

MEMORANDUM

TO: City of Burlington Board of Finance

FROM: Ken Nolan, Manager of Power Resources

DATE: September 25, 2013

RE: **Ryegate Associates RSCR Stipulation**

cc. Barbara Grimes

The Ryegate wood chip generator in Ryegate, Vermont had a contract to sell its output to all Vermont utilities through VEPP Inc. (the statewide purchasing agent for federal PURPA power). That contract, which was signed in the early '90's, utilized provisions of federal law to force the Vermont utilities to buy the plant's output at guaranteed prices. The federally mandated contract ended in October, 2012.

In preparation for their contract ending, the owners of Ryegate went to the Vermont legislature in 2011 and sought passage of a state law that would require the Vermont utilities to continue purchasing the output of the plant. In response the legislature passed new Baseload Renewable provisions to the state's existing SPEED statutes (the SPEED statutes require all utilities to buy the output of small renewable resources under a state program). The only generator that met the requirements to supply the Baseload Renewable power was Ryegate, which in essence meant that the legislature had required the Vermont utilities to buy the plant's output. The new contract between Ryegate and VEPP Inc. was executed this past spring, and Ryegate has continued to sell power to the Vermont utilities through this state contract since that time.

Importantly for BED, the Baseload Renewable statute also included a carve-out for any utility that received more than 33% of its energy from biomass resources in any year. Any utility that could demonstrate such a reliance on biomass did not have to buy the Ryegate power in the subsequent year. BED has purchased more than 33% of its energy from biomass (namely McNeil) since the law's passage and has therefore not purchased any of the Ryegate power.

After its new contract with VEPP Inc. was executed Ryegate determined that it would be economic to install a Regenerative Selective Catalytic Converter (RSCR), similar to the one McNeil had installed in 2008, to reduce air pollutant emissions and qualify the plant to sell Renewable Energy Certificates (RECs) in Connecticut and New Hampshire. However, the Baseload Renewable statute required them to turn over all RECs to the Vermont utilities, so to

move forward with the project Ryegate needed to negotiate a cost sharing arrangement with the utilities.

After nearly 6-months of negotiation the attached stipulation was reached. It requires Ryegate to provide the \$6 million of capital needed to install the RSCR, and in return shares any revenue received from REC sales. For the first 3-years Ryegate will get 90% of any revenue, to insure that they recoup their investment. For the next 3-years the revenue will be split 50-50, and for the final 3-years the utilities will receive 90% of the revenue. Even though BED is not receiving any power from Ryegate at the moment, BED staff was actively involved in the negotiation to make sure Burlington ratepayers would be protected if BED ever did receive the power. BED staff believes the stipulation is a reasonable compromise that will result in additional revenue to the Vermont utilities while providing cleaner air

The Burlington Electric Commission approved the stipulation at its September meeting, with the recommendation that BED become a signatory to make sure that the protections it provides will be available to BED ratepayers in the event that BED is required to buy Ryegate power in the future.

STATE OF VERMONT
PUBLIC SERVICE BOARD

In Re: Investigation into the Establishment)	
Of a Standard-Offer Price for Baseload)	Docket No. 7782
Renewable Power under SPEED Program)	

Stipulation Concerning REC Sharing Arrangement

After Installation of a Selective Catalytic Reduction System

This Stipulation is entered into this 3rd day of September 2013 by and between Ryegate Associates ("Ryegate"), Green Mountain Power Corporation, City of Burlington Electric Department, Vermont Electric Cooperative, Inc., Washington Electric Cooperative, Inc., Vermont Public Power Supply Authority (on behalf of its Member utilities), and the Town of Stowe Electric Department (collectively, "The Utilities"), (collectively referred to as the "Stipulating Parties").

