

**\*\*\*DRAFT\*\*\***  
**MINUTES OF REGULAR MEETING**  
**BURLINGTON ELECTRIC COMMISSION**

**Wednesday, September 14, 2022, 5:30 pm**

The regular meeting of the Burlington Electric Commission was convened at 5:31 pm on Wednesday, September 14, 2022 at Burlington Electric Department at 585 Pine Street, Burlington, Vermont and virtually through Microsoft Teams.

Channel 17 was present to record this meeting.

Commissioners Herendeen, Moody, Stebbins, and Whitaker were present. Commissioner Chagnon was absent.

Staff members present at 585 Pine Street included Paul Alexander, Rodney Dollar, Andy Elliston, James Gibbons, Munir Kasti, Laurie Lemieux (Board Clerk), Paul Pikna, Darren Springer, and Emily Stebbins-Wheelock.

Staff members present via Microsoft Teams included Erika Ferland, Betsy Lesnikoski, and Katie Morris.

**1. Agenda**

Mr. Springer asked that the agenda be amended to remove Agenda Item #7 July Financials. It was the plan to have the financials ready for the meeting, but due to preparation for the audit and staffing challenges, we were unable to have those final financials ready and will present at the October meeting. The Commission agreed to postpone the financials until the October meeting.

**2. July 13, 2022 Meeting Minutes**

Commissioner Whitaker will be arriving late to the meeting, the vote on the minutes was postponed until she arrives. This is due to Commissioner Moody's need to abstain as he was not in attendance at the July meeting, and the vote requires a quorum.

Commissioner Whitaker arrived at 5:40 pm, at which time the Commission voted on the July meeting minutes.

Commissioner Herendeen asked that the minutes be amended by changing any reference to IES Standards to IES Recommendations.

Commissioner Herendeen made a motion to approve the minutes of the July 13, 2022 Commission Meeting as amended; the motion was seconded by Commissioner Whitaker and approved by

Commissioners Herendeen, Whitaker, and Stebbins. Commissioner Moody abstained, as he was not present at the July meeting.

### **3. Public Forum**

Mr. Bill Ellis, Esq., from McNeil Leddy, and Sheehan law firm was present via Microsoft Teams, Mr. Alan Bjerke, Mr. Gary Causer, Mr. Mike Hyland, NEPPA, and Mr. Michael Moser, Moser Consulting, were present in-person

Mr. Bjerke is in attendance to discuss BED's fee of \$30 for initiating electric service. Mr. Bjerke stated that, as a housing provider, he has a standing order with BED so that when the power is disconnected for any reason in one of his apartments, the power account is switched to Mr. Bjerke's existing account. Mr. Bjerke stated that the account is sometimes switched for a couple of days between one tenant moving out and a new one moving in, and this initiates a \$30 *"Initial Service Fee"*. Mr. Bjerke stated that he typically will receive a bill from BED for \$30 plus a \$3.00-\$4.00 fee for the actual electricity used during the 1-3 days before the new tenant moves in. Mr. Bjerke believes it's time to change the assessment of the *"Initial Service Fee"* to landlords. Also, with the use of smart meters, there is no need for an employee to go into the field to read the meter in order to transfer the bill, and a property owner with a standing order means that there is no new account opening process, no credit checks and the process takes less than 5 minutes. Mr. Bjerke stated that BED's Operating Guidelines calls for the Commission to periodically review and revise its fees to recover the costs it actually incurs in providing the service for which the fee is assessed. At this time, Mr. Bjerke is asking the Commission to review and lower the fee to reflect the actual cost incurred by the department.

