STATE OF CONNECTICUT

PUBLIC UTILITIES REGULATORY AUTHORITY
TEN FRANKLIN SQUARE
NEW BRITAIN, CT 06051

DOCKET NO. 15-01-03 DECLARATORY RULING REGARDING CONN. GEN. STAT. §16-1(a)(20), AS AMENDED BY PA 13-303, CONCERNING THE POSSIBLE DOUBLE COUNTING OF RECS

March 11, 2015

By the following Commissioners:

Arthur H. House
John W. Betkoski, III
Michael A. Caron

PROPOSED FINAL DECISION

This proposed final Decision is being distributed to the parties in this proceeding for comment. The proposed Decision is not final. The Authority will consider the parties' arguments and exceptions before reaching a final Decision, which may differ from the proposed Decision. Therefore, this proposed Decision does not establish any precedent and does not necessarily represent the Authority's final conclusion.

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PROPOSED FINAL DECISION

I. INTRODUCTION

A. SUMMARY

In this proceeding, the Public Utilities Regulatory Authority concludes that Connecticut law does not preclude the use, for Connecticut renewable energy portfolio standard compliance, of renewable energy certificates associated with a current regulatory renewable energy program enacted by the State of Vermont. Though a renewable energy program currently scheduled to go into effect in Vermont on January 1, 2017 may preclude the use of associated renewable energy certificates, the Authority does not yet reach a decision on that program. Finally, the Authority determines that a current feed-in tariff program does not preclude the use of associated renewable energy certificates for Connecticut compliance.

B. PROCEDURAL HISTORY

On its own initiative, the Public Utilities Regulatory Authority (PURA or Authority) established Docket No. 14-05-36, PURA Working Group to Amend Regulations Concerning Renewable Portfolio Standards, to confer with stakeholders concerning amendments to §§16-245a-1 and 16-245a-2 of the Regulations of Connecticut State Agencies. By Notice of Proceeding and Request for Written Comments in that proceeding dated June 5, 2014, the Authority announced that it was conducting a fact-finding exercise based on desktop research and stakeholder communications to form a basis for PURA and stakeholders to engage in a process to clarify the treatment of Vermont SPEED RECs under the Connecticut renewable portfolio standards (RPS) and broader application to other potential double-counting situations. The Authority invited all interested persons to comment on the following issues, options (potential interpretations) and their implications:

- What are the relevant statutes and other requirements relating to:
    - CT prohibition under Conn. Gen. Stat. § 16-1(a)(20)
    - VT SPEED
    - Renewable energy claims (basis of rights conveyed by RECs; claims under FTC Green Guidelines or otherwise)
        - Environmental disclosure labeling requirements (retail supplier rules and regulations by state)
        - National Resources to help clarify marketing issues and best practices:
            - FTC (Federal Trade Commission) Green Guides
            - NAAG (National Association of Attorneys General) Guidelines
        - Other New England state laws and issues
- What actions, by whom, might constitute "claimed or counted by a load-serving entity, province or state toward compliance with renewable portfolio standards or

renewable energy policy goals in another province or state" under Conn. Gen. Stat. § 16-1(a)(20)?

- Does the VT Speed program trigger a claim under Conn. Gen. Stat. § 16-1(a)(20)?
    - Several perspectives are implicit in VT PSB decisions; filings made by parties under a docket in which PURA considered a petition to revoke eligibility for specific VT SPEED resources; RPS certification filing by GDF Suez for Ryegate biomass facility
- If so:
    - Would such a prohibition apply to all or a subset of RECs associated with MWh in the VT SPEED program?
    - If a subset, what subset and how would the specific RECs associated with that subset be determined?
- If so, what options are available to PURA to implement the provisions and identify which RECs to not recognize for RPS eligibility, through the NEPOOL GIS or otherwise?

Several interested persons submitted comments in response to the Authority's request. On July 21, 2014, the Authority held a Technical Meeting in Docket No. 14-05-36 to discuss the Vermont statutory programs and their impact on Conn. Gen. Stat. § 16-1(a)(20). Many comments were submitted subsequent to the Technical Meeting.

On January 5, 2015, the Authority established the instant declaratory ruling proceeding. By Notice of Taking of Administrative Notice dated January 6, 2015, the Authority entered the transcript of the Technical Meeting held on July 21, 2014, and all comments received in Docket No. 14-05-36 as evidence in the record of this proceeding.

