

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 22-3944-PET

VEPP Inc. request for approval to continue the purchase power agreement between Ryegate Associates and VEPP Inc.	
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Order entered: 04/04/2023

ORDER AUTHORIZING AMENDING PURCHASE POWER AGREEMENT

In this Order, the Vermont Public Utility Commission (“Commission”) adopts the conclusions and recommendations made in the Hearing Officer’s proposal for decision.

The proposal for decision was circulated to the parties. The participants’ comments and our determinations are addressed in the Commission discussion and conclusions section below.

PROPOSAL FOR DECISION

I. INTRODUCTION

In 2022, Vermont Public Act No. 155 (“Act 155”) made several changes to the requirements under 30 V.S.A. § 8009 for the purchase of baseload renewable power by Vermont retail electricity providers.

In this proposal for decision, I recommend the Commission authorize the execution of an amendment to the existing purchase power agreement (the “Contract”) between VEPP Inc. and Ryegate Associates consistent with requirements of Section 8009, as amended by Act 155, and the recommendations made in this proposal for decision.

II. BACKGROUND AND PROCEDURAL HISTORY

Pursuant to 30 V.S.A. § 8009, each Vermont retail electricity provider is required to purchase a pro rata share (based on the total Vermont retail kWh sales) of the baseload renewable power generated by the biomass facility located in Ryegate, Vermont (the “Ryegate Plant”). Section 8009 also requires the Commission to determine the price to be paid for the output generated by the Ryegate Plant (“baseload renewable power portfolio requirement”).

In an October 29, 2012, Order in Docket 7782, the Commission established a 10-year price schedule for the Ryegate Plant that was represented by a levelized price of \$0.100 per kWh and included a fuel pass-through mechanism, by which the price would be adjusted to reflect

changes in fuel costs. The price schedule ranged from \$0.096 per kWh in year one to \$0.106 per kWh in year ten.

In a December 12, 2013, Order, the Commission approved an agreement under which the Ryegate Plant's owner, Ryegate Associates, and the Vermont distribution utilities would share the expected additional renewable energy credit revenues if selective catalytic reduction ("SCR") (to control NOx emissions) was installed at the Ryegate Plant.

On October 24, 2014, at the Commission's direction, VEPP Inc. executed the Contract with Ryegate Associates that reflected the determinations made in the October 29, 2012, and December 12, 2013, Orders. The original term of the Contract ended on November 1, 2022.

In 2022, Act 155 made several changes to the requirements under 30 V.S.A. § 8009. Act 155 revised the purchase term and rate of the baseload renewable power requirement and allows the Ryegate Plant's owner to retain renewable energy credits and attributes, subject to Commission approval.

On August 30, 2022, VEPP Inc. filed a request that the Commission approve an amendment to the Contract to reflect the changes made by Act 155. The proposed amendment makes changes to the Contract term, rate, and renewable energy credit allocation.

Ryegate Associates did not agree with portions of VEPP Inc.'s proposed amendment and requested a six-month extension of the Contract to allow participants to negotiate and identify areas of agreement.

In an October 26, 2022, Order, the Commission authorized VEPP Inc. to extend the Contract for six months at a price of \$0.100 per kWh. The six-month extension was subject to a "true up" to reconcile any differences between the price and terms of the extended Contract and any future amendments to reflect changes made by Act 155.

On December 15, 2022, Ryegate Associates filed a memorandum of understanding ("MOU") between itself and Green Mountain Power Corporation ("GMP"), Vermont Electric Cooperative, Inc. ("VEC"), and Wahington Electric Cooperative, Inc. Under the terms of the MOU, the base price for the Contract would be \$0.100 per kWh and Ryegate Associates would receive a 10% share of renewable energy credits generated by the plant and the Vermont distribution utilities would receive a 90% share.

On December 15, 2022, the Vermont Department of Public Service (“Department”) filed comments recommending that the Commission approve the MOU as consistent with Act 155.

On December 15, 2022, the Stowe Electric Department (“Stowe”) filed comments stating that it does not object to the proposed purchase price of \$0.100 per kWh and the transfer of 10% of the renewable energy credits to Ryegate Associates. Stowe raised concerns about the Ryegate Plant’s Forward Capacity Market obligations under the ISO New England pay-for-performance rules.

On December 15, 2022, the Village of Hyde Park Electric Department (“Hyde Park”) filed comments concurring with the comments filed by Stowe.

On December 29, Ryegate Associates filed reply comments in response to the Stowe and Hyde Park comments.

In a January 4, 2023, Order, I issued information requests to Ryegate Associates to help the Commission better understand the Ryegate Plant’s participation in the ISO New England markets. Participants were also requested to provide supplemental comments.

On January 20, 2023, Ryegate Associates filed a response to the information requests.

On February 3, 2023, the Department, GMP, Ryegate Associates, Stowe, VEC, and Vermont Public Power Supply Authority (“VPPSA”) separately filed supplemental comments.

III. PUBLIC COMMENTS

Several fuel suppliers (i.e., loggers) filed public comments in this proceeding, expressing significant concerns about the state of operations at the Ryegate Plant. The most prominent issues included: (1) payment and contracting practices, with some commenters reporting that they are not being paid for deliveries or are owed substantial sums; (2) lack of a certified scale to weigh incoming deliveries; (3) lack of qualified forestry staff; and (4) the impacts of ongoing bankruptcy proceedings associated with Solar Enterprises, Series LLC, Ryegate Associates’ owner.

The Department represented that it engaged with Ryegate Associates since learning of these comments, to express its concern and underline the importance of addressing the issues fully and transparently, without delay.¹

¹ Department 12/15/22 Comments at 5-6.

