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	

Order entered: 11/16/2022

ORDER APPROVING REFUND TO CUSTOMERS, OPENING INVESTIGATION INTO NET-METERING TARIFF, GRANTING MOTION TO INTERVENE, AND NOTICE OF SCHEDULING CONFERENCE

I. INTRODUCTION

This case concerns the City of Burlington Electric Department's ("BED") Net-Metering Tariff. In this Order, the Vermont Public Utility Commission ("Commission"):

1. Approves a refund due to customers necessitated by an error in BED's Net-Metering Tariff that was corrected by the Commission's September 30, 2022, order in this proceeding,
2. Opens an investigation into Sections V.F.(5) and (6) of BED's Net-Metering Tariff,
3. Grants Renewable Energy Vermont's ("REV") motion to intervene in this proceeding, and
4. Provides notice of a scheduling conference.

II. PROCEDURAL HISTORY

On September 2, 2022, BED filed proposed revisions to its Net-Metering Tariff and a proposal to reimburse customers affected by a prior error regarding its net-metering solar incentive.

On September 29, 2022, REV filed a "motion to intervene" form in this proceeding, seeking permissive intervention.

On September 30, 2022, the Commission approved BED's revised Net-Metering Tariff, except for the proposed deletion of Sections V.F.(5) and (6). The approved revisions corrected the prior error regarding BED's solar incentive. Regarding the proposed deletion of Sections V.F.(5) and (6) and the proposed refund to customers, the Commission directed further process to ensure an adequate record and sufficient notice to customers before issuance of a final decision on those proposals.

On October 14, 2022, BED withdrew its proposed deletion of Sections V.F.(5) and (6) of its Net-Metering Tariff, instead proposing typographical fixes to those sections, and supplemented the record regarding its proposed refund. Additionally, BED stated that it takes no position on REV's motion to intervene.

Also on October 14, 2022, the Department filed comments stating that it has no objection to REV's motion to intervene.

On October 21, 2022, the Department submitted comments on BED's October 14 filing. In its comments, the Department stated that it:

1. Has no concerns with BED's proposed refund to reimburse customers,
2. Recommends that the Commission disallow BED's exception to the 12-month credit expiration in Sections V.F.(5) and (6) of its Net-Metering Tariff,
3. Recommends that the Commission require BED to provide further information and argument to justify and explain its cash payments (upon request) for net-metering credits over $100 in value, and
4. Recommends that the Commission require BED to submit a revised customer notice once the foregoing issues have been resolved.

III. Discussion and Conclusion

Refund to Affected Net-Metering Customers

In the Commission's September 30, 2022, order in this proceeding, the Commission approved a correction to a prior error regarding BED's solar incentive. The error had resulted in BED undercompensating net-metering customers with pre-existing systems during the period August 1, 2021, to September 30, 2022. The error affected 206 customers, and the difference between the amount customers were compensated and what they should have been compensated is $26,275.00. BED Exhibit B, Refund Calculation.

In its initial filing, BED stated that it sought the Commission's approval to provide a refund to customers who were undercompensated due to the error. In the Commission's September 30 order, the Commission noted that the Department had yet to comment on the proposed refund and requested that the Department provide any comments on the refund by October 21, 2022. In its October 21, 2022, comments, the Department stated, "[u]pon consideration of the total funds involved and the approximate impact of the refund on BED's customers, the Department has no concerns with the refund provided that any refund is provided as a bill credit."[1] The Department noted that BED's October 14 filing indicated that affected customers would receive the refund as a credit on their bill.

The Commission concurs with the Department that it is appropriate for BED to refund each affected customer the amount they were undercompensated between August 1, 2021, and September 30, 2022, through a credit on their bill. As discussed in the Commission's September 30 order, state statute includes clear requirements regarding the solar incentive to be afforded to pre-existing net-metering customers. The decrease in BED's solar incentive was inconsistent with those statutory requirements and was the result of error.[2] Therefore, BED should ensure that affected customers receive the compensation they are due via a bill credit.

Opening Investigation Into Sections V.F.(5) and (6) of BED's Net-Metering Tariff

The issues regarding Sections V.F.(5) and (6) present a unique procedural posture. In BED's September 2, 2022, filing with the Commission, it proposed striking Sections V.F.(5) and (6) of its Net-Metering Tariff. Section V.F.(4) provides that for pre-existing net-metering systems, in addition to the compensation provided for under 30 V.S.A. § 219a(e), BED will pay the customer an additional $0.052265 per kWh for 10 years from the date of the system's commissioning. Sections V.F.(5) and (6) provide that when the amount calculated under Section V.F.(4) is a credit, customers will carry that credit forward and may do so from year to year.[3] Additionally, Sections V.F.(5) and (6) provide that customers may request payment for the value of accumulated credit when the value exceeds $100 and BED may pay customers the value of their credits at any time. BED's requested change raised several issues: Affected customers would experience such a change as a rate increase, but BED's filing did not discuss or explain the change, as required by Commission rule; BED's customer notice did not identify the change;

[1] Department October 21 Comments at 2.

[2] Commission's September 30 Order at 2-4.

