

Rule 2

8/27/2020 Redline of Proposed Changes

2.100 Scope and Construction of Rules

2.101 Applicability

These rules ~~shall~~ apply in all proceedings before the Commission.

2.102 Definitions

(A) Commission: the Vermont Public Utility Commission and any Commissioner, hearing examiner appointed by the officer, clerk, or other Commission ~~wherever the context admits of such a construction.~~ Clerk: the clerk employee or agent authorized to act on behalf of the Commission.

(B) ePUC: the Commission's electronic case management filing system.

~~(B)~~(C) Filing (when used as a noun): any petition, application, complaint, motion, exhibit, report, or any other document ~~or thing of any description which is~~ required or permitted to be filed with the Commission in connection with ~~a pending case~~any proceeding within the Commission's jurisdiction. This includes any ePUC submission. This does not include other electronic communications with the Commission that are not part of a proceeding within the Commission's jurisdiction.

(D) Proceeding: any case, docket, rulemaking, or other matter that is before the Commission.

(E) State: the State of Vermont

2.103 Vermont Rules of Civil Procedure

The most recent version of the Vermont Rules of Civil Procedure, whether specifically adopted herein by reference including any additions or whether made applicable by Rule 2.105, below, shall, subject to amendments to Rule 2.104, below those rules resulting from Administrative Orders of the Vermont Supreme Court, apply in the form in which they exist on June 1, 1982 and as they may thereafter from time to time be amended. Commission proceedings. References in ~~such~~these rules to any judge or to any trial court ~~shall be~~are deemed to ~~be a reference~~refer to the Commission; references to the clerk of the court ~~shall be~~are deemed to ~~be a reference~~refer to the clerk of the Commission; references to trials ~~shall be~~are deemed to ~~be a reference to~~refer to evidentiary hearings; references to complaints ~~shall be~~are deemed to be references to petitions, applications, or complaints; and references to actions ~~shall be~~are deemed to be references to proceedings before the Commission. Where less than the whole of any rule of the Vermont Rules of Civil ~~Procedures~~Procedure is specifically adopted by reference, the provisions of the remainder ~~thereof shall of that rule do~~ not apply ~~except by specific order of the Commission issued pursuant to Rule 2.107.~~

2.104 Conflicting Authority

In the event of ~~any~~a conflict ~~between the provisions of,~~ any other Rule or General Order of the Commission ~~and these rules, the former shall prevail. In the event of any conflict between over these~~

~~rules and over~~ otherwise applicable provisions of the Vermont Rules of Civil Procedure ~~and any Rule or General Order of the Commission, including any provision of~~

2.105 Proceedings Governed by These Rules

~~All proceedings are presumed to be governed by these rules, the latter shall prevail.~~

2.105 Procedures Not Specifically Governed

~~Procedures not specifically governed herein shall. Proceedings may also~~ be governed by the Vermont Rules of Civil Procedure, ~~by any other Commission rules, Commission orders, or applicable Rule or General Order, or by any applicable statute.~~ statutes.

2.106 Construction

These rules shall be liberally construed to secure the just and timely determination of all issues presented to the Commission.

2.107 Waiver of Rules

~~In order~~ To prevent unnecessary hardship or delay, ~~in order~~ to prevent injustice, or for other good cause, the Commission may waive the application of a rule upon such conditions as it may require, unless precluded by the rule, ~~itself~~, or by statute. In an ongoing proceeding, to obtain a waiver, a person must file a motion pursuant to Rule 2.206. When there is not an ongoing proceeding, a waiver can be requested by filing a petition pursuant to Rule 2.202.

2.108 Severability

~~In the event that~~ If any of these rules is found by a court of competent jurisdiction to be illegal or void, the remainder ~~shall be deemed are~~ unaffected and ~~shall~~ continue in full force and effect.

2.109 Immediate Applicability and Repeal of ~~Prior~~ Previously Issued Rules

~~Rules of practice and any~~ When amendments ~~or additions thereto~~ to these rules of practice or to the Vermont Rules of Civil Procedure are made, those amendments go into effect immediately. Those amendments apply to pending proceedings, and all previously adopted by rules of practice and amendments are repealed to the extent they are amended, unless the Commission are hereby repealed, except that with respect to any proceeding pending determines (on the effective date hereof, its own or at the Commission may apply any provision of such prior rules where the failure to do so would work an request of a party or participant) that a previous rule should continue to apply to a pending proceeding to avoid injustice or substantial inconvenience.

