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September 21, 2018

Judith Whitney, Clerk  
Vermont Public Utility Commission  
112 State Street, Montpelier, VT

**Re: Case 17-5257-INV – Review of the standard-offer program**

Dear Ms. Whitney:

Pursuant to Public Utility Commission (“Commission”) Order dated August 15, 2018, as further revised, in the above-referenced proceeding, the City of Burlington Electric Department (“BED”) and the Vermont Public Power Supply Authority (“VPPSA”) submit the following reply comments. These comments are in response to the Public Service Department’s (“Department”) recommendations to:

- Phase out the standard offer program;
- Replace the existing program with an open procurement process; and,
- Revise 30 V.S.A. § 8005a(k)(2)(B) by replacing the existing exemption with a hybrid exemption.<sup>1</sup>

**Phase Out existing Standard Offer program**

BED and VPPSA agree with the Department’s proposition to phase out the Standard Offer program as soon as practicable.<sup>2</sup> The existing program has served its intended purpose to jumpstart the development of in-state renewable generation. In addition, the Renewable Energy Standard (“RES”), enacted in 2015, contains a “Tier 2” requirement that is designed to promote distributed generation. Now, it is time to recognize the successes of the program (in terms of construction of new renewable resources), as well as its unintended consequences (for example, the difficulty in recognizing locational constraints of new generation). The shifts in Vermont’s energy landscape, as well as the administrative inefficiencies associated with the standard offer

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<sup>1</sup> See Department Memorandum of September 21, 2018 pgs. 6 & 10. Referred to hereafter as “Department Memo”.

<sup>2</sup> Department Memo at 1.



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DEPARTMENT



program, as noted by the Department, necessitate an appropriate legislative fix. Specifically, the Commission should recommend to the Legislature that it repeal the statute authorizing the standard offer program since the program is now redundant to the RES Tier 2, creates administrative burdens, and raises a series of problematic issues such as transmission constraints that do not occur under RES Tier 2.

Repealing the Standard Offer statute, effective January 1, 2020, would not undermine the State's clean energy efforts. But it would help to focus our collective attention on the State's overarching renewable energy policy; the Renewable Energy Standard. Under the RES, distribution utilities are required to implement a series of programs designed to decarbonize the grid, promote local small – scale distributed energy resources and encourage customers to reduce fossil fuel consumption. For the first time, distribution utilities are also required to retire their renewable energy credits to demonstrate compliance. RES programs were successfully implemented in 2017 and all of the utilities achieved their legislative requirements. Since its passage, the RES has also fully supplanted the standard offer program as the State's predominate energy policy and is the best standard for determining the amount of renewable energy necessary to meet the State's energy goals.<sup>3</sup> Accordingly, the existing standard offer program should be phased out following the 2019 solicitation.

### Open procurement process

The Department recommends replacing the existing standard offer program with a "successor mechanism," or an open procurement process. According to the Department, this new mechanism would retain valuable elements of the standard offer program; namely, an open procurement would potentially create price transparency, enable "benchmarking" of renewable energy projects through the use of a market mechanism, and enable non-utility entities to participate in meeting Vermont's energy goals.

The Department's proposal to replace the existing standard offer program with an open procurement process may be appropriate in some instances; provided, however, it does not impose incrementally more costs, operational complexity,



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administrative burden, and risks on municipal utilities than would be incurred under existing utility best practices. BED and VPPSA would further note that much of the Department's proposal appears to be consistent with the current procurement processes already undertaken by municipal utilities. As the Commission knows, municipal distribution utilities are obligated to provide access to public records for inspection, unless otherwise exempt, pursuant to 1 V.S.A. §§315 -320. Moreover, in meeting the Tier 2 requirements of the RES, municipal utilities have two primary options – resource acquisition and/or REC purchases – at their disposal. Both obviate the need for an open procurement process as envisioned by the Department. All municipal utilities have a public approval process for contracts of any material duration (i.e. other than short-term purchases) and REC trading occurs in markets with reasonable transparency and competitiveness. Consequently, the Department's stated objective for its proposed successor mechanism, particularly transparency, is already being achieved by the municipal utilities as a matter of law and practice. Thus, BED and VPPSA believe that for municipal utilities, the Department's proposed open procurement proposal would impose additional burdens and costs. BED and VPPSA would request that, if the Commission does accept the Department's proposal, that it recommend to the Legislature that these requirements not apply to municipal utilities.

