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October 3, 2015

By Express U.S. Mail

Susan M. Hudson, Clerk
Vermont Public Service Board
112 State Street, 4th Floor
Montpelier, VT 05620-2701

Re: Docket No. 8571; Swanton Wind's Reply to GMP's Response to the Department's Motion to Dismiss

Dear Mrs. Hudson:

On September 25, 2015, Green Mountain Power Corporation (GMP) filed a response to the Department of Public Service's Motion to Dismiss Swanton Wind LLC's petition to approve an avoided-cost purchase power agreement (PPA) with VEPP, Inc. (VEPPI). Although the contract is for the purchase of in-state power, it requires Board approval before VEPPI may execute the contract pursuant to Rule 4.104(A). GMP makes two claims in its filing that Swanton Wind must address to correct and complete the record: (1) that GMP did not know about the potential Rule 4.100 PPAs and had no opportunity before they were filed with the Board to influence their development, and (2) the Swanton Wind agreement is not a legally enforceable contract.

GMP claims that it "was unaware that new contract forms were being developed by Vermont Electric Power Producers, Inc. ("VEPPI")," and complains that it did not have an opportunity to discuss concerns about the proposed PPA until Swanton Wind filed the agreement with the Board for approval. These assertions are not credible.

First, GMP litigated the avoided cost rates in Docket 8010 and was aware of the interest by Vermont QFs to secure long-term contracts at the avoided cost rates ultimately set in that proceeding. For the two years that Docket 8010 was pending, GMP had the opportunity to discuss potential Rule 4.100 terms with QFs participating in the Docket; it did nothing but join the Department's litigation against the QFs.

Second, and more recently, GMP's Director for Power Supply, who sits on the VEPPi Board of Directors, was made aware of the interest in Rule 4.100 contracts by VEPPi's Secretary at the meeting of the VEPPi board on June 25, 2015. A copy of the meeting minutes, available online at: <http://veppi.org/board-minuets>¹, are attached. So leaving aside the two years Docket 8010 was pending, GMP had at least two months' notice *from VEPPi itself* that Rule 4.100 contracts for a number of QFs were in the works.

Third, as explained previously, the PPA is based on the Board-approved standard offer contract. GMP has not identified any specific terms in the PPA, or excluded from it, that materially differ from the terms of the standard offer contract that the Board has already approved as in the public interest. The company's level of concern about the PPA is disproportionate to the reality of the impact of the PPA's terms.

GMP also claims that the PPA is not a legally enforceable contract. The claim misses the point of the PURPA "legally enforceable obligation," which FERC established to prevent utilities from circumventing their mandatory purchase obligations.

As Swanton Wind explained in its response to the Department's Motion to Dismiss, Swanton Wind cannot be denied the right to sell to GMP and Vermont's other monopoly utilities under PURPA on grounds that Swanton Wind lacks an enforceable contract with VEPPi. FERC's rules allow a QF to sell its output to a utility pursuant to a non-contractual but legally enforceable obligation created by a commitment from the QF to sell power to the utility with the mandatory purchase obligation. FERC reiterated this point in 2014 in the *Hydrodynamics* decision. In that case, FERC explained that "a QF, by committing itself to sell to an electric utility, also commits the electric utility to buy from the QF; these commitments result either in contracts or *in non-contractual, but binding, legally enforceable obligations.*" *Hydrodynamics, Inc.*, 146 F.E.R.C. ¶ 61,193, P. 31 (March 20, 2014) (emphasis added).

Swanton Wind committed to selling its output to VEPPi via the proposed PPA at forecasted avoided cost rates that have been approved by the Board for contracts executed after April 1, 2015. With Swanton Wind's commitment to sell its output to Vermont's monopoly utilities via VEPPi at the Board-approved avoided cost rates—a commitment reflected in the submissions made on Swanton Wind's behalf in this

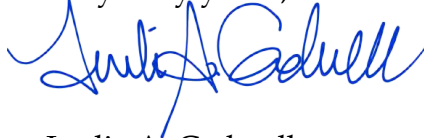
¹ Not a typographical error.



docket – a legally enforceable obligation arose and bound Vermont’s distribution utilities to purchase power from Swanton Wind. The Board should approve the PPA and reject GMP’s late-filed² request to dismiss Swanton Wind’s petition.

We would appreciate your assistance in bringing this filing to the Board’s attention as soon as possible.

Very truly yours,



Leslie A. Cadwell

Enclosure

Cc: Tim Duggan, for DPS
Peter Zamore, for GMP, VEC, VPPSA
Josh Diamond, for WEC

² By letter dated September 4th, GMP requested a hearing on Swanton Wind’s petition; it did not seek dismissal or raise any of the arguments presented in its September 25th filing at its earliest opportunity, i.e. on September 4th. GMP’s failure to notify Swanton Wind of its issues earlier in this proceeding is inconsistent with the fairness principle embedded in the Rules of Civil Procedure and regular Board practice.



VEPP INC. BOARD OF DIRECTORS MEETING
Dynapower Company, Burlington
June 25, 2015

Present: Mathew Rubin, Winooski 8; Linda Nelson, WEC; Brian Waxler, Ferrisburgh Solar; Sander Cohan, Enel Green Power NA; Mark Driscoll, GDF Suez; Craig Kieny, VEC; Doug Smith, GMP; Ken Nolan, BED; Rita Ricketson, Gini Milkey, and Kathleen Keenan, Public Representatives; John Spencer, Ioana Drew, Carolyn Alderman, VEPP Inc.

A tour was held of the Dynapower Company facilities in Burlington, Vermont.

Mathew Rubin called the meeting to order at 12:15 PM.

Meeting Minutes from March 26, 2015 were reviewed. A **MOTION** was made by Craig Kieny and seconded by Brian Waxler to approve the Minutes. The motion passed.

Director elections were held. The following Directors three-year terms expired in June 2015: Brian Waxler, Sander Cohan, Ken Nolan, and Craig Kieny. A **MOTION** was made by Kathy Keenan and seconded by Mark Driscoll to re-elect the present slate of Directors for another three-year term. The motion passed.

Officer Elections were held. The following Officers annual term expired in June 2015: Mathew Rubin as President, Linda Nelson as Vice President, Brian Waxler as Treasurer, and Carolyn Alderman as Secretary. A **MOTION** was made by Rita Ricketson and seconded by Doug Smith to re-elect the present slate of Officers for another annual term. The motion passed.

John presented the financials and informed the Board that VEPP Inc. has \$44,000 in forfeited deposits and is below budget. The Board asked John to present a plan for the \$44,000 at the next Board meeting in September.

Carolyn summarized the results of the 2015 Standard Offer Program Request for Proposals: Twelve bids totaling 6 MW were accepted.

Carolyn reported on the recent Rule 4.100 Program activity. There are five projects totaling approximately 50 MW requesting Rule 4.100 Program contracts.

A **MOTION** to go into Executive Session for personnel matters was made by Kathy Keenan and seconded by Craig Kieny. The motion passed by an affirmative vote of at least two-thirds of the Directors present in accordance with Section 11 of the VEPP Inc. By Laws. John Spencer presented his resignation to the Board after 20 laudable years of service to VEPP Inc. In response, the Board formed a search committee comprised of 4 Directors tasked with finding a replacement executive director.

A **MOTION** to adjourn was made by Mathew Rubin and seconded by Doug Smith. The motion was approved, and the meeting adjourned at 2:23 PM.

Vermont Electric Power Producers

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