On November 21, 2022, Ryegate Associates filed a response to the public comments. Ryegate Associates acknowledged that it had been behind on payments, and faced difficulties with its payment schedules, but reported that it was current on its outstanding obligations through November 13, 2022. Ryegate Associates also expressed a willingness to enter contracts with suppliers, which had been a standard practice in the past. As to equipment and staff, Ryegate Associates stated that its broken truck scale was scheduled to be repaired and recertified on November 29, 2022, and confirmed that it has contracted with a Vermont-licensed forester. In addition, Ryegate Associates represented that it is not directly involved in the bankruptcy case, although the proceeding has indirectly affected its operations. Ryegate Associates also affirmed its commitment to continue resolving issues.²

Based on the response provided by Ryegate Associates and the efforts taken by the Department, I recommend the Commission take no additional action with respect to the issues raised in the public comments. As discussed below, the terms of the MOU and some of my recommendations also address some of the raised concerns about plant operations.

IV. DISCUSSION

Term of Contract

Under Act 155, the obligation of each Vermont retail electricity provider to purchase the provider's pro rata share of the baseload renewable power portfolio requirement is extended until November 1, 2032, unless terminated earlier pursuant to the collocation and efficiency requirements of 30 V.S.A. § 8009(k). Under Section 8009(k), Ryegate Associates must increase the plant's overall efficiency by at least 50%, relative to the 12-month period preceding July 1, 2022. Sections 8009(k)(2) and (3) establish a schedule for Ryegate Associates to demonstrate that the plant will meet the efficiency requirements by November 2026.

Section 8009(k)(2) requires that, on or before July 1, 2023, Ryegate Associates must sign a contract for the construction of a facility that uses the Ryegate Plant's excess thermal heat for a beneficial purpose and provide a certification by a qualified professional engineer that the construction of the facility will meet the efficiency requirement. Section 8009(k)(3) requires Ryegate Associates to file by October 1, 2024, a certification that the main components of the

² See Department 12/15/23 Comments at 5-6.

facility have been completed. If Ryegate Associates fails to meet the milestones established in Sections 8009(k)(2) and (3), then the obligation under Section 8009 for each Vermont retail electricity provider to purchase a pro rata share of the baseload renewable power portfolio requirement will cease on November 1, 2024.³

Assuming Ryegate Associates meets the milestones described above, then on or before September 1, 2025, the Department is required to investigate and submit a recommendation to the Commission on whether the plant has achieved the efficiency requirement of Section 8009(k)(1). If the Department recommends that the plant has not achieved the requirement, the obligation under Section 8009 will cease on November 1, 2025.⁴ After November 1, 2026, Ryegate Associates must report annually to the Department and the Department must verify the overall efficiency of the plant for the prior 12-month period. If the overall efficiency of the plant falls below the requirement in Section 8009(k)(1), the report must include a plan to return the plant to the required efficiency within one year. If, after implementing the plan, the plant does not achieve the efficiency requirements, the Department must request that the Commission commence a proceeding to terminate the purchase obligation under Section 8009.

I recommend that the Commission authorize amending the term of the Contract to end on November 1, 2032, subject to earlier termination if Ryegate Associates fails to meet the requirements of Section 8009(k), described above. VEPP Inc.'s petition included proposed amendment language addressing the term of the Contract and the requirements of Section 8009(k). I recommend that the Commission adopt VEPP Inc.'s proposed amendment language, subject to minor revisions for clarity that are described in the attachment to this proposal for decision.

Purchase Price

Section 2 of Act 155 states that for the “years 2023, 2024, and 2025 and the period from January 1, 2026, to October 31, 2026, the purchase price shall be the levelized value determined in Docket No. 7782.” In an October 29, 2012, Order in Docket 7782, the Commission established a standard-offer price schedule over a 10-year period that was represented by a

³ 30 V.S.A. § 8009(k)(4).

⁴ 30 V.S.A. § 8009(k)(5).

levelized price of \$0.100 per kWh.⁵ Thus, a plain reading of Section 2 of Act 155 and the October 29 Order indicates that the purchase price for years 2023 through October 31, 2026, should be \$0.100 per kWh.

Under the terms of the MOU, the parties agree, through October 31, 2026, the purchase price should be \$0.100 per kWh. The parties to the MOU also agree that the purchase price should include the fuel adjustment mechanism approved in Docket No. 7782. The Department, Stowe Electric, and Hyde Park support this approach.

I recommend the Commission authorize amending the Contract at to reflect a price of \$0.100 per kWh through October 31, 2026. I also recommend that the Contract should include the fuel adjustment mechanism approved in Docket No. 7782. Therefore, I recommend that the Commission adopt VEPP Inc.'s proposed amendments, subject to the revisions described in the attachment to this proposal for decision.

Renewable Energy Credits (“RECs”)

Section 8009(f)(2), as amended by Act 155, addresses the ownership of RECs generated by the Ryegate Plant:

Any tradeable renewable energy credits and attributes that are attributable to the electricity purchased shall be transferred to the Vermont retail electricity providers in accordance with their pro rata share of the costs for such electricity as determined under subdivision (1) of this subsection unless the Commission approves the plant owner retaining renewable energy credits and attributes or other ISO New England revenue streams. If the Commission approves the plant owner retaining renewable energy credits and attributes, or other ISO New England revenue streams, the price paid by the Vermont retail electricity providers pursuant to this section may be reduced by the Commission to reflect the value of those credits, attributes, products, or services.

During the initial ten-year term of the Contract, the Commission approved a stipulation between Ryegate Associates and the Vermont distribution utilities that shared the expected additional REC revenues if an SCR system was installed and operated at the plant.⁶ Any RECs generated by the plant, after the installation and during operation of the SCR system, were distributed in the following proportions: (1) for years 0 through 2, Ryegate Associates received a

⁵ See Docket 7782, Order of 10/29/12 at 33-34.

⁶ See Docket 7782, Order of 12/12/13 at 12.

