

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 23-1870-PET

Petition of City of Burlington Electric Department to transfer Thermal Energy & Process Fuel funds for use in its District Energy System support program	
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Order entered: 08/01/2023

ORDER DENYING MOTION TO INTERVENE AND REQUESTING RESPONSE TO PUBLIC COMMENTS

I. INTRODUCTION

This case involves a petition filed by the City of Burlington Electric Department (“BED”) with the Vermont Public Utility Commission (“Commission”) pursuant to Section III.3 of BED’s Order of Appointment requesting approval of an intra-program transfer of \$500,000 from funds budgeted for BED’s traditional thermal-energy-and-process-fuels (“TEPF”) programs to its District Energy System (“DES”) support program. Both budget categories were approved in BED’s 2021-2023 Demand Resource Plan.¹ BED states that additional design and engineering work is needed prior to finalizing the design and routing of the DES project, and that BED has spent all funds previously approved for the DES project.

II. PROCEDURAL HISTORY

On June 2, 2023, BED filed its petition with the Commission.

On June 9, 2023, I issued a procedural order requesting comments on the petition.

On June 19, 2023, a motion to intervene was filed by Pike Porter (“Porter”).

On June 21, 2023, I issued a procedural order requesting comments on Porter’s motion to intervene.

On July 3, 2023, the Vermont Department of Public Service (“Department”) filed comments responding to the petition and to Porter’s motion.

On July 5, 2023, Porter responded to the Department’s comments.

¹ Case No. 19-3272-PET, *Order Regarding Burlington Electric Department's Demand Resource Plan*, Order of 8/26/21.

Between June 21, 2023, to July 18, 2023, 30 public comments were filed, including three letters by Porter, dated June 21, 2023, July 3, 2023, and July 17, 2023. One public comment filed on June 27, 2023, by Brian Forrest is supportive of Porter's motion, while no other public comments addresses Porter's motion to intervene, though highlight similar concerns about the DES project, including air pollution, efficiency, overall cost, and weatherization being a better option for Burlington residents.

No other responses to the motion to intervene were filed.

III. POSITIONS OF THE PARTIES

Porter is a BED ratepayer and a member-owner of Intervale Center, a community farm that manages approximately 360 acres of farmland, trails, and open spaces that are adjacent to the McNeil electric generator. Porter seeks permissive intervention under Commission Rule 2.209(B). In a detailed filing with citations to Vermont statutes, Porter mounts a series of objections to the DES program, arguing that the DES program is not highly efficient, not cost-effective, and will increase carbon emissions.² As part of the argument, Porter urges accurate and transparent carbon emissions accounting.³ Porter disagrees with the Department's advocacy position in this case.⁴ Due to this disagreement, Porter contends that the Department does not represent his interests in this proceeding.

The Department appreciates Porter's comments on transparent emissions accounting but does not believe his stated interests are relevant to the Commission's review of BED's petition and does not believe that permissive intervention under Commission Rule 2.209 is appropriate in this matter.⁵ Additionally, the Department argues that the statutory interest Porter states is not at issue in this matter. The Department contends that Porter's interests are more appropriately directed to the Vermont Agency of Natural Resources ("ANR"), which coordinates the Vermont Greenhouse Gas Emissions Inventory and is not a party to this proceeding.⁶ Further, the Department states that though Porter does not believe his participation in this proceeding will

² See Act 102 of 2018 (amending 30 V.S.A. § 209 and addressing thermal efficiency monies and biomass-led district heat); Act 31 of 2019 (amending 30 V.S.A. § 209(e) relating to the thermal energy and process fuel efficiency fund).

³ See 10 V.S.A. § 582.

⁴ Porter Reply Comments at 1.

⁵ Department Comments at 2.

⁶ *Id.*

create a delay, “the issues Mr. Porter seeks to raise have no bearing upon the Commission’s determination of BED’s request to transfer funds under BED’s Order of Appointment and BED’s approved 2021-2023 Demand Resource Plan.”⁷

IV. DISCUSSION AND CONCLUSION

Porter seeks permissive intervention through Commission Rule 2.209(B).

Rule 2.209(B) reserves to the Commission the power to grant intervenor status on a permissive basis:

- (1) when a statute or Commission rule confers a conditional right to intervene; or
- (2) when an applicant’s claimed interest shares a question of law or fact in common with the matters that must be resolved in the proceeding. In exercising its discretion under Rule 2.209(B), the Commission must consider whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.

