

STATE OF VERMONT  
PUBLIC UTILITY COMMISSION

Case No. 18-2820-INV

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Investigation to review the avoided costs that serve as prices for the standard-offer program in 2019	
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Order entered: 01/16/2019

**ORDER RE 2019 STANDARD-OFFER PROGRAM**

In today's Order, the Vermont Public Utility Commission ("Commission") adopts the conclusions and recommendations made in the Hearing Officer's proposal for decision with minor modifications to the ordering paragraphs.

The proposal for decision was circulated to the participants for review and comment. No comments were received.

**PROPOSAL FOR DECISION**

**I. INTRODUCTION**

Pursuant to 30 V.S.A. § 8005a(f)(3), the Commission is required on an annual basis to review the avoided costs that serve as prices for the standard-offer program. In this proposal for decision, I recommend the Commission make no changes to the standard-offer prices established in 2018.

The standard-offer prices established in this proposal for decision will serve as price caps in the 2019 request for proposals ("RFP") to fill the available annual capacity under the standard-offer program. In this proposal for decision, I also make some additional recommendations with respect to the implementation of the 2019 RFP.

**II. BACKGROUND**

Established in 2009, pursuant to 30 V.S.A. § 8005a, the standard-offer program promotes the rapid deployment of small renewable generation. The Commission has implemented the program through previous Orders in Dockets 7523, 7533, 7780, 7873, 7874, and 8817, and Case No. 17-3935-INV.

Under the program, Vermont distribution utilities are required to buy renewable power from an eligible generator at a specified price for a specified period of time. Program costs are

distributed among Vermont utilities based on their *pro-rata* share of electric sales. The program is administered by a statewide purchasing agent (“Standard Offer Facilitator”) appointed by the Commission.<sup>1</sup>

The standard-offer program was created with a 50 MW initial program capacity that was expanded to 127.5 MW in 2012. Eligible projects can be no larger than 2.2 MW in size and include the following technologies: solar; wind with a capacity of 100 kW or smaller (“small wind”); wind with a capacity greater than 100 kW up to 2.2 MW (“large wind”); farm methane; landfill methane; food waste anaerobic digestion; biomass; and hydroelectric. Eligible projects selected through a lottery received a standard-offer contract and the contract price was based on technology-specific avoided costs.

In 2012, statutory changes were made to the program that included an increase in the available program capacity, distributed annually as follows: 5 MW in 2013-2015; 7.5 MW in 2016-2018; and 10 MW available in 2019-2022. A specific portion of each year’s capacity is reserved for projects proposed by Vermont utilities and is referred to as the Provider Block, with the remainder referred to as the Developer Block. The 2012 changes also: (a) require allocation of available capacity among different technology categories; (b) allow market-based pricing methodology; and (c) require review of avoided-cost prices every year.

Since 2013, the Commission has issued an annual RFP to fill the available annual capacity under the program. Issued by the Standard Offer Facilitator, the annual RFP specifies annual program capacity, technology allocations, and avoided-cost price caps.<sup>2</sup> Under the RFP, lowest-priced bids are awarded annual capacity. Farm methane projects remain outside the program cap (i.e., no restrictions on the number of projects that can participate in the program) and therefore do not have to participate in the annual RFP.

### **III. PROCEDURAL HISTORY**

In 2017, the Commission established a mechanism for the allocation of available standard-offer program capacity pursuant to Section 8005a(c)(2), and determined the technology-specific avoided costs that served as price caps on the standard-offer projects

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<sup>1</sup> VEPP Inc. (“VEPP”) serves as the Standard Offer Facilitator under contract to the Commission.

<sup>2</sup> The Standard Offer Facilitator maintains a website for the program that includes the annual RFP and other information: <http://www.vermontstandardoffer.com/>.

solicited through the 2017 RFP pursuant to Section 8005a(f)(3).<sup>3</sup> In addition, the Commission determined the avoided costs that served as the prices for farm methane projects under the standard-offer program.<sup>4</sup>

On August 2, 2018, as required by Section 8005a(f)(3), the Commission opened this investigation to conduct a review of the avoided costs that serve as price caps on the standard-offer projects solicited in the 2019 RFP and the avoided costs that will serve as the prices for farm methane projects under the standard-offer program.<sup>5</sup>

In the August 2, 2018, Order, based on its review of the results of the 2018 RFP, the Commission retained the technology allocation used in 2018 for the 2019 RFP.<sup>6</sup> Accordingly, the investigation for the 2019 program was limited to the review of the standard-offer prices.

On August 31, 2018, the Vermont Department of Public Service (“Department”) filed recommended price caps.

On September 3, 2018, Green Mountain Power Corporation (“GMP”) filed comments.

On September 10, 2018, I conducted a workshop to discuss the avoided costs that serve as prices for standard-offer projects.

On September 24, 2018, the Department filed reply comments.

No other comments have been received.

This proceeding has not used contested-case procedures, and all interested persons have been afforded the opportunity to participate through a workshop and written filings. Because this process was not a formal case, there were no parties and no deadlines for intervention. In this proposal for decision, I use the term “participants” to refer to the individuals and entities who participated in some manner in this process.

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<sup>3</sup> *Order Re 2017 Technology Allocation and Price Caps for the Standard-Offer Program*, Docket 8817, Order of 3/2/17; *Order Re Motions to Alter or Amend and Motions to Reconsider*, Docket 8817, Order of 3/29/17; *Order Re Second Motions to Alter or Amend*, Docket 8817; Order of 4/2/17.

<sup>4</sup> Pursuant to Section 8005a(g), farm methane projects remain outside the programmatic cap.

<sup>5</sup> *Order Opening Investigation, Establishing Schedule, and Notice of Workshop*, Case 18-2820-INV, Order of 8/2/18.