Mr. Springer stated that he spoke with the Director of Customer Care, Mr. Andi Higbee, and was informed that there is some backend work that still takes place regardless of the standing order and smart meters. To determine whether the fee aligns with the work involved, we will have to review our entire operating guidelines and submit any changes to the Public Utility Commission (PUC). Our finance team has gone through some turnover, and BED has had two rates cases in the last two years, so we have not had an occasion to look into the operating guidelines. Mr. Springer thanked Mr. Bjerke for his feedback and assured him that we will be looking into our guidelines and will evaluate if the \$30 aligns with the staff time. If it is determined that it does not, we can make the proposed change with the PUC. Mr. Springer stated that realistically this review likely will not occur until fiscal year 2023.

Commissioner Moody asked how many small-scale rental housing providers are affected by this fee. Mr. Springer stated that his recollection is approximately 20% but will follow up with Chris Burns.

Commissioner Stebbins thanked Mr. Bjerke for coming in and stated that, given how much effort goes into going before the PUC, it makes sense not to pick and choose one piece or another but to look at this fee when reviewing the entire guidelines.

At this time Mr. Springer asked if the GM update could be moved ahead of the Street Lighting update, at which time the Commission agreed to amend the agenda to move the GM update to item #4.

## **5. GM Update**

Mr. Springer stated that Mr. Mike Hyland, the new Executive Director of the New England Public Power Association (NEPPA), is present for a special presentation. At this time, Mr. Springer turned the meeting over to Mr. Hyland.

Mr. Hyland stated that NEPPA is located in Littleton, MA, and that it represents 78 municipal and cooperative utilities in New England. Every year, NEPPA gives out awards, and none is more prestigious than the Commissioner's Award. This year, NEPPA received a nomination for Commissioner Robert Herendeen. At this time, Mr. Hyland read the nomination letter submitted by Mr. Springer, which highlighted Commissioner Herendeen's esteemed and dedicated career. Mr. Hyland stated that the committee reviewed this letter and unanimously agreed that Commissioner Herendeen should receive this award.

Mr. Springer stated that he appreciates Mr. Hyland joining tonight, and thanked Ms. Stebbins-Wheelock for helping with the nomination process. Commissioner Herendeen said a few words, and pictures were taken that will appear on the BED website.

Mr. Springer stated that BED and DPI teams held a stakeholder meeting to take initial feedback and still are meeting separately with other stakeholders and working with Building Electrification Institute as well. This is a complex policy-making undertaking, and we are working to focus efforts on the largest energy users in existing buildings, and craft something that is practical and achievable.

The first-ever Net Zero Energy Festival is Saturday, September 17. The department has run ads in Seven Days and the Kids VT (the Seven Days kids publication), promoted it on social media, Front Porch Forum, and in Find and Go Seek. The Festival will have a DJ and live music, kids activities with Vermont Energy Education Program (VEEP), touch-a-truck and Power Town with our line crew, EV test-drives, and E-bike test rides in partnership with SunCommon and Sierra Club, heat pump, solar and EV vendors, fossil-fuel free food trucks and drinks, raffles, CHAMP, and much more.

Mr. Springer stated that Ever-Green had a site visit to Burlington in late August and continues to work to engineer and design the District Energy project with an eye towards getting updated construction pricing this fall. Headwinds in certain areas persist, including financing rates and volatile energy markets.

BED's yearly Employee Appreciation Lunch is scheduled for October 12 and will be held at McNeil this year, weather permitting. If Commissioners are interested in attending, please reach out to the Board Clerk.

Energy Action Network published its 2022 progress report for the state, and there are some interesting findings and data presented. It found that Vermont is not on track to meet its climate goals for 2030. Thermal and transportation make up 74% of Vermont's emissions (2018 data), while electricity is down to just 2% (from 10% in 2015) due in large part to the passage of Vermont's Renewable Energy Standard in 2015. BED is working to support additional legislation in the thermal and transportation sectors this coming session, which would further aid our Net Zero efforts and the state's climate efforts.

Commissioner Moody asked if our Defeat the Peak events are arbitrary? Mr. Springer stated that anytime we call a Defeat the Peak event, it's because the BED team has looked at the conditions ahead and determined that this may be a time where we are going to experience the ISO New England Peak. We called three peak events this summer, and we hit the peak with one of them.