2.110 Use of ePUC for All Commission Proceedings

The provisions of these rules presume the use of ePUC unless specifically stated otherwise. All Commission proceedings and all filings in Commission proceedings must use ePUC, unless:

- a filing is required to be made in paper by statute or under Rule 2.202,
- a party or participant obtains a waiver under Rule 2.107 to allow for paper filings (for instance, because the person does not have high-speed internet in their home or office),
- the filing is a consumer complaint or public comment, or
- a party or participant seeks confidential treatment of the filing (in which case a redacted version must still be filed in ePUC, but the allegedly confidential document must be filed in accordance with Rule 2.226).

2.200 Procedures Generally Applicable

2.201 Practice Before the Commission

(A) Notice of appearance.

- All notices of appearance must specifically state the party or participant that is being represented.
- Attorneys ~~shall~~ must file a ~~written~~ notice of appearance with respect to any ~~matter~~ proceeding in which they are representing a party ~~or participant~~.
- Except in the case of a consumer filing a consumer complaint ~~or a system installer filing a net-metering registration or application~~, pro se representatives ~~shall~~ must likewise file a notice of appearance. ~~Except as otherwise provided by law, a party whose attorney has failed to comply with this requirement, or a party appearing by a pro se representative who has failed to comply with the requirements of this rule, shall not be entitled to notice or service of any document in connection with such matter, whether such notice or service is required to be made by the Commission, by a party or by a person seeking party status.~~
- Although system installers filing a net-metering registration or application need not file a notice of appearance, they must indicate—and keep up-to-date—the name and contact information of the person they are representing.
- A copy of each notice of appearance ~~shall~~ must, on the same day ~~on which~~ it is filed, be served by the party filing ~~the same~~ it upon all persons or parties on whose behalf a notice of appearance has been filed. A list of such persons and parties will be ~~provided by the clerk upon request~~ available through ePUC. The procedures for service are listed in Rule 2.204.
- It is the responsibility of each representative for any party or participant that appears in front of the Commission (whether an attorney or pro se) to ensure that their contact information in ePUC is accurate and up-to-date at all times. The primary email address submitted for a representative must be the email address to which all notices of filings and issuance of Commission-generated documents for a particular Commission proceeding will be sent.
- It is the responsibility of each representative for any party or participant that appears in front of the Commission (whether an attorney or pro se) to ensure that they are familiar with all applicable Commission rules, including all of Rule 2 and all applicable rules that are referenced by Rule 2.
- Electronic filing of any document through ePUC by or on behalf of a representative in a Commission proceeding constitutes consent by that official representative to be served with and to receive notice of any and all documents filed with or issued by the Commission via electronic service in that Commission proceeding.

(B) Pro se appearances. ~~For purposes of these rules a person appearing pursuant to the authority of this section shall be known as a pro se representative. and appearances by net-metering system installers.~~

• In its discretion, the Commission may permit persons who are not attorneys to appear before it ~~as follows:~~

• For purposes of these rules a person who is not an attorney and is representing themselves or representing a party is known as a pro se representative.

• Each pro se representative must provide the identity and contact information of the party they represent, in addition to providing their own contact information.

• A partnership may be represented by a partner, ~~and,~~

• A corporation, cooperative, or association may be represented by ~~an officer thereof~~ one of its officers (or by an employee designated in writing by an officer ~~thereof~~. Such permission shall be given in all proceedings unless, because of their factual or legal complexity or because of the number of parties, the Commission is of the opinion that there is a substantial possibility that the participation of a pro se representative will unnecessarily prolong such proceeding or will result in inadequate exposition of factual or legal matters. Notwithstanding the foregoing, with the designation attached to the notice of appearance filed with the Commission).

• An applicant for a net-metering registration or application may be represented by a system installer, so long as the installer certifies that the applicant has authorized the installer to file the registration or application on the applicant's behalf and also certifies that the applicant has signed a binding installation contract.

• Any individual may be a pro se representative in ~~his or her own cause. This rule shall in no respect relieve any person or party from the necessity of compliance with any applicable rule, law, practice, procedure or other requirement. Except as provided in Rule 2.201(D), anyone appearing as a pro se representative shall be under~~ their own cause.