<sup>6</sup> For the 2018 RFP, the Commission adopted a technology allocation under which the Developer Block included a Price-Competitive Developer Block that was available to projects of any technology category, awarded on bid price. The remainder of the Developer Block capacity was allocated to the Technology Diversity Developer Block which was allocated on an equal basis to non-solar technology categories (except landfill gas), awarded on bid price within each category.

#### **IV. DISCUSSION**

##### **Standard-Offer Price Caps**

As discussed below, I am recommending that the Commission make no changes to the standard-offer price caps established in 2018.

Both the Department and GMP recommend no changes to the avoided costs that serve as price caps on standard-offer projects established by the Commission in 2018.

The Department contends that several of the assumptions used to calculate the existing price caps have changed (i.e., inflation rate, tax rate, depreciation expense, and cost of photovoltaic modules), but in offsetting directions. The Department maintains that the existing price caps continue to represent a reasonable estimate of the cost to build, and enable developers working on technologies other than solar to continue to participate in the standard-offer program.

The Department contends that the existing solar price cap is at a level that encourages developer participation and results in competitively priced bids. The Department notes that the 2018 RFP yielded seven eligible solar bids for a total of 14.4 MW of capacity. Under the Technology Diversity Developer Block, the Department maintains that the price caps are achieving the primary goals of the program. The Department notes that the 2018 RFP resulted in bidding activity (though limited) at or close to the price caps, suggesting that there is developer interest at the existing price caps.

GMP contends that past RFP results indicate that there has been a competitive market for solar projects and that RFP results have been uniformly under the existing \$0.13 per kWh price cap. GMP maintains that the existing solar price cap is higher than prices seen in past RFPs, but since there is a history of price competition among solar projects, it is not necessary to adjust the price cap.

With respect to the price caps for all technologies other than solar, GMP contends that the 2018 RFP results (limited project bids at or near the price caps) suggest that there is limited competition for these technologies, and it is difficult to know whether projects could potentially be developed at prices lower than the current price caps. GMP believes that the avoided-cost caps for these technologies exceed the value of the various products that these projects will provide to Vermont electric customers. However, GMP further states that because these projects have not yet completed permitting and construction, and the scale of projects is limited, it seems reasonable to maintain the existing price caps for the 2019 RFP. GMP further maintains that the

existing price caps support the program goal of technology diversity and maintain the opportunity for developers working on these technologies to participate in the standard-offer program.

In past standard-offer proceedings, the Commission established standard-offer prices based on assumptions that balance between the statutory directive to ensure sufficient incentive for rapid deployment and the directive to ensure that the incentive is not excessive and thereby unnecessarily costly for ratepayers. This means that projects are efficiently sited and financed so as to avoid excessive costs to electric ratepayers.<sup>7</sup>

No participant has recommended that the Commission change the standard-offer price caps established in 2018. Based on a review of past RFP results and the participants' recommendations, I recommend no changes to the existing standard-offer price caps. The existing price caps should continue to balance the statutory directive to ensure sufficient incentive for rapid deployment against ensuring that the incentive is not excessive and thereby unnecessarily costly for ratepayers.

Accordingly, I recommend that the Commission establish the following avoided costs to serve as price caps for the 2019 RFP:

- Biomass: \$0.125 per kWh (levelized over 20 years)
- Landfill Gas: \$0.090 per kWh (levelized over 15 years)
- Wind > 100 kW: \$0.116 per kWh (fixed for 20 years)
- Wind ≤ 100 kW: \$0.258 per kWh (fixed for 20 years)
- New Hydroelectric: \$0.130 per kWh (fixed for 20 years)
- Food Waste Anaerobic Digestion: \$0.208 (fixed for 20 years)
- Solar: \$0.130 per kWh (fixed for 25 years)

#### Farm Methane Prices

Farm methane projects remain outside the standard-offer programmatic cap. No party provided comments on the prices for these projects. I recommend that the Commission adopt the 2018 prices for use in 2019. Accordingly, I recommend the Commission establish an avoided cost of \$0.145 per kWh, fixed over the term of the 20-year contract, for large farm methane

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<sup>7</sup> See Docket 7533, Order of 1/15/10; Docket 7780, Order of 1/23/12; Docket 7874, Order of 3/7/16; Docket 8817, Order of 3/2/17; Case No. 17-3935-INV, Order of 3/16/18.

projects, and an avoided cost of \$0.199 per kWh, fixed over the term of the 20-year contract, for small farm methane projects.

### 2019 RFP Requirements

In its comments, the Department recommends that the RFP require participants to submit bids that provide full documentation of the cost estimates that informed their specific bid price. The Department's comments include an attached bid sheet comprised of six categories (operating characteristics, installation costs, first-year operating costs, replacement costs, decommissioning costs, and revenue streams and cost savings). The Department contends that a bid sheet will increase transparency and ensure that projects do not impose excessive costs on ratepayers.

I recommend that the Commission not adopt any changes to the current RFP mechanism with respect to the methodology for awarding projects based on a bid price. As discussed in the March 16, 2018, Order, the Department's proposal to institute a bid sheet appears to add much complexity to the RFP bidding process without a clear demonstration that the proposal would improve the cost-efficiencies of bids and allow for a more competitive RFP process.<sup>8</sup> However, the bid sheet may provide value to bidders in the development of their RFP bids. To that end, I recommend that the Commission direct the Standard Offer Facilitator to make this bid sheet available to RFP participants as part of the release of materials for the 2019 RFP.

