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**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Case No. 25-2607-INV

Investigation into the City of Burlington Electric Department's operations and management practices	
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**CITY OF BURLINGTON ELECTRIC DEPARTMENT'S OPPOSITION TO MOTION
TO INTERVENE**

NOW COMES City of Burlington Electric Department ("BED"), by and through its attorneys, McNeil, Leddy & Sheahan, P.C., and pursuant to Commission Rule 2.209(B), hereby opposes the motion for permissive intervention filed by Pike Porter, dated October 23, 2025.

I. INTRODUCTION

On October 22, 2025, the Vermont Public Utility Commission ("Commission") opened this investigation into BED's operations and management practices. The investigation was prompted by the Commission's letter to the Vermont Department of Public Service ("Department") dated July 31, 2025 ("Commission Letter"), and the Department's response thereto dated August 29, 2025 ("Department Response").

On October 23, 2025, prior to BED having had a chance to address any of the substantive issues in this proceeding, Burlington resident and BED ratepayer Pike Porter ("Porter") moved to intervene in this matter on a permissive basis.¹ Given his lack of a particularized interest separate from BED's ratepayers broadly, and the potential for his intervention to cause undue

¹ See Motion to Intervene Form at 6.

delay, Porter’s Motion to Intervene should be denied. BED provides additional context and reasoning below.

II. ARGUMENT

Porter seeks permissive intervention pursuant to Commission Rule 2.209(B), which provides that “a person may be permitted to intervene in any proceeding (1) where 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, the Commission must consider whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.”

“In proceedings before the PUC [Public Utility Commission], DPS [Department of Public Service] is present to represent the interests of the people of the State.” *In re Petition of Green Mountain Power Corp.*, 2018 VT 97, ¶ 4, 208 Vt. 349 (“GMP”). Thus, in the ordinary course, there is no need for individuals to intervene in such proceedings.

“Intervention in this context is governed by the PUC’s own rules, specifically by Rules 2.209(A) (‘intervention as of right’) and 2.209(B) (‘permissive intervention’).” *GMP*, 2018 VT 97, ¶ 5. “While Rule 2.209(A) is ‘analogous’ to Rule 24 (a) of the Vermont Rules of Civil Procedure (governing intervention of right in ordinary civil litigation), it is also by design ‘considerably stricter.’” *Id.* (quoting *Investigation of Appropriate Principles for Governing Affiliate Transactions*, 1995 WL 881075 (Vt. Pub. Serv. Bd. May 19, 1995)). When Rule 2.209(A) is inapplicable, as here, “Rule 2.209(B) gives the PUC additional discretion to permit parties to intervene in proceedings.” *Id.* ¶ 6. The Vermont Supreme Court explained:

Permissive intervention under this rule requires only “a substantial interest which may be affected by the outcome of the proceeding.” In addition, in deciding

whether to grant permissive intervention the PUC is directed to consider whether there are alternative means for protecting that interest, whether current parties to the proceeding will adequately protect it, and whether intervention would cause undue delay or prejudice to existing parties or the public.

Id. (quoting rule; citations omitted). “Permissive intervention under Rule 2.209(B) is discretionary, so ‘we reverse such a decision only if we find abuse of discretion.’” *Id.* ¶ 13 (quoting *In re Petition of GMPSolar-Richmond, LLC*, 2017 VT 108, ¶ 19, 206 Vt. 220).

“Pursuant to Board Rule 2.209 in Vermont, however, a would-be intervenor before the Board must demonstrate a substantial and particularized interest . . . to gain party status.” *Petition of GMPSolar-Williston, LLC*, 2016 WL 3549296, *6 (Vt. Pub. Serv. Bd. June 20, 2016). “In applying the substantial interest standard under PSB Rule 2.209(B), the Board will deny a motion to intervene where a movant has failed to demonstrate a ‘specific particularized interest’ that may be affected by the outcome of a proceeding. Simply raising generalized concerns is not sufficient to support intervention.” *Id.* at *6 n.23 (internal quotation marks omitted).

