STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 22-3947-TF

Tariff filing of City of Burlington Electric Department to revise its net-metering tariff effective October 1, 2022	

DEPARTMENT OF PUBLIC SERVICE COMMENTS ON THE CITY OF BURLINGTON ELECTRIC DEPARTMENT'S PROPOSED REFUND AND WITHDRAWN TARIFF CHANGES

On September 2, 2022, the City of Burlington Electric Department ("BED") filed proposed revisions to its net-metering tariff with the Vermont Public Utility Commission ("Commission"), which reverts BED's net-metering 1.1 solar incentive (i.e. for preexisting systems) to its value before Case No. 21-2186-TF and makes other textual changes. On September 30, 2022, the Vermont Public Utility Commission approved BED's tariff revisions excepting language in Sections V.F. (5) and (6), which removed an exception to the 12-month expiration of net-metering credits and the provision of money for net-metering credits over $100 in value (at a customer's request), predominantly due to improper notice and explanation. The Commission's September 30, 2022, order approved the reversion to the solar incentive provided before Case No. 21-2168-TF because the solar incentive established there effectively reduced the compensation afforded to existing NM 1.1 customers despite statute requiring that NM 1.0 customers receive the same incentive as provided upon installation of their system for a period of ten years.[1]

[1] *Tariff filing of City of Burlington Electric Department to revise its net-metering tariff effective October 1, 2022*, Case No. 22-3947-INV, Order of 09/30/2022 at 2 (citing 30 V.S.A. §§ 219a(h)(1)(K)(i)(IV), (iii)(III), and (vi) (2015).

On October 14, 2022, BED supplemented the record regarding its proposed refund and withdrew its proposed changes to Sections V.F. (5) and (6) of its tariff. As explained herein, the Vermont Department of Public Service ("Department") has no concerns with the refund, recommends that BED's exception to the 12-month credit expiration be disallowed, recommends that BED provide further information and argument to justify and explain its cash payments (upon request) for net-metering credits over $100 in value, and recommends that BED revise its notice accordingly (and include a more thorough explanation of the tariff revisions approved on September 30, 2022) after these open questions have been resolved.

Discussion

BED's Proposed Refund: The Department has reviewed BED's proposed refund to NM 1.0 customers whose solar incentive was reduced despite statute requiring that the compensation afforded upon installation remain in place for 10 years. Upon consideration of the total funds involved and the approximate impact of the refund on BED's customers, the Department has no concerns with the refund provided that any refund is provided as a bill credit.[2]

BED's withdrawal of changes to Sections V.F. (5) and (6): The Department recommends that BED's exception to the 12-month net-metering credit expiration should be struck and maintains that BED has not met its burden in justifying continued cash payments. In its filings of October 14, 2022, BED

[2] *See also*, CITY OF BURLINGTON ELECTRIC DEPARTMENT, *Revised Proposed Customer Notice*, filed October 14, 2022 (stating that if the Commission approves BED's refund request, affected customers will receive a credit on their bill).

withdrew its previously proposed revisions to Sections V.F. (5) and (6) of its tariff by noting that the Commission had approved similar language previously[3] and Rule 5.125(C) provides that "customers using pre-existing net-metering systems shall, for a period of 10 years from the date of the net-metering system's commissioning, be credited for generation according to the rates and incentives provided for in 30 V.S.A. § 219a, as the statute existed on December 31, 2016, and the Commission's rules implementing that statute."[4] However, the net-metering rules and statute as they existed on December 31, 2016, arguably preclude net-metering credits from being carried over indefinitely or converted into direct monetary payments.

As the Commission noted in its September 30, 2022, order, "statute and rule . . . require that accumulated credits be used within 12 months."[5] Indeed, 30 V.S.A. § 219a(e)(3)(C) (2015) plainly states "[i]f electricity generated by the customer exceeds the electricity supplied by the electric company . . . [a]ny accumulated credits shall be used within 12 months, or shall revert to the electric company, without any compensation to the customer." This statutory expiration is furthered by Rule 5.104(a)(4), as revised on January 27, 2014. BED has not directly responded to the Commission's assertion of these statutes nor explained why they do not govern.

---

[3] *Investigation into City of Burlington Electric Department's proposed Energy Resource Tariff Rider tariff, filed to take effect on a service-rendered basis as of July 10, 2010*, Docket No. 7629, Order of 09/08/2011 at 6 (deciding 30 V.S.A. § 219a(h)(1)(J) (2011) "clearly authorizes BED's proposed tariff").
[4] *See also*, Sec. 10(d) of H.702, Act 99 of 2014, *An act relating to self-generation and net metering* (Apr. 1, 2014) *available at* https://legislature.vermont.gov/Documents/2014/Docs/ACTS/ACT099/ACT099%20As%20Enacted.pdf.
[5] *Tariff filing of City of Burlington Electric Department to revise its net-metering tariff effective October 1, 2022*, Case No. 22-3947-INV, Order of 09/30/2022 at 4 (citing 30 V.S.A. §§ 219a(h)(1)(K)(ii), 219a(e)(3)(C), and Rule 5.129(B) (July 1, 2017).