Hitting the peak affects BED's power supply costs, reducing our share of the relative peak. During the first peak event this summer, we experienced a 445-kilowatt reduction leading to money the department does not have to pay towards our share of the ISO peak.

Commissioner Moody stated that the monthly report indicated that BED was purchasing two Mustang Mach-Es and asked if the department needs this type of vehicle. Mr. Springer stated that the Mach-E Select is one of the lower priced EVs on the market and stressed that they are not the fancier Mustangs that we may think of when we hear "Mustang." The Select does not have the maximum battery and maximum range, and we are purchasing these at a cost similar to the cost of trucks we have purchased in the past. We are replacing trucks that would cost \$50-60K with the \$40K Mach-E that requires fewer operating costs and less maintenance. We also are using our fuel instead of paying for fuel that is coming from out of state. We also are working on procuring a Ford F-150 Lightning, contractor grade truck, which is the lower end, for approximately \$33K to replace one of our current fossil fuel trucks.

Mr. Springer stated that there have been changes in our Finance Department. Ms. Byrne, our previous Finance Director left us to go back to the State of Vermont. Also, our Senior Accountant moved on from BED. At the City Council meeting this past week, we pursued a couple changes. We received feedback from Ms. Byrne at her exit interview and determined that the breakdown of responsibilities was too much for a single position in terms of attracting and retaining candidates. We were asking for a variety of skill sets that most people do not have. We have refocused the position, and it now will be called *Controller* and will be focused on accounting and financial operations management. Also, in recognition of Ms. Stebbins-Wheelock's work, not only managing the finance team multiple times in the past several years, but also playing a lead role in terms of our work with the budget, with Moody's, and our rate cases, we have changed her title to CFO and Manager of Strategy and Innovation. We also have moved the position held by Cheryl Mitchell to be a direct report to Ms. Stebbins-Wheelock.

Commissioner Stebbins asked if the City Council has voted on the WRAP program. Mr. Springer

stated that at the Monday City Council Meeting, the WRAP program was approved and will be filed with the PUC shortly. Commissioner Stebbins asked if there was any mechanism in place that would evaluate the program's success. Mr. Springer stated that this is a state-wide pilot, with funding for roughly 2,000 customers for the first round. This pilot has a goal/requirement of reaching 75% or more low- to moderate-income customer participants. One of the great benefits of this program is that if anyone defaults on their payments, they will not be disconnected. VHFA has a loan reserve to cover defaults, which is one of the reasons we are comfortable with the program. In most cases, these programs have proven to have a low default rate, but if this program has a higher default rate, this will be a result from which we would want to learn., Our Energy Services team will be interested in reviewing the data, including what combinations of measures are being used by other utilities. Mr. Springer stated that VHFA may have a broader set of metrics on which it will be reporting.

#### **4. Street Lighting Update**

Mr. Elliston stated that street lighting was on the agenda at the June Commission meeting. At that time, the Engineering Department became aware of an update to IES recommendations, and it was agreed that the Engineering team would review these updated recommendations and provide feedback at this meeting.

We became aware of the update to IES Recommended Practice 8 (RP8), which is the street lighting level recommendations that we follow. The most significant change affecting our designs is to the classification and recommended lighting levels for our sidewalks. For the criteria BED applies to residential areas, this results in lower lighting levels for sidewalks when compared to the previous version that were significantly higher. It's important to note that lighting levels for roadways remain the same as the previous version. Once we received this update, we went back and revised our designs for all the streets in the South End that we recently had done, including Scarff Avenue, Ferguson Avenue, Richardson Street, and Wells Street, with the goal of implementing our new sidewalk levels. Also, Lyman Avenue is another street in that area that is currently under construction, and we did revise our design prior to installing the conduit, but no street lighting has been installed yet. These changes were implemented in July and August 2022.

