STATE OF VERMONT
BEFORE THE
PUBLIC UTILITY COMMISSION

Investigation to review the avoided costs that serve as prices for the standard-offer program in 2019	**)** **)** **)**	**Case No. 18-2820-INV**

REPLY COMMENTS OF ALLCO RENEWABLE ENERGY LIMITED AND PLH LLC

In response to the Commission's order of June 12, 2019, Allco Renewable Energy Limited and PLH LLC (collectively, "Allco") submit the following reply comments.

I. Lemay Solar Failed The Clear, Non-Waivable Requirements To Establish Site Control.

In its June 24, 2019, reply comment, SB Energy Holdings LLC ("SB") argues that the RFP only requires the showing of an anticipated point of interconnection designated on the project map, and that therefore it does not matter if Lemay Solar has site control for the land designated as the anticipated POI. That argument could hold water if they were showing the anticipated POI off-site within a road right of way. Not here. First, Lemay Solar does not even specify the POI on their site plan. Lemay identifies a new circuit that would be required for interconnection, but nowhere do they specify the POI. Second, Lemay has identified a new circuit that would need to be constructed over private land that is owned by a third party in order to interconnect the project to an existing circuit, which is also located on private land. Lemay did not provide evidence of site control for the right of way over the private land required for the new circuit.

Lemay's argument that it is too early to determine the exact point of interconnection does not hold water on the facts here because Lemay identified a circuit that they have applied for interconnection on. That circuit is on private property, so regardless of where the POI is (which Lemay has not identified), SB concedes that an easement from a private property owner would be

still necessary to interconnect the project, and they do not have site control for that.

The photo of the survey submitted by SB in its June 24 comments confirms Allco's earlier comment. That survey clearly shows the lands identified for the interconnection right of way are owned by L&J Adams. SB did not submit any site control for the interconnection right of way. The Lemay project map excerpted below clearly shows the need for a right-of-way over private land to interconnect—private land over which Lemay admittedly does not have site control.

II. NextEra Has Confessed That It Failed The Site Control Requirements.

NextEra has admitted that it failed the non-waivable site control requirements. Its claim that "[t]he difference in name between NEER Development and Boulevard is a distinction without significance," is simply frivolous and contrary to hornbook law regarding business entities.

Affiliation is not one of the four express ways to satisfy site control under the RFP and NextEra's attempt to add a fifth way must be rejected. NextEra has also conceded that site control in the project proponent would only be achieved at a future date and only if "the Commission approves the recommended selection of the NEER Development Projects." That puts the cart before the horse. Site control is required to happen first. NextEra's final attempt to excuse its deficiencies—that "an option agreement is acceptable if it 'unconditionally exercisable by the proponent or its assignee'"—misses the point. There was no assignment submitted with the bid. That language does not mean that a future assignment constitutes site control for a bid now, and as NextEra concedes to yet another unidentified entity, which may or may not be a NextEra related entity. "[A]n assignment to an affiliate [that] is inherently anticipated" does not constitute one of the four express ways to prove site control under the RFP.

As to the Vermont Solar DG and the St. Albans Solar DG projects, NextEra has confirmed that the underlying property rights do not provide it the ability as the time of its bid to build and operate the projects. NextEra says it is relying on its ability to argue that it is entitled to an easement by necessity based upon the notion that "[w]hat constitutes 'necessity' evolves over time." While that may be so in the case of the invention of the electric light bulb, it by no means applies to construction and operation of a solar farm.

Here, none of the Vergennes, St. Albans or Vermont Solar DG complied with the bidding specifications and procedures. The bidders which did comply have a legitimate expectation of being awarded a contract in price order.

III. VPPSA.

The Commission may wish to consider receiving additional briefing regarding the anti-trust aspects of VPPSA's bids. The state action doctrine protects entities that comply with state

law requirements. It does not give municipal entities voluntarily acting as market participants (even acting through a state agent) the right to upend and ignore federal law. State law does not require municipal entities to submit bids for the standard offer program. Nor does state law require municipal entities that wish to submit bids to do so through VPPSA. All those actions are voluntary actions of market participants. Allco stands by its other comments regarding the provider block and the VPPSA bids.

Respectfully submitted,

/s/Thomas Melone
Thomas Melone
Bar No. 5456
Allco Renewable Energy Limited
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Dated: June 28, 2019

STATE OF VERMONT
BEFORE THE
PUBLIC UTILITY COMMISSION

Investigation to review the avoided costs that serve as prices for the standard-offer program in 2019	)))	Case No. 18-2820-INV

COMMENTS OF ENCORE REDEVELOPMENT, LLC IN RESPONSE TO
ALLCO RENEWABLE ENERGY LIMITED AND PLH LLC

Encore Redevelopment, LLC d/b/a Encore Renewable Energy ("Encore") takes this opportunity to respond to comments submitted by Allco Renewable Energy Limited and PLH LLC (collectively "Allco").

While the claims made from the Allco are a skewed interpretation of law, it remains clear the reason for the its requests to adjust the award group is for their own financial benefit, and not the deployment the lowest cost renewable energy.

The lease option agreement submitted for the Sand Hill Solar project has met the site control requirement under the Standard Offer RFP. This was by affirmed by VEPPI, Inc based on Encore's response (and the landowners/counsel) to VEPPI, Inc, who in its detailed diligence of the issue, requested clarification from Encore prior to filing its award recommendations. This information is also being provided in the attachment hereto, yet Encore and the landowner are glad to submit additional affidavits or documentation as necessary.