The Authority did not conduct a hearing in this docket. The Burlington Electric Department (BED) requested that to the extent the Authority intends to rely upon non-legal information or submissions in reaching its draft decision, it requests an opportunity for an evidentiary hearing. February 6, 2015 Comments of BED. According to BED, such a hearing would be necessary to ensure that the facts being utilized by the Authority are accurate. *Id*. Conn. Gen. Stat. § 4-176(e) provides the Authority wide discretion in the conduct of a declaratory ruling. The Authority determined that no hearing is necessary because this declaratory ruling concerns a question of law, and sufficient facts were developed in Docket No. 14-05-36 upon which PURA can rule in this proceeding. Specifically, the limited question of law before the Authority is whether megawatt hours generated under the auspices of the Vermont SPEED program, as currently constructed, are excluded from Connecticut Class I RPS compliance by the definition of Class I renewable energy source set forth in Conn. Gen. Stat. §16-1(a)(20). The Vermont SPEED program is a renewable energy program first enacted by that state in 2005.

The Authority issued a proposed final decision on March 11, 2015. Parties and Intervenors were given opportunities to submit written exceptions to, and present oral arguments regarding, the proposed final decision.

C. PARTIES AND INTERVENORS

The Authority recognized the following as Parties to this proceeding: State of Vermont, Department of Public Service, 112 State Street, Montpelier, VT 05620-2601; City of Burlington Electric Department, 585 Pine Street, Burlington, VT 05401; Vermont Public Power Supply Authority, 5195 Waterbury-Stowe Road, Waterbury Center, VT 05677; Vermont Electric Cooperative, Inc., 42 Wescom Road, Johnson, VT 05656; Washington Electric Cooperative, Inc., 40 Church Street, P.O. Box 8, East Montpelier, VT 05651; Green Mountain Power Corporation, 163 Acorn Lane, Colchester, VT 05446; Office of Consumer Counsel (OCC), Ten Franklin Square, New Britain, CT 06051; and the Commissioner of the Department of Energy and Environmental Protection (DEEP Commissioner), 79 Elm Street, Hartford, CT 06106.

The Authority recognized the following as Intervenors to this proceeding: Vermonters for a Clean Environment; The WindAction Group; NextEra Energy Power Marketing, LLC; and GDF SUEZ Energy Generation, NA, Inc.

II. PARTIES' POSITIONS[1]

A. VERMONTERS FOR A CLEAN ENVIRONMENT AND RIDGEPROTECTORS

Vermonters for a Clean Environment and Ridgeprotectors state that the 2012 SPEED program triggers a claim under Conn. Gen. Stat. § 16-1(a)(20) to the extent Vermont entities are counting megawatt hours of generation toward Vermont SPEED goals while at the same time selling renewable attributes into the NEPOOL GIS for Connecticut RPS compliance. June 23, 2014 Comments, p. 3. Vermonters for a Clean Environment and Ridgeprotectors maintain that there is a serious double-counting of fuel use and air emissions that results from claims made by certain Vermont retail electricity providers. Tr. 7/21/14, pp. 38-43. They assert that the Vermont retail electricity providers making such claims should be stopped from making them. *Id*., p. 43. Vermonters for a Clean Environment and Ridgeprotectors further maintain that the 2012 SPEED program has present, operative pre-2017 goals. Tr. 7/21/14, p. 100; August 18, 2014 Comments, p. 4.

B. VERMONT DPS

The Vermont Department of Public Service (Vermont DPS) requests that the Authority find that the Vermont SPEED program does not trigger a claim under Conn. Gen. Stat. § 16-1(a)(20). According to the Vermont DPS, while an argument could be made that the SPEED program could trigger a claim under the Connecticut statute beginning calendar year 2017, no basis exists for any such claim regarding the current 2012 SPEED program. Tr. 7/21/14, p. 88; June 23, 2014 Comments, p. 6. Vermont DPS maintains that pre-2017, there is no present, operative goal for the 2012 SPEED

[1] This section recounts positions taken regarding whether megawatt hours generated under the Vermont SPEED program, as currently constructed, should be excluded from the definition of Class I renewable energy source set forth in Conn. Gen. Stat. § 16-1(a)(20). Positions taken on other issues in Docket No. 14-05-36 are not recounted here.

program that could trigger a claim under Conn. Gen. Stat. § 16-1(a)(20). June 23, 2014 Comments, p. 7.

