

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 20-2935-INV

Investigation to review the 2021 implementation of the standard-offer program	
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**RECOMMENDATIONS OF THE DEPARTMENT OF PUBLIC SERVICE ON
AVOIDED COST PRICE CAPS FOR THE 2021 STANDARD OFFER PROGRAM
SOLICITATION**

On October 9, 2020, the Vermont Public Utility Commission (“Commission” or “PUC”) opened an investigation to implement the 2021 Standard Offer program, including review of the pricing mechanism and the avoided costs that serve as price caps for the program. The 2021 request for proposals (“RFP”) will retain the technology allocation used in the 2020 RFP. The PUC requests that parties submit comments and recommendations on avoided-cost prices, and regarding recent federal rulemakings, for the 2021 solicitation. For the 2021 RFP, the Department of Public Service (“Department”) recommends retaining the current standard-offer price caps for all technologies except solar. The Department recommends that the solar price cap be set 115% of the weighted average of all bids that were awarded contracts in the Price Competitive block or placed in the 2020 Reserve Group. The Department also maintains that recent federal rulemakings generally do not impact the Standard Offer program’s implementation and would welcome further discussion on this issue.

Price Cap Recommendations

The Department has reviewed the Standard Offer price caps that were used in the 2020 RFP and recommends maintaining those price caps for the 2021 RFP for all technologies except solar. The existing price caps, by technology are:

Technology	Price per kWh	Term
Biomass	\$0.125	Levelized over 20 years
Landfill Gas	\$0.090	Levelized over 15 years
Large Wind (>100 kW)	\$0.116	Fixed for 20 years
Small Wind (\leq 100 kW)	\$0.258	Fixed for 20 years
Hydroelectric	\$0.130	Fixed for 20 years
Food Waste Anaerobic Digestion	\$0.208	Fixed for 20 years
Solar	\$0.130	Fixed for 25 years

The price caps used in the 2018, 2019, and 2020 RFPs were the output of a detailed cash-flow model last updated in 2018. The model included a wide range of assumptions including the inflation rate, tax rate, depreciation expenses, and installation costs. Given the mature stage of the Standard Offer program and its several years of program history, a bottom-up, time-intensive update of the model and its assumptions is not warranted at this time. The current price caps continue to solicit robust participation in the annual RFP. The Department recommends retaining the current price caps for all technologies except solar, and using last year's RFP results as the basis for the 2021 solar price cap. For the solar price cap, the Department recommends setting the price cap to 115% of the weighted average of the 2020 Price Competitive block bids that were awarded Standard Offer contracts or placed in the Reserve Group. The use of an average of the prior year's accepted bids is a reasonable approach to meet the Standard Offer program's definition of "avoided cost," which is:

For the purpose of this subsection (f), the term "avoided cost" means the incremental cost to retail electricity providers of electric energy or

capacity, or both, which, but for the purchase through the standard offer, such providers would obtain from distributed renewable generation that uses the same generation technology as the category of renewable energy for which the Commission is setting the price.¹

This definition of avoided cost is not consistent with the definition of avoided cost in the Public Utilities Regulatory Policies Act (“PURPA”): “the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source.”² As such, PURPA’s avoided costs are determined by any other source, regardless of type. Most notably, the Standard Offer program requires that the avoided cost price be set for technology specific, distributed, and renewable resources (i.e., the purchase of renewable energy credits in addition to energy and capacity). In other words, rather than purchasing only energy and capacity as required by PURPA, the Standard Offer program is purchasing specific attributes as well.³ In particular, the statute requires the Commission to set the Standard Offer price at a level necessary to bring online the required amount of distributed solar, small wind, etc. This is an important distinction which supports the conclusion that the reverse auction mechanism used in the Standard Offer program is not materially altered by recent updates to the PURPA regulations, as will be discussed further below.

The solar category within the Developer Block of the Standard Offer program has seen robust competition, unlike the other technology categories and the Provider Block. Additionally,

¹ 30 V.S.A. § 8005a(f)(1)(B). *See also* 30 V.S.A. §8005a(k) (discussing the distribution of energy and capacity from awarded projects, alongside environmental attributes).

² 18 C.F.R. § 292.101(b)(6).