• With regard to the proceeding they appear in, all parties and pro se and other representatives must comply with all applicable rules, laws, practices, procedures, and other requirements, including all the obligations of an attorney admitted to practice in this state ~~with respect to the matter in which such person appears.~~

(C) Attorneys admitted elsewhere.

• An attorney admitted to practice and in good standing in any other state ~~or American or common law jurisdiction~~ may appear in particular ~~matters~~ proceedings with the permission of the Commission.

• An attorney who previously was permitted to appear under this subsection of this Rule does not need the Commission's permission ~~of the Commission~~, provided that such attorney must have ~~co~~ for later appearances that are on behalf of the same client, so long as the attorney submits an attestation that the attorney continues to represent that same client and that the attorney remains in good standing in another state.

• When an attorney admitted elsewhere enters a Commission proceeding, they accept all responsibilities that apply to all attorneys and pro se representatives that appear in front of the Commission. This includes the requirements that they keep all contact

information up-to-date and that they be familiar with all applicable Commission rules, including all of Rule 2 and all applicable rules that are referenced by Rule 2.

• The Commission, in its discretion and at any time, may impose conditions on an attorney admitted in another state who seeks to appear before the Commission, including a requirement that the attorney work with local counsel of record who is admitted to practice in Vermont.

(D) Withdrawal of appearance. ~~An attorney~~

• Any person who has appeared on behalf of a party may withdraw only upon permission of the Commission ~~or when a substitute appearance is filed by a properly designated representative of the party (e.g., when an attorney from the same law firm, agency, or corporation simultaneously enters a notice of appearance).~~

• A person appearing as a pro se representative for themselves may withdraw without permission of the Commission, ~~provided, that if other counsel has not appeared for such person, such withdrawal shall be~~ which is deemed to constitute withdrawal of that person as a party.

(E) Ex parte communications.

(1) Prohibited communications. Unless required for the disposition of ex parte ~~matters~~ proceedings authorized by law, upon the filing in a contested case of a complaint, petition, application, or other filing ~~which that~~ the Commission has treated as the same, ~~no member, employee, or agent of~~ the Commission may not communicate, directly or indirectly, in connection with any issue of fact, with any party or any person, or, in connection with any issue of law, with any party or any employee, agent, or representative of any party, except with the consent of all parties or upon notice and opportunity for all parties to participate.

(2) ~~Where~~ Allowed communications. Non-substantive ex parte communications regarding procedural, scheduling, technological, or administrative matters are allowed, even in contested cases, and no disclosure to other parties is required. Also, when circumstances require, in a contested case, ex parte communications for ~~scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits~~ emergency situations are authorized, provided:

~~(a) the member, employee, or agent of~~

(a) the Commission reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication regarding the emergency, and

(b) the ~~member, employee, or agent of the~~ Commission ~~makes provision~~ promptly ~~to notify~~notifies all other parties of the substance of the ex parte communication and allows an opportunity to respond.

- (3) Participation in decision. ~~Unless required for disposition of ex parte matters authorized by law, any member,~~ In general, a Commissioner, Commission employee, or agent of the Commission ~~who has, in connection with a pending, contested case, except with the consent of all parties or upon notice and opportunity for all parties to participate, communicated in connection with any issue of fact with any party or interested person or, in connection with any issue of law, with any party or any employee, agent or representative of any party, shall~~ may not participate or advise (except as a witness) in the Commission's decision, recommended decision, or ~~Commission review~~ except as a witness or as counsel in public of a pending, contested case if the person has communicated about any facts regarding the case with any person or party, or has communicated about any issue of law with any party or any employee, agent, or representative of any party. However, the prohibition in this provision does not apply to any of the following:
- communications allowed under (2) above;
 - communications that are required for disposition of ex parte proceedings authorized by law;
 - communications that all parties have consented to; or
 - when there has been notice and opportunity for all parties to participate.
- (4) Improper communications by parties. Any person or party who, directly or through an employee, agent, or representative, communicates or attempts to communicate with ~~any member, employee or agent of~~ the Commission on any subject so as to cause, or ~~with the intent to potentially~~ cause, the disqualification of ~~such member, a Commissioner, Commission~~ employee, or agent of the Commission from participating in any manner in any proceeding, may be disqualified from ~~subsequent~~later participation in the proceeding, may be dismissed as a party to the proceeding, may be held in contempt of the Commission under the Commission's powers as a court of record under 30 V.S.A. § 9, and/or may be deemed to have waived any objection to the ~~subsequent~~later decision by the Commission with respect to any ~~matter which~~proceeding that is the subject of such communication.
- (5) Exception ~~Notwithstanding.~~ Despite any provision ~~of subparagraph (1) or (3),~~ above, ~~members, Commissioners, Commission~~ employees, and agents of the Commission may communicate with other ~~members, Commissioners, Commission~~ employees, or agents, provided that none of the latter has engaged in communications prohibited by (1) above.