90% share and the utilities received a 10% share; (2) for years 3 through 7, Ryegate Associates and the utilities each received a 50% share; and (3) for years 8 through end of the agreement, Ryegate Associates received a 10% share and the utilities received a 90% share.⁷ The Commission found that the price schedule itself (represented by the levelized price of \$0.100 per kWh) did not account for the installation of an SCR and its financial implications, and that the REC revenue sharing provided an incentive for Ryegate Associates to invest in the SCR by recovering the costs associated with its installation and operation.⁸ The Commission also found that the REC-sharing agreement provided benefits to Vermont ratepayers by effectively reducing the costs paid by the distribution utilities under the Contract because the operation of the SCR allowed the plant to qualify for higher value RECs.⁹

Under the terms of the MOU, Ryegate Associates agrees to operate the SCR system at the plant during the term of the Contract, and the MOU parties agree that the sharing of REC revenues should continue until October 31, 2026. The parties support amending the Contract to allow Ryegate Associates to receive a 10% share and the utilities to receive a 90% share of the RECs.¹⁰ Allowing Ryegate Associates to retain a 10% portion of the RECs will help offset its operations and maintenance costs associated with the SCR system, while the 90% share of RECs retained by the utilities provides a benefit to Vermont electrical customers.¹¹

The Department supports the continuation of the REC-sharing agreement and maintains that the agreement is consistent with Act 155 and will help ensure that an amended Contract continues to benefit both ratepayers and Vermont.¹² The Department notes that Act 155 states that all decisions and orders of the Commission in Docket 7782 “shall remain in full force and effect through October 31, 2026,” and that Section 8009(f)(2) allows the Commission to approve “the plant owner retaining renewable energy credits.” The Department maintains that this language supports Ryegate Associates retaining a 10% share of the RECs.¹³ The Department also contends that the operation of the SCR system allows the plant to qualify for higher-value

⁷ See Docket 7782, Order of 12/12/13 at 9.

⁸ See Docket 7782, Order of 12/12/13 at 9.

⁹ See Docket 7782, Order of 12/12/13 at 9.

¹⁰ MOU at 3.

¹¹ MOU at 3.

¹² Department 12/15/22 Comments at 3.

¹³ Department 12/15/22 Comments at 3.

RECs, thereby reducing the cost paid by the distribution utilities.¹⁴ In addition, the Department notes that the proposed contract amendment will use the levelized price of \$0.100 per kWh, which does not account for the costs of the installation and operation of the SCR system. Based on its information review, the Department maintains that the value of the 10% REC share retained by Ryegate Associates will serve to mitigate the operating and maintenance costs of the SCR system that will be the responsibility of Ryegate Associates.¹⁵

I recommend the Commission authorize amending the Contract to allow Ryegate Associates to receive a 10% share of the RECs and the distribution utilities to receive a 90% share through October 31, 2026. The REC-sharing agreement is consistent with Section 8009(f)(2) and the Commission's determinations in Docket 7782. The 10% REC share retained serves to mitigate the operating and maintenance costs of the SCR system that will be the responsibility of Ryegate Associates. The REC-sharing agreement also helps ensure the operation of the SCR at the plant, which provides benefits to Vermont ratepayers by reducing the costs paid by the distribution utilities under the Contract.

Therefore, I have proposed revisions to the amendment document proposed by VEPP Inc. that would permit Ryegate Associates to retain 10% of the RECs generated by the Ryegate Plant. These revisions are described in the attachment to this proposal for decision.

Plant Operations and Market Participation

The Contract contains provisions that define the rights and obligations, and allocate risks, with respect to plant operation, power delivery, and compliance with ISO New England rules and regulations.¹⁶ Currently, VEPP Inc. serves as the lead market participant contact and Vermont Electric Power Company ("VELCO") serves as lead market participant, which allows the Ryegate Plant to participate in the ISO New England energy and capacity markets.¹⁷ Under this arrangement, VEPP Inc. administers the Ryegate Plant's participation in the markets and VELCO maintains the ISO New England financial assurance obligation.¹⁸ All capacity and

¹⁴ Department 12/15/22 Comments at 3-4.

¹⁵ Department 12/15/22 Comments at 4.

¹⁶ See Purchase Power Agreement §§ 3 (Delivery of Electricity), 8 (Project Operation), 13 (Dispatch), and 21 (Indemnification).

¹⁷ Ryegate 1/20/23 Comments at 1.

¹⁸ Ryegate 1/20/23 Comments at 1-2.

energy revenues are transferred to the Vermont retail electricity providers in accordance with their pro rata share of total Vermont retail kWh sales.¹⁹

The pay-for-performance rules were implemented in 2018, after the Contract was executed in 2014. Credits or charges can be assessed based on the Ryegate Plant's performance during capacity scarcity events on the ISO New England system. On September 3, 2018, and December 24, 2022, the New England system experienced capacity shortage conditions under the pay-for-performance market rules and the Ryegate Plant was operating during both events. Credit payments of \$23,682.14 and \$23,682 under the pay-for-performance rules were passed along to the Vermont distribution utilities as the result of the plant's performance during the scarcity events.²⁰

Under the terms of the MOU, Ryegate Associates acknowledges that operation of the plant at a high-capacity factor during the peak winter months provides the greatest potential benefit to the distribution utilities' customers and that Ryegate Associates' satisfactory payment of fuel suppliers in a timely manner is important to those suppliers, the local economy in which they operate, and the forest products industry.²¹ Consistent with its rights and obligations under the Contract including Section 8, Ryegate Associates agrees that it will use commercially reasonable efforts in accordance with good engineering and operating practices (each as defined in the Contract) to maintain sufficient fuel supply for continued operation of the plant.²² In addition, Ryegate Associates will use commercially reasonable efforts to manage any potential fuel shortage that may develop to dispatch the plant at levels and at times that would maximize the value of the output for Vermont customers.²³

The Department, GMP, and VEC maintain that the MOU provides an acceptable assignment of risks and benefits with respect to the Ryegate Plant's operation. The Department and GMP maintain that the terms of the MOU obligate Ryegate Associates to operate the plant with the greatest possible output when its value in the market is high, and to manage the plant to avoid penalties under the pay-for-performance rules.²⁴ VEC maintains that Ryegate Associates has an economic incentive to operate the plant at a high-capacity factor to enhance its revenue

¹⁹ Ryegate 1/20/23 Comments at 2.