### Notice of Sheffield-Highgate Export Interface

The Department and GMP recommend, as provided in the 2018 RFP, that the RFP include information regarding the constraints in the Sheffield-Highgate Export Interface ("SHEI") area. In 2013, ISO New England demarcated the SHEI and established generator operation limits to ensure that the transmission system's capacity to function reliably remains intact. During certain operational periods, these limits are reached and generation resources in areas of northern Vermont are required to curtail their output due to the lack of transmission system capacity to export power.<sup>9</sup>

As recommended by the participants and as required in the March 26, 2018, Order, I recommend that the Commission include language in the 2019 RFP on the concerns identified in

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<sup>8</sup> Case No. 17-3935-INV, Order of 3/16/18 at 18-19.

<sup>9</sup> More information on SHEI can be found at: <https://www.vermontspc.com/grid-planning/shei-info>.

the SHEI area.<sup>10</sup> Specifically, I recommend the 2019 RFP include the following: (1) a short description of the SHEI area and limitations, including a link to the Vermont System Planning Committee webpage on the SHEI area; (2) an explanation that proposed projects within the SHEI area could adversely impact the operation of other renewable generation in the area; and (3) a notice to bidders that any standard-offer projects proposed in the SHEI area will have to address the economic and transmission system concerns during the certificate of public good process.

#### RFP Award Group – Refundable Deposit

Although not raised in this proceeding, participants in a related proceeding have made recommendations concerning the refundable deposit fee of \$15 per kW paid by recipients of an RFP award. Because the recommendations are likely to enhance the success of the 2019 RFP, I am addressing them in this proposal for decision.

Under the terms of the 2018 RFP, within 30 days of receiving notice of an award in the RFP, the recipient is required to provide a refundable deposit fee of \$15 per kW.

The standard-offer contract establishes milestones for projects and conditions for the return of the refundable deposit. The standard-offer contract states that projects are required to file a petition for a certificate of public good within one year of the contract signature date. Solar and small wind projects are required to be commissioned within two years of the contract signature date, and biomass, large wind, landfill gas, and hydroelectric plants are required to be commissioned within three years of that date. If a project is commissioned within the applicable milestone date set forth in its contract, 100% of the refundable deposit will be returned. For all technology categories, if a project voluntarily withdraws from the standard-offer program within the first year, the entire refundable deposit is returned. For small wind and solar projects, the deposit is refunded 50% if the project withdraws within the second year. For other project categories, the deposit is refunded 75% within the second year and 50% within the third year.

During last year's review of the standard-offer program, participants recommended that the \$15-per-kW deposit be fully forfeited when a project is withdrawn from the standard-offer program prior to commissioning, except if the petition for a certificate of public good is denied. The Commission declined to make changes to the standard-offer contract with respect to the refundable \$15-per-kW deposit. The Commission stated that without a more comprehensive

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<sup>10</sup> Case No. 17-3935-INV, Order of 3/16/18 at 19-21.

examination of why projects may not be achieving commissioning, this policy change may have some unintended consequences. The Commission further stated that it would continue to monitor the commissioning rate of projects receiving standard-offer contracts and will revisit this issue before the 2019 RFP.<sup>11</sup>

In Case No. 17-5257-INV, the Commission opened a proceeding to review the effectiveness of the standard-offer program.<sup>12</sup> During that review, the Department stated that it continues to support the recommendation that the \$15-per-kW deposit be fully forfeited when a project is withdrawn from the standard-offer program before commissioning and recommends that the Commission implement these changes for the 2019 RFP.

I recommend that the Commission accept the proposal that the \$15 per kW deposit be fully forfeited when a project is withdrawn before commissioning, except if the petition for a certificate of public good is denied. This proposal should increase the likelihood that RFP bids will be based on better planned, fully vetted projects and result in more standard-offer projects achieving commissioning. Further, winning RFP bids with signed standard-offer contracts will occupy capacity in the standard-offer program. This change should help avoid occupation of this capacity by projects not likely to achieve commissioning. To implement this change in deposit requirements, I recommend that the Commission issue a revised standard-offer contract.

### RFP Timeline

To meet the 2019 requirements of Section 8005a(c), as discussed in the August 2, 2018, Order, the Commission anticipated that it would direct the Standard Offer Facilitator to issue an RFP to solicit standard-offer projects by April 1, 2019.

I recommend that the Commission direct the Standard Offer Facilitator to issue an RFP shortly after the Commission's determination in this proceeding and that bid proposals be due on May 1, 2019, consistent with past RFP schedules. The goal of this schedule is to provide potential bidders with significant advance notice of the RFP parameters.

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<sup>11</sup> 2018 Programmatic Adjustments to the Standard-Offer Program, Case No. 17-3935-INV, Order of 3/16/18 at 47.

<sup>12</sup> See Order Re: Notice of Proceeding, Case No. 17-52-57-INV, Order 12/29/17.



**V. CONCLUSION**

In this proposal for decision, pursuant to Section 8005a(f)(3), I recommend that the Commission make no changes to the avoided cost prices established in 2018.

In addition, I make some additional recommendations with respect to the implementation of the 2019 RFP. These recommendations include: (1) making a bid sheet available to RFP participants; (2) adding language in the 2019 RFP on concerns identified in the SHEI area; (3) requiring the \$15 per kW deposit be fully forfeited when a project is withdrawn before commissioning; and (4) adopting an RFP schedule that requires submittals by May 1, 2019.

I am circulating this proposal for decision to the participants for their review and comment.

Dated at Montpelier, Vermont this 21st day of December, 2018.