With regards,

Phillip Foy
General Counsel
Encore Renewable Energy

June 28, 2019

Ms. Judith Whitney, Clerk
Vermont Public Utility Commission
112 State Street
Montpelier, Vermont 05620-2601

Filed vis ePUC

Re: Case No. 18-2820-INV – 2019 Standard Offer Program RFP Recommendations:
Reply Comments of Freepoint Solar LLC

Dear Ms. Whitney

Freepoint Solar LLC ("Freepoint") appreciates the opportunity to submit reply comments (this "Reply") to the comments of Allco Renewable Energy Limited and PLH LLC (collectively, "Allco") filed with the PUC on June 11, 2019 in connection with the recommendations of VEPP Inc., the Standard Offer Program Facilitator ("Facilitator") for the 2019 Standard Offer Request for Proposal ("RFP") as requested in the Public Utility Commission's ("PUC") Procedural Order dated June 12, 2019.

Freepoint submitted its Windsor Solar Project (the "Windsor Project") in response to the RFP and thereafter the Facilitator recommended that the Windsor Project be the third project in the Reserve Group for award of a contract. The Windsor Project's rights to, and control of, the land for the Windsor Project are located in the Option Agreement dated as of October 4, 2017 by and between Freepoint and Black Dog Realty LLC (the "Option Agreement"). As explained below, the Option Agreement (a) places no conditions on Freepoint's exercise of the Option provided therein that requires Black Dog Realty LLC (the "Seller") to sell the land for the Windsor Project (the "Premises") to Freepoint and (b) provides Freepoint control over the Premises sufficient for the Option Agreement to be found valid and enforceable.

There are No Conditions to Freepoint's Exercise of its Option Rights under the Option Agreement

The Option Agreement unequivocally grants Freepoint the right to purchase and control the site for the Windsor Project. It provides as follows:

> 1.1 Grant of Option Rights.
>
> (a) Subject to the terms and conditions and for the consideration herein stated, Seller, on Seller's own behalf and on behalf of Seller's heirs, successors, assigns, personal representatives, and legal representatives, grants to Buyer an exclusive, irrevocable, and continuing right and option (the "Option") to purchase the Premises in accordance with the terms of this Agreement.
>
> (b) The Option granted herein shall include the right of access to and from the Premises from a public road via any easements or other access rights held by Seller for the benefit

Re: Relationship between Robert and Barbara Levine Revocable Trust and Sand Hill Road, LLC

To Whom It May Concern,

It has been brought to my attention that there may be a question as to the rights underlying the Lease Option Agreement ("Option") entered into by and between Encore Redevelopment, LLC ("Encore") and the Robert and Barbara Levine Revocable Trust (the "Trust). The Trust's members are Robert and Barbara Levine, who also are the sole members of Sand Hill Road, LLC ("SHR").

The Option is in the name of the Trust, however the underlying lease agreement is in the name of SHR. The reason for this difference is due to the desire of Encore to limit the financial burden to Mr. and Mrs. Levine, that would otherwise be incurred by transferring the land from the Trust to SHR, until a project has been awarded under the Standard Offer Program.

Once the Standard Offer award has been approved by the Public Utility Commission, the land and Option will be transferred from the Trust to SHR so that the proposed project may move forward in the certificate of public good permitting process.

Should you have any questions or need anything further, please do not hesitate to contact me or the Levine's attorney, Jay Kenlan at jkenlan@kenlanlawvt.com or 802-855-8724.

Sincerely,

Phillip D. Foy, Esq.
Admitted in Vermont
802.861.3023
phillip@encorerenewableenergy.com

> of the Premises and the right to travel on, over and across the Premises as necessary to access the Premises during the Option Term for the purpose of conducting the Activities and the Studies (each as defined in Section 1.3 below) in accordance with this Agreement.

Section 1.5 of the Option Agreement further provides for Freepoint's unconditional right to exercise the Option: "The Option shall remain in effect and may be exercised by Buyer [Freepoint] at any time from the Effective Date through the end of the Option Term…. by Buyer by delivering to Seller written notice of such exercise (the "***Exercise Notice***") prior to the expiration of the Option Term." No conditions are placed on the right of Freepoint to exercise the Option, and such right to exercise cannot be withdrawn, revoked or rescinded by the Seller. Furthermore, as explained more fully in the next section of this Reply, it is in Freepoint's control, and sole discretion, to identify the exact 28 to 40 acres to comprise the Premises that is required to be identified in the Exercise Notice and to pursue any required subdivision.

Upon exercise of the Option, the Seller is required to transfer the Premises to Freepoint within forty-five (45) days by delivery of a warranty deed. (See Sections 2.1 and 2.4 of the Option Agreement).

The PUC has recognized that bidders can demonstrate site control through the use of an option to acquire real property rights. See *Investigation into Programmatic Adjustments to the Standard-Offer Program for 2018*, Case No. 17-3935-INV, 2018 WL 1452283 at *36 (Vt. P.U.C. Mar. 16, 2018).

To demonstrate site control through an option agreement, the 2019 RFP requires a "legally enforceable written option with all terms stipulated . . . unconditionally exercisable by the proponent . . . ." This language restricts any conditions placed on Freepoint's ability to ***exercise the option***. Allco overreads this requirement to mean that there may be no conditions or additional steps that the buyer and seller must take ***to close a land sale***. In fact, there are generally many such steps in any land transaction, including for example financing contingencies, payment of land transfer taxes, obtaining of title insurance and/or obtaining some form of regulatory approval. If the RFP required bidders to show that all such routine steps have been taken *before* submitting their bids, it would in essence require bidders to show that they have fee simple title to such real property. This would be contrary to and inconsistent with the PUC's prior decision that a legally enforceable option agreement satisfies the site control condition.