²⁰ Ryegate 1/20/23 Comments at 3.

²¹ MOU at 3.

²² MOU at 4.

²³ MOU at 4.

²⁴ GMP 2/3/23 Comments at 2; Department 2/3/23 Comments at 2.

and the risk to incur penalties under the pay-for-performance rules is low. VEC notes that the Ryegate Plant operations have not been assessed any penalties to date.²⁵ The Department and VEC suggest that the appropriate assignment of risks associated with the pay-for-performance rules be considered when the Commission undertakes a new avoided cost determination required by Act 155.²⁶

Despite the commitments made by Ryegate Associates under the terms of the MOU, several distribution utilities maintain that the MOU terms do not adequately address the Ryegate Plant operations. The utilities are concerned about the Ryegate Plant's recent performance, including recent outages caused by the failure of Ryegate Associates to timely pay fuel suppliers, and argue that the plant operations have not met the baseload renewable power requirements under Section 8009(a)(1) to produce "electricity essentially continuously at a constant rate."²⁷ In addition, Stowe is concerned that the proposed contract amendments in the MOU do not appropriately assign the risks associated with the ISO New England Forward Capacity Market pay-for-performance rules among Ryegate Associates, VELCO, VEPP Inc., and the Vermont distribution utilities. Specifically, Stowe argued that Ryegate Associates should bear the risk for obligations under the Forward Capacity Market because Ryegate Associates is the plant operator.²⁸ Stowe further contends that Ryegate Associates is insulated from market volatility that can affect resource supply availability and plant operations because Ryegate Associates is not directly allocated any market settlements.²⁹ Stowe maintains that Ryegate Associates should post financial assurances to VELCO and remain responsible for any pay-for-performance penalty to increase the likelihood of the Ryegate Plant operating during a scarcity event.³⁰

I recommend that the amendment to the Contract include the terms of the MOU under which Ryegate Associates agrees to use commercially reasonable efforts in accordance with good engineering and operating practices to maintain sufficient fuel supply for continued operation of the plant and to use commercially reasonable efforts to manage any potential fuel shortage that may develop to dispatch the plant at levels and at times that would maximize the

²⁵ VEC 2/3/23 Comments at 1.

²⁶ VEC 2/3/23 Comments at 1; Department 2/3/23 Comments at 2.

²⁷ See VPPSA 2/3/23 Comments; Stowe 2/3/23 Comments; and Hyde Park 12/15/22 Comments.

²⁸ Stowe 2/3/23 Comments at 1.

²⁹ Stowe 2/3/23 Comments at 1.

³⁰ Stowe 2/3/23 Comments at 1-2.

value of the output for Vermont customers. These terms place additional obligations on Ryegate Associates with respect to fuel supply, operations, and managing potential shortages and are intended to reduce the risk of outages. By reducing the likelihood of outages, the terms should also help avoid a plant outage during a scarcity event on the ISO New England system and an assessment of penalties under the pay-for-performance rules.

With respect to the pay-for-performance rules, participants disagree on who bears the responsibility for any charges assessed by ISO New England. As discussed above, Stowe, Hyde Park, and VPPSA support Ryegate Associates bearing the responsibility for market penalties. The Department, GMP, and VEC suggest that the distribution utilities incur credits and charges under capacity market rules, in part because Section 8009(f)(3) transfers all capacity rights attributable to the plant associated with the electricity purchased by the distribution utilities.³¹ Ryegate Associates maintains that the terms under Section 8 of the Contract govern the parties' obligations when scarcity conditions occur under ISO New England's pay-for-performance rules.³²

Section 8 of the Contract subjects all plant operations and deliveries to the rules and regulations of ISO New England, and Ryegate Associates, as producer, is responsible for payment of any costs, sanctions, or charges assessed by ISO New England arising from actions or inactions of the producer.³³ While the language of the Contract does not specifically address pay-for-performance rules, the plain reading of the Contract is that the producer is responsible for all penalties assessed by ISO New England under the market rules that are in effect during the Contract term, which would include those under the pay-for-performance rules. Act 155, the MOU, and the fact that VEPP Inc. and VELCO act as the agents for market participation does not change this requirement. If any penalties are charged to the plant under the pay-for-performance rules, VEPP Inc. should reduce the payment to Ryegate Associates to reflect the penalties.

³¹ GMP 2/3/23 Comments at 2; Department 2/3/23 Comments at 2; VEC 2/3/23 Comments at 1.

³² Ryegate 12/29/22 Comments at 3.

³³ Purchase Power Agreement at ¶ 8 "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."

Accordingly, at this time, I recommend that the Commission not make any additional amendments to the Contract to address the risks associated with the pay-for-performance rules. As noted by some of the parties in this proceeding, the appropriate assignment of risks associated with the pay-for-performance rules can be further considered when the Commission undertakes a new avoided cost determination required by Act 155.

Further, Stowe requests that Ryegate Associates provide VELCO and the Vermont distribution utilities regular updates regarding their operating information, fuel supply, and other relevant data. Stowe contends that regular insight into the Ryegate Plant's operation will allow distribution utilities to make better decisions with respect to their ISO New England market obligations, which in turn better protects Vermont ratepayers from unwarranted financial exposure.³⁴ The Department also recommends that Ryegate Associates adopt a more forthcoming and transparent approach in its conduct with suppliers, customers, and regulators.³⁵

I agree that the distribution utilities would benefit from regular information regarding the plant's operation, fuel supply, and other relevant data. This information would benefit Vermont ratepayers by helping the distribution utilities to reduce their financial exposure and make better decisions with respect to their ISO New England market obligations. VEPP Inc. most likely receives this information to allow it to act as agent for the Ryegate Plant's participation in the energy and capacity markets. I recommend that the Commission direct VEPP Inc. to work with Ryegate Associates and the distribution utilities to develop a system to provide regular report on the plant's operating information, fuel supply, and other relevant data.

