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STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 20-0203-INV

Investigation into the establishment of reduced)
rates for low-income residential ratepayers of)
Vermont electric utilities)

MOTION TO ALTER OR AMEND

NOW COMES Vermont Public Power Supply Authority (“VPPSA”)¹, by and through its attorneys, McNeil, Leddy & Sheahan, P.C., and pursuant to Rule 59(e) of the Vermont Rules of Civil Procedure, made applicable to this proceeding by Rule 2.103 of the Commission’s Rules of Practice, moves to alter or amend the Commission’s *Order Clarifying the Scope of this Proceeding and Requesting Information* in the above-captioned matter dated April 26, 2022 (the “Order”), by clarifying that the Commission presently lacks the statutory authority to order adoption of low-income residential electric rates on a statewide basis. If the Commission concludes it presently has such authority, VPPSA requests confirmation from the Commission that the Order is interlocutory and not subject to immediate appeal to the Vermont Supreme Court as a final order. In support of this motion, VPPSA respectfully submits the accompanying Memorandum of Law.

WHEREFORE, VPPSA’s Motion to Alter or Amend should be granted.

¹ Hardwick Electric Department is explicitly excluded from this motion and will submit comments on its own behalf.

DATED at Burlington, Vermont, this 24th day of May 2022.

VERMONT PUBLIC POWER SUPPLY
AUTHORITY

By: /s/ William F. Ellis
William F. Ellis, Esq.
McNeil, Leddy & Sheahan, P.C.
271 South Union Street
Burlington, VT 05401
Its Attorneys

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO ALTER OR AMEND**

VPPSA respectfully submits this Memorandum of Law in support of its Motion to Alter or Amend in the above-captioned matter.

Pursuant to Rule 59, the Commission may reconsider issues previously before it and may examine the correctness of the ruling itself. *See In re Robinson/Keir Partnership*, 154 Vt. 50, 573 A.2d 1188 (1990). A Rule 59 motion gives the Commission a last opportunity to ensure the completeness and accuracy of its decision. *See Drumheller v. Drumheller*, 2009 VT 23, 185 Vt. 417, 972 A.2d 176 (2009). For the reasons set forth below, VPPSA respectfully requests the Commission to take this opportunity to amend the Order to clarify that it presently lacks the statutory authority to order implementation of low-income residential electric rates on a statewide basis.

In the Order the Commission found that it “has broad statutory authority to ensure that a low-income program is available for customers of all Vermont electric utilities if we conclude that such a path is warranted.” Order at 4. That authority derives from 30 V.S.A. § 218(e), which provides:

Notwithstanding any other provisions of this section, the Commission, on its own motion or upon petition of any person, may issue an order approving a rate schedule, tariff, agreement, contract, or settlement that provides reduced rates for low-income electric utility consumers better to assure affordability. As used in this subsection, “low-income electric utility consumer” means a customer who has a household income at or below 185 percent of the current federal poverty level. When considering whether to approve a rate schedule, tariff, agreement, contract, or settlement for low-income electric utility consumers, the Commission shall take into account the potential impact on, and cost-shifting to, other utility customers.

Id. After making the foregoing finding the Commission concluded:

Although in today’s Order the Commission finds that it does have jurisdiction to require all utilities to have a low-income program, that is not the only potential pathway to ensuring that all customers have access to affordable energy services. The information requests below will assist the Commission with the broader question of how best to provide access to affordable energy through a utility-by-utility approach, a statewide program, the strengthening of preexisting assistance programs, rate design, or other alternatives not yet put forth.

Order at 5.

VPPSA does not disagree that Section 218(e) grants the Commission authority to order each individual utility to implement low-income residential electric rates. VPPSA also agrees that the Commission has the authority to order Vermont’s electric utilities to provide the requested information as it evaluates the best path forward for ensuring access to affordable energy, and VPPSA fully intends to respond to the Commission’s information requests by May 27, 2022. Where VPPSA may disagree with the Commission is whether the Commission presently has the authority to require adoption of low-income rates on a statewide basis. VPPSA submits that it does not.