I. Recitals

Whereas, Ryegate is the owner and operator of a 20 MW wood-fired electric generation facility in Ryegate, Vermont (the "Ryegate facility"); and

Whereas, the Ryegate facility is a qualifying small power production facility under 16 U.S.C. § 796(17)(C) and 18 C.F.R. part 292; and

Whereas, by Order dated October 29, 2012, the Vermont Public Service Board ("Board") set a price for a new ten year power purchase agreement ("PPA") for the Ryegate facility, pursuant to 30 V.S.A. § 8009 ("PPA Order"); and

Whereas, pursuant to 30 V.S.A. § 8009, Vermont Retail Electricity Providers are required to purchase power from the Ryegate facility at the price established in the PPA Order, unless a provider is otherwise exempt from the purchase requirement, i.e., one-third of the electricity

supplied by the provider to its customers is from a plant that produces electricity from woody biomass; and

Whereas, under the statute any tradeable renewable energy certificates ("RECs") attributable to the electricity purchased are transferred to the Vermont retail electricity providers; and

Whereas, the Ryegate facility currently qualifies for Connecticut Class II RECs; and

Whereas, the Ryegate facility currently utilizes selective non-catalytic reduction to control nitrogen oxide (NOx) emissions under its current air pollution control permit; and

Whereas, installation of a selective catalytic reduction system ("SCR") would reduce NOx from the Ryegate facility to a level that would potentially qualify the facility for higher-valued RECs in Connecticut or other New England states; and

Whereas, Ryegate is not currently required by state or federal law or regulation to reduce the NOx emissions of the facility beyond currently permitted levels by installing an SCR unit; and

Whereas, The PPA Order included, among other things, a requirement that Ryegate Associates file with the Board a proposal for the installation of an SCR at the Ryegate plant in order to qualify for higher valued RECs and for the resulting financial benefit of the SCR unit to be apportioned between Ryegate and the Utilities; and

Whereas, in April 2013, Ryegate submitted an SCR Proposal to the Board which included a REC revenue sharing arrangement; and

Whereas, Ryegate and the Utilities have been engaged in discussions concerning the SCR Proposal; and

Whereas, Ryegate and the Utilities have reached agreement on a revenue sharing for RECs should an SCR unit be installed at the Ryegate facility; and

Whereas, the Stipulating Parties agree to certain conditions that should be included in a Board Order in this docket; and

Therefore, in consideration of the above, the Stipulating Parties hereby stipulate as follows:

II. Terms Regarding SCR and RECs

1. In the event that Ryegate, in its sole discretion and at its sole expense, elects to install and operate an SCR system at the Ryegate facility, Ryegate and the Utilities agree that any RECs generated by the Ryegate facility will be distributed in the following proportions:
 - a. Years 0 through 2 – Ryegate 90%, Utilities 10% (first 24 months)
 - b. Years 3 through 7 – Ryegate 50%, Utilities 50% (next 60 months)
 - ~~c. Years 8 through end of current PPA – Ryegate 10%, Utilities 90% (remaining PPA term)~~

The first month under subparagraph 1.a. begins when RECs are actually being produced, i.e., after the SCR is operational and the RECs have been certified as something other than Connecticut Class II RECs either in Connecticut or pursuant to the provisions of a Renewable Portfolio Standard in one or more of the other New England States. The length of the last period under subparagraph 1.c. is dependent on when the SCR becomes operational.

2. The REC distributions to the Utilities provided in paragraph 1 above shall be based on the pro-rata assignment of energy to the utility under the PPA, and in accordance with 30 V.S.A. § 8009(g), for the period in which the RECs are generated.
3. Distribution of all RECs generated by the Ryegate facility pursuant to 30 V.S.A. § 8009(f)(2) will occur on a quarterly or other appropriate periodic basis through the transfer of electronic renewable generation certificates in the NEPOOL GIS system or its successor.

After distribution of RECs to the Utilities under 30 V.S.A. § 8009(f)(2) is first satisfied, RECs from the Ryegate facility will then be transferred back to Ryegate (or an entity designated by Ryegate), either by VEPP, Inc. (the "SPEED Facilitator") or the Utilities, in accordance with the percentages reflected in paragraph 1 above.