For clarification, Commissioner Stebbins stated that, while the new recommendations are lower than the recommendations we were following in the past, the residents living on the streets will feel like there is predominantly more lighting.

Mr. Elliston reviewed the previous version of the way that lighting levels were structured for sidewalks versus the updated recommendations that we currently are following, breaking it down by each street.

Commissioner Whitaker asked if Mr. Elliston has heard from the community since these streets were updated. Mr. Elliston stated that he has received a number of emails, mostly positive. He did receive a report on *See-Click-Fix* in which someone had reported that the streets were dark.

At this time, Commissioner Herendeen presented a PowerPoint presentation. Commissioner Herendeen reviewed four communities that removed a number of fixtures. One of the questions that came up is: When you intentionally reduce light levels below IEC recommendations, do you run into legal issues? The research indicates that less than 10% of municipalities follow IES recommendations, and those that have active knowledge of IES recommendations, tend to follow their recommendations. Those that do not follow IES recommendations have a broad spectrum of criteria and policies. Commissioner Herendeen found no legal battles or pushback in any of the places contacted or reviewed, this list included approximately 10 places around the country.

Commissioner Herendeen reviewed his findings from Flagstaff, AZ, where he spoke with an engineer who stated that they do not follow IES recommendations, and instead light at half of IES recommendations for most of their lighting installations for most metrics.

Mr. Lee Crone is the City Manager in Shelburne, VT, and previously was City Manager in Manchester, VT. At that time, GMP sponsored a LED conversion in which GMP paid the capital cost. IES recommendations were not used, and there were no legal issues. Before Mr. Crone came to Shelburne, there was a large reduction in the number of lights. Over time, he has put a few back in with minimal pushback, again with no consideration of IES recommendations.

Tucson, AZ underwent a dramatic LED change and dropped its average illuminance by 68% and now is at IES recommended levels. It's important to state that they were severely over-lit prior to the change. They do dim the street lights at midnight and at 3:00 am in the University and downtown areas. This is called adaptive lighting.

Pepperell, MA has converted from HPS to amber LED 2200K. They made the switch in response to feedback from a canvass of the population. They also dim down at night between 50%-70%. Commissioner Herendeen received a note from Pepperell stating that it would be completing a town survey to determine the actual illuminance of the dimmed lights and how it compares to IES values.

Commissioner Herendeen stated that, if the City of Burlington were ever going to consider doing anything different regarding lighting levels, we would need a lot of community involvement and really good consultants.

Commissioner Moody asked if, during Commissioner Herendeen's research, there was any legal involvement regarding an accident, injury, or death related to lighting levels. Commissioner Herendeen stated that in Riverside, CA there was an individual hurt who claimed it was due to lighting levels, but the City won the claim.

Commissioner Whitaker stated that we did have a legal case in Burlington regarding lighting, and BED was part of the settlement. Paul Alexander stated that he is reluctant to talk too much about the details of this case and stated that he spoke two months ago about the legality of claims that

have occurred and the pushback that could occur from lawyers who represent people who get hurt. Mr. Alexander stated that it's great that Commissioner Herendeen has produced these cases where there hasn't been pushback, but ultimately, there has to be some set of guidelines with which we're comfortable, whether it's IES or guidelines set by our engineers or another party. There still is going to be a threshold, and once you go below that threshold, and an accident occurs, and there's a claim, then we must be ready to respond.

Commissioner Stebbins thanked Commissioner Herendeen for his hard work. If there is an interest or desire to look into changing our standards and to not follow IES standards, then we need to look at what this undertaking would look like in terms of lawyers, consultants, financial impact, etc.

At this time Mr. Causer, a resident of Lyman Avenue, stated that he has seen a lot of changes in lighting in his neighborhood from 1995 until now, and that they had been very gradual until recently when there was a huge change in lighting levels. Mr. Causer stated that BED has been lighting the streets for many years and has some sense of what an acceptable amount of light is. Mr. Causer asked if it was possible that the IES recommendations which set standards for the entire country, have in some ways taken away the ability for BED to build on its knowledge gained from lighting our streets for 100 years. He used his neighborhood as an example, stating that the lighting has gone from slightly underlit to unbelievably lit and now being backed off again because of the revised standard.