The PUC has previously addressed option agreements in a way that highlights this distinction. In the 2017 Standard Offer Award, the PUC found one bidder, Eitri, had not satisfied the site control requirement when the option agreement contained a clause providing that the property owner "may cancel this Agreement at any time for any reason or for no reason, in Owner's sole discretion at any time upon written notice to Eitri." Order Re: 2017 Standard-Offer Award Group, Docket No. 8817, 2017 WL 4841502 at *4 (Vt. P.U.C. Oct. 20, 2017). The

Eitri option agreement expressly conditioned Eitri's ability to exercise the offer by giving the property owner control over the option. In contrast, Freepoint's Option Agreement gives Freepoint complete authority to exercise the option and does not provide the Seller with any right to unilaterally withdraw, revoke or rescind the option and the Seller's obligation to sell the Premises to Freepoint upon exercise of the Option. See Sections 1.1 and 1.5 of the Option Agreement quoted above.

Furthermore, the fact that the purchase of the Premises by Freepoint will require a subdivision of the property owned by the Seller also does not constitute a condition to Freepoint's right to exercise of the option or of the Seller's obligation to transfer the Premises. Contrary to Allco's claims, the subdivision itself is controlled by Freepoint and is not within the control or subject to the approval of the Seller. The Option Agreement allows Freepoint to conduct a survey of the Premises to delineate the appropriate boundaries for the Windsor Project. Once the survey and field notes are delivered, "this Agreement shall be deemed to be amended to delete the Exhibit A attached to this Agreement and such field notes shall be substituted therefore as the legal description for the Premises and shall be used in the Deed . . . to be conveyed at Closing." See Section 2.3(a) of the Option Agreement.

In fact, the Seller is obligated to work with Freepoint to obtain the subdivision (and the subdivision will only be consummated after Freepoint has delivered the Exercise Notice obligating it to purchase the Premises from Seller). See Section 3.1(h) of the Option Agreement.

In addition, the requirement for obtaining approval for subdivision of Seller's property is no different than the other land use and / or other regulatory approvals from governmental authorities that may be required for the Windsor Project, and any solar project, to proceed with their project. In general, the need to obtain such approvals do not constitute a "condition" that would invalidate an agreement for the transfer of real property interests. The courts have recognized this in many cases. See, e.g., *Meyer v. Fugat*, 133 Vt. 265, 336 A.2d 169 (1975) (purchase obligation subject to a building permit and Act 250 permit being obtained) and *Mahoney v. Howe*, No. S0890-02 CnC, 2004 WL 5460382 (Vt. Super. May 4, 2004) (purchase transaction required that various permits be secured).

<u>The Identification of the Premises in the Option Agreement is Sufficiently Specific to Define its Boundaries for Purposes of Effectiveness and Enforcement of the Option Agreement</u>

The Option Agreement provides for a mutual assent between Freepoint and the Seller as to how the Premises will be finally delineated and agreement between the parties that the Premises will be whatever results from such process. As discussed above, Section 2.3(a) of th Option Agreement provides that "[u]pon delivery of the Survey and the field notes to the Premises prepared by the Surveyor to Seller and Buyer . . . this Agreement shall be deemed to be amended to delete the Exhibit A attached to this Agreement and such field notes shall be substituted therefore as the legal description for the Premises and shall be used in the Deed . . . to be conveyed at Closing." Likewise, Section 3.1(h) provides that "[t]he subdivision shall be

generally as shown on Exhibit A attached hereto, subject to adjustment based on Buyer's due diligence before the delivery of the Exercise Notice." This process is under the complete control of Freepoint with its due diligence and actions in pursuit of any subdivision approval resulting in the final specific boundaries and size of the Premises. The Seller has agreed to these actions being controlled by Freepoint and to cooperate and work with Freepoint on these matters.[i]

In *Mahoney v. Howe*, the trial court upheld a contract where it found that an "agreement must be examined in the totality of the circumstances surrounding its formation and contained within the document. As part of an ongoing process, the agreement was a snapshot of the parties' current understanding." No. S0890-02 CnC, 2004 WL 5460382 (Vt. Super, May 4, 2004). The *Mahoney* court recognized that the fact that the exact dimensions of the property had not been established "was not the result of any lack of agreement between the parties" but rather a function of the ongoing steps established by the parties and required for completion of the zoning process.

As in *Mahoney*, the process for the exact delineation of the Premises under the Option Agreement was agreed to by the parties with the only aspect outside of Freepoint's full control being the zoning approval to be obtained from the applicable governmental authority. In addition, similar to Mahoney, the Option Agreement sets out the key terms of the sale: the price to be paid for the Premises, a range for the size of the Premises and the process of due diligence and zoning work to be done to finalize the exact delineation of the Premises and complete the transaction.

In contrast, the sales agreement in *Evarts v. Forte*, 135 Vt. 306, 308, 376 A.2d 766 (1977) was intended to be the full and final agreement between the parties. That agreement vaguely described the property as an "[i]mproved lot of one acre (more or less) and presumed to be one acre plus, rather than minus" and provided for no further delineation of, or discussion or negotiation on, the boundaries of the property for sale. *Id.* Here, the Option Agreement shows a meeting of the minds on the general delineation of the Premises (Exhibit A of the Option Agreement), expressly provides Freepoint control over the size of the Premises, and requires Freepoint and the Seller to work together to obtain the subdivision. Thus, the facts here are readily distinguishable from *Evarts*.

The comments of Allco arguing that the Option Agreement for the Windsor Project is unenforceable also fails to acknowledge that the agreement in question is an option contract to purchase real estate, not an agreement of sale for real estate. Under the Option Agreement, at the time of the exercise of the Option, when the obligations of the Seller to sell the Premises and Freepoint to buy the Premises will fully mature, the final delineation of the Premises will be complete along with a legal description and final total acreage for the Premises. See Section 1.5 of the Option Agreement. The creation of the beneficial real property interest of Freepoint in the Premises through an option agreement purposefully provides for time during the Option Term for arriving at a final total delineation of the Premises from an initial adequate, but not

fully complete, identification and meeting of the minds of the parties as to what will constitute the Premises.