Vermont DPS states that this proceeding is not an assessment of whether the SPEED program is ideal, and it is not a determination regarding specific representations made by individual entities; instead, it examines whether the SPEED program creates a structural system that results in double-counting, thus triggering Conn. Gen. Stat. § 16-1(a)(20). February 2, 2015 Comments, p. 2.

Vermont DPS also maintains that a third aspect of the SPEED program, known as the Standard Offer, does not trigger a claim under Conn. Gen. Stat. § 16-1(a)(20). According to Vermont DPS, the Standard Offer program is essentially a feed-in tariff. June 23 Comments of Vermont DPS, pp. 4-5. The Standard Offer program targets the development of 127.5 MW of SPEED resources by 2022. *Id*. However, the program's goal is to develop generating capacity, and the program does not have a megawatt hour requirement. *Id*., pp. 7-8.

C. GREEN MOUNTAIN POWER

Green Mountain Power maintains that the 2012 SPEED program goal does not trigger a claim under Conn. Gen. Stat. § 16-1(a)(20). Comments, p. 6. It states that the SPEED program does not trigger the Connecticut statute because the program is limited to wholesale purchase of renewable generation, rather than retail sale, and does not require that the MWH be sold to a utility's retail customers or otherwise be included in its portfolio of generation sources. *Id*. Green Mountain Power asserts that the 2012 SPEED goal was a one-time determination made in 2012, and places no ongoing goals on Vermont retail electric providers. *Id*.

D. NEXTERA ENERGY POWER MARKETING

NextEra Energy Power Marketing asserts that the SPEED program does not trigger a claim under Conn. Gen. Stat. § 16-1(a)(20). June 23, 2014 Comments, p. 7.

III. PURA ANALYSIS

A. INTRODUCTION

The limited question before the Authority is whether megawatt hours generated under the Vermont SPEED program, as currently constructed, should be excluded from Connecticut Class I RPS compliance by the definition of Class I renewable energy source set forth in Conn. Gen. Stat. § 16-1(a)(20). If so, RECs associated with those megawatt hours cannot be used by any electric supplier or electric distribution company to comply with the Class I requirement of Connecticut's renewable energy portfolio standard.

Renewable portfolio standards are one method of encouraging the construction and operation of renewable energy facilities. An RPS incentivizes renewable energy construction by placing an obligation on all retail suppliers to purchase renewable energy certificates. RECs are renewable attributes that are unbundled from the

underlying energy, and traded from electric generators to retail electric suppliers. For an RPS to function properly, RECs must be accounted for in a coordinated system that ensures the RECs are only claimed once by a retail electric supplier. This accounting system can also serve as the recognized means of compliance to a state regulator. For New England states with an RPS, the New England Generation Information System (GIS) performs these functions.

The GIS performs these functions by generally taking each megawatt hour of electric generation produced in the entire ISO-NE control area (plus imports), and assigning generating characteristics to each megawatt hour. Megawatt hours from non-renewable generation are not assigned "tradable" RECs. Renewable generating resources, on the other hand, originate RECs that can be transferred into retail electric supplier accounts. Checks and balances incorporated in the GIS Operating Rules and implemented in the GIS software ensure that RECs originated by renewable energy generators can only be claimed once by a retail electric supplier.

Though the GIS offers many advantages to RPS states, an RPS is only one method of encouraging the construction and operation of renewable energy facilities. Indeed, each state can conduct its own assessment as to whether it adopts an RPS or encourages renewable energy development in a different way. The State of Vermont enacted a program that does not rely on an RPS at this point in time, and instead currently relies on bilateral contracts. June 23, 2014 Comments of Vermont DPS p. 6.

Despite the fact that Vermont does not presently utilize an RPS, all of Vermont's generating resources are nonetheless assigned generating characteristics within the GIS. Consequently, a Vermont generator recognized as a renewable energy resource by Connecticut can originate RECs that can be used toward Connecticut RPS compliance, and can do so notwithstanding the fact that Vermont does not currently utilize an RPS. It is this current dynamic, the fact that Vermont originates RECs within the GIS, but does not itself have an RPS, makes Vermont unique among New England states, and raises questions as to whether Conn. Gen. Stat. § 16-1(a)(20) is implicated.