4. After the Board issues an Order approving the Stipulation, the Stipulating Parties will cooperate to adjust the method of distribution, if necessary, to further comply with 30 V.S.A. § 8009(f)(1), and to cooperate in making and memorializing any other arrangements that are necessary to implement this Stipulation.
5. The Utilities and Ryegate will cooperate in seeking certification of RECs produced by the ~~Ryegate facility (with installation of the SCR) as Connecticut Class I RECs, or any other type~~ of REC, regardless of state or class, as may be appropriate.
6. The Stipulating Parties acknowledge that in order to qualify for Connecticut Class I RECs after installation of the SCR system, any portion of the energy output of the Ryegate facility in the Connecticut Class I REC market for which RECs are sold may not be claimed or counted towards meeting any Vermont renewable energy policy goal or Renewable Portfolio Standard.
 - a. After installation of the SCR and qualification for Connecticut Class I RECs, the Utilities and Ryegate will not claim or count any portion of the energy output of the Ryegate facility in the Connecticut Class I REC market for which RECs are sold towards meeting any Vermont renewable energy policy goal or Renewable Portfolio Standard.
 - b. Should any portion of the energy output of the Ryegate facility be disqualified from the Connecticut Class I REC market due to such claiming or counting by any

Stipulating Party, the Board shall, upon request, determine the damages to be assessed to the responsible Stipulating Party (or Parties) and awarded to the damaged Stipulating Party (or Parties) for any loss in REC revenues due to such disqualification. Said damages shall be limited to the loss in REC revenue, and both the responsible and damaged Stipulating Parties shall have the duty to mitigate damages. In no event shall any Stipulating Party be subject to incidental, consequential or punitive damages. Should the Ryegate facility be disqualified from the Connecticut Class I REC market due to any action other than as specified in (a), this section will not apply. Stipulating Parties not responsible for the disqualification will bear no liability under this section.

- c. No Stipulating Party or Parties will be held responsible for damages which may result from complying with any new or existing Vermont statutory or regulatory reporting requirements that require the generation of the Ryegate facility to be counted for renewable generation. Additionally, No Stipulating Party or Parties will be held responsible if an unrelated party including but not limited to the Public Service Department, the Board, or the SPEED Facilitator issues any reporting that counts the generation of the Ryegate facility toward the Vermont renewable goals.
- d. The Stipulating Parties jointly request that the Board include in its approval of this agreement an order or requirement stating that RECs associated with any portion of the energy output of the Ryegate facility that are sold as Connecticut Class I RECs may not be claimed or counted towards meeting any Vermont renewable energy policy goal or Renewable Portfolio Standard.

7. The Stipulating Parties will cooperate in obtaining the concurrence of the Public Service Department and the approval of the Board.
8. Subject to Ryegate's right, in its sole discretion, to determine whether to construct the SCR, in the event the SCR is installed Ryegate shall operate the SCR for all generation that is associated with the sale of energy through the term of its current contract with the SPEED Facilitator.
9. The Stipulating Parties request that the Board direct the SPEED Facilitator to take whatever actions are necessary to implement the REC sharing arrangement reflected in this Stipulation.

III. Other Terms

10. Based on the foregoing, the Stipulating Parties request that the Board adopt the provisions contained in section II of this Stipulation, in their entirety without material change or condition, as the full and final resolution of the issues presented in this proceeding.
11. The Stipulating Parties request that the Board retain continuing jurisdiction to resolve any matters or disputes arising under this Stipulation.
12. This Stipulation represents the entire agreement between the Stipulating Parties with respect to the matter addressed herein. It may be modified only upon mutual written agreement by the Stipulating Parties, and is subject to any necessary Board approvals.
13. The Stipulating Parties agree that this Stipulation shall not be construed by any party or tribunal as having precedential impact on any future proceeding involving the Stipulating Parties, except as necessary to implement this Stipulation or to enforce an order of the Board resulting from this Stipulation.

