STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 22-3947-TF

Tariff filing of the City of Burlington Electric Department to revise its net-metering tariff effective October 1, 2022	

Order entered: 05/01/2023

FINAL ORDER GRANTING THE CITY OF BURLINGTON ELECTRIC DEPARTMENT'S MOTION FOR SUMMARY JUDGMENT

In this Order, the Vermont Public Utility Commission adopts the following Proposal for Decision.

PROPOSAL FOR DECISION

I. INTRODUCTION

This investigation concerns Sections V.F.(5) and (6) of the City of Burlington Electric Department's ("BED") Net-Metering Tariff, which permit BED to pay customers money for accumulated net-metering credits at or over $100 in value and allow such credits to be carried forward from year to year. The Vermont Public Service Department ("Department") initially raised concerns with these provisions in BED's tariff. However, after BED responded to information requests and filed its motion for summary judgment, the Department understood the history and legal basis for these provisions and made a filing in support of BED's motion for summary judgment. The provisions in Sections V.F.(5) and (6) were originally approved by the Vermont Public Utility Commission ("Commission") in 2011 and nothing in the law has changed since that time that would warrant overturning the Commission's previous decision. Therefore, I recommend that the Commission grant BED's motion for summary judgment.

II. RELEVANT PROCEDURAL HISTORY

On September 2, 2022, BED filed proposed revisions to its Net-Metering Tariff.

On September 29, 2022, Renewable Energy Vermont ("REV") filed a "motion to intervene" form, seeking permissive intervention. The Commission granted REV's motion in its order of November 16, 2022.

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). Regarding the proposed deletion of Sections V.F.(5) and (6), the Commission directed further process to ensure an adequate record and sufficient notice to customers before issuance of any final decision on those changes.

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.

On October 21, 2022, the Department submitted comments on BED's October 14 filing, in which it recommended 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, (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, and (3) require BED to submit a revised customer notice once the foregoing issues have been resolved.

On November 16, 2022, the Commission issued an order opening an investigation into Sections V.F.(5) and (6) of BED's Net-Metering Tariff.

On December 21, 2022, I issued a scheduling order in this case after holding a scheduling conference on December 2, 2022, and receiving a proposed schedule from the parties on December 16, 2022.

On February 28, 2023, after responding to discovery requests by the Department and information requests from the Commission, BED filed a motion for summary judgment and statement of undisputed material facts ("BED's facts").

On March 30, 2023, the Department filed a response in support of BED's motion for summary judgment. The Department also recommended that BED's proposed customer notice be further revised with an opportunity for the Department to comment on it after the disposition of the motion.

On April 13, 2023, BED filed a reply in which it stated that, given the Department's position, "there is no genuine issue as to the material facts and that BED is entitled to judgment as a matter of law that it is permitted to continue to provide cash payments and carry-forward credits beyond 12 months for pre-existing net metering customers for the remainder of the ten years from the date of system commissioning."

III. Legal Standard

Pursuant to Commission Rule 2.219(A), the Commission may grant summary judgment if the moving party demonstrates "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." The standard for summary judgment is stringent.[1] When seeking summary judgment, the movant has the burden of proof, and the party opposing the summary judgment motion is to be given the benefit of all reasonable doubts and inferences in determining whether a genuine issue exists.[2] Summary judgment "provides a mechanism for the disposition of issues, claims, and defenses which do not merit a full trial."[3] Disputes over irrelevant or unnecessary facts do not preclude the entry of summary judgment.[4] However, a trial is "necessary where there is a genuine issue as to any material fact."[5] A fact is "material" when it affects the outcome of a case.[6]

IV. Undisputed Material Facts

The Department had no objections to BED's statement of undisputed material facts and stated that "the material facts to this analysis are minimal and that the question before the Commission turns more on a judgment of law." Having reviewed BED's statement of undisputed material facts, and the evidence in the record to support them, I find that the following facts are material and are not in dispute and admit them into the record as evidence in this proceeding:

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[1] *Wesco, Inc. v. Hay-Now, Inc.*, 159 Vt. 23, 26 (1992).

[2] *Price v. Leland*, 149 Vt. 518, 521 (1988). Even where there is no opposition to a motion for summary judgment amongst the parties, the Commission has its own regulatory duty to determine whether a genuine issue exists.

[3] *Gore v. Green Mountain Lakes*, 140 Vt. 262, 264 (1987).

[4] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

[5] *Sykas v. Kearns*, 135 Vt. 610, 612 (1978).

[6] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

1. In 2010, BED filed a petition with the Commission for approval of its optional Renewable Energy Resource Tariff Rider, which provided, among other things, 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 amount back to $0.[7] BED's facts at ¶¶ 1-3.

2. Before the Commission issued a final order regarding the tariff, the Vermont General Assembly enacted Public Act No. 47 (2011 Vt., Bien Sess).[8] BED's facts at ¶ 5.