B. VERMONT SPEED 2012 GOALS

Because Conn. Gen. Stat. § 16-1(a)(20) excludes megawatt hours "claimed or counted … toward compliance with renewable portfolio standards or renewable energy policy goals in another province or state," the Vermont SPEED program must be analyzed with respect to its goals. The SPEED program has two fundamentally different goals and targets, as set forth in 30 V.S.A. § 8005(d):

> (d) Goals and targets. To advance the goals stated in section 8001 of this title, the following goals and targets are established.
>
> > (1) **2012 SPEED goal**. The Board shall meet on or before January 1, 2012 and open a proceeding to determine the total amount of SPEED resources that have been supplied to Vermont retail electricity providers or have been issued a certificate of public good. If the Board finds that the amount of SPEED resources coming into service or have been issued a certificate of public good

> after January 1, 2005 and before July 1, 2012 equals or exceeds 10 percent of total statewide electric retail sales for calendar year 2005, the portfolio standards established under this chapter shall not be in force. The Board shall make its determination by January 1, 2013. If the Board finds that the goal established has not been met, one year after the Board's determination the portfolio standards established under this subsection 8004(b) of this title shall take effect.
>
> (2) **2017 SPEED goal**. A State goal is to assure that 20 percent of total statewide electric retail sales during the year commencing January 1, 2017 shall be generated by SPEED resources that constitute new renewable energy. On or before January 31, 2018, the Board shall meet and open a proceeding to determine, for the calendar year 2017, the total amount of SPEED resources that were supplied to Vermont retail electricity providers and the total amount of statewide retail electric sales.

Prior to 2017, Vermont's SPEED program is dramatically unlike an RPS. The program encouraged the development of sufficient renewable SPEED resources to satisfy all incremental load between 2005 and 2012. Tr. 7/21/14, p. 48. If the program was unsuccessful in that goal, and did not satisfy all incremental load between 2005 and 2012 with renewable SPEED resources, then an RPS would be established. 30 V.S.A. § 8005(d)(1). Vermont determined that the 2012 goal was met, and did not implement an RPS at that time. June 23, 2014 Comments of Vermont DPS p. 4.

The 2012 goal is akin to a "snapshot" taken at that time. June 23, 2014 Comments of Vermont DPS pp. 6-7; Tr. 7/21/14 p. 16. Again, the 2012 goal assessed the SPEED program's progress, and if insufficient, directed immediate corrective action by implementing an RPS. The assessment took place in 2012, and the Vermont Public Service Board issued an order on December 18, 2012 determining that the 2012 SPEED goal was met. June 23, 2014 Comments of Vermont DPS p. 4.

Conn. Gen. Stat. § 16-1(a)(20) precludes the eligibility of megawatt hours "that **are** claimed or counted … toward … renewable energy policy goals." (emphasis added) Conn. Gen. Stat. § 16-1(a)(20). The SPEED program does not presently claim or count any megawatt hours toward an RPS, and it does not presently claim or count any megawatt hours toward any renewable energy program goal that lays claim to megawatt hours. There simply is no direct annual goal between 2012 and 2017 towards which megawatt hours are claimed or counted. As the Vermont DPS states, the SPEED law is silent as to what happens between 2012 and 2017 once the program was determined successful in 2012. June 23, 2014 Comments of Vermont DPS p. 7; Tr. 7/21/14, p. 16. While there does appear to be an overarching "glide path" goal over that timeframe to increase the percentage of renewable SPEED resources used,[2] no megawatt hours are presently counted toward any identifiable goal today.

[2] 30 V.S.A. § 8005(d)(2) attempts to assure that, beginning January 1, 2017, 20 percent of total statewide electric retail sales will be generated by renewable SPEED resources.

The question of whether megawatt hours **are** presently claimed or counted is critical. First, the Authority need not determine whether the 2012 SPEED goals might have precluded associated RECs in 2012 had Conn. Gen. Stat. § 16-1(a)(20) been amended at that time; the statute was amended in 2013, and does not preclude any RECs prior to January 1, 2014. Conn. Gen. Stat. § 16-1(a)(20). Second, the regulatory structure in any particular compliance year should not determine REC eligibility for all subsequent compliance years, particularly when a renewable energy facility can be constructed to last forty years if not more, and will produce megawatt hours over the facility's entire lifespan. For example, assume solely for the sake of argument that the 2012 SPEED program goal precluded the use of associated RECs in 2012. If Vermont adopted an RPS on the date of this decision and embraced the GIS for compliance, no argument can be made under Conn. Gen. Stat. § 16-1(a)(20) that megawatt hours from SPEED resources are forever precluded based upon the 2012 SPEED goal. Therefore, in any compliance year, the pertinent issue is whether megawatt hours **are** presently claimed or counted, and therefore precluded under Conn. Gen. Stat. § 16-1(a)(20).