The seminal case addressing the scope of the Commission’s jurisdiction is *Trybulski*, in which the Vermont Supreme Court ruled that the Commission:

is a body exercising special and statutory powers not according to the course of the common law, as to which nothing will be presumed in favor of its jurisdiction. . . . *It has only such powers as are expressly conferred upon it by the Legislature, together with such incidental powers expressly granted or necessarily implied as are necessary to the full exercise of those granted*, and it is merely an administrative board created by the State for carrying into effect the will of the State as expressed by its legislation.

Trybulski v. Bellow Falls Hydro-Electric Corp., 112 Vt. 1, 7 (1941) (emphasis added).

As noted above, Section 218(e) provides the Commission the authority to order the implementation of “reduced rates for low-income electric utility consumers ...” ***on a utility-by-utility basis***. The authority to order a statewide approach, however, where one utility’s ratepayers may benefit from or subsidize another utility’s ratepayers, is beyond the scope of authority granted the Commission to date by the Legislature.

The legislative and regulatory history support an interpretation of Section 218(e) that limits the Commission’s authority to ordering low-income rates on a service-territory specific basis. The Commission has found in the past that Section 218(e) “contains no language authorizing the [Commission] to draw upon the State’s general fund or to otherwise order the electric utilities to pool their resources for purposes of funding a ‘statewide’ low-income rate program.” Order at 4 (quoting Docket 7535, Order of 7/22/11 at 84). The decision in Docket 7535 concluded that the statute “as presently written does not permit the [Commission] to order all Vermont utilities to implement a single unified program that makes electricity more affordable for low-income ratepayers.” *Id.*

Section 218(e) remains unchanged from its form when Docket 7535 was decided notwithstanding the Vermont General Assembly having had the opportunity to expressly grant the Commission the authority the Commission at least implicitly suggests it

presently possesses. Yet the Legislature has chosen not to do so. In Docket 7535 the Commission provided a brief history of legislative efforts concerning affordable electric rates for low-income Vermonters. Docket 7535, Order of 7/22/11 at 12-15. In 2006, the Legislature enacted Act 208, which directed the Commission to “conduct a collaborative effort and to design a ‘proposed electricity affordability program in the form of draft legislation.’” *Id.* at 13. In response, in 2007 the Commission presented the Legislature with a “draft bill to create a statewide, low-income rate program.” *Id.* at 14. Rather than adopting the Commission’s recommended statewide, low-income rate program, however, the Legislature enacted Section 218(e) in 2008, determining “that the needs of low-income electric customers in Vermont could be addressed with programs tailored to individual utility service territories instead of a single, statewide program[.]” *Id.* This legislative history strongly suggests that the Commission presently does not possess the statutory authority the Order claims it has.²

As noted above, VPPSA will be responding to the Commission’s information requests as required by the Order. The information provided by VPPSA and the electric utilities may assist the Commission in evaluating a low-income program “through a utility-by-utility approach, a statewide program, the strengthening of preexisting assistance programs, rate design, or other alternatives not yet put forth.” Order at 5. What VPPSA requests through this motion is clarification that the Commission acknowledges it presently lacks the statutory authority to order a statewide low-income program, and that if it eventually determines that the best path forward is a statewide

² Other statewide electric programs in Vermont have been explicitly established by the Legislature in the past. *See, e.g.*, 30 V.S.A. § 8005a (Standard Offer Program); 30 V.S.A. § 8009 (baseload renewable power portfolio requirement).

program it will need to obtain the authority from the Legislature before doing so. Designing social welfare policy in this regard is a subject best left to the elected representatives of Vermonters.

Should the Commission continue to assert that it presently has the statutory authority to order the adoption of low-income rates on a statewide basis, VPPSA respectfully requests confirmation from the Commission that the Order is interlocutory and not subject to immediate appeal to the Vermont Supreme Court as a final order.

CONCLUSION

WHEREFORE, based upon the foregoing, the Commission should grant VPPSA's Motion to Alter or Amend the Order and clarify that it presently lacks the statutory authority to adopt statewide rates for low-income consumers.

DATED at Burlington, Vermont, this 24th day of May 2022.

Respectfully submitted,

/s/ William F. Ellis
William F. Ellis, Esq.
McNeil, Leddy & Sheahan, P.C.
271 South Union Street
Burlington, VT 05401
Attorneys for Vermont Public Power
Supply Authority

cc: Filed in ePUC

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