14. The Stipulating Parties agree that this Stipulation should not be construed by any party or tribunal as having precedential or any other impact on any other proceedings involving a different project, different subject matter, or other parties. With respect to such proceedings, the Stipulating Parties reserve the right to advocate positions that differ from those set forth in this Stipulation.
15. The Stipulating Parties agree that, should the Board fail to approve this Stipulation in its entirety, the Stipulating Parties' agreements set forth herein shall terminate and the Stipulating Parties shall have the right to submit filings in this docket and the Stipulating Parties' agreements in this Stipulation shall not be construed by any party or tribunal as ~~having precedential impact on any testimony or positions that may be advanced in these~~ proceedings. Any disputes arising under this Stipulation shall be resolved by the Board under Vermont law.
16. The Stipulating Parties hereby waive their rights under 3 V.S.A. § 811 to file written comments or present oral argument with respect to any proposal for decision issued by a hearing officer concerning this Stipulation, provided such proposal for decision is consistent in all material respects with this Stipulation and proposes that the Board approve this Stipulation in its entirety.

Ryegate Associates

By: 

Dated: 9/4/2013 

Green Mountain Power Corporation

By: _____

Dated: _____

City of Burlington Electric Department

By: _____

Dated: _____

Vermont Electric Cooperative, Inc.

By: _____

Dated: _____

Washington Electric Cooperative, Inc.

By: _____

Dated: _____

Vermont Public Power Supply Authority

By: _____

Dated: _____

Town of Stowe Electric Department


By: _____

Dated: _____

Ryegate Associates

By: _____
Dated: _____

Green Mountain Power Corporation

By: 
Dated: 9/4/2013

City of Burlington Electric Department

By: _____
Dated: _____

Vermont Electric Cooperative, Inc.

By: _____
Dated: _____

Washington Electric Cooperative, Inc.

By: _____
Dated: _____

Vermont Public Power Supply Authority

By: _____
Dated: _____

Town of Stowe Electric Department

By: _____
Dated: _____

Ryegate Associates

By: _____
Dated: _____

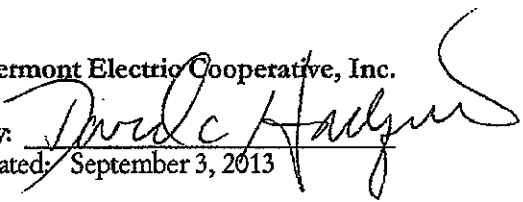
Green Mountain Power Corporation

By: _____
Dated: _____

City of Burlington Electric Department

By: _____
Dated: _____

Vermont Electric Cooperative, Inc.

By: 
Dated: September 3, 2013

Washington Electric Cooperative, Inc.

By: _____
Dated: _____

Vermont Public Power Supply Authority

By: _____
Dated: _____

Town of Stowe Electric Department

By: _____
Dated: _____

Ryegate Associates

By: _____
Dated: _____

Green Mountain Power Corporation

By: _____
Dated: _____

City of Burlington Electric Department

By: _____
Dated: _____

Vermont Electric Cooperative, Inc.

By: _____
Dated: _____

Washington Electric Cooperative, Inc.

By: *Robert H. Smith*
Dated: 9/4/2013

Vermont Public Power Supply Authority

By: _____
Dated: _____

Town of Stowe Electric Department

By: _____
Dated: _____

Ryegate Associates

By: _____
Dated: _____

Green Mountain Power Corporation

By: _____
Dated: _____

City of Burlington Electric Department

By: _____
Dated: _____

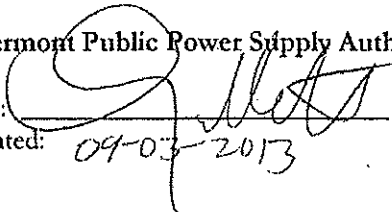
Vermont Electric Cooperative, Inc.

By: _____
Dated: _____

Washington Electric Cooperative, Inc.

By: _____
Dated: _____

Vermont Public Power Supply Authority

By: 
Dated: 09-03-2013

Town of Stowe Electric Department

By: _____
Dated: _____

Ryegate Associates

By: _____
Dated: _____

Green Mountain Power Corporation

By: _____
Dated: _____

City of Burlington Electric Department

By: _____
Dated: _____

Vermont Electric Cooperative, Inc.

