STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 8817

Investigation into programmatic adjustments to the standard-offer program	

Order entered: 4/21/2017

ORDER RE SECOND MOTIONS TO ALTER OR AMEND

I. INTRODUCTION

In this Order, the Vermont Public Service Board ("Board") addresses Renewable Energy Vermont's ("REV") second motion (REV's "2nd Motion") to alter or amend the March 2, 2017, Order in this proceeding.

For the reasons discussed below, we deny the 2nd Motion.

II. BACKGROUND AND PROCEDURAL HISTORY

In an Order dated March 2, 2017,[1] pursuant to 30 V.S.A. § 8005a(c)(2), the Board established a mechanism for the allocation of available capacity for the remainder of the standard-offer program that included a Price-Competitive Developer Block and a Technology Diversity Developer Block. For 2017, as required by Section 8005a(c)(1)(D), the Board also established a Preferred Location Block. In addition, the Board determined, pursuant to Section 8005a(f)(3), the avoided costs that will serve as price caps on the standard-offer projects solicited through the 2017 Request for Proposals ("RFP").

On March 29, 2017, the Board issued an Order addressing the Vermont Department of Public Service's ("Department"), Vermont Public Power Supply Authority's ("VPPSA"), and REV's motions to alter or amend and Allco Renewable Energy Limited's motion for reconsideration of the March 2, 2017, Order in this proceeding.[2]

On April 7, 2017, REV filed the 2nd Motion.

On April 14, 2017, the Department filed comments in response to REV's 2nd Motion.

[1] *Order Re 2017 Technology Allocation and Price Caps for the Standard-Offer Program*, Docket 8817, Order of 3/2/17 ("March 2nd Order").

[2] *Order Re Motions to Amend*, Docket 8817, Order of 3/29/17 ("March 29th Order").

III. PARTICIPANTS' MOTION AND COMMENTS

REV

In its 2nd Motion, as in its previous motion, REV requests that the Board retain the 2016 technology categories and treatment of the Technology Diversity Developer Block. In addition, REV asks the Board to correct page 7 of the March 2nd Order to provide that the unsubscribed portion of the Technology Diversity Developer Block be awarded to technologies in the Technology Diversity Developer Block rather than "to project bids from any technology, including solar, on the basis of bid price alone."[3]

REV states that it is submitting a second motion because the March 29th Order was the first time the Board explained its rationale for excluding large wind from the Technology Diversity Developer Block and therefore represented the first opportunity for REV to respond to the rationale. REV argues that the March 2nd Order excludes large wind from the Technology Diversity Block, and would allow unsubscribed allotments in the Technology Diversity Developer Block to be open to bids from all technologies, and in particular those in the Price-Competitive Developer Block. REV contends that this allocation effectively deprives technologies like large wind from the opportunity to effectively participate in the standard-offer program, because large wind projects require a higher price than solar projects and a single large wind project requires a capacity of least 2 MW.

REV argues that the Board did not provide notice that it was excluding large wind projects from the Technology Diversity Developer Block, or an opportunity for participants to present evidence on that issue. REV contends that the issue was never noticed in the Order[4] opening the docket or in the workshop held in the docket. REV maintains that developers were completely deprived of adequate notice and opportunity to participate on this issue.

REV also argues that the Board did not follow procedures required by 30 V.S.A. § 11(b), which states that the Board "make its findings of fact." REV contends that the March 2nd Order did not include any enumerated findings with regard to the exclusion of multiple technology categories from the Technology Diversity Developer Block and therefore violates Section 11(b).

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[3] Docket 8817, Order of 3/2/17 at 7.

[4] *Order Opening Investigation and Notice of Workshop*, Docket 8817, Order of 9/16/16 ("September 16th Order').

In addition, REV argues that the March 2nd Order and the March 29th Order do not include a factual or legal foundation for excluding large wind projects from the Technology Diversity Developer Block. REV contends that the exclusion of large wind projects from the Technology Diversity Developer Block is inconsistent with the standard-offer statute, which calls for technology allocations. REV maintains that the lack of technology diversity in the standard-offer portfolio is demonstrated by the current contract mix, which includes one contract for large wind out of 72 issued contracts.

Department

The Department argues that REV's 2nd Motion should be denied because it is untimely, well beyond the ten-day limit under V.R.C.P. 59(e). The Department contends that the 2nd Motion does not seek relief from any ruling contained in the March 29th Order and that the issue date of that Order has no relevance to the timeliness of REV's 2nd Motion. The Department argues that REV's 2nd Motion should be denied because it duplicates the relief requested in REV's 1st Motion and the Board has already denied that request for relief.

The Department contends that REV's 2nd Motion does not meet the requirements of a motion to alter and amend under V.R.C.P. 59(e). The Department contends that the purpose of Rule 59(e) is to avoid an unjust result due to inadvertence of the Board and is not intended to permit parties to simply relitigate issues or present additional procedural or legal grounds to buttress previous requests. The Department maintains that REV's 2nd Motion is based on facts that could have been identified by REV before the March 2nd Order and does not identify any unjust result from the March 2nd Order that is due to inadvertence by the Board. The Department maintains that instead REV's 2nd Motion reiterates REV's initial request and makes due process and procedural arguments that could have been made in its initial motion, but were not.