From a homeowners point of view, the idea of the standard appears to be for liability reasons so that if something happens like what happened in 1990, we can point to the standard. Mr. Causer stated that maybe there's other reasons for the standard, such as uniformity, but stated that he is not seeing great uniformity in the South End right now. He's seeing lights of different temperatures, different heights, different fixtures, with Scarff Avenue having one light temperature on the upper block and the lower block having a different lighting temperature. Mr. Causer continued by saying that the lights are kind of all over the place and asked: Do we really need to have this standard?

Commissioner Stebbins stated that, in regard to different lights, levels, color, etc., streets can stay the same for 30+ years, but when something triggers the upgrade, such as a complaint, or conduit upgrade, this action requires the street and the surrounding streets to go through a lighting review. Mr. Causer stated that he is assuming that prior to these changes his street was below the IES recommendation and asked if there was a liability issue at that time. Could an accident have occurred, could an individual say it's dark on that street and the City has a standard that it is not meeting?

Commissioner Herendeen stated that he had the first presentation regarding lighting in 2015 with a law student at Vermont Law School. At that time, we looked into the question of what the City's responsibilities are about lighting and considered the concept of sovereign immunity, which basically means the City gets off the hook on a lot of stuff and generally that applies to street lighting as well.

Commissioner Herendeen stated that there was an accident in the area of the roundabout on St. Paul Street involving an island with a light on it, but that light was not lit. At that time, a lawsuit was filed, and the City won.

Mr. Springer stated that he would like Bill Ellis to weigh in because it's Mr. Springer's understanding that the legal standard is, if the City chooses to light the streets, then it is well advised to follow a lighting standard for purposes of liability.

Mr. Ellis stated that a municipality does not have an obligation or responsibility to light its streets, but once it does, it must do so in a non-negligent fashion. Regarding the immunity question, it is Mr. Ellis' opinion that immunity would not be applicable in Vermont. Running an electric utility and lighting streets are proprietary functions.

The question is "*what's the standard?*" In its literature, the IES states that its recommendations are not a legal standard. Mr. Ellis stated that, if you have a catastrophic injury like what happened in 1994, then the plaintiff's attorney is going to come after the City. If there was an accident and there was a street light nearby and they said, well, maybe that street light wasn't properly lit, not only would there be a lawsuit filed against the City of Burlington, but the lawsuit also would be against Burlington Electric Department.

Mr. Ellis stated that you don't have to follow a standard/recommendation as long as you have an engineer who says this lower standard does not create an unreasonable or substantial risk of personal injury or property damage.

Mr. Ellis stated that a survey could be conducted, but you would get different opinions from different people in different neighborhoods. So many things would need to be taken into consideration when asking these questions. If it's the will of the electorate that we don't want to have lights or we like it dark, then that's a choice that you as the Commission can make. However, if somebody gets hurt because of a lack of lighting and they can prove causation, you have exposure.

Mr. Springer stated that, if the Commission is considering changing anything, we should meet with Hickock and Boardman because they help us manage our insurance policy.

Commissioner Stebbins stated that four or five volunteer commissioners can't make the judgment call as to whether there could be a potential lawsuit for the City. This would involve reaching out to the City Council. Commissioner Stebbins asked the Commissioners what they feel the next steps should be.

Commissioner Stebbins stated that, other than touching base with Hickock and Boardman and the City Council, we need to know how the entire community feels. And then how does that ripple through all of Burlington? Commissioner Stebbins asked the Commission if it would want to do a survey. It would have to be City-wide and would need one standard for the whole City.



Commissioner Whitaker stated that since she has been on the Commission, there have been three complaints, and they've all been about being over-lit. It's going to be difficult to have a standard in place about which everybody agrees.