Here, Porter has not alleged that a statute or Commission rule confers a conditional right to intervention by a BED ratepayer. Therefore, Porter must demonstrate a claimed interest that shares a question of law or fact in common with the matters that must be resolved in this proceeding. Further, Porter’s participation must not unduly delay the proceeding or prejudice the interests of existing parties or of the public.

The matter in front of the Commission in this case is the petition to transfer funds governed by BED’s Order of Appointment. Under Section III.3 of BED’s Order of Appointment, after receiving Commission approval, BED may transfer funds among eligible resource acquisition and development and support service budget categories.⁸ Section III.3 provides the criteria and conditions for filing a request to transfer funds. A request such as this must be made in writing at least 60 days in advance of the transfer and must include an explanation of why the proposed transfer is required. The proposed transfer request must include the following:

- i. Identification of the DSS budget categories being adjusted;
- ii. Identification of the RA major market budgets being adjusted;

⁷ *Id.*

⁸ *See* Case No. 8606, Order of 2/21/18 at Attachment.

- iii. The amount of the transfers and the percent of the performance period budget by DSS and RA budget category, DSS initiative, and in total;
- iv. A description of the underlying events contributing to the need for the transfer; and
- v. An estimate of the impacts associated with reducing the RA and DSS budget categories.⁹

When evaluating BED's proposed transfer request, the Commission considers the substance of BED's filing regarding the above criteria in the context of the statutory directives regarding efficiency funding as well as the Demand Resource Plan ("DRP") governing BED's current energy-efficiency spending.¹⁰

Porter raises concerns with whether BED's energy-efficiency funding should be spent on the DES program at all. This determination was already made in a final order in BED's last DRP.¹¹ In this case, BED has filed a request to transfer already authorized funds for a purpose that has been approved. The request to transfer the funds does not open up DES program spending to reconsideration in this case. Further, Porter's interests are not distinct from the broad interests of ratepayers, which are represented by the Department by statute.¹² Finally, some of the issues raised by Porter concerning emissions counting and transparency are best addressed by ANR, the agency that manages the program. Therefore, Porter does not satisfy the underlying requirement for permissive intervention under Rule 2.209(B) in this matter and the motion to intervene is denied.

In closing, Porter's motion and subsequent filings demonstrate a detailed set of concerns regarding funding the DES program. Therefore, Porter is encouraged to participate actively in this proceeding. There are several ways that the public may participate in Commission

⁹ See Case No. 8606, Order of 2/21/18 at Attachment § III.3(E).

¹⁰ See, e.g., 30 V.S.A. § 209(e)(1).

¹¹ Case No. 19-3272-PET, Order of 8/26/21; see also Commission Rule 2.221 (providing 28 days for motions to alter or amend a judgment).

¹² See Case No. 18-1633-PET, Order of 9/24/18 at 3 ("In applying Rule 2.209, the Commission has consistently held that an intervenor's interests must be sufficiently 'particularized,' meaning that an intervenor must demonstrate that his or her interest in a proceeding is different from the general interests of other retail ratepayers represented by the Department."); see also *In re Petition of Green Mountain Power Corporation*, 2018 VT 97, ¶ 16 (holding that a person's "interests as a ratepayer did not constitute a substantial, particularized interest, because [the person's] position was not distinct from that of any other generic, individual ratepayer.").

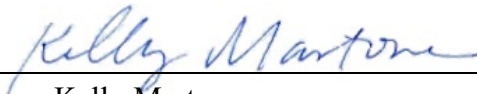
proceedings without becoming a party. The public may file comments at any time during this case. The Commission will carefully review those comments and investigate any relevant issues raised by the public. Public comments serve an important function in Commission proceedings. For example, they can help the Commission identify issues overlooked by the parties or highlight areas where the evidentiary record should be developed to address the public’s concerns. Finally, the public may review all of the information filed in this case at <https://epuc.vermont.gov>. More information about how the public may participate in Commission proceedings is available online at: <http://puc.vermont.gov/public-participation>.

V. RESPOND TO PUBLIC COMMENTS

This case has received 30 public comments. So that the Commission has a more complete record, the Commission requests that BED respond to the substantive issues raised by the public in their comments by Friday, August 18, 2023.

SO ORDERED.


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



Kelly Martone
Hearing Officer

OFFICE OF THE CLERK

Filed: August 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)

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