It is true that Rule 2.209(B), like Rule 2.209(A), “does not explicitly require that the interest of a potential intervenor be ‘particularized.’ But [Vermont courts] must also give ‘great weight’ to how the PUC applies its own rules.” *GMP*, 2018 VT 97, ¶ 13 (quoting *In re Hydro Energies Corp.*, 147 Vt. 570, 573 (1987)). Such a “particularized interest” is lacking here.

In *GMP*, the Vermont Supreme Court affirmed the PUC’s denial of intervenor status to an applicant who asserted various grounds under both Rule 2.209(A) and (B), one of which was the applicant’s status as a ratepayer, citing a prior administrative decision involving Green Mountain Power Corporation. The applicants in both cases “‘had not demonstrated that his interest as a ratepayer differed in any way from the general interests of other retail ratepayers represented by

the Department [of Public Service].” *GMP*, 2018 VT 97, ¶ 17 (quoting *In re Green Mountain Power Corp.*, 1991 WL 736201 (Vt. Pub. Serv. Bd. Nov. 21, 1991)). So too here:

On the basis of this consistent application, we defer to the PUC’s interpretation of its own rule to require that a “substantial” interest be a sufficiently “particularized” one and to its determination that [the applicant] did not meet this standard. The concerns that [the applicant] raised . . . are purely generalized ones that are theoretically shared by every ratepayer in Vermont.

Id. ¶ 18.

None of the information about which Porter expressed concern is the focus in this proceeding, and he has failed to establish a right to permissive intervention.

But even if Porter could clear the “particularized interest” hurdle, there remain the issues of undue delay and prejudice. Admittedly, there may be few Vermont cases applying these standards in the context of Rule 2.209(B). However, Porter would not prevail even under the more forgiving standard governing requests for intervention under Rule 24(a) of both the Federal and Vermont Rules of Civil Procedure respectively. Take, for example, the following federal cases.

In *Citizens Against Casino Gambling of Erie County v. Hogen*, 417 Fed. Appx. 49 (2d Cir. 2011), the Second Circuit affirmed the denial of a Native American tribe’s motion for permissive intervention, emphasizing the discretionary nature of the relief sought. “Reversal of a district court’s denial of permissive intervention is a very rare bird indeed, so seldom seen as to be considered unique. . . . In fact, a denial of permissive intervention has virtually never been reversed.” *Id.* at 51 (internal quotation marks omitted).

“In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” *Hogen*, 417 Fed. Appx. at 50 (internal quotation marks omitted). The Second Circuit continued:

Additional relevant factors include the nature and extent of the intervenors’ interests, the degree to which those interests are adequately represented by other parties, and whether parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented.

Id. (internal quotation marks omitted). The *Hogen* Court did not need to address any of the additional factors because “undue delay or prejudice is the principal consideration in determining whether intervention is appropriate.” *Id.* at 51. The Court found that the issue that the applicant wanted to advance via intervention “has the potential to inject collateral issues into this litigation and prejudice the parties.” *Id.* Here, as in *Hogan*, that is certainly the case.

In *Kluge v. Brownsburg Community School Corp.*, 432 F. Supp. 3d 823 (S.D. Ind. 2020), the Court denied a student group’s motion to intervene on both an as-of-right and permissive basis. As to permissive intervention, the decision is “wholly discretionary.” *Id.* at 858 (internal quotation marks omitted). “While the Federal Rules require a district court to consider whether intervention would unduly delay or otherwise prejudice the adjudication of the original parties’ rights, they otherwise leave the court with ample authority to consider a wide variety of factors and manage the litigation before it.” *Id.* (citing F.R.C.P. 24(b)(3)). “[J]udicial economy will not be served by permitting [the applicant] to intervene because . . . its intervention would add nothing to the litigation.” *Id.* at 859. So too here. Applicant would only interject collateral issues that would distract from the issues that the parties need to address and resolve.

And in *Commonwealth Edison Co. v. Allis-Chalmers Manufacturing Co.*, 207 F. Supp. 252 (N.D. Ill. 1962), the Court denied even the Attorney General’s motion to intervene on behalf

of the State and consumers in a case involving electric utilities, on both an as-of-right and permissive basis. Rule 24(b) is “a caution to the Court so that in its Zeal [*sic*] to avoid a multiplicity of suits it will not hamper or vex the claims of the original parties.” *Id.* at 257. Moreover: “Additional parties always take additional time. Even if they have no witnesses of their own, they are the source of additional questions, objections, briefs, arguments, motions and the like which tend to make the proceedings a Donnybrook Fair.” *Id.* (internal quotation marks omitted).