~~(6)~~

(6) Facilitation and mediation. An employee or agent of the Commission may, with the consent of the parties, confer separately with a party or their representative in an effort to mediate or settle ~~matters~~proceedings pending before the Commission. Pursuant to (1), above, such employee or agent of the Commission may not participate in rendering a decision in such ~~matters~~proceedings.

2.202 Initiation of Proceedings, Referrals of Proceedings, and Participation in Proceedings

~~Except for cases initiated by the Commission,~~(A) Initiation of proceedings. To initiate a
proceeding is initiated by filing, a party must file a complaint, petition, or other application
with the Clerk at the Commission's office during normal business hours. If the named defendant
or respondent is a utility, service of process shall be completed by the Clerk who shall send a
copy of the filing which initiates the proceeding in ePUC. Paper filings may initiate
proceedings only in the following instances:

(1) consumer complaints;

(2) proceedings that are statutorily required to be filed in paper (such utility by certified
mail, return receipt requested. If the named defendant, respondent, or other person or entity
entitled to notice is not a utility, then the as certain condemnation proceedings);

(3) proceedings in which the party initiating the proceeding shall procure a summons from
the Clerk and shall cannot file or receive documents electronically (if a party or participant
seeks a Rule 2.107 waiver of the requirement to file in ePUC, good cause the summons,
together with the filing which initiates the proceeding, to may be served on such defendant to
respondent demonstrated by an attestation that the person does not have high-speed
internet in their home or office); and

(4) notices of appeal from a final decision of the Commission to the Vermont Supreme
Court. Notices of appeal must be filed in paper with the clerk of the Commission, with
any entry fee paid in the manner provided by set forth in Rule 3 of the Vermont Rules of
Civil Appellate Procedure within thirty days after such. A request by an ePUC user for
permission from the Commission to appeal to the Vermont Supreme Court before the
Commission issues a final judgment must be filed in ePUC and should not be
accompanied by a paper filing.

(B) Enforcement proceedings and referrals of enforcement proceedings. For enforcement
proceedings, whether initiated by a member of the public, a party, or the Commission, the
Commission may at any time refer the matter to the Department of Public Service in
accordance with applicable statutory provisions. Although not required, it is preferable

that any filing that seeks to initiate an enforcement proceeding at the Commission include, at a minimum, the following:

- A statement of whether the matter has been brought to the Department of Public Service for evaluation of an administrative citation under 30 V.S.A. § 30(h) and, if so, what the Department concluded (to the extent that the conclusion is public and not a matter of confidential negotiations). If the matter was not brought to the Department's attention, the statement should explain why it was not brought to the Department.
- Reference to any applicable statutes, rules, Commission orders, or certificates of public good that are alleged to have been violated.
- The factual bases, preferably in the form of one or more signed affidavits, for each alleged violation.

(C) Participation in proceedings. To file anything with the Commission, other than a public comment or a paper filing allowed under Rule 2.202(A) (including any filing by a user who must file in paper because they cannot file or receive documents electronically), a user must first log into ePUC's public portal using a user name and password. A person, entity, or group of persons functioning as a single entity may use ePUC to file a motion to intervene in a Commission proceeding or, as provided in other Commission rules related to certain specific types of proceedings, a notice of intervention in a Commission proceeding.

2.203 Signing of Petitions, Motions, and All Other Pleadings Filings

- Except for prefiled testimony (which is signed and attested to by its author, in accordance with Rule 2.213(C)) and exhibits or other attachments to another filing, every petition, motion, or other pleading shall filing must be signed or electronically signed by at least one an attorney or pro se representative of record in his their individual name, whose with their email address and telephone number shall be stated.
- Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or pro se representative constitutes a certificate by him that the best of such subscriber's knowledge, information and belief there are good grounds to support it; and that it is not interposed for delay.
- The signature of an attorney or pro se representative constitutes a certificate by that person that to the best of their knowledge, information, and belief there are good grounds to support it, and that it is not being done for delay or any other inappropriate purpose.