The Option Agreement adequately defines the Premises for purposes of validity and enforcement of the agreement.

Conclusion

VEPPI has identified on the Standard Offer link of its website in the Frequently Asked Questions section what is needed to meet the requirements of the PUC to demonstrate site control as follows: "An option or contract of sale must unconditionally confer on the producer the right to purchase or lease the property within an agreed upon period at a named price. It must be binding on the owner of the property and provide that the owner cannot unilaterally withdraw, revoke, or rescind the obligation to sell or lease the property to the producer." https://vermontstandardoffer.com/standard-offer/request-for-proposals/frequently-asked-questions/. The Option Agreement meets all these requirements.

Freepoint submits to the PUC and the Facilitator that the objections of Allco with respect to Freepoint's Windsor Solar Project are without merit, that the recommendations of the Facilitator for the project should remain unchanged and that the PUC should accept and approve such recommendations.

Sincerely,

Peter S. Ford

[i] The Seller filed a Memorandum of Option Agreement in the Land Records of the Town of Windsor on November 29, 2017, as required by Section 1.6 of the Option Agreement. This action further reflects the mutual assent and agreement between Freepoint and the Seller found in the Option Agreement.

Matthew S. Handel
Vice President
700 Universe Boulevard
Juno Beach, FL 33408-0420
561-691-2108
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June 26, 2018

-VIA ePUC ELECTRONIC FILING-

Mrs. Judith Whitney, Clerk
Vermont Public Utility Commission
112 State Street
Montpelier, Vermont 05620-2601

Re: Case No. 18-2820-INV, Investigation to review the avoided costs that serve as prices for the standard-offer program in 2019

Dear Mrs. Whitney:

NextEra Energy Resources Development, LLC ("NEER Development" or "Company") submits this response to the "Comments of Allco Renewable Energy Limited and PLH, LLC" on the Report and Recommendation of the Standard Offer Facilitator ("Facilitator") regarding the results of the 2019 standard-offer program Request for Proposals ("RFP"). In its comments, Allco asserts, *inter alia,* that the Vermont Solar DG, St. Albans DG, and Vergennes Solar DG Projects ("NEER Development Projects") fail to meet the site control requirements set forth in the RFP and should be rejected. As set forth more fully below, Allco's assertions are incorrect, without support, and should be rejected.

INTRODUCTION

On April 26, 2019, NEER Development submitted three 2.2 megawatt ("MW") (AC) solar project proposals to VEPP Inc., the Facilitator, in response to the 2019 Request for Proposals ("2019 RFP"). Thirty-eight proposals were submitted to the Facilitator by various providers and developers. On May 24, 2019, the Facilitator filed its report with the Commission recommending that the Commission award contracts for twenty-three proposals in the Award Group and three proposals for the Reserve Group. With respect to Price Competitive Block Proposals, the Facilitator recommended that the NEER Development Projects be selected.

COMMENTS

In its comments, Allco claims that the NEER Development Projects should be rejected because "the site control documents for [the] bids do not give site control *to the project proponent*." (Case No. 18-2820-INV, *Investigation to review the avoided costs that serve as prices for the*

standard-offer program in 2019, Allco Comments (filed on June 11, 2019) at 3. Specifically, Allco argues that because the name of project proponent, NEER Development, differs from the entity possessing site control, Boulevard Associates, LLC ("Boulevard"), the bids fail the required site control requirements. (*Id.* at 3-5) Allco also claims that the St. Albans Solar DG and Vermont Solar DG Projects do not possess site control sufficient to build the projects. (*Id*. at 5 n.4) Allco's claims, however, are without merit as each of the NEER Development Projects have demonstrated the requisite site control to construct the proposed projects.

Pursuant to Section 3.1.3 of the 2019 RFP, "[t]he proponent must demonstrate project site control in favor of the proponent's legal company name by providing evidence of one of the following: (1) fee simple title to such real property; (2) valid written leasehold or easement interest for such real estate property; (3) a legally enforceable written option with all terms stipulated including "option price" and "option term," unconditionally exercisable by the proponent or its assignee, to purchase or lease such real property or hold an easement for such property including the underlying purchase, lease, or easement agreement; or (4) a duly executed contract for the purchase and sale of such real property." Consistent with the site-control requirements, NEER Development has demonstrated site control for each of the NEER Development Project site locations pursuant to option agreements that legally inure to NEER Development intracompany affiliates upon the exercise of the agreement.

The difference in name between NEER Development and Boulevard is a distinction without significance. As demonstrated in the project proposals, the project proponent (NEER Development) and entity possessing site control (Boulevard) are affiliates of the same company. Specifically, as set forth in the NEER Development RFP Responses, both NEER Development and Boulevard are wholly-owned indirect subsidiaries of NextEra Energy Resources, LLC. (RFP Responses at 2, Exhibit 3.) During early stage development, Boulevard was used to secure options agreements for the potential facilities. If the Commission approves the recommended selection of the NEER Development Projects, all easement option agreements will be transferred from Boulevard to the specific Project entity, and it will be the Project entity that exercises the options on the underlying easements prior to the start of construction. Significantly, such an assignment to an affiliate is inherently anticipated in the site-control requirements. Specifically, an option agreement is acceptable if it "unconditionally exercisable by the proponent *or its assignee*." As such, NEER Development's demonstration of site control was properly accepted by the Facilitator.[1]

A finding that site control exists for NEER Development is also consistent with Commission precedent. The Commission has held that "the purpose of the site-control requirement is to decrease speculative positioning in the queue by showing that the applicant identified a particular location on which the project could be constructed …"[2] Consistent with the site control requirements, NEER Development provided a legally enforceable option agreement as Exhibit 4 to each of the RFP

[1] Allco's reliance on the rejection of the VT Fresh Energy bid in 2017 is flawed. as the VT Fresh Energy factual circumstances are not analogous to the NEER Development projects. First, unlike NEER Development, VT Fresh Energy did not identify a specific parcel for development. Secondly, VT Fresh Energy did not establish a nexus between the project proponent and the site control entity in their RFP response. **(***see Standard Offer Facilitator's recommendations for the 2017 Standard Offer Program Request for Proposals (RFP) Award Group,* VEPP Inc. Recommendation (dated June 4, 2017) at 7**)** As demonstrated above, NEER Development has established a corporate relationship with Boulevard and provided a legally enforceable option agreement for specific project sites.