Rather, as noted in a footnote to BED's argument that the language in Sections V.F. (5) and (6) of its tariff were previously approved and thereby should be upheld, BED notes that an electric company "[m]ay in its rate schedules offer credits or other incentives that may include monetary payments to net metering customers. These credits or incentives *shall not displace the benefits provided to such customers under subsections (e) and (f) of this section*."[6] However, this statutory subsection fails to justify BED's withdrawal of its previously proposed changes to Sections V.F. (5) and (6) for two reasons. First, nothing in this language provides an exception to the 12-month expiration provided by 30 V.S.A. § 219a(e)(3)(C) (2015). Second, it conflates the auxiliary and optional provisions of 30 V.S.A. § 219a(h)(1)(J) (2015) with the required net-metering incentives provided under 30 V.S.A. § 219a (2015). This is particularly important given the Department's understanding that many provisions of 30 V.S.A. § 219a (2015), including the 12-month expiration of the net-metering credits provided under the statute, were designed to ensure the net-metering program is compliant with the Public Utility Regulatory Policies Act of 1978, Pub.L. 95-617, 92 Stat. 3117 ("PURPA").

The supplemental and optional nature of 30 V.S.A. § 219a(h)(1)(J) incentives, as distinct from those required under 30 V.S.A. § 219a, is further supported in statute and Commission rule. For example, 30 V.S.A. § 219a(h)(2) (2015) distinguishes net-metering credits as being either "a credit or incentive under subdivision (1)(J) (*optional credit or incentive*) or (K) (solar credit)." (emphasis

[6] 30 V.S.A. § 219a(h)(1)(J) (2015) (emphasis added).

added). This separation between the statutory program and a utility's optional incentives are also required by Rule 5.105(F) (rev. Jan. 27, 2014) as a distinct line item to be provided on a customer's bill.

Conversely, BED's tariff addresses the net-metering credit provided under 30 V.S.A. § 219a(h)(1)(K) (2015) and there is no indication or argument that a 30 V.S.A. § 219a(h)(1)(J) incentive is provided or requested by Sections V.F. (5) and (6). The statute is also clear that any such optional incentive does not alter or supplant that provided by statute. Moreover, given the relatively high incentive of the net-metering program during NM 1.1, the 12-month expiration represents sound policy in that it discourages customers from generating excess net-metered energy beyond their needs and encourages such excess energy to be allocated to another via a net-metering group. This approach would maximize the extent to which customers net their usage alone and thereby limits cost shifting to non-participating customers. As such, the 12- month expiration of net-metering credits should govern.

Finally, the Department maintains that continued monetary payments have not been adequately justified by BED. There has been no demonstration that the cash payments, or their extension of the 12-month credit expiration date, are an optional and supplemental credit distinct from those expressly provided by statute. BED has not requested that the monetary payments or the exception to the 12-month expiration requirement be considered an optional, supplemental credit under 30 V.S.A. § 219a(h)(1)(J) (2015) either. The Department also observes that by providing money for net-metering credits, the 12-month expiration of net-metering credits can effectively be circumvented or extended – thereby nullifying the expiration provided by statute. It is problematic to interpret one statutory as nullifying another because the Vermont Supreme Court typically does "not construe a statute in a way that renders a significant part of it pure surplusage."[7]

The accompanying revised proposed notice: Because of the uncertainty regarding the monetary payments, the pendency of the Department's argument that BED's net-metering credits should expire in 12 months,[8] and the comparatively sparse description in the revised proposed notce of the Commission's approval of a revision to the solar incentive before Case No. 21-2186-TF (and its impacts on both participating and non-participating customers), the Department recommends that BED's revised proposed notice be further revised, with an opportunity for comment, after the disposition of these open issues.

Dated in Montpelier, Vermont on this 21st day of October 2022.

Sincerely,

/s/ Alex Wing
Alexander Wing, Special Counsel
Vermont Department of Public Service
112 State Street, Montpelier VT 05602
(802) 828-4011
alexander.wing@vermont.gov

cc: ePUC Service List

[7] *In re LK Holdings, LLC*, 2018 VT 109, ¶ 14, 209 Vt. 14, 201 A.3d 373.
[8] *But see*, Tariff Nos. 8596 and 8603 – GMP Net-Metering Tariff Revision, 2016, (allowing net-metering credits to be extended 4 months as a transition into net-metering credit expiration).