For the foregoing reasons, the Authority concludes that Conn. Gen. Stat. § 16-1(a)(20) does not preclude megawatt hours from SPEED resources as a result of the 2012 SPEED goal because megawatt hours are not presently claimed or counted: 1) toward an RPS; or 2) toward an identifiable state renewable energy policy goal that lays claim to megawatt hours.

C. REPRESENTATIONS MADE BY VERMONT RETAIL ELECTRICITY PROVIDERS

This proceeding was initiated to determine whether megawatt hours generated under the Vermont SPEED program, as currently constructed, should be excluded from the definition of Class I renewable energy source set forth in Conn. Gen. Stat. § 16-1(a)(20). As set forth above, between 2012 and 2017, Vermont's SPEED statute itself does not trigger a claim under Conn. Gen. Stat. § 16-1(a)(20). However, the record is replete with concerns expressed by some commenters regarding potential double-counting of fuel use and air emissions by certain Vermont retail electricity providers. Tr. 7/21/14, pp. 38-43. They state that the Vermont retail electricity providers "should be stopped from making [these claims]." *Id*., p. 43.

The representations by Vermont retail electricity providers to customers are made of their own accord. No provision of the SPEED program's enabling law requires this action. Consequently, the questions presented to the Authority are: 1) whether Conn. Gen. Stat. § 16-1(a)(20) excludes SPEED RECs based upon the voluntary actions of Vermont retail electricity providers; and 2) if not, whether the Authority can or should take steps under other authority to prohibit the use of SPEED RECs toward Connecticut Class I compliance.

Because Conn. Gen. Stat. § 16-1(a)(20) excludes megawatt hours claimed or counted toward an RPS or "renewable policy goals in another province or state," it focuses on the use of those megawatt hours toward a state (or province)-mandated program. The Authority concludes that the voluntary actions of Vermont retail electricity providers to not implicate Conn. Gen. Stat. § 16-1(a)(20). Instead, the voluntary actions reflect the internal goals and motivations of the individual Vermont retail electricity provider, instead of a state (or province)-mandated program. The question presented is

therefore whether PURA can or should take steps under other authority to prohibit the use of SPEED RECs.

The voluntary actions of one Vermont retail electricity provider have been raised to the Federal Trade Commission (FTC). Specifically, on September 15, 2014, the Environmental and Natural Resources Law Clinic of the Vermont Law School submitted to the FTC a "Petition to Investigate Deceptive Trade Practices of Green Mountain Power Company in the Marketing of Renewable Energy to Vermont Consumers" (Petition). September 14, 2014 filing of The WindAction Group/Vermonters for a Clean Environment in Docket No. 14-05-36. The Petition asked the FTC to initiate an investigation and take appropriate enforcement action in relation to Green Mountain Power Corporation's representations to its customers and to the public regarding its provision of electricity.

In a letter dated February 5, 2015, the FTC's Division of Enforcement declined to initiate a formal investigation of the practices alleged in the Petition. February 10, 2015 filing of Green Mountain Power Company. At page 3, the February 5, 2015 FTC letter recounted the agency's regulations. FTC Letter, p. 3. The cited regulations provide as follows:

> (d) If a marketer generates renewable electricity but sells renewable energy certificates for all of that electricity, it would be deceptive for the marketer to represent, directly or by implication, that it uses renewable energy.

16 C.F.R. § 260.15(d). The letter also noted that the FTC's Green Guides "warn that power providers that sell null electricity to their customers, but sell RECs based on that electricity to another party, should keep in mind that their customers may mistakenly believe the electricity they purchase is renewable, when legally it is not." FTC Letter, pp. 3-4.

