

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 19-3286-PET

Request of NativeEnergy for a standard offer contract amendment	
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Order entered: 10/17/2019

ORDER GRANTING REQUEST TO AMEND STANDARD OFFER CONTRACT

I. INTRODUCTION

In today's Order, the Vermont Public Utility Commission ("Commission") grants a petition by Native Energy ("Petitioner") to amend the terms of a standard-offer contract for a methane digester proposed to be located in Highgate, Vermont (the "Project"). The Commission also authorizes the Standard Offer Facilitator to amend the form of standard-offer contracts for all agricultural methane digesters.

II. SUMMARY OF THE PETITION AND COMMENTS RECEIVED

The petition was filed on August 26, 2019. Notice of the petition was given to the Vermont electric distribution utilities and the Standard Offer Facilitator. The due date for comments on the petition was September 16, 2019.

The Petitioner requests that the Commission amend Section 11 of the standard-offer contract so that the Project may be moved to a new location if in the future the Project is unable to secure adequate manure supply at the farm in Highgate where it will be initially constructed. Normally, it is a breach of the standard-offer contract if a producer fails to deliver electricity for more than 12 consecutive months. The Petitioner requests that Section 20 of the standard-offer contract be amended to provide an exception to this general rule so that the Petitioner would have time to relocate the methane digester to a new location.

The Petitioner contends that the standard-offer contract is too risky because the Petitioner "could lose the entire value of the Project equipment (~\$300,000)" if the host farm were to stop operating. The Petitioner believes that the host farm is "sound" but represents that Vermont lost

9% of its dairy farms in 2018. Therefore, the Petitioner “cannot wager hundreds of thousands of dollars on the continued existence of any given dairy.”¹

The Petitioner asserts that the Commission has reserved for itself the authority to amend standard-offer contracts when the amendment is in the public interest. The Petitioner states that an amendment would preserve existing renewable generation capacity and that this goal should be considered more fundamental than the “timely development” goal of 30 V.S.A. § 8005a. The Petitioner states that this issue arises for all methane digesters and suggests that the form of contract be amended for all methane plants that are capable of being relocated. The Petitioner asserts that “the costs of relocation alone are sufficient to demand robust due diligence” from methane digester project developers.²

The Vermont Department of Public Service (the “Department”) opposes the requested amendments on the grounds that they will create an administrative burden and reduce incentives for developers to conduct due diligence before selecting a site. The Department states that “the purpose of the standard-offer program is to have one contract offered to certain developers that meet established programmatic credentials, thus creating an ‘even-handed’ process for all developers looking to participate in the standard-offer program.”³ According to the Department, the proposed amendments “will create a pathway for developers wanting speedy project resolutions to put forth less of an effort in the site selection process.”⁴

III. DISCUSSION

The Commission has previously held that it “does not allow modifications to the location, technology type, or interconnecting utility listed in Attachment A of the contract.”⁵ The Commission reasoned that allowing such changes, absent a compelling reason, would encourage developers to propose speculative projects that are less likely to be commissioned in a timely manner.⁶ This would disadvantage legitimate projects that were competing for limited space in

¹ Petition at 3.

² Petitioner Reply Comments at 4.

³ Department Comments at 3.

⁴ *Id.* at 4.

⁵ *Investigation Re: Establishment of a Standard Offer Program for Qualifying Sustainably Priced Energy Enterprise Development (“SPEED”) Resources*, Docket 7533, Order of 7/7/2011 at 11.

⁶ *Petition of Conti Solar for an amendment to its standard-offer contract*, Case No. 18-0939-PET, Order of 6/6/18 at 3.

the standard-offer program. These considerations do not apply to agricultural-methane projects because there is no statutory limit on the capacity of agricultural-methane projects participating in the standard-offer program.⁷ Therefore, while the Commission's categorical rejection of requests to move standard-offer projects remains the standard for projects that participate in competitive solicitations, the Commission has reconsidered this prohibition for agricultural methane projects. Amending the standard-offer contract in the manner requested by the Petitioner will not prejudice other participants in the standard-offer program because developers of agricultural methane projects do not compete for limited program space.