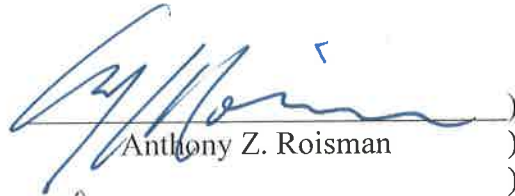
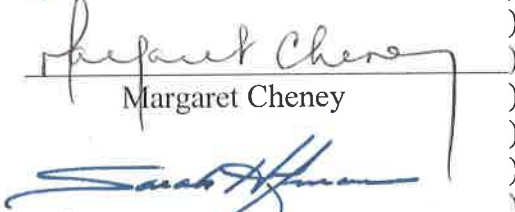

Mary Jo Krolewski  
Hearing Officer

## **VI. ORDER**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Utility Commission (“Commission”) of the State of Vermont that:

1. The conclusions and recommendations of the Hearing Officer are adopted.
2. Effective for any standard-offer contract executed after March 1, 2019, the standard-offer prices for renewable power under 30 V.S.A. § 8005a(b)(2) shall be determined through a request for proposals issued by the Standard Offer Facilitator and shall be no higher than the avoided costs as specified in this Order.
3. Effective for any standard-offer contract executed after March 1, 2019, pursuant to 30 V.S.A. § 8005a(f)(2), the following avoided costs will serve as the prices for farm methane projects under the standard-offer program: (1) \$0.145 per kWh fixed over the 20-year contract for projects with a nameplate capacity greater than 150 kW; and (2) \$0.199 per kWh fixed over the 20-year contract for projects with a nameplate capacity less than or equal to 150 kW.
4. The form of the standard-offer contract is revised to reflect that the refundable contract deposit of \$15 per kW of installed capacity will be fully forfeited when a project that has been awarded a contract is withdrawn before commissioning, except if the petition for a certificate of public good is denied. This change is reflected in the annotated document attached to this Order.
5. The Commission will direct the Standard Offer Facilitator to issue a request for proposals to solicit standard-offer projects by January 28, 2019. Bid proposals will be due on May 1, 2019.

Dated at Montpelier, Vermont this 16th day of January, 2019

  
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 Anthony Z. Roisman )  
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 Margaret Cheney )  
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 Sarah Hofmann )

PUBLIC UTILITY

COMMISSION

OF VERMONT

OFFICE OF THE CLERK

Filed: January 16, 2019

Attest:   
 Clerk of the Commission

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

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

VERMONT STANDARD OFFER  
PURCHASE POWER AGREEMENT

This Vermont Standard Offer Purchase Power Agreement is made between (“Producer”) and VEPP Inc. (“Facilitator”), a Vermont nonprofit corporation.

RECITALS

WHEREAS, Producer desires to produce and sell Electricity and Other Products Related to Electric Generation in accordance with the Vermont standard-offer program, as authorized in 30 V.S.A. 8001 et. seq., (“Statute”) and

WHEREAS, Facilitator is the duly appointed Standard Offer Facilitator under 30 V.S.A. Chapter 89; and

WHEREAS, Producer and Facilitator (collectively “the Parties”) desire to enter into this Agreement to provide for the purchase and sale of Electricity and Other Products Related to Electric Generation provided by Producer's electric generating facility described in Attachment A hereto (“the Project”) pursuant to and subject to the Statute.

NOW, THEREFORE, the Parties agree as follows:

1. DEFINED TERMS

Capitalized terms used in this Agreement shall have the following meanings.

- a. Commission means the Vermont Public Utility Commission.
- b. Commercially Reasonable Efforts means efforts that are designed to enable a Party, directly or indirectly, to satisfy a condition to, or otherwise assist in the consummation of, a transaction, activity or undertaking contemplated by this Agreement and that do not require the performing Party to expend any funds or assume liabilities other than expenditures and liabilities that are reasonable in nature and amount in the context of the transaction, activity or undertaking contemplated by this Agreement.
- c. Delivered, in the context of Electricity, means delivered to the interconnection point and successfully injected into the Distribution System, and Deliver has the corresponding meaning.
- d. Distribution System means the system connected to the ISO-NE-Controlled Grid for distributing Electricity at voltages of 50 kV or less, which is owned and operated by the Interconnecting Utility, and includes any structures, equipment or other things used for that purpose.

- e. Electricity means electric energy, measured in kWh.
- f. Force Majeure means any act, event, cause or condition that (i) prevents a Party from performing its obligations, and (ii) is beyond the affected Party's reasonable control, except that no act, event, cause or condition shall be considered to be an event of Force Majeure:
  - (1) if and to the extent the Party seeking to invoke Force Majeure has caused or contributed to the applicable act, event, cause or condition by its act, fault or negligence or has failed to use Commercially Reasonable Efforts to prevent or remedy such act, event, cause, or condition and, so far as possible and within a reasonable time period, remove it (except in the case of strikes, lockouts and other labor disturbances, the settlement of which shall be wholly within the discretion of the party involved);
  - (2) if the act, event, cause or condition involves a failure or delay on the party of the Interconnecting Utility or its agents to complete network or system upgrades or otherwise perform responsibilities under an Interconnection Agreement, and such failure or delay is attributable to a change in specifications of the interconnection point or the Project by the Producer;
  - (3) if the act, event, cause or condition is the result of a violation of law or the terms of any regulatory approval by the Party seeking to invoke Force Majeure; or
  - (4) if the act, event, cause or condition was caused by a lack of funds or other financial cause.
- g. Good Engineering and Operating Practices means any of the practices, methods and activities adopted by a significant portion of the North America electric utility industry as good practices applicable to the design, building, and operation of generating facilities of similar type, size and capacity or any of the practices, methods or activities that, in the exercise of skill, diligence, prudence, foresight and reasonable judgment by a prudent generator of Electricity in light of the facts known at the time the decision was made, reasonably could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and laws and regulations.
- h. ISO-NE means the Independent System Operator-New England, or its successor.
- i. ISO-NE Administered Markets has the meaning given to it by the ISO-NE Market Rules.
- j. ISO-NE Controlled Grid has the meaning given to it by the ISO-NE Market Rules.

