STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 8684

Re: Investigation into Establishing Rates for)
Power Sold to the Purchasing Agent Pursuant to)
Public Service Board Rule 4.100, 16 U.S.C.)
§ 824a-3, and 30 V.S.A. § 209(a)(8))

Order entered: 2/5/2016

ORDER OPENING INVESTIGATION AND NOTICE OF PREHEARING CONFERENCE

I. INTRODUCTION

This Order concerns a petition filed by the Vermont Department of Public Service (the "Department" or "DPS") requesting that the Vermont Public Service Board (the "Board") open an investigation to establish rates for power sold to the purchasing agent pursuant to Board Rule 4.100, 16 U.S.C. § 824a-3, and 30 V.S.A. § 209(a)(8). In today's Order, we: (1) grant the Department's request to open an investigation; (2) grant the motions to intervene filed by a group of solar facility developers (collectively the "Developers"), the Vermont Independent Power Developers Association ("VIPPA"), Green Mountain Power Corporation ("GMP"), Washington Electric Cooperative, Inc. ("WEC"), and the City of Burlington Electric Department ("BED"); (3) deny the Developers' motion to dismiss the petition; and (4) deny the Department's request to make the Department's proposed rate schedules effective immediately.

II. PROCEDURAL HISTORY

On October 30, 2015, the Department filed the petition that initiated this proceeding.

On November 4, 3015, the Developers filed a motion to intervene and motion to dismiss the petition.

On November 13, 2015, Allco Renewable Energy ("Allco") filed comments on the petition.

On November 16, 2015, the Town of Stowe Electric Department ("Stowe") filed a notice of appearance. Stowe states that it does not intend to intervene but requests to be listed as an interested person.

On November 16, 2015, VIPPA filed a motion to intervene and comments on the Department's request. VIPPA also joined in the Developers' motion to dismiss.

On November 18, 2015, BED filed a motion to intervene.

On November 19, 2015, the Department filed comments opposing the motion to dismiss.

Also on November 19, 2015, GMP filed comments on the petition and a motion to intervene.

On November 23, 2015, the Vermont Public Power Supply Authority filed a notice of appearance in this matter.

On November 23, 2015, WEC filed a motion to intervene.

III. MOTIONS TO INTERVENE

GMP, WEC, and BED

GMP, WEC, and BED are Vermont electric distribution utilities that are required to take power from the purchasing agent pursuant to Board Rule 4.100. These utilities assert that this proceeding addresses the level of avoided-cost rates the utilities must pay and therefore affords the exclusive means by which they can protect their interest, and their interest is not adequately represented by the existing parties.

In the absence of any objection, GMP , WEC, and BED are granted intervention on a permissive basis pursuant to Board Rule 2.209(B), limited to the interests identified in their respective motions.

The Developers

The Developers assert that they are "self-certified Qualifying Facilities ('QFs' under the Public Utility Regulatory Policy [sic] Act ('PURPA')."[1] The Developers state that they have power purchase agreements that are pending before the Board for approval. These agreements were negotiated and developed under the current avoided-cost rates established in Docket No. 8010. The Developers contend that this proceeding may affect the Developers' previously submitted agreements, as well as any future agreements submitted by the Developers for Board approval.

In the absence of any objection, the Developers are granted intervention on a permissive basis pursuant to Board Rule 2.209(B), limited to the interests identified in their motion.

VIPPA

VIPPA is a domestic non-profit corporation that represents the interests of small power producers including QFs that are party to or are seeking approval from the Board for power purchase and sale agreements with the purchasing agent. VIPPA contends that the Department's proposed changes to the rates for power sold by QFs may affect the rates to be paid to VIPPA members under power purchase agreements with the purchasing agent including agreements currently under Board review.

In the absence of any objection, VIPPA is granted intervention on a permissive basis pursuant to Board Rule 2.209(B), limited to the interests identified in its motion.

IV. POSITIONS OF THE PARTIES

The Developers

The Developers assert that the petition is defective because:

> (1) Board Rule 4.104(E) requires the DPS to calculate Rule 4.100 avoided costs, yet here the rates were calculated, at the request of the DPS, by five Vermont utilities (two of which, GMP and VEC who oppose the Solar QFs PPAs), not the DPS, (2) the avoided costs do not reflect the Vermont composite system, as

1. Developers' motion to intervene at 2.

> required by Rule 4.100, and (3) the filing fails to include material information required to support the proposed avoided cost rate schedules.[2]

The Developers further argue that the Department's filing is also substantially defective because it does not reflect consideration of the 2015 Avoided Energy Supply Costs in New England.