Monthly Facilitator Fee

Section 6 of the Contract includes a table establishing the monthly facilitator fee paid to VEPP Inc. throughout the Contract term. VEPP Inc. has proposed an update for the extended term required by Act 155.

I recommend that the amendment to the Contract include the following table to be added in Section 6.

Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20
\$2,822	\$2,907	\$2,994	\$3,084	\$3,177	\$3,272	\$3,370	\$3,471	\$3,575	\$3,682

³⁴ Stowe 2/3/23 Comments at 2.

³⁵ Department 12/15/22 Comments at 6.

Interconnection Agreement

Ryegate Associates has an interconnection agreement with GMP that will need updates under the purchase obligation extension required by Act 155. VEPP Inc. has proposed amended language to Attachment D of the Contract to reflect the needed updates. I recommend the Commission adopt these amendments.

Annual Reporting

Act 155 requires that beginning on August 1, 2023, Ryegate Associates report annually to the House Committee on Energy and Technology and Senate Committee on Finance, the Commissioner of Forests, Parks and Recreation, and the Secretary of Commerce and Community Development, with a copy to the Facilitator, on the wood fuel purchases for the Ryegate Plant. The report should include the average monthly price paid for the wood fuel and the source of the wood fuel, including location, number, types, and sources of non-forest-derived wood.

I recommend the amendment to the Contract include this requirement.

V. CONCLUSION

I recommend the Commission authorize VEPP Inc. to execute an amendment to the Contract between VEPP Inc. and Ryegate Associates consistent with requirements of 30 V.S.A. § 8009, as amended by Act 155, and the recommendations made in this proposal for decision. A copy of the revised amendment document is attached to this proposal for decision.

This proposal for decision is being served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 1st day of March, 2023.



Mary Jo Krolewski
Hearing Officer

VI. COMMISSION DISCUSSION AND CONCLUSION

The Department and GMP separately filed comments stating that they had no objections to the proposal for decision. VEC filed comments stating that it supported the proposal for decision.

Ryegate Associates filed comments stating that it supports the proposal for decision insofar as it adopts the terms of the MOU between Ryegate Associates and GMP, VEC, and WEC. With respect to the plant operations and market participation section of the proposal for decision, Ryegate Associates contends that the allocation of risks and benefits under ISO New England's pay-for-performance rules will need to be revisited in accordance with Act 155 when the Commission establishes the new rates for the Ryegate Plant that will take effect in 2026.

Based on our review of the proposal for decision and the participants' comments, we adopt the recommendations and conclusions of the Hearing Officer. With regard to the pay-for-performance rules, we agree with the Hearing Officer that the plain reading of the Contract is that the producer is responsible for all penalties assessed by ISO New England under the market rules that are in effect during the Contract term, which would include those under the pay-for-performance rules. In addition, as noted in the proposal for decision, the appropriate assignment of risks associated with the pay-for-performance rules will be considered when the Commission undertakes a new avoided-cost determination required by Act 155.

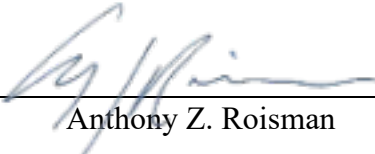
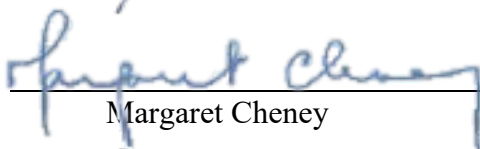
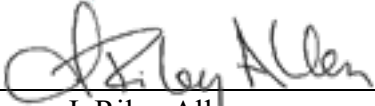
VII. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Vermont Public Utility Commission ("Commission") that:

1. VEPP Inc. is authorized to execute an amendment to the purchase power agreement between VEPP Inc. and Ryegate Associates consistent with requirements of 30 V.S.A. § 8009, as amended by Vermont Public Act No. 155, and the determinations made in this Order.
2. Within two weeks of the executed agreement, VEPP Inc. must file in this proceeding a copy of the executed amendment to the purchase power agreement.
3. VEPP Inc. is directed to work with Ryegate Associates and the Vermont distribution utilities to develop a system to provide regular reports on the Ryegate Plant's operation, fuel supply, and other relevant data.


4. The December 15, 2022, Memorandum of Understanding among Ryegate Associates, Green Mountain Power Corporation, Vermont Electric Cooperative, Inc., and Washington Electric Cooperative is accepted. The parties shall comply with all the terms of the Memorandum of Understanding.

Dated at Montpelier, Vermont, this 4th day of April, 2023.

 _____))	PUBLIC UTILITY
Anthony Z. Roisman)	
))	
 _____))	COMMISSION
Margaret Cheney)	
))	
 _____))	OF VERMONT
J. Riley Allen)	
))	

OFFICE OF THE CLERK

Filed: April 4, 2023

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.