- k. Interconnecting Utility means the electric utility with which Producer enters into the Interconnection Agreement.
- l. Interconnection Agreement means the agreement or agreements entered into between the Interconnecting Utility and Producer with respect to the connection of the Project to the Distribution System.
- m. Interconnection Costs mean all costs which are payable by Producer with respect to the interconnection of the Facility to the Distribution System.
- n. Meter means a meter owned by or under the control of the Interconnecting Utility that measures and records the quantity of Electricity which passes through it.
- o. Other Products Related to Electric Generation means any transferable commodity, in addition to Electricity, that is directly attributable to the generation of electricity from the plant. For purposes of this definition, Other Products Related to Electric Generation does not include (1) tradeable renewable energy credits, as defined in 30 V.S.A. § 8002(8), directly attributable to plants using methane from agricultural operations; (2) ancillary heat associated with engine exhaust, combined heat and power systems, or biomass systems; or (3) tax credits associated with power production.
- p. Regulatory Approval means the receipt of any federal, state or local permit, license or other assent of any governmental body, where such assent is required for lawful construction and/or operation of the Project.
- q. Secured Lender means the lender(s) under a Security Agreement.
- r. Security Agreement means an agreement or instrument, including a deed or trust or similar instrument securing bonds or debentures, or other evidences of indebtedness, containing a charge, mortgage, pledge, security interest, assignment, sublease, deed of trust or similar instrument with respect to all or any part of the Producer's interest granted by the Producer that is security for any indebtedness, liability or obligation of the Producer, together with any amendment, change, supplement, restatement, extension, renewal or modification thereof.
- s. Site Control means proof of dominion over real property to the extent necessary to construct the project in accordance with the description set forth on Attachment A. Site control may be established by: (1) fee simple title to such real property; or (2) a legally enforceable written leasehold or easement interest in such real property for at least the duration of the contract term; or (3) a legally enforceable written option with all terms stipulated, unconditionally exercisable by Producer, to purchase or lease such real property or hold and easement for such property; or (4) a duly executed contract for the purchase or lease of such real property.

- t. Station Service means the Electricity used at the Project for excitation, on-site maintenance, and operation of auxiliary and other facilities that are essential to the operation of the Project.

## 2. EFFECTIVE DATE

This Agreement shall become effective upon its execution by Facilitator, and is of no force and effect whatsoever until that time.

## 3. 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 the Electricity and Other Products Related to Electric Generation. Producer shall deliver Electricity at the delivery point specified in the Interconnection Agreement. If requested by Facilitator, Producer shall use Commercially Reasonable Efforts to obtain, register, certify or deliver the Other Products Related to Electric Generation or any evidence of the Facilitator's right, title and interest thereto to Facilitator, to the ISO-NE Administered Markets or other markets, or as Facilitator reasonably may direct otherwise. Facilitator shall retain all right, title, and interest in all Other Products Related to Electric Generation in trust for all Vermont Distribution Utilities that are subject to prorated allocations under the Statute. Facilitator shall be entitled, unilaterally and without the consent of Producer, to deal with Other Products Related to Electric Generation in any manner it determines and consistent with the Statute, regardless of whether any consideration is separately stated as being received or paid for by Facilitator.

## 4. SITE CONTROL

Producer warrants that it has the Site Control required for the Project, pursuant to the documentation set forth in attachment B hereto.

## 5. INTERCONNECTION APPLICATION

Producer warrants that its interconnection application with the interconnecting utility is complete, pursuant to the documentation set forth in attachment C hereto. Producer shall pay all required interconnection fees or deposits necessary within the timeframes established by Rule 5.500 in order to remain in the interconnecting utility's queue. Any requests for extensions within Rule 5.500 must be noticed to the Standard Offer Facilitator and approved by the Commission.

## 6. QUALIFYING FACILITY

Producer warrants that the Project is a qualifying small power production facility under 16 U.S.C. § 796(17)(C) and 18 C.F.R. part 292, pursuant to the documentation set forth in attachment D hereto and that the project does not use fossil fuels for generation.

7. MILESTONES

- a. Within one year of the date of this Agreement, Producer shall file a complete Section 248 application with the Commission, unless the project is a hydroelectric facility that requires a license from the Federal Energy Regulatory Commission. If the project is a hydroelectric facility, Producer shall file an annual update with the Commission, Department of Public Service, and Facilitator regarding the status of the project’s application before the Federal Energy Regulatory Commission.
- b. If the Project is a wind project with a capacity greater than 100 kW, a biomass project, landfill gas project, food waste anaerobic digestion project, or a hydroelectric project, within three years of the date of this Agreement, the Project shall achieve Commissioning as defined by 30 V.S.A. § 8005a(j)(1)(B).
- c. If the Project is a solar project of any size or a wind project with a capacity of 100 kW or less, within 24 months of the date of this Agreement, the Project shall achieve Commissioning as defined by 30 V.S.A. § 8005a(j)(1)(A).

8. FAILURE TO ACHIEVE MILESTONES

Should Producer fail to meet any of the milestones set forth in paragraph 7 above, this Agreement shall be null and void and of no further force and effect, absent an order of the Commission to the contrary. The pursuit of such an order shall be Producer's sole remedy in this regard. Facilitator shall notify Producer and the Commission of such failure and of the termination of this Agreement. Facilitator shall have no authority to grant extensions relative to any provisions of this Agreement, including the milestones herein.