With respect to benchmarking projects through the use of a market mechanism, BED and VPPSA recommend that municipal utilities be allowed the option to issue requests for proposal ("RFPs"), as they currently do, and enter into bilateral negotiations with project developers rather than engage with other utilities in an open procurement. BED and VPPSA have ample experience procuring renewable energy resources and negotiating terms and conditions, including prices. Under these processes, elected bodies (or governing bodies appointed by elected officials, or both) review the proposed resource acquisition, its costs, the reasons for its selection, as well as any and all competing alternatives. This review occurs in public meetings, for the most part, and to the extent that some components happen in executive session, these decision makers are presented with all relevant information.

As for the Department's intent to enable non-utility entities to participate in the Vermont energy market, BED and VPPSA have a long history of working with such



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third party market actors to build generation and supply renewable energy to the grid. For example, BED recently finalized a purchase power agreement for a 2.5MW (AC) solar plant in Burlington. Moreover, BED has successfully contracted with all proposed solar arrays in Burlington that have sought contracts. VPPSA, too, has issued an RFP seeking bids to build solar generation in its members' service areas. That RFP has resulted in active purchase power agreement negotiations on two projects, while a third is currently going through a public review process. These efforts are a positive reflection of our practice of engaging independent power producers to build small-scale, in-state renewable generation. If additional energy needs are required in the future, BED and VPPSA would naturally pursue all available pathways, including, new purchase power agreements, to address such needs consistent with 30 V.S.A. §218c.

### Hybrid exemption

At page 12 of the Department's memo, the Department proposes that the Commission recommend to the Legislature that it repeal 30 V.S.A. § 8005a(k)(2)(B) and replace it with a so-called hybrid exemption. Under the proposed amendment, utilities that were granted exemptions would continue to be exempt from paying for standard offer projects built in or before 2019, provided such utilities successfully demonstrated 100 percent renewability. In other words, exemptions would no longer be granted to any utility for standard offer projects built in 2020 or later. BED and VPPSA assert that the Department's proposed hybrid approach is neither consistent with the original intent of the legislature, nor would it comport with Sections 202a and 218c of Title 30.

BED and VPPSA understand that the original intent of 30 V.S.A. § 8005a(k)(2)(B) was to provide relief for those utilities that were already 100 percent renewable or were actively pursuing strategies to achieve 100 percent renewability. BED and VPPSA also note that in order to achieve the existing standard-offer exemption, BED and Swanton incurred costs that they may not have otherwise incurred but for 30 V.S.A. § 8005a(k)(2)(B). Such costs were incurred under the assumption that 30 V.S.A. § 8005a(k)(2)(B) would remain in place for as long as each utility maintained its renewable status and that this provision of the law would indeed "wholly" relieve WEC, BED and Swanton from its requirements, or any subsequent amendment thereto. To now remove the exemption, even from projects built in 2020 or later, would only



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increase BED's and Swanton's energy and transmission "wheeling" costs. Further, the hybrid exemption would not reduce regulatory uncertainty as the Department alludes.<sup>4</sup> Under the Department's hybrid solution, BED and VPPSA would still be unsure about how much new renewable generation would come online or when since many projects built in neighboring service areas may or may not actually be built.

Lastly, BED and VPPSA believe that while the Department's hybrid approach may appear to strike a balance between the competing interests of Vermont's distribution utilities, it would only have the effect of forcing previously exempt 100 percent renewable utilities to procure energy in 2020 (and beyond) that is less affordable than they would otherwise procure and do not need. The former would violate Section 202a of Title 30, while the latter would violate Section 218c. Nevertheless, VPPSA and BED could potentially agree to a modified version of the Department's proposal. Such a modification would include a provision that would allow for any utility that had been previously exempt from standard offer, or its successor, by Commission Order would remain exempt, provided, however, that they meet the requirements for exemption from Tier II.

BED and VPPSA appreciate the opportunity provide these comments and look forward to providing further assistance, if needed. Please feel free to contact us should you have any questions or concerns.

Sincerely,

Thomas Lyle  
Programs and Policy  
Burlington Electric Department

Melissa Bailey  
Legislative & Regulatory Affairs  
Vermont Public Power Supply Authority

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<sup>4</sup> Department Memo at 12.