AMENDMENT NO. 2 TO PURCHASE POWER AGREEMENT

This Amendment No. 2 to the Vermont SPEED Purchase Power Agreement (“Amendment No. 2”) is dated as of _____, 2023, by and between Ryegate Associates (“Ryegate” or “Producer”) and VEPP Inc. (“Facilitator”), a Vermont nonprofit corporation. Producer and Facilitator are each referred to herein as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, the Parties entered into that certain Vermont SPEED Purchase Power Agreement, dated as of April 3, 2013 (“PPA”) for the purchase and sale of energy from the 20.5 MW biomass electric generating facility in East Ryegate, Vermont; and

WHEREAS, the Parties entered into that certain Amendment No. 1 to the PPA, dated as of October 24, 2014 (“Amendment No. 1”) following the installation of a selective catalytic reduction (“SCR”) system at the Ryegate plant and approval of a Stipulation between Ryegate and the Vermont distribution utilities concerning a sharing arrangement for renewable energy credits (“RECs”) after installation of the SCR system by Order dated December 12, 2013 in Docket No. 7782; and

WHEREAS, on May 31, 2022, Vermont’s Governor signed **Public Act No. 155**. An Act Relating to Extending the Baseload Renewable Power Portfolio Requirement (“Act 155”) into law; and

WHEREAS, Act 155 provides, in part, that:

- the obligations of the Vermont retail electricity providers pursuant to 30 V.S.A. § 8009(b) are enlarged to November 1, 2032, unless terminated earlier pursuant to 30 V.S.A. § 8009(k);
- on or before November 1, 2026, the Vermont Public Utility Commission (“Commission”) shall determine, for the period beginning on November 1, 2026 and ending on November 1, 2032, the price to be paid to a plant used to satisfy the baseload renewable power portfolio requirement **pursuant to Section 8009(d)**;
- any tradeable renewable energy credits and attributes that are attributable to the electricity purchased shall be transferred to the Vermont retail electricity providers in accordance with their pro rata share of the costs for such electricity unless the Commission approves the plant owner retaining renewable energy credits and attributes, or other ISO New England revenue streams. If the Commission approves the plant owner retaining renewable energy credits and attributes, or other ISO New England revenue

streams, the price paid by the Vermont retail electricity providers may be reduced to reflect the value of those credits, attributes, products, or services;

- the owner of the plant shall cause the plant’s overall efficiency to be increased by at least 50 percent relative to the 12-month period preceding July 1, 2022;
- on or before July 1, 2023, the owner of the plant shall submit to the Commission and the Vermont Department of Public Service (“Department”):

(A) A signed contract providing for the construction of a facility at the plant that utilizes the excess thermal heat generated at the plant for a beneficial purpose. As used in this subdivision (A), beneficial purpose may include the displacement of fossil fuel use for the sustainable production of a product or service or more efficient or less costly generation of electricity; and

(B) A certification by a qualified professional engineer that the construction of the facility shall meet the requirement of 30 V.S.A. § 8009(k)(1);

- on or before October 1, 2024, the owner of the plant shall submit to the Commission and the Department a certification that the main components of the facility used to meet the requirement of 30 V.S.A. § 8009(k)(1) have been completed;
- if the contract and certification required under 30 V.S.A. § 8009(k)(2) are not submitted to the Commission and Department on or before July 1, 2023, or if the certification required under 30 V.S.A. § 8009(k)(3) is not submitted to the Commission and Department on or before October 1, 2024, then the obligation under Section 8009 for each Vermont retail electricity provider to purchase a pro rata share of the baseload renewable power portfolio requirement shall cease on November 1, 2024, and the Commission is not required to conduct the rate determination provided for in Section § 8009(d);
- on or before September 1, 2025, the Department shall investigate and submit a recommendation to the Commission on whether the plant has achieved the requirement of 30 V.S.A. § 8009(k)(1). If the Department recommends that the plant has not achieved the requirement, the obligation under Section 8009 shall cease on November 1, 2025, and the Commission is not required to conduct the rate determination provided for in Section 8009(d);
- after November 1, 2026, the owner of the plant shall report annually to the Department and the Department shall verify the overall efficiency of the plant for the prior 12-month period. If the overall efficiency of the plant falls below the requirement in 30 V.S.A. § 8009(k)(1), the report shall include a plan to return the plant to the required efficiency within one year;

- if, after implementing the plan, the owner of the plant does not achieve the efficiency required in 30 V.S.A. § 8009(k)(1), the Department shall request that the Commission commence a proceeding to terminate the obligation under Section 8009. ~~and;~~

WHEREAS, the Parties desire to enter into this Amendment No. 2 and amend certain provisions of and enlarge the term of the PPA on the terms and subject to the conditions of this Amendment No. 2, **following the acceptance of a Stipulation between Ryegate, Green Mountain Power Corporation, Vermont Electric Cooperative, Inc., and Washington Electric Cooperative, Inc., by Order in Case No. 22-3944-PET.**

NOW, THEREFORE, in consideration of the premises and the mutual promises, covenants and agreements herein set forth and intending to be legally bound, the Parties agree as follows:

AGREEMENT

1. PPA Paragraph 1, Defined Terms, is amended to include the following additional definition:

“cc. “Commission” means the Vermont Public Utility Commission successor to the Board. As used in this Agreement the term Board shall include the Commission.”

2. PPA Paragraph 1, Defined Terms, is amended by deleting “~~November 1, 2012 and ending on November 1, 2022~~” and replacing it with “~~November 1, 2022 and ending on November 1, 2032~~”, and inserting following the term “hereto” the phrase “unless earlier terminated as provided for herein.” As amended the provision provides:

“aa. “Term” means the ~~40-year~~ **20-year** period commencing on November 1, ~~2012~~ **2022** and ending on November 1, 2032, as described in Attachment E hereto unless earlier terminated as provided for herein.”