9. ADMINISTRATIVE FEE AND DEPOSIT

At the time of initial submission of this Agreement signed by Producer to Facilitator, Producer shall tender to Facilitator a \$200, non-refundable administrative fee and a refundable contract deposit of \$15 per kW of installed capacity. If the project is commissioned within the applicable milestone date set forth in this contract, 100% of the contract deposit will be refunded. ~~if Producer voluntarily withdraws from the standard offer program within the first year, the entire contract deposit is returned; otherwise, Producer is entitled to a refund of a portion of the contract deposit according to the schedule below:~~ **If the project is not commissioned within the applicable milestone date set forth in this contract, the contract deposit will be forfeited, except if the petition for a certificate of public good is denied.**

Project Type	Withdrawal before end of second year	Withdrawal before end of third year
Wind ≤ 100 kW or Solar	50%	N/A
Biomass, landfill, food waste anaerobic digestion,	75%	50%



hydroelectric, Wind $\geq$ 100 kW		
Farm Methane	N/A	N/A

## 10. RATES AND TERM

Beginning with Commissioning, Facilitator shall pay Producer in accordance with the rate schedule and for the term set forth in Attachment F hereto.

## 11. PROJECT LOCATION, DESIGN, CONSTRUCTION AND OPERATION

Producer shall construct the Project at the location and in a manner substantially consistent with the description set forth in Attachment A. Producer shall utilize Commercially Reasonable Efforts in the design, construction and operation of the Project in accordance with Good Engineering and Operating Practices, the terms and conditions of any certificate of public good and any other Regulatory Approvals issued relative to the Project, and shall be solely responsible for all costs, expenses, liabilities and other obligations associated with the Project. All operations and deliveries shall be subject to the rules and regulations of the ISO-NE bulk power system in effect during the Term of this Agreement, and Producer shall be responsible for payment of any costs, sanctions or charges assessed by ISO-NE arising from actions or inactions of Producer.

## 12. PROVISION OF PROJECT COSTS

Producer shall provide the costs of developing the Project to Facilitator in a form as prescribed by the Facilitator. Project costs, with sufficient protections to shield identifying characteristics, will be made publicly available to assist in future price determinations by the Commission pursuant to 30 V.S.A. § 8005a(f). Facilitator shall seek to treat as exempt from disclosure information related to the development of the Project to the extent that such information constitutes trade secrets under 1 V.S.A. § 317(c)(9), unless otherwise directed by the Commission.

## 13. INTERCONNECTION

Producer shall be solely responsible for the negotiation, delivery and execution of the Interconnection Agreement, along with the payment of all costs and the execution of all responsibilities arising under that Agreement. Producer shall deliver to Facilitator a copy of the executed Interconnection Agreement within five business days of its execution. At such time as the Interconnection Agreement is executed, it shall be deemed part of this Agreement and a copy shall be appended as Attachment E to this Agreement. Facilitator shall be named as a named insured under any policies of insurance required under the Interconnection Agreement.

## 14. TRANSMISSION SERVICES

Producer shall be responsible for arranging for any transmission services required under the terms of the Interconnecting Utility's duly approved transmission tariff, if any, including executing applications for transmission service and transmission service agreements, provided however, that by virtue of participation in the Standard Offer Program, Producer will not be charged for any transmission costs, which will be billed by Facilitator to the Vermont Distribution Utilities participating in the Standard Offer Program.

#### 15. EXCLUSIVITY

During the Term of this Agreement, Producer shall not enter into any other agreement for the sale or other conveyance of any portion of the Electricity or any Other Products Related to Electric Generation that is the subject of sale under this Agreement. Producer acknowledges that, by entering into this Agreement, Producer is waiving any and all rights to seek an alternative power sales arrangement, including but not limited to an arrangement through Commission Rules 4.100, 4.300 and 5.100, at any time throughout the term set forth in this Agreement. Absent an order of the Commission to the contrary, this waiver shall extend throughout the full term contemplated under this Agreement, even if this Agreement is terminated early for any reason by default, for cause or otherwise. In the event of a default by Facilitator, the Commission's review under this paragraph shall begin with the rebuttable presumption that Producer should be relieved of the waiver contained in this paragraph.

#### 16. STATION SERVICE

Station service, if any is provided by the Interconnecting Utility, shall be priced only in accordance with any applicable tariff, special contract, order or other means approved by the Commission.

#### 17. PAYMENT TO PRODUCER

Facilitator shall pay or cause to be paid to Producer amounts calculated in accordance with Attachment F within 45 days of the end of each billing period during which Electricity and Other Products Related to Electric Generation were provided by Producer. Facilitator shall have no authority whatsoever to make payments to producer for Electricity or Other Products Related to Electric Generation that are not Delivered. As a matter of administrative convenience, Facilitator may wait to send payments to Producer until the total amount due to Producer, net of any set offs, exceeds \$100.00.

#### 18. METERING REQUIREMENTS

Producer shall be responsible for meeting such metering requirements as may be established by Facilitator or by regulatory requirement, all at Producer's expense. The testing of metering equipment shall be at the discretion of Facilitator; provided, however, that Facilitator shall cause such testing to be performed not less than once every five years during the Term of this Agreement if the Project exceeds 100 kw in size. Any Vermont distribution utility may

request additional verification at any time, but all costs shall be borne by the requesting utility should the metering prove to be accurate within 2%.

## 19. SETTLEMENT REQUIREMENTS

Producer shall cooperate with Facilitator as necessary to meet rules related to settlement of Project generation. This may include, among other actions, registering generation assets with ISO-NE.