By: _____
Dated: _____

Washington Electric Cooperative, Inc.

By: _____
Dated: _____

Vermont Public Power Supply Authority

By: _____
Dated: _____

Town of Stowe Electric Department

By: Ellen L. Burt
Ellen L. Burt, General Manager

Dated: September 4, 2013

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6 **AUTHORIZATION TO BURLINGTON**
7 **ELECTRIC DEPARTMENT TO**
8 **ENTER INTO STIPULATION**
9 **CONCERNING REC**
10 **SHARING ARRANGEMENT**
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14 In the year Two Thousand Thirteen.....

15 Resolved by the City Council of the City of Burlington, as follows:

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17 That WHEREAS, Burlington Electric Department (“BED”) is a party in Vermont Public
18 Service Board (“PSB”) Docket No. 7782 relating to the standard-offer price for baseload
19 renewable power under the SPEED program generated by the 20 MW wood-fired electric
20 generation facility in Ryegate, Vermont (“Ryegate”); and

21 WHEREAS, as a component of this PSB Docket, Ryegate has proposed installing a
22 selective catalytic reduction system (“SCR”) to reduce nitrogen oxide (“NOx”) emissions from
23 the Ryegate facility at an estimated cost of \$6,000,000.00; and

24 WHEREAS, reduction of emitted pollutants and greenhouse gases in Vermont is
25 desirable; and

26 WHEREAS, installation of the SCR at the Ryegate facility will potentially qualify
27 Ryegate for higher-valued renewable energy credits (“RECs”) in Connecticut or other New
28 England states; and

29 WHEREAS, pursuant to 30 V.S.A. § 8009, all tradable RECs attributable to the electricity
30 produced by Ryegate must be transferred to the Vermont retail electricity providers (“Utilities”)
31 who purchase power from Ryegate; and

32 WHEREAS, absent some incentive to install the SCR, Ryegate would not expend the
33 funds and proceed; and
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**AUTHORIZATION TO BURLINGTON
ELECTRIC DEPARTMENT TO
ENTER INTO STIPULATION
CONCERNING REC
SHARING ARRANGEMENT**

WHEREAS, Ryegate has proposed a stipulation wherein the Utilities who purchase, or may be obligated to purchase, power from Ryegate would agree to a REC sharing arrangement that would effectively distribute a portion of the higher value RECs that would currently be distributed to the Utilities per 30 V.S.A. § 8009 to Ryegate when/if the SCR is installed and Ryegate is qualified for higher valued RECs (“Stipulation”); and

WHEREAS, said Stipulation would incentivize Ryegate to install the SCR and compensate Ryegate for the up-front cost of installing the SCR; and

WHEREAS, BED participated in the negotiation of the Stipulation and BED’s General Manager has determined that it is in the best interest of BED and BED’s ratepayers to enter into this Stipulation; and

WHEREAS, at its regularly scheduled meeting on September 11, 2013, the City of Burlington Electric Commission approved the terms of the Stipulation.

NOW THEREFORE, BE IT RESOLVED THAT upon City Council approval, BED General Manager, Barbara L. Grimes, on behalf of the City, is authorized to negotiate and execute the Stipulation and any documents necessary to facilitate the Stipulation, subject to any applicable City Purchasing Procedure and to prior review by the Chief Administrative Officer and the City Attorney, as appropriate.

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**AUTHORITY TO BURLINGTON
ELECTRIC DEPARTMENT TO
ENTER INTO A STIPULATION
CONCERNING REC
SHARING ARRANGEMENT**

NAME/PURPOSE OF CONTRACTS:	Ryegate SCR Stipulation
ADMINISTRATIVE DEPARTMENT:	Burlington Electric Department
CONTRACT AMOUNTS:	N/A
CONTRACT TERM:	9-years from PSB approval
DESIGNATION OF FUNDS:	No funds required
FISCAL YEAR:	2013
ACCOUNT NAME:	
ACCOUNT NUMBER:	

211150/15