3. PPA Paragraph 2, Effective Date, is amended by inserting at the end the following additional terms:

“Amendment No. 2. to this Agreement shall become effective upon its execution by Producer and Facilitator, with the extended Term of the Agreement ~~commencing November 1, 2022 and ending November 1, 2032, unless otherwise terminated as provided for in the Commission’s Order dated _____ in Case No. _____~~ **pursuant to 30 V.S.A. § 8009(k).** The effectiveness of this Agreement shall be expressly conditioned upon Producer satisfaction of the following conditions:

a. Producer shall cause the plant’s overall efficiency to be increased by at least 50 percent relative to the 12-month period preceding July 1, 2022.

b. On or before July 1, 2023, Producer shall submit to the Commission and the Department, with a copy to Facilitator:

i. A signed contract providing for the construction of a facility at the plant that utilizes the excess thermal heat generated at the plant for a beneficial purpose. Beneficial purpose may include the displacement of fossil fuel use for the sustainable production of a product or service or more efficient or less costly generation of electricity; and

ii. A certification by a qualified professional engineer that the construction of the facility shall meet the requirement of 30 V.S.A. § 8009(k)(1).

c. On or before October 1, 2024, Producer shall submit to the Commission and the Department, with a copy to Facilitator, a certification that the main components of the facility used to meet the requirements of 30 V.S.A § 8009(k)(1) have been completed.

If the contract and certification required under 30 V.S.A. § 8009(k)(2) are not submitted to the Commission and Department, with copies to the Facilitator, on or before July 1, 2023 or if the certification required under 30 V.S.A. § 8009(k)(3) is not submitted to the Commission and Department, with copies to the Facilitator, on or before October 1, 2024, then the obligation of Facilitator to purchase the plant's output shall cease on November 1, 2024.

On or before September 1, 2025, the Department shall investigate and submit a recommendation to the Commission on whether the plant has achieved the requirements of 30 V.S.A § 8009(k)(1). If the Department recommends that the plant has not achieved these requirements, the obligation of Facilitator to purchase the plant's output shall cease on November 1, 2025.

After November 1, 2026, Producer shall report annually to the Department and the Department shall verify the overall efficiency of the plant for the prior 12-month period. If the overall efficiency of the plant falls below the requirement in 30 V.S.A. § 8009(k)(1), the report shall include a plan to return the plant to the required efficiency within one year. If, after implementing the plan, Producer does not achieve the efficiency required in 30 V.S.A § 8009(k)(1), the Department shall request that the Commission commence a proceeding to terminate the obligation of Facilitator to purchase the plant's output and the obligation of retail electricity providers to purchase the baseload renewable power portfolio requirement under Section 8009.

Beginning on August 1, 2023, the Producer shall report annually to the House Committee on Energy and Technology and Senate Committee on Finance, the Commissioner of Forests, Parks and Recreation, and the Secretary of Commerce and Community Development, with a copy to the Facilitator, on the wood fuel purchases for the plant. The report shall include the average monthly price paid for

the wood fuel and the source of the wood fuel, including location, number, types, and sources of non-forest-derived wood.

4. ~~PPA Paragraph 3, Delivery of Electricity and Transfer of Other Products Related to Electric Generation, is amended by adding the following additional term at the end of the existing paragraph:~~

~~“In addition to the delivery of electricity and transfer of other products related to electric generation, Producer hereby unconditionally sells, transfers and assigns to Facilitator all of its right, title and interest in all renewable energy credits and attributes or certificates and related products that are produced during the term of this Agreement, unless the contract price is reduced to reflect the value of any credits, attributes, certificates or related products that are retained by Producer.”~~

5. ~~4. PPA Paragraph 6, Payment of Fees, is amended by deleting the Monthly Facilitator Fee table included on page 6 and replacing it with the following~~ adding to the Monthly Facilitator Fee table included on page 6 with the following:

Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20
\$2,822	\$2,907	\$2,994	\$3,084	\$3,177	\$3,272	\$3,370	\$3,471	\$3,575	\$3,682

~~“MONTHLY FACILITATOR FEE~~

Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
\$2,822	\$2,907	\$2,994	\$3,084	\$3,177	\$3,272	\$3,370	\$3,471	\$3,575	\$3,682

5. PPA Paragraph 8 is amended by adding the following paragraphs:

The Producer acknowledges that operation of the plant at a high-capacity factor during the peak winter months provides the greatest potential benefit to the Vermont distribution utilities’ customers and that the Producer’s satisfactory payment of fuel suppliers in a timely manner is important to those suppliers, the local economy in which they operate, and the forest products industry. Consistent with its rights and obligations under this PPA, including this Section, Producer agrees that it will use Commercially Reasonable Efforts in accordance with Good Engineering and Operating Practices to maintain sufficient fuel supply for continued operation of the Ryegate Facility.

Producer must use Commercially Reasonable Efforts to manage any potential fuel shortage that may develop to dispatch the plant at levels and at times that would maximize the value of the output for Vermont customers.

6. PPA Attachment D, Interconnection Agreement, has expired and is replaced with ~~Amended Attachment D~~ a new agreement. An amended Attachment D is attached to this Agreement.

7. PPA Attachment E, Rate Schedule and Contract Term, is amended and replaced. ~~to update the Rate Schedule for the period November 1, 2022 through November 1, 2026, to recognize that the Commission on or before November 1, 2026 will establish a Rate Schedule for the period November 1, 2026 through November 1, 2032, and to extend the term of the Agreement through November 1, 2032, unless earlier terminated as provided for herein.~~ The term of the Agreement is extended through November 1, 2032, unless earlier terminated as provided for herein, pursuant to 30 V.S.A. § 8009(k). The Rate Schedule is provided for the period November 1, 2012, through November 1, 2026, and recognizes that the Commission on or before November 1, 2026, will establish a Rate Schedule for the period November 1, 2026, through November 1, 2032. An amended Attachment E is attached to and made part of this Agreement.

8. PPA Attachment E.2, SCR Device Rate Adjuster, has expired and is ~~removed from the Agreement~~ replaced with a new agreement. An amended Attachment E.2 is attached to this Agreement.

9. There are no other changes to the PPA and Amendment No. 1, which are hereby fully incorporated into this Amendment No. 2 by reference and reaffirmed by the Parties. The PPA shall continue in full force and effect, as amended.