We also note that the requested amendment language still requires the Petitioner to commission the Project in the location described in Attachment A. The Petitioner may not move the Project unless "*after commissioning, and due to circumstances beyond its control, the [Petitioner] becomes unable to secure adequate manure supply to continue financially viable operations.*"⁸ The changes to the standard-offer contract proposed by the Petitioner will promote the timely development of agricultural-methane projects in Vermont, which is consistent with state policy. Accordingly, the Petitioner's request is granted. The contract shall be amended as follows:

11. PROJECT LOCATION, DESIGN, CONSTRUCTION AND OPERATION
Producer shall construct the Project at the location and in a manner substantially consistent with the description set forth in Attachment A. If after Commissioning, and due to circumstances beyond its control, Producer becomes unable to secure adequate manure supply to continue financially viable operations of the Project at this location, Producer may, with notice to Facilitator, relocate the Project to such other location at which the Project would otherwise be eligible for standard offers under 30 V.S.A § 8005a, provided that the Project resumes operations at such other location within eighteen months of its cessation of operations at the location set forth in Attachment A. Producer shall utilize Commercially Reasonable Efforts in the design, construction and operation of the Project in accordance with Good Engineering and Operating Practices, the terms and conditions of any certificate of public good and any other Regulatory Approvals issued relative to the Project, and shall be solely responsible for all costs, expenses, liabilities and other obligations associated with the Project. All operations and deliveries shall be subject to the rules and regulations of the ISO-NE bulk power system in effect during the Term of this Agreement, and Producer shall be responsible for payment of any costs, sanctions or charges assessed by ISO-NE arising from actions or inactions of Producer.

⁷ 30 V.S.A. § 8005a(d)(1).

⁸ Petition at 4.

20. EVENTS OF DEFAULT AND TERMINATION EVENT

Under this agreement, an event of default includes, but is not limited to of any of the following:

- a. Any breach of the terms of this agreement.
- b. Producer fails to deliver any Electricity from the Project for a period of twelve consecutive months at any time after Commissioning, or, in connection with the relocation of the Project as provided for in Section 11 of this agreement, for a period of eighteen months.

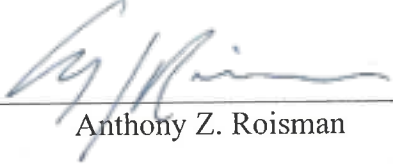
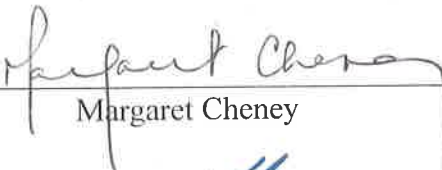
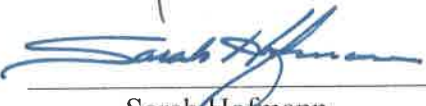
The Commission wants to make clear that any relocated project must continue to use methane derived from an agricultural operation. Further, nothing in today's decision affects an agricultural-methane project's obligation to first obtain approval pursuant to 30 V.S.A. §§ 248(a) and (q) before changing location and undertaking site preparation or construction of the equipment used to generate electricity from biogas, the equipment used to refine biogas into natural gas, the structures housing such equipment used to generate electricity or refine biogas, and the interconnection to electric and natural gas distribution and transmission systems.

The Commission authorizes the Standard Offer Facilitator to revise the form of contract for all future agricultural-methane projects as described in this Order.⁹ The Commission recognizes that it may not be possible for some agricultural methane digester projects to be relocated. However, having a single form of contract for all agricultural methane projects will streamline the administration of the standard-offer program.

SO ORDERED.

⁹ Agricultural-methane projects holding existing contracts may apply to the Facilitator for an amendment like the one discussed in this Order.

Dated at Montpelier, Vermont this 17th day of October, 2019.

 _____ Anthony Z. Roisman) PUBLIC UTILITY
 _____ Margaret Cheney) COMMISSION
 _____ Sarah Hofmann) OF VERMONT

OFFICE OF THE CLERK

Filed: October 17, 2019

Attest: 
Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Commission within 30 days. Appeal will not stay the effect of this Order, absent further order by this Commission or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Commission within 28 days of the date of this decision and Order.

PUC Case No. 19-3286-PET - SERVICE LIST

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