3. The Commission approved BED's tariff concluding that it was consistent with the statutes as revised, stating:

> 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.
>
> . . . The new statutory language clearly authorizes BED's proposed tariff and, therefore, we approve the tariff pursuant to § 219a(h)(1)(J).[9] BED's facts at ¶ 6.

4. Since the approval of BED's tariff in 2011, the Commission has approved credit carry-forward and $100 cash-out provisions for pre-existing net-metering systems in all subsequent reviews of BED's Net-Metering Tariff to date.[10] BED's facts at ¶ 7.

5. BED has continuously applied the credit carry-forward and cash-out provisions for pre-existing net-metering systems to the aggregate balance of the solar incentive and net-metering credits since the Commission approved BED's Net-Metering Tariff in 2011. BED's facts at ¶¶ 11-12.

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[7] *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 at 1-3.

[8] *Id*. at 6.

[9] *Id*.

[10] *Tariff filing of Burlington Electric Department implementing a revised net-metering program*, Tariff No. 8623, Order of 12/30/16; *Net-metering tariff filing of the City of Burlington Electric Department*, Case No. 18-1390-TF, Order of 6/29/18; *Tariff filing of the City of Burlington Electric Department revising their net-metering tariff effective February 2, 2021*, Case No. 20-3613-TF, Order of 1/11/21.

V. DISCUSSION

Section 218(a) of Title 30 of the Vermont Statutes Annotated 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 [state law]." The Commission opened this case to review whether the incentives that BED provides to pre-existing net-metering systems are consistent with the relevant statutes.[11] If production from a pre-existing net-metering system in BED's service territory results in a credit, BED carries 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 amount back to $0. These incentives were approved by the Commission in 2011.[12] In its decision, the Commission determined that BED's incentives were authorized by 30 V.S.A. § 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."[13]

Under Commission Rule 5.125(C) "customers using pre-existing net-metering systems shall, for a period of 10 years from the date of the net-metering system's commissioning, be credited for generation according to the rates and incentives provided for in 30 V.S.A. § 219a, as the statute existed on December 31, 2016, and the Commission's rules implementing that statute." The language of Section 219a(h)(1)(J) was the same on December 31, 2016, as it was when the Commission approved BED's incentives in 2011. Additionally, the Commission has approved this provision as a part of past approvals of BED's Net-Metering Tariff. Therefore, the Commission's 2011 ruling stands.

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[11] "Pre-existing net-metering system" means a net-metering system for which a completed CPG application was filed with the Commission before January 1, 2017, and whose completed application was either filed at a time when net-metering was being offered by the electric company 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. Commission Rule 5.103.

[12] *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 at 6.

[13] *Id.*

Based on the undisputed facts presented by BED, I recommend that the Commission find that, subject to the clarification described below, Sections V.F.(5) and (6) of BED's Net-Metering Tariff are consistent with state law.

To ensure there is no confusion regarding the implementation of BED's Net-Metering Tariff going forward, I recommend that the Commission direct BED to file one final revision to its tariff filed October 14, 2022, correcting Section V.F.(5) of its tariff to cross reference subsection (1) in addition to subsection (4).[14] Additionally, I recommend that the Commission direct BED to file a revised proposed customer notice regarding the changes to BED's Net-Metering Tariff approved by the Commission on September 30, 2022, as well as the conclusions of this Order. I recommend that BED consult with the Department regarding its proposed customer notice before filing. I recommend that the Commission direct BED to make these filings by May 15, 2023.

Provided that BED files a corrected tariff and appropriate customer notice, I recommend that the Commission close this investigation.

VI. CONCLUSION

This Proposal for Decision has not been circulated to the parties pursuant to 3 V.S.A. § 811 because it is not adverse to any party.

Date: May 1, 2023

Elizabeth Schilling, Esq.
Hearing Officer

[14] In the process of BED reorganizing and reformatting its Net-Metering Tariff, Section V.F.(5) and (6) cross referenced subsection (3), which made Section V.F.(5) and (6) nonsensical. BED's October 14, 2022, filing fully corrected the cross reference in subsection (6), but requires a final edit to subsection (5), so that it reads "In the event that the aggregate value of the amount calculated under <u>(1) and</u> (4) of this subsection . . . ."

VII. ORDER

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

1. The findings, conclusions, and recommendations of the Hearing Officer are adopted. All findings proposed by parties, to the extent that they are inconsistent with this Order, were considered and not adopted.

2. The motion for summary judgment filed by the City of Burlington Electric Department ("BED") on February 28, 2023, is granted.

3. By May 15, 2023, BED must file a corrected Net-Metering Tariff revising the cross reference in Section V.F.(5).

4. By May 15, 2023, BED must file a revised proposed customer notice regarding the changes to BED's Net-Metering Tariff approved by the Commission on September 30, 2022, as well as the conclusions of this Order.

Dated at Montpelier, Vermont, this 1st day of May, 2023.

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

OFFICE OF THE CLERK

Filed: May 1, 2023

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)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Commission within 30 days. Appeal will not stay the effect of this Order, absent further order by this Commission or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Commission within 28 days of the date of this decision and Order.

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

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