10. Capitalized terms used but not defined in this Amendment No. 2 shall have the meanings assigned to such terms in the PPA and Amendment No. 1.

11. This Amendment No. 2 may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall constitute but one and the same instrument.

12. This Amendment No. 2 and the rights and duties of the Parties hereunder shall be governed by and construed, enforced, and performed in accordance with Vermont law.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment No. 2 to be executed by their duly authorized representatives as of the date first above written.

Ryegate Associates, Producer

By: _____

Name:

Title:

VEPP Inc., Acting as Standard Offer Facilitator

By: _____

Name:

Title:

**Attachment D (as amended by Amendment No. 2)
Interconnection Agreement**

VEPP Inc. (“Facilitator”) and Ryegate Associates (“Producer”)

The Interconnection Agreement extension with Green Mountain Power Corporation must be filed with Facilitator within five business days of its execution.

**Attachment E (as mended by Amendment No. 2)
Rate Schedule and Contract Term**

VEPP Inc. (“Facilitator”) and Ryegate Associates (“Producer”)

Governing Paragraphs, Orders, and Statutes:

Electricity and Other Products Related to Electric Generation delivered pursuant to this Agreement shall be priced at the rate listed below in accordance with the provisions of Paragraph 7, “Rates and Term,” Paragraph 3, “Delivery of Electricity and Transfer of Other Products Related to Electric Generation,” the provisions of the Vermont Public Utility Commission’s (“Commission”) Orders in Docket No. 7782 and Case No. 22-3944-PET, Vermont Public Act No. 155, and 30 V.S.A. § 8009, “Baseload Renewable Power Portfolio Requirement.” Terms defined in the Agreement are used herein with their defined meanings.

Rate Schedule:

~~On or before November 1, 2026, the Commission shall determine, for the period beginning on November 1, 2026 (Year 5) and ending on November 1, 2032 (Year 10), the price to be paid to Producer under this Agreement.~~

~~Until November 1, 2026, the Contract Rate will be calculated as follows:~~

The Rate Schedule shall be calculated as follows:

Base Rate + Fuel Price Adjustment

Where:

“Base Rate” shall be as follows:

Annual Pricing \$/kWh

Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
0.100	0.100	0.100	0.100						

From November 1, 2012, through October 31, 2022, the “Base Rate” shall annually be:

Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
0.096	0.097	0.098	0.099	0.100	0.101	0.102	0.103	0.105	0.106

From November 1, 2022, until November 1, 2026, the “Base Rate” will be \$0.100 per kWh.

On or before November 1, 2026, the Commission must determine, for the period beginning on November 1, 2026, and ending on November 1, 2032, the Rate Schedule to be paid to Producer under this Agreement pursuant to the requirements of 30 V.S.A. § 8009(d).

“Fuel Price Adjustment” shall be calculated as described in Attachment E.1, **as amended by Amendment No. 1.**

Term of Agreement:

This amended Agreement shall become effective upon execution by Producer and Facilitator. Facilitator shall file an executed original of this amended Agreement with the Commission. This amended Agreement shall remain in effect ~~for a period of ten (10) years~~ beginning November 1, 2022, and ending November 1, 2032, unless earlier terminated as provided for herein, **pursuant to 30 V.S.A. § 8009(k).**

The Facilitator shall bill the Vermont distribution utilities and pay Producer in accordance with the terms of this Agreement, after the Agreement is approved by the Commission.

**Attachment E.2 (as amended by Amendment No. 2)
SCR Device Rate Adjuster**

By Order dated December 12, 2013, in Docket No. 7782, the Vermont Public Utility Commission accepted a Stipulation between Ryegate Associates and the Vermont Electric Distribution Utilities (“Utilities”) providing for a sharing arrangement for Renewable Energy Credits (“RECs”) after installation of a selective catalytic reduction system (“SCR”) at the Ryegate Facility. The sharing agreement attached to Amendment No. 1 expired on October 31, 2022.

By Order dated _____, in Case No. 22-3944-PET, the Vermont Public Utility Commission accepted a Stipulation between Ryegate Associates, Green Mountain Power Corporation, Vermont Electric Cooperative, Inc., and Washington Electric Cooperative, Inc. for a sharing agreement for RECs generated by the operation of SCR at the Ryegate Facility until November 1, 2026.

The sharing agreement is as follows:

1. Any RECs generated by the Ryegate Facility must be distributed in the following proportion: Ryegate Associates share of 10% and Utilities share of 90%.
2. Distribution of all RECs generated by the Ryegate Facility must occur on a quarterly or other appropriate periodic basis through the transfer of electronic RECs in the New England Power Pool Generation Information System or its successor. The first month of REC sharing begins when non-CT II RECs (i.e., NH III or CT I RECs) are produced and generated by the Ryegate facility in the NEPOOL GIS system.
3. The Utilities will create a NEPOOL GIS account entitled “VT Utilities Ryegate Account.” By agreement of the Utilities, ownership of the VT Utilities Ryegate Account will be in accordance with each of the Utility’s current Ryegate pro-rata share. On a quarterly basis (or other time period mutually agreed upon): (i) Ryegate will transfer all RECs to VEPP Inc.’s NEPOOL GIS account; (ii) VEPP Inc. will distribute Ryegate RECs in its NEPOOL GIS account to each of the Utility’s individual NEPOOL GIS accounts, on a pro rata basis, in the amounts specified in section 1 above; (iii) VEPP Inc. will transfer the remainder of the Ryegate RECs to the VT Utilities Ryegate Account; and (iv) a representative designated by the Utilities will transfer the remaining RECs in the VT Utilities Ryegate Account to the NEPOOL GIS account designated by Ryegate. Ryegate, the Utilities and VEPP Inc. agree to use their best efforts to complete the necessary transfers in a total of 15 business days after the start of trading for each quarter or other time period as appropriate.

PUC Case No. 22-4421-INV - SERVICE LIST

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