[2] Docket No. 7533, *Investigation Re: Establishment of a Standard Offer Program for Qualifying Sustainably Priced Energy Enterprise Development ("SPEED") Resources*, Order (issued October 28, 2009) at 2; *see also* Docket No. 8817, *investigation into programmatic adjustments to the standard-offer program*, Order Re: 2017 Standard-Offer Award Group (issued October 20, 2017) at 6, 10.

responses. Thus, control over a particular location has been established.

NEER Development also has proof of dominion over real property to the extent necessary to construct the Projects. With respect to St. Albans DG, the Field Drive Use Agreement was included in the legal description of the site control documents because the easement is necessary for the landowner to access their property. When the Field Use Agreement was entered into on January 13, 1999, the parties likely did not contemplate using the property to access a solar power plant because solar energy was not a common source of renewable energy and the only economic benefit the landowner contemplated at that time was one from agricultural purposes. The landowner still intends to use portions of the property for agricultural purposes and NEER Development will too by mowing and seeding the property. The Field Drive Use Agreement specifically provides that the "field drive shall be limited to USER…USER's tenants… and persons having business with USER". Vermont law also recognizes the concept of an "easement by necessity" which arises when the division and transfer of commonly owned land creates a parcel without access to a public road. *Myers v. Lacasse*, 2003 VT 86A, ¶ 16. What constitutes "necessity" evolves over time. Access for pedestrian and vehicular traffic were historically the only rights regarded as necessary, but increasing dependence on electricity has led to the recognition of easements by necessity for those purposes as well. *Berge v. State*, 2006 VT 116, ¶ 10 (2006).

Similarly, with respect to Vermont Solar DG, the Easement Deed recorded May 12, 1998 also provides adequate site control for the foregoing reasons and because it explicitly provides that the "easement and right of way is for the benefit of those lands and premises conveyed to Michael T. and Margaret M. Russell by Warranty Deed of George M. and Patricia R. Lavalette dated April 7, 1997 and recorded in Volume 93, Page 217 of the Town of Charlotte Land Records (Lot C)". Lot C is the Lot that NEER Development encumbered with a Lease.

CONCLUSION

The Company reiterates its commitment to the development of renewable energy in Vermont and looks forward to bringing the benefits of its projects to the citizens of the State in the future.

Please contact me should you or your staff have any questions regarding this filing.

Sincerely,

s/ Matthew S. Handel
Matthew S. Handel
Vice President

PURPOSE ENERGY™

Digest this.

June 28, 2019

Ms. Judith Whitney, Clerk
Vermont Public Utility Commission
112 State Street
Montpelier, Vermont

RE: Case No. 18-2820-INV – Standard Offer Program RFP Recommendations

Dear Ms. Whitney,

PurposeEnergy is grateful for the opportunity to respond to comments that have been submitted regarding the 2019 Standard Offer Request for Proposal.

Specifically, PurposeEnergy would like to respond to misinformed comments made by Allco Renewable Energy Limited and PLH LLC (Allco).

In Section V of Allco's comments, Allco questions whether the PurposeEnergy, Franklin Foods, and Cabot projects meet FERC requirements. PurposeEnergy has twice obtained FERC certification for similar food waste projects in Vermont, both in South Burlington (2009) and in Middlebury (2018). Whatever concern Allco has regarding FERC certification for these projects is simply invalid.

