

Case No. 23-1870-PET

Petition of the City of Burlington Electric  
Department to transfer Thermal Energy and  
Process Fuel funds for use in its District  
Energy System support programs

### **Motion For Reconsideration**

On August 1, 2023, the PUC denied my Motion to Intervene, and provided several reasons for its denial. None of the reasons the PUC provided consider information that came to light after 8/26/2021 when it issued its *Order Regarding Burlington Electric Department's Demand Resource Plan*. The PUC also requested BED respond by August 15<sup>th</sup> to the concerns that the DES is highly-inefficient and not cost-effective. BED does not dispute that the DES is highly-inefficient and not cost-effective, and was unable to or willing to comply with the request to address citizen concerns by August 15<sup>th</sup>.

### **Background**

Vermont law directs the Commission to appoint energy efficiency utilities to develop and implement electric, natural gas, and thermal-energy-and-process-fuels (“TEPF”) energy efficiency and conservation programs. To fund the electric and natural gas programs, the Commission is authorized to establish a volumetric energy efficiency charge on electric and natural gas customer bills. By law, the budgets funded by the energy efficiency charge must be set at a level to achieve “all reasonably available, cost-effective energy efficiency” with consideration given to specific statutory objectives.<sup>4</sup> In addition, the Commission’s conclusions are guided by the objectives and criteria of 30 V.S.A. §§ 218c, 209(d), 209(e), 202(a), and other applicable sections of Vermont statutes and prior Commission orders.

### **Discussion**

The PUC’s primary argument for not considering either the efficiency or the cost of the DES is that the fund transfer has already been approved in Case No. 19-3272-PET, *Order Regarding Burlington Electric Department's Demand Resource Plan*, Order of 8/26/21:

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. 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.

The PUC makes two errors of concluding that it cannot (or will not) reconsider its earlier decision to approve the use of TEPF funds for DEC studies. First, the conclusion suggests that the PUC is above the law: that by ignoring the clear language of Vermont statutes once, it can do so again. *As I’m ready to demonstrate in court*, the PUC must follow Vermont statutes. If the PUC failed to follow statute previously, this fact does not give the PUC license to ignore statutes a second time. As we all learned as toddlers: *two wrongs don’t make a right*. Second: the conclusion fails to address recent information regarding the DEC that came to light after its order in 19-3272: that the DES is highly-inefficient and

not cost-effective. The PUC **must, per statute**, reconsider the transfer request in light of the ballooned budget and the fact that the DEC is highly inefficient.

Because the PUC and the DPS both show a disregard for the clear language of 30 V.S.A. § 209, which requires a DES be highly-efficient and cost-effective to be eligible for TEPF funds, the PUC should allow me to participate in the proceeding to argue for full enforcement of 30 V.S.A. § 209.

## Chronology

- February 21, 2018: The PUC issues the Order of Appointment appointing BED an Energy Efficiency Utility (EEU).
- April 17, 2018: Act 102 is enacted. The Act amends 30 V.S.A. § 209 and allows BED “to use monies subject to this subsection for the conversion of thermal energy customers using fossil fuels to district heat if the majority of the district’s energy is from biomass sources, the district’s distribution system is highly energy efficient, and such conversion is cost effective.” This Act does not allow TEPF funds to be used for studies of district energy systems.
- May 31, 2019: Act 31 is enacted, which amends 30 V.S.A. § 209 and allows BED “to use monies subject to this subsection for the *engineering, design, and construction of facilities* for the conversion of thermal energy customers using fossil fuels to district heat if the majority of the district’s energy is from biomass sources, the district’s distribution system is highly energy efficient, and such conversion is cost effective.”
- July 21, 2020: BED submits Exhibit B in Case # 19-2327 which advises “Estimated overall capital costs for the revised steam based system are on the order of \$16.2 to \$22.4 million.” While Exhibit B is revised twice, the amount estimated for the DES is not revised. (Note: if the most recent and approved DRP dated 1/21/2021 and referenced in 8/26/2021 *Order* appears in the record, I do not find it. I rely on the DRP dated 11/20/2020)
- August 26, 2021: The PUC issues *Order Regarding Burlington Electric Department’s Demand Resource Plan* and allows \$434 of TEPF funds be used for DES studies and engineering. This decision is based on a proposed DES budget of \$16-24 million dollars and the decision is made prior to efficiency studies of the DES.
- April 29, 2022: VEIC publishes the *Assessment of lifecycle GHG emissions from Joseph C. McNeil Generation Station* which states that McNeil is about 26% efficient and might achieve about 29% efficiency with a DES. This study was commissioned by BED.

