This document has been electronically filed using ePUC.

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	

DEPARTMENT OF PUBLIC SERVICE RESPONSE TO BURLINGTON ELECTRIC DEPARTMENT'S MOTION FOR SUMMARY JUDGMENT

On September 2, 2022, the City of Burlington Electric Department ("BED") filed revisions to its net-metering tariff with the Vermont Public Utility Commission ("Commission"), which reverted BED's net-metering solar incentive for preexisting[1] systems to its value before Case No. 21-2186-TF. On September 30, 2022, the Vermont Public Utility Commission approved BED's tariff revisions[2] but indicated that more process was needed regarding language in Sections V.F. (5) and (6). These two provisions of BED's net-metering tariff permit BED to pay customers money for accumulated net-metering credits at or over $100 in value (at a customer's request) and correspondingly allows such credits to be carried past one year.

However, statute provides that excess net-metering generation is applied as a bill credit (not money) and that unused credits are rolled over to the next bill.[3]

---

[1] Per Rule 5.125(A)(1), a "pre-existing" net-metering system is one where a complete certification of public good ("CPG") was filed with the Commission prior to January 1, 2017. Rule 5.125(A)(2) requires that such a CPG application "must have been filed at a time when the electric company was accepting net-metering systems pursuant to 30 V.S.A. §219a (h)(1)(A) as the statute existed on December 31, 2016, or qualified under state law as a system that did not count towards the capacity limit on net-metering contained in that statute."
[2] The Commission approved the reversion to the prior solar incentive because it adhered to statute requiring that NM 1.0 customers receive the same incentive as provided upon installation of their system for a period of ten years. *See* 30 V.S.A. §§ 219a(h)(1)(K)(i)(IV), (iii)(III), and (vi).
[3] 30 V.S.A. §§ 219a(e)(3)(B); 30 V.S.A. § 219a(h)(1)(K)(ii).

Moreover, any credits that are unused after 12 months revert to the utility without any compensation to the customer.[4]

On October 14, 2022, BED filed a cover letter arguing that this language should be approved pursuant to 30 V.S.A. § 219a(h)(1)(J). On October 21, 2022, the Vermont Department of Public Service ("Department") preliminarily recommended that BED's limited exception to the 12-month credit expiration be disallowed but recommended information requests to better understand BED's position and the justification for it. The Department served information requests upon BED on January 17, 2023, and the Commission issued information requests for BED on January 23, 2023. BED responded on February 10, 2023. These responses were not entirely clear to the Department. However, BED filed a motion for summary judgment and a memorandum of law on February 28, 2023, which did clarify the legal issues. The Department supports that motion as provided herein.

Legal Standard

The Commission reviews motions for summary judgment according to Commission Rule 2.219.[5] Commission Rule 2.219(A) authorizes the Commission to "grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."

> The purpose of the summary judgment procedure 'is solely to determine whether a genuine issue of fact exists.' Where a genuine issue of material fact exists, 'summary judgment may not serve as a substitute for a determination on the merits.' Summary judgment 'is appropriate when, taking all allegations

---

[4] 30 V.S.A. §§ 219a(e)(3)(C) and 219a(h)(1)(K)(ii).
[5] Commission Rule 2.200 at 31-33, *available at* https://puc.vermont.gov/sites/psbnew/files/doc_library/2.000-rules-of-practice_0.pdf.

> made by the nonmoving party as true, there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law.'[6]

In this case, the Summary Judgment analysis largely turns on a handful of statutory sections and the Commission's precedent regarding BED's tariff. Little operative fact is material.

Discussion

Policy Concerns: Because 30 V.S.A. § 219a(e)(3)(C) provides that excess net-metering credits must be used within 12 months or revert to the utility without compensating the customer, any provisions extending the availability of such credits correspondingly imposes a cost on rate payers. Indeed, BED estimates around $146,833.19 in cash-out payments has been made since 2013 (BED Response to DPS of 02/10/23 at 13). To accumulate credits to a value of $100 or more, they were presumably unable to be used. Had these credits reverted to the utility instead, they would have imposed no such cost to ratepayers. BED states that roughly 148 pre-existing systems still qualify for this provision, with the last one aging out of the incentive in the spring of 2028. As such, these added costs to ratepayers would continue if approved.

Cash-out Provisions: However, the law supports this outcome, and renders some of these facts immaterial, because statute allows for monetary payments as an added incentive beyond that mandated under the 30 V.S.A. § 219a

[6] *Petition of Dep't of Pub. Serv. to impose penalties & other remedial action upon Vermont Gas Sys., Inc. ("Vgs"), re: probable violations of Vermont L., pertaining to gas safety, involving 31 separate locations installed, owned, operated &/or maintained by VGS*, Docket No. 7513, Order of 10/23/2009 at 4 (quotations omitted).

net-metering program. Specifically, BED argues that Sections V.F. (5) and (6) of its tariff are permissible because 30 V.S.A. § 219a(h)(1)(J) provides that utilities "[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" (emphasis added). To the Department's understanding, BED's cash payments may muddle with the benefits provided under the program, but it does not *displace* them. Despite the repeal of 30 V.S.A. § 219a, the application of incentives it provided continue for 10 years from a net-metered facility's commissioning date.[7] Given that monetary payments are expressly authorized as an adjunct to the benefits granted by statute, the Department supports the continuation of the cash-out provisions.

Extension of the 12-month credit expiration: The question of whether BED's provisions extending the 12 month shelf life of net-metering credits is authorized by 30 V.S.A. § 219a(h)(1)(J) is less direct to answer. Again, 30 V.S.A. § 219a(h)(1)(J) states that utilities "[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." While a yearlong credit life is clearly not a benefit that could be displaced, it is clearly not a credit either. BED argues that extending this deadline is an incentive, while the Department had argued that the expiration is inherent to the net-metering program's structure. However, resolving

[7] *See*, *e.g*., Commission Rule 5.125(C).

any such ambiguity is unnecessary given the resolution of this issue in *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 and the tariff language's subsequent reaffirmations. Given that the cash-out is permissible under statute and the extension of the lifespan of the credit only corresponds to the cash-out, the exception here is limited. When coupled with Rule 5.125's continuation of pre-existing system benefits and the many years this tariff language has been in effect, the Department has no objection to it continuing.

Therefore, the Department maintains that the material facts to this analysis are minimal and that the question before the Commission turns more on a judgment of law.

The accompanying revised proposed notice: Finally, the Department reaffirms its earlier recommendation that BED's revised proposed customer notice be further revised, with an opportunity for comment, after the disposition of these questions.

Dated in Montpelier, Vermont on this 30th day of March 2023.

Sincerely,

/s/ Alex Wing
Alexander Wing, Special Counsel
Department of Public Service
112 State Street
Montpelier, VT 05620-2601
alexander.wing@vermont.gov
(802) 828-4011

cc: ePUC Service List