BED is deeply concerned that Porter could delay this proceeding similar to what occurred in Case No. 23-3799-PET. Case No. 23-3799-PET involves BED’s 2023 integrated resource plan (“IRP”) filed November 1, 2023. That proceeding remains pending now more than two years after the filing of the IRP, at least in part due to Porter’s intervention in that proceeding over BED’s opposition. In that proceeding Porter was granted limited permissive intervention by *Order Resolving Motions to Intervene and Suspending Schedule*:

To be clear, this scope of intervention is narrow. The Intervenor will be permitted to serve discovery and present testimony on issues related to: (1) Burlington Electric’s economic impact report for McNeil (included as an appendix to the IRP); (2) Burlington Electric’s decision-making regarding the financial impacts of continued operation of McNeil on Burlington Electric’s ratepayers within the applicable “least-cost” standard under 30 V.S.A. § 218c; and (3) Burlington Electric decision-making regarding its reliance on McNeil for its RES compliance obligations under Title 30, Chapter 29. The scope of intervention does not include broader challenges to McNeil’s continued operation or consideration of its fuel source or greenhouse gas emissions for the reasons discussed above. Likewise, the scope of any testimony regarding McNeil’s role in Burlington Electric’s RES compliance obligations will not address whether McNeil is a renewable resource.²

Notwithstanding this limited scope of intervention, Porter repeatedly sought to expand the scope of his intervention beyond that granted by the Commission on several occasions. For

² Case No. 23-3799-PET, *Order Resolving Motions to Intervene and Suspending Schedule*, 02/23/24 at 8.

example, Porter served two sets of voluminous interrogatories and requests to produce, many of which sought information beyond the scope of his limited intervention.³ On July 26, 2024, Porter filed a *Motion for Clarification or Modification of Order Resolving Motions to Intervene and Suspending Schedule* in which he sought permission to raise issues regarding McNeil's greenhouse gas emissions, necessitating BED to incur the cost and expense of having to respond to that motion. Porter also filed the testimony of William R. Moomaw, PH.D, which discussed climate impacts and his assertions that McNeil is not carbon neutral in direct contravention of the Commission's limited grant of intervention.

Moreover, Porter has engaged in motion practice in Case No. 23-3799-PET that has delayed that proceeding. Most notably, Porter filed a Motion to Recuse the Hearing Officer on December 31, 2024, which was eventually denied by the Commission. That proceeding has been at a standstill ever since.

III. CONCLUSION

In sum, BED does not believe that this proceeding is the correct forum for a discussion of Porter's concerns as he cites in his petition. The time and cost that would result from granting his request will accrue to all BED ratepayers. The intervention request is not focused on the stated reasons for this proceeding.

BED wishes to engage constructively with the Commission and Department to facilitate an appropriately scoped business process review to assist BED in improving its regulatory

³ Mr. Porter served a third set of interrogatories and requests to produce on BED. BED objected to the third set of discovery and obtained a protective order from the Commission, again at ratepayer expense.

engagement, consistent with the Commission's and Department's stated concerns. Porter's intervention could delay that outcome, at odds with the interest of BED and its ratepayers.

BED takes seriously its role as a municipal utility and wants to ensure the voices of all its customers and community can be heard. As a municipal utility, BED is accountable to the Burlington Electric Commission and Burlington City Council, both of which have public engagement opportunities, of which Porter has availed himself extensively. Applicant's stated interest in this proceeding is no different from that of the rest of BED ratepayers, which will be adequately represented in this proceeding by the Department.

His request for intervention should be denied.

Dated at Burlington, Vermont this 6th day of November 2025.

Respectfully submitted,

William F. Ellis

William F. Ellis, Esq.
McNeil, Leddy & Sheahan, P.C.
271 South Union Street
Burlington, VT 05401
Telephone: (802) 863-4531
Facsimile: (802) 863-1743
wellis@mcneilvt.com
Attorneys for City of Burlington Electric
Department

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