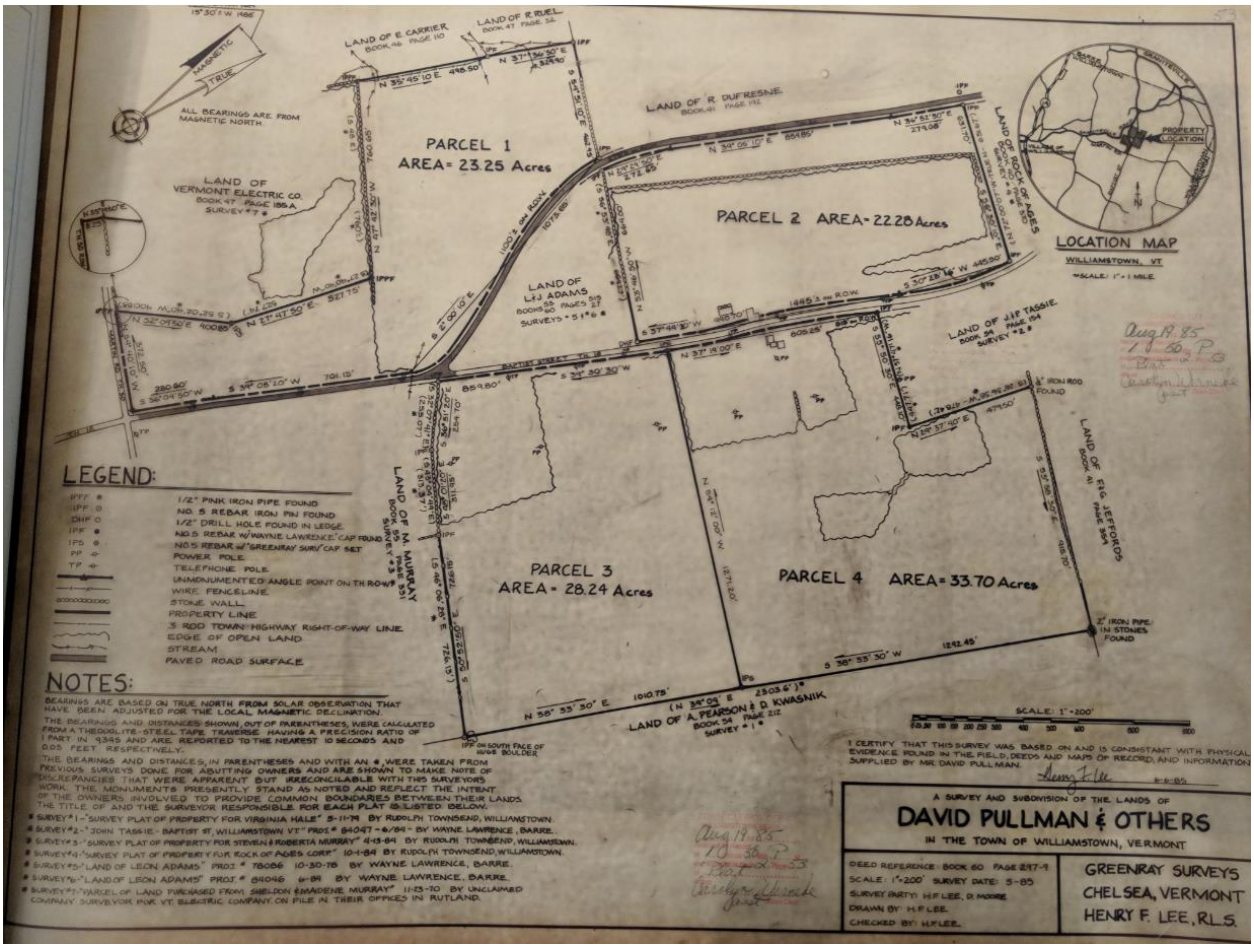
In Sections VI and XIV, Allco seems to be confused about the distinction between an agricultural operation and an industrial operation. Agricultural operations are defined by the Agency of Agriculture using various metrics for sales of agricultural products, planting and harvesting crops, raising livestock, and Internal Revenue Service 1040(F) eligibility. Since none of these metrics apply to a merchant food waste anaerobic digester in a municipal industrial park, the PurposeEnergy proposal cannot be considered an agricultural operation. Similar consideration applies to the Franklin Foods and Cabot proposals. Furthermore, the Food Waste Standard Offer category is intended for pre-consumer and post-consumer food residuals while the Farm Methane Standard Offer category is intended for on-farm manure digesters. The PurposeEnergy, Franklin Foods, and Cabot proposals each include feedstock tables evidencing that greater than 50% by volume of the feedstock will be food residuals and that no manure is included as feedstock. Finally, the sites are appropriately located in industrial zones, not on farms. Clearly these projects fit into the Food Waste Standard Offer category and not the Farm Methane Standard Offer category.

PurposeEnergy respectfully disagrees with Allco's allegations and avers that the three Food Waste Anaerobic Digester proposals are FERC eligible and squarely achieve the feedstock requirements of the Food Waste Anaerobic Digester category.

Sincerely,
Eric Fitch, Manager
PurposeEnergy – St. Albans, LLC
fitch@PurposeEnergy.com

SB Energy Holdings LLC is hereby filing an official reply comment regarding the statements made by that of Allco Renewable Energy Limited and PLH LLC. Allco Renewable Energy Limited argues that our project Lemay Solar "failed the clear, non-waivable requirements to establish site control." Allco Renewable Energy Limited states that the "identified interconnection point on a separate parcel referred to as parcel 2 but the site control provided only relates to parcel 1-the site of solar array." What they fail to mention as demonstrated in the 2019 Standard Offer RFP under section 3.1.4 Project Map (5) "**anticipated** interconnection point" thus the interconnection point as shown in our project map is only anticipated. At this time, it is too early to determine the exact point of interconnection without further discussion and investigations conducted by the utility, Green Mountain Power. The anticipated interconnection point is by no means the exact and only point of interconnection.

Additionally, Allco has the parcels switched around parcel 2 is the site of the solar array. The "Tap" point with the utility will be at the main disconnect switch which is located on Parcel 2 and all other utility poles are simply representative of the possible pathway the utility will take to provide a source of interconnection on site. The pathway from the main disconnect to the utility lines will be included in the utility scope of work, owned by the utility, and installed by the utility. The solar contractor is not the party who determines this utility line path to the solar project location. The new utility lines shown are only the anticipated pathway based on the closest utility line location to the site. The utility will still determine the best pathway based on their infrastructure, easements, and such. There may be alternative pathways for the utility lines which the utility takes, but the scope by the solar project will end at the disconnect located on parcel 2.


PARCEL 1
AREA = 23.25 Acres
PARCEL 2 AREA = 22.28 Acres
PARCEL 3
AREA = 28.24 Acres
PARCEL 4 AREA = 33.70 Acres
LAND OF VERMONT ELECTRIC CO.
LAND OF E CARRIER
LAND OF R RUEL
LAND OF R DUFRESNE
LAND OF ROCK OF AGES
LAND OF LIJ ADAMS
LAND OF JJF TASSIE
LAND OF M MURRAY
LAND OF FIG JEFFORDS
LAND OF A PEARSON & D KWASNIK
BAPTIST ROAD
LOCATION MAP
WILLIAMSTOWN, VT
LEGEND:
NOTES:
SCALE: 1" = 200'
A SURVEY AND SUBDIVISION OF THE LANDS OF
DAVID PULLMAN & OTHERS
IN THE TOWN OF WILLIAMSTOWN, VERMONT
GREENRAY SURVEYS
CHELSEA, VERMONT
HENRY F. LEE, R.L.S.