The Department further contends that the Board has amply supported its decision as required by 30 V.S.A. § 11(b). The Department notes that REV simultaneously and contradictorily contends that the Board failed to make findings of fact to support its decision about the technology diversity allocation as required by Section 11(b), while admitting that the Board explained its rationale for excluding large wind projects in the March 29th Order.

The Department notes that the Board was required to allocate one third of the standard-offer program capacity for 2017 to the pilot program for projects located at preferred locations.

The Department maintains that the Board exercised its discretion to select one among several reasonable approaches, and that the decision maintains the goals and integrity of the standard-offer program while accommodating the mandatory reallocation of a significant portion of the capacity available for 2017 to the pilot program.

Lastly, the Department argues that the application of Rule 59(e) is intended to balance the right to reconsideration with finality. The Department contends that finality is necessary at this point so that the 2017 RFP can be issued and the award of contracts can proceed in a timely fashion.

IV. DISCUSSION AND CONCLUSION

We deny REV's 2nd motion because it is untimely. REV's 2nd Motion seeks relief from our ruling contained in the March 2nd Order. REV's 2nd Motion was filed on April 7, 2017, well beyond the ten-day limit under V.R.C.P. 59(e). For this reason alone, REV's motion should be denied.

Setting aside the untimeliness of the filing, REV's 2nd Motion fails to meet the requirements of Rule 59(e). Rule 59(e) codifies the Board's inherent power to "open and correct, modify or vacate its judgments," and the purpose of the rule is to avoid an unjust result due to inadvertence of the Board.[5] Rule 59(e) is not intended to permit parties to simply relitigate issues or present additional procedural or legal grounds to buttress previous requests.[6] REV's 2nd Motion largely restates arguments that it raised in its first motion for reconsideration or makes new arguments based on facts that could have been identified by REV before the March 2nd Order. In sum, the 2nd Motion does not identify any unjust result from the March 2nd Order that is due to inadvertence by the Board.

REV incorrectly claims that the Board did not provide notice that it was considering excluding large wind projects from the Technology Diversity Developer Block. Participants were provided notice that the allocation of program capacity would be under review at the opening of this proceeding. The September 16th Order opening the investigation stated that the "investigation will include the establishment of a pilot project for standard-offer projects, the review of standard-offer price caps, and *review of the allocation of available capacity under the*

[5] *Osborn v. Osborn*, 147 Vt. 432, 433 (1986).
[6] *In re Cent. Vt. Pub. Serv. Corp.*, Dockets 6946/6988, Order of 5/25/05.

standard-offer program."[7] Other participants in this proceeding responded to this notice and, accordingly, recommended allocation methodologies on October 28, 2016, and filed reply comments on November 10, 2016.

The March 2nd Order discussed these comments, including VPPSA's specific recommendation that "solar and all of the technologies with price caps determined to be lower than the solar price cap compete in the Price-Competitive Developer Block," and that "this approach would promote technological diversity 'while leveraging the competitive bidding mechanism to secure distributed resources at the lowest feasible cost to ratepayers.'"[8] Accordingly, the March 2nd Order concluded that the 2017 technology allocation was "guided by the applicable goals and directives of Sections 8001 and 8005a as well as the goals expressed by stakeholders."[9] Accordingly, the basis for the technology allocation for the 2017 RFP was adequately supported in the March 2nd Order as required by 30 V.S.A. § 11(b).

In addition, REV has repeated its request that the Board correct page 7 of the March 2nd Order to provide that the unsubscribed portion of the Technology Diversity Developer Block be awarded to technologies in the Technology Diversity Developer Block rather than "to project bids from any technology, including solar, on the basis of bid price alone." We deny this request for the same reasons stated in the March 29th Order. The allocation of unsubscribed capacity to competitively priced projects represents a reasonable approach that is consistent with our 2016 RFP.

In conclusion, we deny REV's 2nd Motion. Accordingly, the March 2nd Order and March 29th Order remain unchanged with regard to the Technology Diversity Developer Block.

2017 RFP

The March 29th Order required the Standard Offer Facilitator to issue the RFP by April 10, 2017. Given the 2nd Motion, we extended that deadline. Accordingly, by April 24, 2017, the Standard Offer Facilitator shall issue an RFP, consistent with the requirements of this Order, the March 2nd Order, March 29th Order, and prior orders in other standard-offer proceedings, to solicit standard-offer projects to meet the requirements of Section 8005a(c).

SO ORDERED.

[7] Docket 8817, Order of 9/16/16 at 1.
[8] Order of 3/2/17 at 5.
[9] Order of 3/2/17 at 5-6.

Dated at Montpelier, Vermont this 21st day of April, 2017.

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

OFFICE OF THE CLERK

Filed: April 21, 2017

Attest: s/Judith C. Whitney
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)

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