

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Case No. 22-3947-TF

Tariff filing of City of Burlington Electric Department to revise its net- metering tariff effective October 1, 2022	
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**DEPARTMENT OF PUBLIC SERVICE RECOMMENDATIONS REGARDING
THE NET-METERING TARIFF FILING OF THE CITY OF BURLINGTON
ELECTRIC DEPARTMENT**

On September 2, 2022, the City of Burlington Electric Department (“BED”) filed proposed revisions to its net-metering tariff with the Vermont Public Utility Commission (“Commission”). BED’s proposed effective date is October 1, 2022, and the revised tariff predominantly reverts BED’s net-metering 1.1 solar incentive (i.e. for preexisting systems) to its value before Case No. 21-2186-TF.¹ On September 8, 2022, the Commission set the recommendation of the Vermont Department of Public Service (“Department”) as September 16, 2022, if the typical 45 day notice under 30 V.S.A. § 225 is waived, or for October 3, 2022, should the typical 45 day notice remain in effect (thereby nullifying BED’s proposed effective date).

On September 9, 2022, the Commission asked BED a series of information requests, also due for September 16, 2022, explaining whether (and why) a waiver of the 45-day notice is sought, providing customer notice and an explanation of customer impacts, updating the redline to discount changes already effective September 1, 2022,² and explaining the reasoning and context for these proposed changes. In response, BED submitted a revised tariff, another cover letter, a

¹ It bears noting that BED’s net-metering tariff was recently updated to reflect the most recent Rule 5.128 biennial update (*In re: biennial update of the net-metering program*, Case No. 22-3304-INV, Order of 06/17/2022), as approved in Case No. 22-2768-TF, on August 26, 2022, and that updated tariff became effective on September 1, 2022.

² Per Case No. 22-2768-TF.

proposed customer notice, and explanatory testimony on September 16, 2022. The Department looks forward to reviewing BED's responses to the Commission's September 9, 2022, information requests, and requests the opportunity to comment on BED's responses after said review (particularly regarding issues separate from, or auxiliary to, BED's requested solar incentive change and the Department's recommendation thereto).

Sometime in early 2022, the Department's Consumer Affairs and Public Information ("CAPI") division received a customer complaint, from which it became apparent that, after the approval of Case No. 21-2186-TF, BED had changed its crediting and billing practices of preexisting net-metering 1.0 customers (within the first 10 years of operation) and effectively reduced the compensation otherwise afforded such customers by 30 V.S.A. § 219a(h)(K).

While the net-metering law applicable to the system which initiated the first relevant CAPI consumer complaint, 30 V.S.A. § 219a(h)(1)(K)(i) (2015), permits a utility to obtain a Commission approved modification to its rate schedules and net-metering credit, the Department maintains BED incorrectly applied these changed rates and credits to existing NM 1.0 systems. Specifically, 30 V.S.A. § 219a(h)(1)(K) is materially qualified and explained by subsequent subsections which afford customers, with operational systems, the credit provided as of installation for 10 years.

As such, BED's implementation of its tariff disregarded 2015's 30 V.S.A.

§§ 219(h)(1)(K)(i)(IV),³ 219a(h)(1)(K)(iii)(III),⁴ and, perhaps most importantly, 219a(h)(1)(K)(v).⁵ While the Department also seeks further information from BED, as requested by the Commission on September 9, 2022, the Department's discussions with BED regarding 30 V.S.A. § 219a(h)(K) and the CAPI complaint can partially illuminate some of what the Commission seeks to learn by its information requests.

Given the Department's analysis of 30 V.S.A. § 219a (2015) relative to BED's billing and crediting practices, BED informed the Department that it elected to revise its net-metering tariff accordingly⁶ as its preferred first step to correcting what the Department maintains are ongoing billing mistakes. The Department understands this filing to be BED's intended revision. The Department also surmises that BED proposed October 1, 2022, as an effective date for quicker implementation to correct this ongoing error and to better harmonize any revision with its billing cycle (and, if approved, make correction of past mistakes smoother

³ "Notwithstanding the basis for this calculation, *the amount of the credit shall not fluctuate with changes in the underlying residential rate* used to calculate the amount."

30 V.S.A. § 219(h)(1)(K)(i)(IV) (2015) (emphasis added).

⁴ "[s]uch a modification or existing credit may be altered by the [Commission] *for prospective effect only* commencing with the date of the Commission's decision." 30 V.S.A. § 219a(h)(1)(K)(iii)(III) (2015) (emphasis added).

⁵ "A solar net-metering system *shall receive the amount of the credit* under this subdivision (K) that is in effect for the service territory in which the system is installed *as of the date of the system's installation and shall continue to receive that amount* for not less than 10 years after that date *regardless of any subsequent modification to the credit* as contained in the electric company's rate schedules." 30 V.S.A. § 219a(h)(1)(K)(v) (2015) (emphasis added).

⁶ See also, *Tariff Filing of City of Burlington Electric Department requesting a 3.95% rate increase effective August 1, 2022*, Case No. 22-2296-TF; Prefiled Testimony of Emily Byrne and James L. Gibbons of 06/16/22 at 13 (raising issue this tariff filing is intended to address); *Tariff Filing of City of Burlington Electric Department requesting a 3.95% rate increase effective August 1, 2022*, Case No. 22-2296-TF, Letter from William F. Ellis, Esq. to Holly R. Anderson, Clerk of the Commission of July 15, 2022 (reserving BED NM 1.0 billing and crediting, and whether to correct it, to a separate proceeding); Cover letter from Amber Widmayer, Burlington Electric Department, to Holly R. Anderson, Clerk of the Commission, of August 12, 2022, Case No. 22-2768-TF (alluding to this filing being forthcoming).

and easier). The Department's understands that BED intended this tariff filing as "a change which in effect decreases such tolls or rates [which] may be made upon five days' notice to the Commission and the Department of Public Service and such notice to parties affected as the Commission shall direct."⁷

Insofar as the proposed tariff changes are a rate decrease, and because it reverts the NM 1.0 solar incentive to that before Case No. 21-2186-TF (thereby serving to prospectively correct BED's 30 V.S.A. § 219a(h)(K) implementation error) the Department recommends that the Commission approve BED's solar incentive change without a hearing or further investigation. In the alternative, the Department consents⁸ to a shorter notice period and effective date regarding the solar incentive change.

However, BED also "seeks the authorization to provide a refund to affected pre-existing net-metering customers who were undercompensated due to the change to the solar incentive in BED's 2021 rate case."⁹ While the Department agrees with BED that, as a guiding principle absent countervailing circumstances, crediting and billing errors should be corrected, the record is unclear¹⁰ as to the scale of the error, rate payer impact, etc. As such, the Department recommends that the Commission postpone deciding that question until the record is supplemented accordingly. Thank you for your consideration, please do not hesitate to contact me with questions or concerns.

⁷ 30 V.S.A. § 225(a).

⁸ As required by 30 V.S.A. § 225.

⁹ Cover letter from Amber Widmayer, Burlington Electric Department, to Holly R. Anderson, Clerk of the Commission, dated September 2, 2022, in Case No. 22-3947-TF.

¹⁰ Possibly pending the review and analysis of BED's September 16, 2022, filings.

Dated in Montpelier, Vermont on this 16th day of September 2022.

Sincerely,

/s/ Alex Wing

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cc: ePUC Service List