The FTC's Division of Enforcement did not prepare a claim-by-claim analysis of the statements identified in the Petition. FTC Letter, p. 4. It stated that "some of [the] unqualified claims [asserted in the Petition] raise concerns" in light of FTC principles regarding the claiming of renewable attributes. *Id*. The Division of Enforcement urged GMP to:

> …carefully review its current and future communications to ensure that Vermont customers, and other market participants, clearly understand that GMP sells RECs for many of its renewable facilities and thus has forfeited its right to characterize the power delivered from those facilities as renewable, in any way.

FTC Letter, p. 5. The Division of Enforcement expressly reserved the right to take further action if it identified concerns in the future. *Id*.

As the aforegoing demonstrates, the voluntary claims made by Vermont retail electricity providers related to SPEED resources have been properly raised to the federal consumer protection regime, and the FTC's Division of Enforcement has taken

the action it deems appropriate. In the Authority's view, the FTC Letter does more than merely ask Green Mountain Power to carefully review its marketing materials. The letter: 1) expressly articulates double-counting principles; 2) communicates to Green Mountain Power the expectation that it adhere to those principles; and 3) reserves the right for the FTC to take action if it finds in the future that Green Mountain Power has violated those principles.

Given this specific procedural and factual background, the Authority concludes that it will not take steps to preclude the use of RECs associated with the Vermont SPEED program based on the voluntary actions of Vermont retail electricity providers. This conclusion should not be construed to mean that PURA will never explore actions it can take to prevent double-counting of renewable attributes. Here, the federal consumer protection regime is addressing the issue in the manner it deems appropriate. PURA need not investigate Vermont retail electricity providers' voluntary actions when the FTC has given clear guidance to these providers intended to prevent the double-counting of renewable claims, the precise activity Conn. Gen. Stat. § 16-1(a)(20) seeks to prevent. Further, as discussed in the following section, it is very likely that the regulatory structure in Vermont will bring needed clarity and fully resolve the situation beginning January 1, 2017.

D. VERMONT SPEED 2017 GOALS

The Vermont DPS states that there is no need to address whether the SPEED 2017 goals would trigger Conn. Gen. Stat. § 16-1(a)(20). February 2, 2015 Comments of Vermont DPS, p. 5. The Vermont DPS notes that these goals do not become effective until 2017, and that the underlying statute creating these goals has been modified many times over the years, and is subject to revision yet again in the 2015 legislative session. *Id*.

The Authority agrees that it is premature to decide the application of Conn. Gen. Stat. § 16-1(a)(20) to the SPEED 2017 goals because the SPEED program is subject to change and is under active consideration at this time. However, the Authority also notes that current law includes two provisions that are particularly relevant to the issue of double-counting. Specifically, current law sets forth target amounts for **each** retail provider's annual electric sales beginning January 1, 2017. 30 V.S.A. § 8005(d)(4). Second, current law requires Vermont electricity retail providers to retain beneficial ownership of RECs associated with SPEED projects in the event an RPS comes into effect. 30 V.S.A. § 8005(b)(6). These provisions create a regulatory structure that is very unlike the currently operative SPEED 2012 regime.

The Authority firmly believes that under current law, the Vermont Public Service Board would likely implement the current SPEED 2017 goals in a manner complementary to other New England states' RPS programs. However, the Authority also notes that proposed legislation in Vermont, if enacted, would provide more certainty today that SPEED 2017 goals would be administered in a way that is entirely compatible with other state RPS programs. February 2, 2015 Comments of Vermont DPS, Attachment A, pp. 35-36. The Authority applauds this effort to flesh out the impending Vermont RPS program.

As discussed above, the Authority agrees with Vermont DPS that it is premature at this time to decide the issue post-2017. However, the Authority notes that if the State of Vermont ultimately chooses to not utilize the GIS in its post-2017 regulatory structure, it is quite likely that Vermont SPEED RECs would be precluded by Conn. Gen. Stat. § 16-1(a)(20). At that point, Vermont's statutory structure will appear to claim megawatt hours (and beneficial ownership of renewable attributes) toward an identifiable regulatory requirement. In that event, it is extremely likely that RECs will have to enter the Vermont RPS system or the GIS, but not both.

E. VERMONT STANDARD OFFER PROGRAM

The Standard Offer program is another effort of the State of Vermont to encourage the construction and operation of renewable generating facilities. 30 V.S.A. § 8005a. The Standard Offer program is essentially a feed-in tariff under which Vermont utilities offer standardized power purchase agreements for renewable power at standardized prices. June 23 Comments of Vermont DPS, pp. 4-5. The goal for that program is to result in the development of 127.5 MW of SPEED resources by 2022. *Id*.

