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	

STATEMENT OF UNDISPUTED MATERIAL FACTS

NOW COMES City of Burlington Electric Department ("BED"), by and through its attorneys, McNeil, Leddy & Sheahan, P.C., and pursuant to Vt. P.U.C. Rule 2.219(C)(1), hereby submits the following statement of undisputed material facts in support of its Motion for Summary Judgment.

1. On May 26, 2010, BED filed a petition with the Vermont Public Utility Commission's ("PUC's" or "Commission's") predecessor, the Vermont Public Service Board ("Board"), for approval of its optional Renewable Energy Resource Tariff Rider.[1],[2]
2. On September 17, 2010, BED filed an amended petition for approval of a modified version of its proposed tariff. *See* Docket No. 7629, Order of 09/08/2011 at 2; *see also* Exhibit 1 (BED's Amended Petition, Tariff # 8159, dated September 16, 2010).
3. BED's proposed tariff provided, *inter alia*, that if production from a participating customer's approved energy source results in a credit, BED will carry that credit forward indefinitely, and if the cumulative credits equal or exceed $100, the customer may request payment by BED of the value of the credit and set the carry-forward

[1] *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 09/08/2011 at 1.
[2] Pursuant to 3 V.S.A. § 810(4), the Commission may take administrative notice of "judicially cognizable facts." Prior Board orders and acts of the General Assembly should be so cognizable.

amount back to $0. *See* Docket No. 7629, Order of 09/08/2011 at 3; *see also* Exhibit 1 at 2, ¶ 8 and attachment A thereto.

4. In a Proposal for Decision dated December 3, 2010, the Hearing Officer in Docket 7629 found that BED's proposed tariff was inconsistent with the then prevailing statutory requirements for net metering and recommended denial of BED's request for approval. Docket No. 7629, Order of 09/08/2011 at 4-5.

5. Prior to the Board's final Order in Docket 7629, the Vermont General Assembly enacted Public Act No. 47 (2011 Vt., Biennial Session). *Id*. at 6.

6. As a result of the enactment of Act No. 47, the Board concluded that BED's proposed tariff was consistent with the statutes as revised, and should be approved, stating as follows:

> Act No. 47 modified the provisions of 30 V.S.A. § 219a to include § 219a(h)(1)(J) which provides that an electric company: [m]ay in its rate schedules offer credits or other incentives that may include monetary payments to net metering customers. These credits or incentives shall not displace the benefits provided to such customers under subsections (e) and (f) of this section. Act No. 47's statutory revisions to 219a followed the issuance of the Hearing Officer's proposal for decision. The new statutory language clearly authorizes BED's proposed tariff and, therefore, we approve the tariff pursuant to § 219a(h)(1)(J).

Docket No. 7629, Order of 09/08/2011 at 6.

7. Since the Commission's approval of BED's net-metering tariff in Docket No. 7629, the Commission has approved the indefinite credit carry-forward and $100 cash-out provisions in all subsequent reviews of BED's net-metering tariff to date.[3]

[3] Applicable language from BED's net-metering tariff, effective as of June 15, 2012: "In the event that **the aggregate value** of the amount calculated under 1-2 above is a credit, BED will carry that credit forward to the next billing period (and this credit may be carried over from year to year). At any time where the credit to be carried forward to a subsequent billing period equals or exceeds $100, the customer may request that BED pay the customer

8. BED's net-metering tariff effective January 1, 2017, differs from the tariff effective June 15, 2012, in that it was, *inter alia*, reorganized and reformatted. *Cf.* Exhibit 2 *with* Exhibit 3; *see also* Attestation of James L. Gibbons dated February 28, 2023, ¶ 3.
9. The tariff effective January 1, 2017, limits the credit carry-forward and cash-out provisions to BED's solar incentive credit of $0.052265, rather than applying to both the solar incentive and net-metering credits like prior versions of the tariff. *See* Attestation of James L. Gibbons dated February 28, 2023. *Id.*, ¶ 4.
10. There had been no change in statute or Commission rules that required BED to limit the credit carry-forward and cash-out provisions to BED's solar incentive credit in its net-metering tariff effective January 1, 2017. *Id.*, ¶ 5.
11. While BED does show separate values for the solar incentive credit and net-metering credit balances on monthly customer statements, BED's billing system is not capable of automatically differentiating a customer's solar incentive credit balances from its net-metering credit balances for purposes of expiring credits or for issuing cash-out payments. *Id.*, ¶ 6

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the value of the credit and set the carry forward amount back to $0." Exhibit 2 (emphasis added). Applicable language from II.b.ii. on p. 2 of BED's net-metering tariff, effective January 1, 2017: "In the event that the **aggregate value** of the amount calculated under Section b. above is a credit, BED will carry that credit forward to the next billing period (and this credit may be carried over from year to year). At any time where the credit to be carried forward to a subsequent billing period equals or exceeds $100, the Customer may request that BED pay the Customer the value of the credit and set the carry forward amount back to $0." Exhibit 3 (emphasis added). BED's net-metering tariff effective July 1, 2018, contains the same language as the tariff effective January 1, 2017. *See* Exhibit 4. Applicable language from BED's net-metering tariff effective February 2, 2021, approved by PUC on January 11, 2021, in Case No. 20-3613-TF: "In the event that the **aggregate value** of the amount calculated under (3) of this subsection above is a credit, BED will carry that credit forward to the next billing period and this credit may be carried over from year to year. At any time that this credit equals or exceeds $100, the customer may request that BED pay the customer the value of the credit and set the carry forward amount back to $0." Exhibit 5.

12. BED has continuously applied the credit carry-forward and cash-out provisions to the aggregate balance of the solar incentive and net-metering credits since the Board approved BED's net-metering tariff in 2011 to date. *Id.*, ¶ 7.

13. As of January 25, 2023, there were approximately 148 pre-existing net-metering systems receiving the benefit of the credit carry-forward and cash-out provisions of BED's net-metering tariff. *Id.*, ¶ 8.

14. The latest commissioning date for BED's pre-existing net-metering systems is March 9, 2018, so the carry-forward and cash-out provisions will have fully expired by early 2028. *Id.*, ¶ 9.

Dated at Burlington, Vermont this 28th day of February 2023.

BURLINGTON ELECTRIC DEPARTMENT

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