VIPPA

VIPPA opposes the Department's request for an investigation. VIPPA contends that the Board should follow the procedures established under Rules 4.104(E) and 4.113 for the regular update of the Rule 4.100 rates and that the Board should direct the Department to file its updated rate schedules on April 1, 2016. VIPPA argues that if the Department's proposed rate schedules are approved, the QFs that are currently seeking to exercise their rights to a long-term contract with the purchasing agent under the rates established in Docket 8010 might not see their proposed contracts approved despite the QFs and the purchasing agent acting in a timely manner to establish a PPA in accordance with Rule 4.100 and the Board's Order in Docket 8010.[3] VIPPA asserts that this is unfair to the affected QFs that relied on the Docket 8010 rates when they took steps to secure PPAs at these rates and as a result is the erection of an impermissible obstacle to the approval of mandatory PURPA contracts as contemplated under federal law.

GMP

GMP supports the Department's petition. GMP states that it disagrees with the Developers' assertions and requests that the Board open a proceeding to facilitate legal argument.

The Department

The Department represents that since the Board last adopted rate schedules for QFs in Docket 8010, market declines have caused the rates adopted in Docket 8010 to exceed market-rates. Accordingly, the Department requests that the Board open an investigation to review its new proposed rate schedules.

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2. Motion to dismiss at 8.

3. Citing I*nvestigation into Establishing Rates for Power Sold to the Purchasing Agent*, Docket 8010, Order of February 9, 2015.

The Department opposes the Developers' motion to dismiss the petition. The Department contends that nothing in Board Rule 4.100 prevents the Department from filing proposed rates at this time. The Department states that Rule 4.100 "contains no prescribed methodology by which the Department must determine the avoided capacity and energy costs of the Vermont composite electric utility system, nor does it contain any filing requirements other than the proposed rates themselves." The Department argues that the Developer's arguments concerning the Department's calculation of avoided costs go to the merits of the proposed rates and do not provide a basis to dismiss the petition.

V. MOTION TO DISMISS PURSUANT TO BOARD RULE 2.208

The Developers and VIPPA assert that the petition is substantially defective and, therefore, should be rejected pursuant to Board Rule 2.208.[4] VIPPA argues that the Department's filing is untimely under Rule 4.113. The Developers allege that the petition is defective because: (1) Rule 4.104(E) requires the Department — not the utilities — to calculate Rule 4.100 avoided costs, (2) the avoided costs do not reflect the Vermont composite system, as required by Rule 4.100, and (3) the filing fails to include material information required to support the proposed avoided-cost rate schedules. The Developers further argue that the petition is defective because "it ignores the results of the Avoided Energy Supply Costs in New England ('2015 AESC')," and also because the proposed rates do not reflect solar projects being developed by the utilities at higher prices. In addition, the Developers contend that the Department's proposed rates present an "unreasonable obstacle" to QF development. Finally, VIPPA asserts that the petition is not timely because it was not filed on April 1.

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4. Board Rule 2.208 states:

> Substantially defective or insufficient filings may be rejected by the Board, provided, that if it will not unreasonably delay any proceeding nor unreasonably adversely affect the rights of any party, the Board shall allow a reasonable opportunity to a party to cure any defect or insufficiency. A filing which is found to be defective or insufficient shall not be deemed to have been cured until the date on which the last document is filed which removes the defect or makes the filing complete. A filing is substantially insufficient if, inter alia, it fails to include all material information required by statute or rule.

We are not persuaded by the arguments raised by VIPPA that the Department must defer its annual rate filing until April 1, 2016. Instead, the rule states that "annually, *on or before* April 1" the Department shall file proposed rates.[5] The Board's previous decision to waive the Department's obligation to file new rates on or before April 1, 2015, in no way precludes the Department from filing rates "on or before" April 1 of 2016. Moreover, the rates approved by the Board in Docket 8010 were filed by the Department on August 4, 2014, well over a year before the rates under consideration in this Docket were filed with the Board. Accordingly, we find no basis to deny the Department's request to open an investigation based on the timing of the filing.