## 20. EVENTS OF DEFAULT AND TERMINATION EVENT

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

- a. Any breach of the terms of this agreement.
- b. Producer fails to deliver any Electricity from the Project for a period of twelve consecutive months at any time after Commissioning.
- c. Producer ceases to hold any Regulatory Approval after commissioning, the failure or cessation of which results in a lack of legal right on the part of Producer to continue to operate the Project.
- d. Any information provided by Producer relative to this Agreement or any information, representations or warranties set out in this Agreement is not true or correct in any material respect when given, or Producer commits any act of fraud in relation to this Agreement or any regulatory proceeding relating to the Project.
- e. By agreement, decree, judgment or order of a court, Producer agrees to be treated as and/or is adjudicated bankrupt or insolvent, or real or personal property of the Project is sequestered or subject to the appointment of any third party and such agreement, decree, judgment, order of appointment continues in effect unrevoked, undischarged and unstayed for a period of thirty (30) days after the entry or implementation thereof.
- f. Producer utilizes electricity, or any source of fuel other than the fuel type specified in attachment A, for the generation of electricity.
- g. Producer fails or ceases to comply with Good Engineering and Operating Practices.
- h. Producer fails to comply with applicable statutory requirements or Commission Rules or Commission Orders.

## 21. CURE PERIOD AND TERMINATION OF AGREEMENT

- a. Remedies of Facilitator. Within five business days after learning of an event of default, Facilitator shall send a written notice to Producer and the Commission specifying the default and allowing a cure period of 30 days from the date of notice to Producer and the Commission, unless a shorter period is ordered by the Commission. If the default is not cured within the cure period, Facilitator shall send a notice of termination to Producer and the Commission to take effect ten business days after the notice is sent, absent an order of the Commission to the contrary.
- b. Remedies of Producer. Within five business days after learning of an event of default, Producer shall send a written notice to Facilitator and the Commission specifying the default and allowing a cure period of 30 days from the date of the notice to Facilitator and the Commission, unless a shorter period is ordered by the Commission. If the default is not cured within the cure period, Producer shall send a notice of termination to Facilitator and the Commission to take effect ten business days after the notice is sent, absent an order of the Commission to the contrary.

## 22. EFFECT OF TERMINATION OR EXPIRATION

Termination of this Agreement, whether by expiration or otherwise, shall not affect or prejudice any rights or obligations of either Party, including those relating to amounts payable under this Agreement up to and including the time of any termination.

## 23. FORCE MAJEURE

In the event of Force Majeure, act event, cause, or condition, Facilitator shall suspend the obligations of Producer under this Agreement for a period of up to sixty days. Any further suspension or remedy for a Force Majeure event shall only be in accordance with an order of the Commission. The Party seeking to invoke this Force Majeure provision shall provide prompt notification of such Force Majeure act, event, cause or condition to the other Party and the Commission.

## 24. SECURED LENDER RIGHTS

- a. Producer shall have the right, at its cost, to enter into one or more Security Agreements upon such terms as it desires, provided that:
  - (i) in the case of a deed of trust, syndication agreement or similar instrument by which the trustee or syndication agent holds security on behalf of, or for the benefit of, other lenders, only the trustee or agent shall be entitled to exercise the rights and remedies under the Security Agreement as the Secured Lender on behalf of the lenders;
  - (ii) Facilitator shall have no liability whatsoever under any Security Agreement for the payment of the principal sum secured or any interest accrued thereon or any other sum secured thereby or accruing thereunder, and the Secured Lender shall

not be entitled to seek any damages against the Facilitator for any or all of the same; and

- (iii) all rights acquired by a Secured Lender under any Security Agreement shall be subject to all of the provisions of this Agreement, including the restrictions on assignment contained herein.
- b. While a Security Agreement remains outstanding, and provided that Facilitator has received from Producer prior written notice of the name and address of the Secured Lender, Facilitator shall provide a copy of any written notice of default or termination to the Secured Lender at such time that such notice is sent to Producer. Subject to the provisions of this Agreement, a Secured Lender may enforce any Security Agreement and acquire Producer's interest in the Project in any lawful way, subject to (1) receipt of any required Regulatory Approvals, (2) the honoring of all obligations of Producer under this Agreement, and (3) payment of all of Facilitator's costs and expenses (including attorney fees) incurred with respect to the acquisition and any related events.
- c. Facilitator, upon request of Producer, shall enter into a reasonable acknowledgement and agreement, in such form as Facilitator may determine, with Producer and any Secured Lender for the purpose of implementing the Security Agreement protection provisions contained in this Agreement.

## 25. INDEMNIFICATION OF FACILITATOR

Facilitator shall not be liable under this Agreement or under any cause of action relating to the subject matter of this Agreement for any special, indirect, incidental, punitive, exemplary or consequential damages, including loss of profits, loss of use of any property or claims of customers or contractors of the Producer for any such damages. Producer may seek review by the Commission of any decision made by Facilitator that materially impacts Producer. Producer shall indemnify, defend and hold Facilitator, the State of Vermont, the Vermont Distribution Utilities, any transmission service providers and their respective directors, officers, employees, shareholders, advisors, and agents (including contractors and their employees) (collectively, the "Indemnitees") harmless from and against any and all claims, demands, suits, losses, damages, liabilities, penalties, obligations, payments, costs and expenses, interest accrued thereon (including the costs and expense of, and interest accrued on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable attorney fees and reasonable disbursements in connection therewith), asserted against or suffered by the Indemnitees relating to, in connection with, resulting from, or arising out of the design, construction or operation of the Project or the generation and delivery of Electricity and Other Products Related to Electric Generation therefrom or any occurrence or event relating thereto, or any occurrence or event on Producer's side of the interconnection point, or a breach by Producer of any of its representations, warranties, obligations or covenants contained in this Agreement.

## 26. JOINT AND SEVERAL LIABILITY

If Producer is not a single legal entity, then all such entities comprising Producer shall be jointly and severally liable to Facilitator for all representations, warranties, obligations, covenants, and liabilities of Producer under this Agreement.