³ The Standard Offer pricing could also be set at the avoided cost of Commission Rule 4.100, plus an adder for the renewable and technology specific characteristics required to meet the Standard Offer program requirements, with the Commission setting the price for these adders through a competitive process.

using competition to set prices generally results in the lowest cost necessary to achieve the result, and presumably developers would submit a bid price that reflects the true cost of constructing the project plus whatever profit margin they believe appropriate. These factors lead the Department to conclude that, where there is sufficient competition, the bid price should be the primary indicator for setting the avoided cost.

The Developer Block is broken into the Technology Diversity Block and the Price Competitive Block. In the Technology Diversity Block, the 2020 RFP yielded five proposals totaling 575 kW. Four of the Technology Diversity Block proposals were for small wind at the price cap totaling 175 kW, and the remaining 400 kW was from a single food waste project priced at 20.7 cents per kWh. All the bids received were within 1% of the price caps, suggesting that there is developer interest with the current price cap levels, and the goal of technology diversity is being achieved. However, it is worth noting that no projects that have been awarded contracts in the technology diversity group have achieved commissioning to date. There are currently 16 projects, with a combined capacity of 3.799 MW, from previous RFPs (not including 2020) that have been awarded contracts but are not yet commissioned. In 2020, all bids in the Technology Diversity Block were awarded contracts.

In the Price Competitive Block, the 2020 RFP yielded twenty proposals for a total sum of 42.65 MW, all for solar projects.⁴ The proposed prices ranged from 8.78 cents per kWh up to 13 cents per kWh. Seven projects totaling 14.05 MW were awarded contracts, with the highest contract price at 9.08 cents per kWh. An additional three projects, totaling 6.6 MW, were placed

⁴ An additional 3 proposals were received after the proposal submission deadline and therefore deemed ineligible. *Investigation to review the avoided costs that serve as prices for the standard-offer program in 2020*, PUC Case No. 19-4466-INV, Order re: 2020 Standard-Offer Award Group of 09/17/2020.

in the Reserve Group. The 2020 weighted average price of the seven Price Competitive projects awarded a contract, and the three Reserve Group projects, was 9.05 cents per kWh. If this straight average was used without an adder, then some projects that were accepted in the previous year would not screen in the current year. Therefore, it is also appropriate to set an upward margin on this average price to account for changing factors, such as siting costs, that may result in the average of prices in any given year being higher or lower, given the relatively small sample size. Adding a 15% margin would result in a price cap of 10.41 cents per kWh for 2021. See Attachment A for details.

The Provider Block, however, elicits less competition. The 2020 RFP yielded two Provider Block proposals, both from Green Mountain Power, totaling 4.4 MW with an average price of 8.8 cents per kWh.

Sheffield-Highgate Export Interface (“SHEI”)

The Department recommends that the 2021 RFP include a notification to proponents of transmission limitations within the SHEI like that provided in section 2.7 of the 2020 RFP. This notification ensures that all participants understand that proposed projects in the SHEI area that are awarded a standard-offer contract will be required to address the economic and transmission system concerns associated with generation in that area during the certificate of public good process.

Standard Offer’s Consistency with Federal Law

Under 30 V.S.A. § 8005a(f)(1), the Commission must use a market-based mechanism to obtain the plant capacity available under the Standard Offer program, if it first finds that use of the mechanism is consistent with: (A) applicable federal law; and (B) the goal of timely

development at the lowest feasible cost. Given recent updates made by the Federal Energy Regulatory Commission (“FERC”) to its regulations under the PURPA, the PUC has asked participants to this proceeding to comment on Order 872, *Qualifying Facility Rates & Requirements Implementation Issues Under the Pub. Util. Regulatory Policies Act of 1978*, 172 FERC ¶ 61041 (July 16, 2020) and the subsequent Notice of Denial of Rehearings by Operation of Law and Providing for Further Consideration, *Qualifying Facility Rates & Requirements Implementation Issues Under the Pub. Util. Regulatory Policies Act of 1978* (Sept. 17, 2020), Elibrary Accession No. 20200917-3139.

Previously, the FERC stated that relative to the PURPA:

Vermont's [Standard Offer] program, in contrast, is a voluntary program that . . . QFs may choose to avail themselves of if they wish to do so, but it in no way replaces or supersedes the Rule 4.100 program. Instead, the [Standard Offer] program is simply an option offered by Vermont to QFs like Otter Creek in addition to, but not as a replacement for, the Rule 4.100 program . . . as we recognized in the June 27 Order, the [FERC’s] regulations, in fact, have long allowed QFs to agree to rates that they find acceptable — even rates that “differ from the rate ... which would otherwise be required.”