95 Tesla Lane East Dorset, VT 05253
Tel: 802-779-8118 www.Starwindturbines.com

Ms. Judith Whitney, Clerk
Vermont Public Utility Commission
112 State St. 4th Floor
Montpelier, VT 05620-2701

June 28, 2019

REF: Case 18-2820 INV Standard Offer Program

Dear Ms. Whitney,

I am responding to the allegation by ALLCO/PHL, Tom Melone, that proposed Projects Howrigan Wind, Way Out Wind, Merck Forest Wind, Hespos Wind, Auger Heights Wind A, Auger Heights Wind B, and Pennock Hill Wind exceed the 100kW limit and should be disqualified. The sole basis of this complaint is that the bidders are using a STAR72-6 30kW or STAR72-6 45kW in their proposals, thereby exceeding the 100kW small wind limit when using four turbines. This is not the case.

The STAR72-6 turbine is modular and can be configured in 25kW, 30kW, 35kW, 40kW, and 45kW depending on the application and site rules. The above bidders are planning to use 4 x STAR72-6 25kW turbines to make 100kW and qualify for the Small Wind Technology allocation. The Small Wind Technology category can also be met with 3 x STAR72-6 30kw, or 2 x STAR72-6 45kW. This modular turbine can be seen at the Star Wind Turbines facility in East Dorset, Vermont.

Sincerely

Jason Day

Also: I am requesting to be on the email list for Case 18-2820 INV and the Standard Offer Program in general.

Vermonters for a Clean Environment

Case No. 18-2820-INV

Investigation to review the avoided costs that)
Serve as prices for the standard-offer)
Program in 2019)

VERMONTERS FOR A CLEAN ENVIRONMENT'S COMMENTS ON COMMENTS ON STANDARD OFFER RFP RECOMMENDATIONS

On June 11, 2019, the Department of Public Service, Green Mountain Power and Allco Renewable Energy Limited/Ecos Energy LLC/PLH LLC/Thomas Melone filed comments on the Standard Officer Facilitator's recommendations. VCE offers these comments on issues raised.

Publication of RFP Responses: VCE supports the recommendation to make proposals received available online in the interests of transparency.

Site Control: VCE supports a requirement for applicants to submit bids that show the proponent has control over all necessary land rights in order to guarantee that the project can be constructed, including compliance with deed restrictions, covenants, necessary rights of way and easements. However, control of all land rights is currently not required to meet the definition of "site control" in the Standard Offer program.

Standard Offer contracts have been issued to proponents after which issues have arisen such as failure to obtain the right of way necessary to construct the project according to plans and testimony, and failure to obtain an easement to build the project over a 19th century water line. In one Standard Offer case, a CPG was issued to Allco Renewable Energy Limited d/b/a Otter Creek Solar LLC after which it came to light that the project could not be constructed via the planned access road due to failure to obtain the necessary easement from the adjoining

property owner. It would serve the public's interest to expand the definition of "site control" for Standard Offer bids to include control over all necessary land rights in order to guarantee that the project can be constructed. In the absence of any such requirement in place at this time, the recommendation to reject bids responding to this recent RFP that have not demonstrated control over all necessary land rights is without merit.

Star Wind Turbines. Two CPGs were issued for two net-metered Star Wind turbines in East Dorset in 2015. VCE Exhibit 1 shows five photographs taken over a three year period of the Star Wind turbines erected in East Dorset, Vermont at the company's manufacturing facility. VCE has followed this company's progress and been contacted by many people about the technology, which promises to be a beneficial addition to deployment of renewable energy. However, there is no evidence that the company has a product that is ready for market that can be erected in the time frames established by the Standard Offer program.

As seen in the photos, at most one wind turbine and one tower have been erected in East Dorset, and in recent years the wind turbine has only three of the advertised six blades. On Oct. 29, 2018, a CPG was issued for a Standard-Offer contract Star Wind turbine in Readsboro, Vermont. Neighbors report as of yesterday there has been no activity to erect the wind turbine.

VCE recommends that the PUC stay the issuance of any more Standard Offer contracts for Star Wind turbines until the company can demonstrate it has a functioning product by erecting two complete units at its East Dorset facility.

Dated at Danby, Vermont on this 28st day of June, 2019,

By: Annette Smith

Annette Smith
Executive Director

Star Wind Turbines, Tesla Drive, East Dorset, Vermont
CPG # NM-4023 issued 2/5/15, Amended 17-3868-PET, 12/5/17

Two wind turbines have tower heights of 80 feet and 103 feet and rotor diameters of 36 feet and 52 feet, amended in 2017 to replace one of the existing STAR5233 model turbines at the Project with a STAR7230 turbine that will have a larger rotor diameter than the approved model but will have the same capacity.

April 12, 2016

Oct. 5, 2016

Dec. 26, 2017

Jan. 4, 2019

June 18, 2019

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 18-2820-INV

Investigation to review the avoided costs that serve as prices for the standard-offer program in 2019	)))

REPLY COMMENTS OF VERMONT PUBLIC POWER SUPPLY AUTHORITY

NOW COMES Vermont Public Power Supply Authority ("VPPSA"), by and through its attorneys, McNeil, Leddy & Sheahan, P.C., and pursuant to the Procedural Order of the Vermont Public Utility Commission ("Commission") in the above-captioned matter dated June 12, 2019, hereby replies to the Comments of Allco Renewable Energy Limited and PLH LLC (hereinafter "Allco") dated June 11, 2019 ("Allco Comments").