Vermont DPS states that the program targets the development of generating capacity, and does not have a megawatt hour requirement. *Id*., pp. 7-8. The program only tallies the nameplate capacity of the facilities under contract. Tr. 7/21/14, p. 87.

The pertinent issue is whether a program with a megawatt capacity goal results in double-counting under a statute that asks whether megawatt hours are claimed or counted elsewhere. Tr. 7/21/14, pp. 97; 128. However, no party presented a theory under which a megawatt capacity goal, in and of itself, results in double counting of megawatt hours. Indeed, no party contended that the Standard Offer program triggers a claim under Conn. Gen. Stat. § 16-1(a)(20).

The Authority concludes that the Vermont Standard Offer program does not count megawatt hours, and therefore no megawatt hours of the Standard Offer program are claimed or counted toward an RPS or renewable energy goal in contravention of Conn. Gen. Stat. § 16-1(a)(20). This provision is part of a statutory scheme that: 1) imposes a renewable energy portfolio standard on Connecticut retail electric suppliers; and 2) bases compliance upon a REC system that ensures against the double-counting of renewable attributes. The statute's remedy is to preclude double-counted RECs from Connecticut compliance. Therefore, a reasonable construction of the statute is that it ensures the sanctity of RECs used for compliance. If the goals of another state renewable energy program do not directly threaten the integrity of the megawatt hours used for Connecticut RPS compliance, these concerns would appear to fall outside of the scope of Conn. Gen. Stat. §16-1(a)(20).

IV. FINDINGS OF FACT

1. The State of Vermont enacted a renewable energy program that does not rely on an RPS at this point in time, and instead currently relies on bilateral contracts.

2. A Vermont generator recognized as a renewable energy resource by Connecticut can originate RECs that can be used toward Connecticut RPS compliance, and

can do so notwithstanding the fact that Vermont does not currently utilize an RPS.

3. The representations by Vermont retail electricity providers to customers are made of their own accord.

4. The FTC's Division of Enforcement declined to initiate a formal investigation of Green Mountain Power based upon practices alleged in a petition to the agency.

5. The FTC's Division of Enforcement issued a letter that articulates double-counting principles, and expects Green Mountain Power to adhere to those principles. Additionally, the letter states that the FTC reserved the right to take action if it finds in the future that Green Mountain Power has violated those principles.

6. Proposed legislation in Vermont, if enacted, would provide more certainty today that SPEED 2017 goals would be administered in a way that is entirely compatible with other state RPS programs.

7. The Vermont Standard Offer program is essentially a feed-in tariff under which Vermont utilities offer standardized power purchase agreements for renewable power at standardized prices.

V. CONCLUSION

The Authority concludes that the SPEED 2012 goal does not trigger a claim under Conn. Gen. Stat. §16-1(a)(20). The Connecticut provision precludes the eligibility of megawatt hours that are claimed toward another state's renewable energy program goals, and the SPEED 2012 program does not have identifiable numerical goals between 2012 and 2017. The Authority does not discount that voluntary representations made by Vermont retail electricity providers raise concerns. However, the federal consumer protection regime is addressing those concerns. Beginning January 1, 2017, the Vermont SPEED program may trigger a claim under Conn. Gen. Stat. §16-1(a)(20). However, the Authority concludes it is not necessary to make a final determination with respect to post-2017, particularly because legislative efforts are currently underway in Vermont to flesh out the impending post-2017 program. Finally, the Authority determines that Vermont's Standard Offer program does not preclude the use of associated renewable energy certificates for Connecticut compliance.

DOCKET NO. 15-01-03 DECLARATORY RULING REGARDING CONN. GEN. STAT. §16-1(a)(20), AS AMENDED BY PA 13-303, CONCERNING THE POSSIBLE DOUBLE COUNTING OF RECsS

This Decision is adopted by the following Commissioners:

Arthur H. House

John W. Betkoski, III

Michael A. Caron

CERTIFICATE OF SERVICE

The foregoing is a true and correct copy of the Decision issued by the Public Utilities Regulatory Authority, State of Connecticut, and was forwarded by Certified Mail to all parties of record in this proceeding on the date indicated.

Nicholas E. Neeley
Acting Executive Secretary
Public Utilities Regulatory Authority

Date