Next we turn to the Developers' argument that the petition is deficient and should be rejected under Board Rule 2.208. The Department is required to "annually determine the avoided capacity and energy costs of the Vermont composite electric utility system."[6] Rule 4.104(E) does not prescribe any method for making such a determination, nor does it contain any filing requirements other than the rate schedules. Accordingly, we cannot agree with the Developers' argument that the petition is deficient for purposes of Rule 2.208 due to the Department's reliance on rate forecasts supplied by the utilities.

Similarly, we are not persuaded by the Developers' argument that the petition is substantially deficient because the bases for the utility forecasts are not "publicly available." The Developers' argument is premature. As parties, VIPPA and the Developers will have the opportunity to test the basis for the Department's proposed rates in this proceeding. Accordingly, the Developers' argument on this point does not provide a basis for dismissing the petition pursuant to Board Rule 2.208.

The remainder of the Developers' arguments go to whether the proposed rates accurately reflect the avoided costs of the Vermont composite system. These argument deal with the merits of the Department's proposed rates, not the sufficiency of the filing. Therefore, the Developers' motion to dismiss pursuant to Board Rule 2.208 is denied.

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5. Rule 4.113.
6. Pursuant to Rule 4.104(E).

VI. THE DEPARTMENT'S REQUEST FOR INVESTIGATION AND ADOPTION OF INTERIM RATES

On April 23, 2015, the Board granted the Department's request to waive the requirement set forth in Rules 4.104(E) and 4.1l3 that the Department file updated rate schedules by April 1, 2015. At that time, the Department indicated that it may consider filing new proposed avoided cost rates in the future based on market trends. The Department now alleges that market declines have necessitated an investigation to set rates for purchases of power by the purchasing agent pursuant to Board Rule 4.104(E) because the rates adopted in Docket 8010 do not reflect avoided costs. The Department's petition included proposed schedules of avoided energy and capacity costs for the Vermont system.

Based upon the Department's representation that the rates currently adopted by the Board no longer reflect avoided costs, the Board grants the Department's request to open an investigation into the Department's proposed rates.

The Department requests that the Board "plac[e] the Department's proposed rate schedules into effect on an interim basis." The Department further requests that the "Board make such rate schedules effective subject to the final outcome of this proceeding, such that any Rule 4.100 agreements approved by the Board in advance of a final order will incorporate those rate schedules ultimately approved in this proceeding." The Department contends that there is precedent to proceed in this manner, citing the Board's adoption of interim rates in Docket 8010.

The Department's request to implement interim rates is denied. Pursuant to Board Rule 4.104(E), the Department must file proposed rates with "the Board for approval, and the Board, after hearing, shall approve or modify such schedules." Based upon the plain language of the rule, the Board cannot proceed in the fashion requested by the Department.

The circumstances underlying the Board's decision to adopt interim rates in Docket 8010 are not comparable to the facts of this case. In Docket 8010, there were no adopted rates to offer QFs seeking a Rule 4.100 contract. Accordingly, the Board made available one-year contracts so that QFs could sell their output, as required by federal law and the Board's rules, while the Board reviewed the Department's then-proposed rates. It is not necessary in this case to proceed in the fashion proposed by the Department because the Board adopted rates in Docket 8010 and these rates remain in effect.

VII. CONCLUSION

The Department's petition for the Board to open an investigation is granted in part and denied in part. The motions to intervene are granted. The Developers' motion to dismiss is denied. The Board hereby assigns this matter to a hearing officer, Mary Jo Krolewski, Utilities Analyst, to convene a prehearing conference in this matter on Wednesday, February 17, 2016, at 9:30 A.M., at the Public Service Board Hearing Room, Third Floor, People's United Bank Building, 112 State Street, Montpelier, Vermont.

SO ORDERED.

Dated at Montpelier, Vermont, this 5th day of February, 2016.

s/James Volz)
)
s/Margaret Cheney) PUBLIC SERVICE BOARD OF VERMONT
)
s/Sarah Hofmann)

OFFICE OF THE CLERK

FILED: February 5, 2016

ATTEST: s/Judith C. Whitney
Acting Clerk of the Board

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