I. The Standard Offer Facilitator Correctly Calculated the Amount Available to the Provider Block

Allco contends that the provider block has a hard limit of 20% of the 10MW annual increase for 2019, arguing that the unused amount from the 2018 RFP cannot be added to the 10MW annual increase. Allco Comments at 14-15. This argument not only conflicts with the plain language of the operative statute, but also is inconsistent with Commission precedent.

The statute is clear that "[i]f the provider block for a given year is not fully subscribed, any unsubscribed capacity within that block shall be added to the ***annual increase*** for each following year…." 30 V.S.A. § 8005a(C)(1)(B)(ii) (emphasis added). The Commission has previously ruled that unused capacity in the provider block is to be allocated to the annual increase for the following year. *See Investigation into programmatic adjustments to the standard-offer program for 2018*, Case No. 17-3935-INV, Order of 6/15/2018 at 3 ("The unused capacity in the Provider Block of 0.125MW

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is allocated to the 2019 annual increase for the standard-offer program as required by 30 V.S.A. § 8005a(C)(1)(B)(ii)."); *see also Programmatic Changes to the Standard-Offer Program,* Docket No. 7873 and *Investigation into the Establishment of Standard-Offer Prices Under the Sustainably Priced Energy Enterprise Development ("SPEED") Program*, Docket No. 7874, Order of 3/1/2013 at 36 (holding that unsubscribed capacity from the provider block is included in the following year's annual increase and available to both the developer and provider blocks). VPPSA submits there is no reason for the Commission to revisit these rulings, and should conclude that the Standard Offer Facilitator correctly calculated the annual increase and the amount of capacity allocated to the provider block.

II. The Sherman Act is Inapplicable to VPPSA Under the State-Action Doctrine

It is black letter law that the Sherman Act does not apply to state action or official action directed by the state. *See Parker v. Brown*, 317 U.S. 341, 351 (1942)("Sherman Act… gives no hint that it was intended to restrain state action or official action directed by the State."). VPPSA is a creature of state statute, established as a "body politic and corporate" and "constituted a public instrumentality exercising public and essential governmental functions" of the State of Vermont. 30 V.S.A. § 5011(a). Among VPPSA's powers and duties is the authority to purchase electric power and energy of specific projects and to sell that electric power and energy to other utilities in the State. 30 V.S.A. § 5012(7) and (8). When placing bids in response to the standard-offer program request for proposals and assisting its members to meet their renewable portfolio standards, VPPSA is exercising an essential governmental function of the State of Vermont. Moreover, it is acting as directed by state statute when it does so. As such, VPPSA is immune from Sherman Act liability under the state-action doctrine. *See*

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Washington Gas Light Co. v. Virginia Electric & Power Co., 438 F.2d 248 (4th Cir. 1971). Allco's arguments based upon Sherman Act violations are inapplicable to VPPSA and its members and should be disregarded by the Commission.

III. The Federal Power Act is Inapplicable to VPPSA and its Members

No provision of the Federal Power Act applies to a State, a political subdivision of a State, or an instrumentality of the State. 16 U.S.C.S. § 824(f). As noted above, VPPSA is expressly made an instrumentality of the State of Vermont, and its members are all political subdivisions of the State. While there are myriad reasons why Allco's analysis in this regard fail, the fact that VPPSA and its members are non-jurisdictional at the Federal Energy Regulatory Commission ("FERC") is fatal to Allco's claims. Furthermore, FERC was previously presented with a challenge to the provider block by Allco and others, and FERC declined to act on their petition. *Otter Creek Solar LLC, et al.*, Docket Nos. EL 17-16-000, QF 13-402-006, QF 16-353-001, QF 16-354-001, QF 16-355-001, QF 16-356-001, 158 FERC ¶ 61,001 (2017).

IV. The Commission Lacks Jurisdiction to Consider the Constitutionality of a State Statute it is Bound to Administer

Allco also challenges the constitutionality of the provider block under Chapter 1, Article 7 of the Vermont Constitution. While Allco argues that its challenge to the statutorily–created provider block is "as applied" and therefore within the Commission's jurisdiction, it is readily apparent that Allco challenges 30 V.S.A. & 8005a(C)(1)(B) as unconstitutional. Vermont law is clear that the Commission does not have the authority to rule upon the constitutionality of a statutory enactment. *Westover v. Village of Barton Electric Department,* 149 Vt. 356, 357 (1988); *see also Williams v. State*, 156 Vt. 42, 53 (1990)(holding that an administrative agency is not authorized to rule upon the constitutionality of statues the agency is bound to administer). Here, the Commission, as

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an administrative agency, is bound to administer the Standard-Offer program under Section 8005a and, therefore, lacks the jurisdiction to consider Allco's challenge. Allco's challenge in this regard must be resolved by the judicial branch of government, not the executive branch. Like all other arguments advanced by Allco, this one fails as well.

CONCLUSION

WHEREFORE, based upon the foregoing, the Commission should disregard Allco's comments in their entirety and uphold the Standard Offer Facilitator's report and recommendation regarding the results of the 2019 standard-offer program request for proposals.

DATED at Burlington, Vermont this 28th day of June 2019.

McNEIL, LEDDY & SHEAHAN, P.C.

By: William F. Ellis

William F. Ellis, Esq.
A Member of the Firm
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06/28/2019	SB Energy Holdings LLC [PUBCOM] Dipisa, Joseph [PUBCOMREP]	To emphasize our previous point, if selected as part of the Award Group SB Energy Holdings LLC does not foresee any issues interconnecting our project Lemay Solar. The parcel is bordered by two public access roads on either side, Adams Rd and Baptist St, This provides us plenty of opportunity to work with the utility to determine an exact interconnection point. Sincerely, Joseph Dipisa Analyst SB Energy Holdings LLC	Filed