

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: 11/03/2023

**ORDER DENYING MOTION TO RECONSIDER**

**I. INTRODUCTION**

On June 2, 2023, the City of Burlington Electric Department (“BED”) filed a petition 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 programs to its District Energy System support program.

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

On July 3, the Vermont Department of Public Service (“Department”) filed comments regarding Porter’s motion, stating that “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.”

On August 1, 2023, the Hearing Officer issued an order denying the motion to intervene in this case.

On August 17, 2023, Porter filed a motion to reconsider the order denying intervention.

On September 1, 2023, the Department filed a response to Porter’s motion stating it supported the Commission’s August 1, 2023, order and that Porter has not provided a basis for reversal of the Commission's decision.

In today’s Order, we deny Porter’s motion for reconsideration.<sup>1</sup>

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<sup>1</sup> Today, we also issue an order partially approving BED's request.

## II. DISCUSSION AND CONCLUSION

The Commission reviews requests for reconsideration pursuant to Commission Rule 2.221. Commission Rule 2.221(A) incorporates the language of Vermont Rule of Civil Procedure 59 without modification.<sup>2</sup> Thus, precedent applying Rule 59(e) is relevant to the application of Commission Rule 2.221(A). Reconsideration is appropriate only to avoid an unjust result “due to mistake or inadvertence of the Commission, as opposed to that of a party.”<sup>3</sup> The disposition of a reconsideration motion rests with the discretion of the Commission.<sup>4</sup> Relief pursuant to Commission Rule 2.221(A) is an extraordinary remedy that is to be used with great caution.<sup>5</sup> A hearing is not mandatory.<sup>6</sup>

Granting reconsideration is an extraordinary remedy to be used with great caution.<sup>7</sup> Commission Rule 2.221(A) does not permit parties to relitigate issues or correct previous tactical decisions.<sup>8</sup> It is not a vehicle to introduce new evidence or advance arguments that could have been made previously.<sup>9</sup> A party’s disagreement with the Commission’s decision is not grounds for reconsideration.<sup>10</sup>

Porter’s arguments do not meet the high standard for granting reconsideration of a Commission order. Porter (1) reiterates arguments previously articulated in the motion to intervene about the District Energy System support project; and (2) attempts to challenge the

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<sup>2</sup> Rule 2.221(A) incorporates the language of Vermont Rule of Civil Procedure 59(e), whereas Rule 2.221(B) incorporates the language of Vermont Rule of Civil Procedure 60(b). Porter did not cite to the rule upon which the request for reconsideration is based. Based on the asserted grounds in Porter’s motion, the basis appears to be Rule 2.221(A) because Rule 2.221(B) requires the moving party to demonstrate mistake, inadvertence, excusable neglect, newly discovered evidence, or fraud. None of those grounds was alleged in Porter’s motion.

<sup>3</sup> *Rubin v. Sterling Enterprises, Inc.*, 164 Vt. 582, 588, 674 A.2d 782 (1996) (citing *Osborn v. Osborn*, 147 Vt. 432, 433 (1986) and *In re Kostenblatt*, 161 Vt. 292, 302 (1994)).

<sup>4</sup> *Petition of Vermont Transco LLC, et al.*, Case No. 17-3808-PET, Order of 5/9/18 at 3 (citing *Alden v. Alden*, 187 Vt. 591, 592 (2010)).

<sup>5</sup> *Petition of Vermont Gas Systems, Inc. for authority to condemn easement rights in property interests of the Town of Hinesburg, Vermont, at Shelburne Falls Road, Hinesburg, Vermont, for the purpose of constructing the pipeline authorized in Docket 7970*, Docket 8643, Order of 11/3/16 at 1.

<sup>6</sup> *Rubin*, 164 Vt. at 588, 674 A.2d at 786.

<sup>7</sup> Docket 8643, Order of 11/3/16 at 2.

<sup>8</sup> *Id.* (citing *In re Cent. Vt. Pub. Serv. Corp.*, Docket Nos. 6946/6988, Order of 5/25/05 at 3).

<sup>9</sup> *In re B.K.*, 2017 VT 105, ¶ 13, 206 Vt. 110, 115, 179 A.3d 758, 762 (2017) (“While the trial court has broad power under Rule 59(e) to reconsider issues previously presented, the rule does not contemplate reopening the evidence or creating a new record.”).

<sup>10</sup> *Investigation to consider revising maximum and minimum water levels at Great Averill Pond, Little Averill Pond, and Norton Lake in the towns of Averill, Norton, and Warren's Gore, Vermont*, Docket No. 8429, Order of 12/21/17 at 6.

Commission's decision in Case No. 19-3272-PET. Porter's arguments were considered and addressed in our order denying intervention in this case. As the Department articulates, Porter's second challenge is untimely, irrelevant, and inappropriate to the matter in the present case. This proceeding in no way reopens the matters decided in Case No. 19-3272-PET. 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.<sup>11</sup> Porter's stated interests in the proceeding are not relevant to the Commission's review of BED's request to transfer funds pursuant to Section III.3 of BED's Order of Appointment and BED's request does not open up the DES program spending to reconsideration in this case.

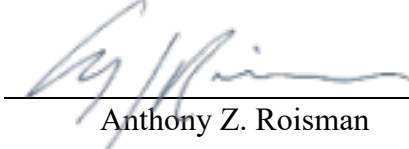
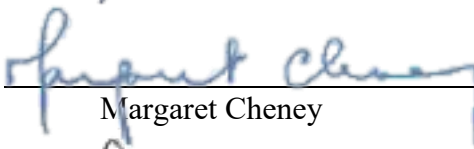
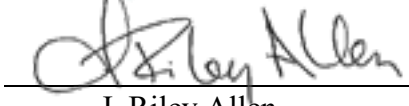
Commission Rule 2.221(A) does not allow reconsideration in these circumstances. Porter's motion is denied.

**SO ORDERED.**

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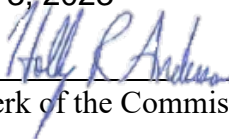
<sup>11</sup> See Case No. 8606, Order of 2/21/18 at Attachment.

Dated at Montpelier, Vermont, this 3rd day of November, 2023.

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

OFFICE OF THE CLERK

Filed: November 3, 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](mailto: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. 23-1870-PET - SERVICE LIST

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