## 27. RECORD RETENTION

Producer and Facilitator each shall keep complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement. Without limiting the generality of the foregoing, Producer shall keep all records and other documents that may be necessary to establish, substantiate or maintain any claim or title of Facilitator to any Other Products Related to Electric Generation. All such records and other documents shall be maintained as required by law, but for no less than seven (7) years after the creation of the record or data. Producer shall provide or cause to be provided to Facilitator reasonable access to the relevant and appropriate financial and operating records and data kept by it or on its behalf relating to this Agreement reasonably required for Facilitator to comply with its obligations, or to verify billings, or to verify information provided in accordance with this Agreement or relating to compliance by Producer with this Agreement.

## 28. PROJECT INSPECTION

Facilitator shall have the right to inspect the Project during normal business hours during the term of this Agreement, upon at least five business days' notice to Producer.

## 29. NOTICES

- a. Unless otherwise stated, all notices pertaining to this Agreement shall be in writing and shall be transmitted, by the Party giving notice, via electronic mail, or if such method is unavailable, via facsimile, first-class mail, courier or hand delivery, and addressed to the other Party as follows:

If to Producer:

If to Facilitator:

VEPP Inc.  
P.O. Box 1938  
1965 Depot Street  
Manchester Center, VT 05255

- b. Notice transmitted or delivered as provided above shall be deemed to have been given and received on the day it is transmitted (if by electronic mail or facsimile) or delivered (if by courier or hand delivery), provided such notice is transmitted or delivered on a business day prior to 5:00 p.m. local time in the place of delivery or

receipt. If a notice is transmitted or delivered after 5:00 p.m. local time or such day is not a business day, then such notice shall be deemed to have been given and received on the next business day. Either Party, by written notice to the other, may change its contact person, electronic mail address, facsimile number or postal address to which notices are to be sent.

### 30. PUBLIC RECORD REQUESTS

Producer acknowledges that Facilitator's records are subject to Vermont's Access to Public Records law, 1 V.S.A. § 315 et seq. (Public Records Law). To the extent that Facilitator may receive requests under the Public Records Law for information provided by Producer to Facilitator, Facilitator shall notify Producer of the request not later than the next business day after the request is received.

### 31. AMENDMENT TO THE CONTRACT IN THE PUBLIC INTEREST

This contract may be amended, without the consent of the parties, by order of the Commission, provided: (1) such amendment does not result in any reduction in the Project's economic value to Producer; (2) such amendment will not adversely affect Producer's ability to meet the Project's financial obligations; (3) such amendment will not impose additional operational or other economic costs on Producer without full compensation; (4) the amendment results in a benefit to ratepayers; and (5) the parties are given notice and an opportunity to be heard by the Commission.

### 32. OTHER AMENDMENTS TO THE CONTRACT

When authorized by the Commission, the Facilitator may amend Attachment A of this Agreement. Otherwise, except as provided in Section 31, above, the Facilitator may not amend the Agreement.

### 33. BUSINESS RELATIONSHIP

The relationship between the Facilitator and Producer is that between independent contractors, and nothing in this Agreement shall create or be deemed to create a relationship of partnership, joint venture, fiduciary, principal and agent or any other relationship between the Parties.

### 34. BINDING AGREEMENT

Except as set out otherwise in this Agreement, this Agreement shall not confer upon any person or entity, except the Parties and permitted assigns, any rights, interests, obligations or remedies under this Agreement.

### 35. ASSIGNMENT

Producer may assign its rights and duties under this Agreement to the fullest extent allowed by the Statute, and any assignee of Producer shall give Facilitator written notice of the assignment within thirty days of the date of the assignment. Nothing in this provision shall be deemed to alter Producer's responsibility or obligations to obtain any and all Regulatory Approvals that may be required in conjunction with a transfer of all or part of any legal interest in the Project. Facilitator may not assign its rights and duties under this Agreement absent consent of the Commission.

### 36. FACILITATOR SETOFF RIGHTS

In addition to its other rights of setoff under this Agreement or otherwise arising in law or equity, Facilitator may set off any amounts owed to it by Producer against any monies owed by Facilitator to Producer.

### 37. FACILITATOR FEE

Pursuant to the Commission's Order of 7/8/11 in Docket No. 7533, Producer shall be required to pay a monthly Facilitator Fee as authorized by the Commission. The Facilitator Fee shall be billed on the first day of the month after the Project begins generating electricity and shall continue to be billed for the term of this Agreement.

### 38. TIME OF ESSENCE

Time is of the essence in the performance of the Parties' respective obligations under this Agreement.

### 39. FURTHER ASSURANCES

Each Party, from time to time on written request of the other Party, shall perform further acts, including execution of documents, as may reasonably be required in order to fully perform and to more effectively implement and carry out the terms of this Agreement, provided that such acts shall not be inconsistent with this Agreement or any law or Regulatory Approvals pertaining to the Project.

### 40. MISCELLANEOUS

#### a. Headings

The inclusion of headings in this Agreement is for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

#### b. Entire Agreement

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement.



c. Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of any provision of this Agreement shall be binding unless executed in writing by the Party to be bound thereby and approved in writing by the Commission. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall it constitute a continuing waiver or operate as a waiver of, or estoppel with respect to, any subsequent failure to comply, unless otherwise expressly provided.

d. Commission Jurisdiction

The Commission shall have jurisdiction to resolve disputes arising under or in connection with this Agreement, to the fullest extent allowed by law.

IN WITNESS WHEREOF, Producer and Facilitator have executed this instrument on the respective dates set forth below.

(PRODUCER)

By: \_\_\_\_\_  
Duly authorized agent  
Dated:

Witness: \_\_\_\_\_

VEPP Inc., acting as Standard Offer Facilitator

By: \_\_\_\_\_  
Executive Director  
Dated:

Witness: \_\_\_\_\_

PSB Case No. 18-2820-INV - SERVICE LIST

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