[3] Under BED's current Net-Metering Tariff, Sections V.F.(5) and (6) make reference to the "amount calculated under (3) of this subsection," rather than referencing subdivision (4). This reference to subdivision (3) does not make sense and appears to be in error. In BED's October 14 filing it has proposed changing the cross reference to subdivision (4).

and the Department's comments did not address the change. Therefore, the Commission directed BED to supplement the record to explain the change, submit a revised customer notice explaining the change, and explain when and how affected customers would receive the notice. Instead, on October 14, 2022, BED withdrew its proposed deletions of Sections V.F.(5) and (6) and explained that it had made the deletions based on recommendations from the Department, but that upon further investigation BED determined that the Commission had explicitly authorized these specific provisions in a 2011 order.[4]

On October 21, 2022, the Department submitted comments recommending that the Commission: (1) disallow BED's exception to the 12-month credit expiration in Sections V.F.(5) and (6) of its Net-Metering Tariff; and (2) require BED to provide further information and argument to justify and explain its cash payments (upon request) for net-metering credits over $100 in value.

Section 225 of Title 30 of the Vermont Statutes Annotated requires the Commission to open an investigation into a tariff filing if the Department opposes it. While 30 V.S.A. § 225 does not squarely apply to the current case because BED is no longer proposing any further changes to its rates (i.e., net-metering compensation), 30 V.S.A. § 218(a) provides that the Commission may, after opportunity for hearing, order changes to a utility's rate schedule if it finds it to be "unjust, unreasonable, insufficient, or unjustly discriminatory … preferential or otherwise in violation of a provision of this chapter." Based on the foregoing, the Commission will open an investigation to determine what, if any, changes should be made to Sections V.F.(5) and (6). The proposed changes to BED's tariff filed on October 14, 2022, are suspended. Additionally, because it is unclear at this time what, if any, further changes will be made to BED's Net-Metering Tariff, the Commission directs that BED refrain from issuing any customer notice regarding Sections V.F.(5) and (6) at this time.

Pursuant to 30 V.S.A. §§ 20 and 21, BED will be responsible for court reporter costs incurred by the Commission during the course of this proceeding and billed back to BED.

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[4] *See Investigation into City of Burlington Electric Department's proposed Energy Resource Tariff Rider tariff, filed to take effect on a service-rendered basis as of July 10, 2010*, Docket No. 7629, Order of 9/8/11.

REV's Motion to Intervene

Commission Rule 2.209(B) reserves to the Commission the power to grant intervenor status on a permissive basis when an applicant "demonstrates a substantial interest which may be affected by the outcome of the proceeding." In exercising its discretionary authority under this provision, the Commission considers three factors:

(1) whether the applicant's interest will be adequately protected by other parties;

(2) whether alternative means exist by which the applicant's interest can be protected; and

(3) whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.

In its motion to intervene, REV argues that it has a substantial interest that may be affected by the outcome of this proceeding. REV states that as a non-profit trade organization, the success of its membership "depends in part upon the ability [of] Vermonter[s] who wish to participate in the net-metering program to secure financing for their projects" and that "[r]etroactive changes to the net-metering compensation structure … put that ability at risk."[5] Additionally, REV contends that no other party adequately represents its interests and it "offers a perspective that is not represented by others and that will assist the Commission in understanding the issues arising from BED's proposal."[6]

Neither the Department nor BED objects to REV's intervention.

For the reasons articulated in REV's motion, the Commission finds that REV has a substantial interest that may be adversely affected by the outcome of this proceeding, REV's interest is not adequately represented by existing parties, and there is not an alternative means by which REV's interest can be protected. Additionally, the Commission has no reason to believe that REV's intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public. Thus, the Commission grants REV permissive intervention pursuant to Commission Rule 2.209(B).

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[5] REV Motion to Intervene Form at 4.

[6] REV Motion to Intervene Form at 5.

IV. Order

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Utility Commission ("Commission") of the State of Vermont that:

1. The Commission opens an investigation into the justness and reasonableness of Sections V.F.(5) and (6) of the City of Burlington Electric Department's Net-Metering Tariff.

2. Pursuant to 30 V.S.A. § 8, Elizabeth Schilling is appointed to serve as the hearing officer to conduct the proceedings in this matter.

3. Pursuant to 30 V.S.A. §§ 10 and 11(a)(2), a scheduling conference will be held on December 2, 2022, commencing at 2:30 P.M., via Go To Meeting videoconference.

Participants and members of the public may access the scheduling conference online at https://meet.goto.com/422866141, or call in by telephone using the following information: phone number: +1 (646) 749-3129; access code: 422-866-141. Participants may wish to download the GoToMeeting software application in advance of the hearing at https://meet.goto.com/install. Guidance on how to join the meeting and system requirements may be found at https://www.gotomeeting.com//online-meeting-support.

Dated at Montpelier, Vermont, this 16th day of November, 2022.

Anthony Z. Roisman	)	PUBLIC UTILITY
Margaret Cheney	)	COMMISSION
J. Riley Allen	)	OF VERMONT

OFFICE OF THE CLERK

Filed: November 16, 2022

Attest: ______________________________
Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

PUC Case No. 22-3947-TF - SERVICE LIST

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