**Since the filing of the 8/26/2020 Order, the estimated cost of the DES has ballooned to \$42,000,000 and the efficiency has been estimated at 26-29%.** Either one of these facts alone require the PUC to reconsider the decision for the transfer of funds. That the DES fails to meet two of the three required criteria makes it obvious the transfer request should be denied.

## Cost

The cost of the DES has doubled since August 2020: current estimates for the DES are around \$42,000,000. This fact alone calls into question the plans ability to meet “least-cost planning” criteria found in 30 V.S.A. §§ 218c. The fact also requires the PUC to reconsider granting TEPF funds for DES studies in light of 30 V.S.A. § 209, which requires a DES be cost-effective.

BED recognizes that the PUC has a right and obligation to reconsider the DES in light of cost and efficiency concerns. In the approved Demand Resource Plan, BED stated with regard to the DES:

“If the new analyses demonstrate that the DES is cost ineffective and customers do not make a commitment to participate in a future DES, BED will notify the Commission of its intent to cease DES planning and return the remaining TEPF funds that have been allocated to the DES or propose another cost effective program.”

## Efficiency

The *VEIC Memo*, published after the 8/26/2020 *Order* also raises the issue of efficiency. Based on all evidence and testimony that informed the 8/26/2020 *Order*, no knowledge of the efficiency of the DES was at that time known. There was no reason for the PUC to deny the transfer in 2020 based on the efficiency of the DES since no studies were done, or, if done, entered into the record. In light of 30 V.S.A. § 209, which requires the DES be “highly-efficient,” the PUC must reconsider its earlier *Order* by considering the efficiency information found in the *VEIC memo*. 29% efficiency is highly inefficient for thermal systems, and especially inefficient compared with the heating system the DES would replace.

The PUC did not consider that the *VEIC Memo* reports of an extraordinary inefficiency of the DES in its *Order* of August 2021. The *VEIC Memo*, which reports that “The heat capture and use would boost the overall energy efficiency of the McNeil Station ~26% efficiency to ~29% efficiency,” was not published until April, 2022.<sup>1</sup> At the time of the prior approval, the PUC, and the public which it purports to represent, did not know of the gross inefficiency of the Burlington DES. The suggestion that the PUC cannot reconsider a previous decision based on new information makes a mockery of the quasi-judicial process. This new information reveals that the DES does not meet the criteria enacted by the legislature in the two Acts<sup>2</sup> that allow transfer of TEPF funds to DES systems.

## Conclusion

The PUC advises I “*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.*” The PUC further advises that my “*participation must not unduly delay the proceeding or prejudice the interests of existing parties or of the public.*”

I clearly meet the first threshold: the primary issue I raise, that the DES does not meet the legal criteria for a funds transfer, is a question of law, specifically 30 V.S.A. § 209. I clearly also meet the alternative threshold, and raise a question of fact—does the DES meet the criteria for efficiency and cost set by the

<sup>1</sup> Page 11. *RE: Assessment of lifecycle GHG emissions from Joseph C. McNeil Generation Station*. Retrieved from: <https://www.burlingtonelectric.com/wp-content/uploads/VEIC-Final-Memo-to-BED-LCA-of-GHG-emissions-4.29.22-.pdf>

<sup>2</sup> Act 102, 2018 (H. 616), and Act 31, 2019 (H. 133). See also 30 V.S.A. § 209

30 V.S.A. § 209? Further there is nothing in my argument that suggests my participation will create *undue* delay or prejudice the interests of others, and the PUC makes no claim that my participation will unduly delay the proceeding. Recently, ANR decided in a jurisdictional opinion that the DES is subject to Act 250 regulation. With this ANR decision, I concede that ANR is best suited to hear my concerns over 10 VSA 582(g). Now that ANR has ruled that the DES is subject to Act 250 regulation, I'm willing to withdraw my concerns over 10 VSA 582(g) in the instant case and take this issue up with ANR as the PUC suggests. This quells all implied concerns that my participation will create undue delay.

As a BED rate-payer, I share an interest in a point of law and fact in the instant case; and with my withdrawal of my concerns over 10 VSA 582(g), no evidence has been provided that my participation will unduly delay the proceedings. My request for party status meets the criteria for such status and should be granted.

The suggestion that the PUC decision in Case No. 19-3272-PET can supersede state statute and legislative acts undermines and mocks the entire legislative process. If the DPS and the PUC plan to ignore the clear reading of the statute, it is imperative that someone argue for the rule of law. For these reason I request the PUC reconsider its denial of my request to participate in the instant case and approve my request to be a participant.

Dated and electronically filed August 16<sup>th</sup>, 2023 by Pike Porter

/s/ Pike Porter