Otter Creek Solar LLC, 146 FERC ¶ 61192, at ¶ 8 (Mar. 20, 2014) (denying motion for reconsideration). Thus, Rule 4.100 is Vermont’s implementation of PURPA, and the Standard Offer is an alternative program distinguishable from PURPA. For example, the FERC’s PURPA regulations compensate renewable energy generators at avoided costs defined as “the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source.” 18 C.F.R. § 292.101(b)(6). Again, notice these costs are set according to any other source. Conversely, Standard Offer is technology specific and its version

of avoided costs includes, not just energy and capacity, but also renewable energy credit (“RECs”) and any other attributes.⁵

The FERC’s revised PURPA regulations do not affirmatively address or reverse its precedent allowing States to have auxiliary, alternative programs in addition to PURPA. Nor has any Court invalidated the FERC’s precedent on this point, or Vermont’s implementation of the PURPA, Rule 4.100.

Moreover, the FERC’s revised PURPA regulations make explicit that a competitive process can be used to set avoided cost rates and uphold the FERC’s prior rulings that it is acceptable to have different rates for specific categories of resources required by State law (termed Tiered Rates). With respect to an RFP process to set rates, the FERC set forth in paragraph 472 of Order 872 criteria that a competitive solicitation would need to comply with:

In this final rule, the Commission finds that, in order to use the results of a competitive solicitation to set avoided cost rates, the competitive solicitation must be conducted in a transparent and non-discriminatory manner. Such a competitive solicitation must be conducted in a process that includes, but is not limited to, the following factors: (i) the solicitation process is an open and transparent process that includes, but is not limited to, providing equally to all potential bidders substantial and meaningful information regarding transmission constraints, levels of congestion, and interconnections, subject to appropriate confidentiality safeguards; (ii) solicitations must be open to all sources, to satisfy that purchasing electric utility’s capacity needs, taking into account the required operating characteristics of the needed capacity; (iii) solicitations are conducted at regular intervals; (iv) solicitations are subject to oversight by an independent administrator; and (v) solicitations are certified as fulfilling the above criteria by the relevant state regulatory authority or nonregulated electric utility through a post solicitation report.

⁵ 30 V.S.A. § 8005a(f)(1)(B). *See also* 30 V.S.A. §8005a(k) (discussing the distribution of energy and capacity from awarded projects, alongside environmental attributes).

The Standard Offer RFP meets these criteria. Further, in the subsequently issued Order 872 - A, *Qualifying Facility Rates & Requirements Implementation Issues Under the Pub. Util. Regulatory Policies Act of 1978*, 173 FERC ¶ 61158 (Nov. 19, 2020), at paragraph 72 the FERC said:

Although Commission precedent does not allow the use of non-operational externalities, such as environmental benefits, in setting avoided cost rates, PURPA neither requires nor prohibits states from establishing tiered procurement (and thus tiered pricing), such as California does. California's tiered supply procurement requirements reflect decisions regarding utility generation procurement (e.g., by specific fuel type or technology) that are within the boundaries of a state's traditional authority. Once such tiered generation procurement requirements have been established by a state, if a QF qualifies for a particular generation procurement tier, it is reasonable to assume that the mandatory QF purchase will displace resources otherwise in that tier; therefore, the rates for that tier are in fact the cost avoided by the purchasing utility when it instead purchases from that QF.

Thus, for example, avoided cost rates for small wind projects procured under the Standard Offer Program, Diversity Block can be significantly higher than the rates for solar projects procured under the Competitive Block.

Therefore, the Department maintains that recent FERC regulation updates do not alter or invalidate the Standard Offer program. Given the voluntary nature of the Standard Offer Program, the revised PURPA regulations will likely have greater impact on Commission Rule 4.100. The Department welcomes the opportunity to provide further comment on any specific aspects of the FERC orders that may be raised during this proceeding by either participants or the Commission.

Conclusion

The Department looks forward to discussing these matters at the upcoming PUC workshop on December 17, 2020 and appreciates the opportunity to provide these comments and recommendations.

Dated at Montpelier, Vermont this 11th day of December 2020.

VERMONT DEPARTMENT OF PUBLIC SERVICE

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