Commissioner Stebbins asked Mr. Causer if he felt that a survey would be beneficial. Mr. Causer replied that he does not feel that BED should conduct a survey. Mr. Causer stated that BED has been lighting the streets for a long time and that, yes, there are areas that could be improved but doesn't feel a survey would be useful.

Commissioner Moody stated that, based Mr. Ellis' statement and Mr. Alexander's concerns, he believes BED should continue to follow the IES recommendations and, as long as we do, we will be covered. You are not going to please everyone.

Commissioner Stebbins stated that this subject can be discussed further in our Commissioner Check-In next month. In the meantime, Commissioner Stebbins will reach out to Commissioner Chagnon to discuss his thoughts on how he would move forward.

## **6. Customer Satisfaction Survey**

Mr. Springer stated that every three years the Public Utility Commission requires BED to ask our customers how satisfied they are with BED's services. The last Customer Satisfaction Survey was four years ago due to COVID, but going forward, we will follow the every three-year plan. Mr. Springer stated that BED has been working with Michael Moser, an independent consultant, since 2005 to lead us through BED's triennial Customer Satisfaction Survey.

Mr. Moser stated that the Customer Satisfaction Survey outreach was conducted by a third-party. This survey is unbiased and guarantees respondent confidentiality. The survey was conducted during daytimes and evenings on weekdays and weekends via email and telephone. The survey collected responses from 923 residential customers and 183 commercial customers.

Mr. Moser's assessment of the Residential Survey is that all the results have remained steady and stable since 2005. Offering innovative or new services seems to be the least important to BED customers and providing reliable electric services remains one of the top most important characteristics. The survey indicates that customer satisfaction remains above 8 (at 8.7 out of 10), and it would be very challenging to improve on the overall satisfaction rate because it is so high.

Mr. Moser presented the Commercial Survey, which indicates that the results are pretty much the same as the Residential results with a little increase in overall satisfaction (9 out of 10).

Mr. Moser reviewed the results regarding BED Energy Efficiency programs, including weatherization, lighting rebates, or efficient appliances. Where the survey asked if the customer owned an EV or PHEV, the results concluded that 44% of respondents said they are waiting until their current vehicle needs to be replaced, 30% felt that EVs and PHEVs were too expensive, even

with the rebates. The survey asked both residential and commercial customers if they had a cold climate heat pump. The commercial response was just over 25% who had heat pumps and the residential response was 12.9%.

There was a short discussion along with questions that Mr. Moser answered to the Commission's satisfaction.

Mr. Springer stated that full survey will be forwarded to the Commission.

## **7. Commissioners' Check-In**

Commissioner Whitaker asked if Mr. Springer were aware that the General Manager for Green Mountain Transit (GMT) is leaving and would it make sense for BED to get involved with finding the replacement. Mr. Springer stated that he did briefly connect with the individual who is leading the search, and that he asked if we had any thoughts or recommendations. Mr. Springer stated that GMT may be purchasing up to seven additional electric buses, and we are in discussions and working with them regarding incentives.


Commissioner Whitaker stated that Mr. Jack Hanson, the Ward I City Councilor has stepped down. There were articles in VT Digger and Seven Days which made it sound like he was stepping down to take a position at BED that he created. Commissioner Whitaker asked Mr. Springer what his thoughts were regarding these articles.

Mr. Springer stated that the job was created by BED, not by the City Council. This position is in Ms. Stebbins-Wheelock's area, reporting to Jennifer Green in the Sustainability area. This position opened last Friday, and it will be a fully open and competitive process, and we welcome applications from anybody who is interested and qualified. We will go through a competitive process, so any implications otherwise are inaccurate.

Commissioner Moody made a motion to adjourn; the motion was seconded by Commissioner Herendeen and approved by all Commissioners present.

The meeting of the Burlington Electric Commission adjourned at 7:47 p.m.

Attest:

  
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Laurie Lemieux, Board Clerk