2.204 Pleadings and Other Filings; Service, Filing, Form, and Amendment

(A) Service, when required. In addition to any other requirement imposed by law, every filing shall must, on the same day on which it is filed, be served by the party filing the same upon every other party who has filed a notice of appearance, unless the Commission for good cause otherwise directs.

(B) Service, how made. ~~Whenever under these rules~~

~~• When service is required to be made on a party, it shall~~must be made upon the attorney or pro se representative whose appearance has been attorneys and representatives who have filed on behalf notices of appearance.

~~• ePUC users and non-ePUC users. Parties or participants who are using ePUC to participate in a Commission proceeding (ePUC users) will have their email addresses included on the "People" tab in ePUC, while parties or participants who are not using ePUC to participate in a Commission proceeding (non-ePUC users) will have only their physical mailing addresses included on the "People" tab in ePUC.~~

~~• Service on State agencies through ePUC. When a party or participant initiates a Commission proceeding in ePUC, service on any State agency that is entitled to service must occur through ePUC. For petition filings labeled "Other" in ePUC, the party or participant should contact the clerk to ensure that State agencies (in addition to the Department of Public Service) are added to the ePUC case and served.~~

~~• Electronic service for all ePUC users. In all cases, service is deemed to be made upon all ePUC users in that proceeding by automatic notification through ePUC. ePUC will send email notification of a filing made via ePUC with a link to access the document filed to all parties or persons upon whom service is required by the applicable rules of procedure, and who are using ePUC to participate in a Commission proceeding.~~

~~• No certificate of service when service is entirely through ePUC. In cases where all parties and participants are ePUC users, no certificate of service is required. This rule does not relieve anyone of any obligation to file other certifications, such party-as any required certificates or notices regarding the exchange of discovery.~~

~~• Paper copies for non-ePUC users. In all cases, service may be made upon non-ePUC users by mailing a copy of the filing, first-class postage prepaid, to the person whose notice of appearance is on file, but. For service upon non-ePUC users, service may also be made by personal delivery or by any other means authorized by the person entitled to service. The filer, or the Commission in the case of a Commission-issued document, must serve a paper copy of an electronically filed document on all parties or persons upon whom service is required by the applicable rules of procedure, and who are not using ePUC to participate in a Commission proceeding.~~

~~• Certificates of service. When a party or participant in a Commission proceeding serves paper copies, a certificate of service is required. A certificate of service must include the names and addresses of entities or individuals who are served with a paper copy of a filing. A certificate of service need not include the names and addresses of any entities or individuals for whom service is effectuated electronically using ePUC.~~

(C) Filing, manner and significance.

~~• Filing shall of all public documents must~~ be accomplished ~~by delivery to the clerk at the office of the Commission through ePUC~~ or by delivery to the Commission during the

course of ~~an evidentiary~~ hearing, unless a waiver has been granted under Rule 2.207 for paper filing.

- Filing of documents for which confidential treatment is sought must be accomplished through the procedures listed in Rule 2.226.

- Regardless of the method of delivery employed, filing of all public documents occurs only upon receipt by the ~~clerk~~PUC system or receipt by the Commission, as the case may be. Such.

- Every filing ~~shall constitute~~constitutes a representation by the attorney or pro se representative signing the ~~same~~filing that a copy thereof has been or will be served on the same day on which it is filed upon every other party or participant on whose behalf a notice of appearance has been filed.

- (D) Number of copies. ~~Except as provided herein, or as otherwise ordered by the Commission, all materials required to be filed shall require~~In the limited circumstances where Commission rules allow paper filings, all materials required to be filed must include an original and one copy of each document. The exceptions to this rule are as follows:

~~Rule 2.205 (Statement Regarding Persons Entitled to Notice) — Original plus one copy.~~

~~Rule 2.214 (Discovery Responses) — One copy only.~~

~~Rule 2.302 (Consumer Complaints) — Original only.~~

~~Rule 2.401 (Tariffs) — Original plus nine copies.~~

~~Rule 2.403 (Petition for Declaratory Ruling) — Original plus five copies.~~

~~Rule 2.404 (Petition for Adoption of Rules) — Original plus five copies.~~

- (E) Form of filings ~~Generally.~~

(1) In general.

- Except as provided in Rule 2.204(F), all filings ~~shall~~must be typewritten on paper typed using a common typeface, size 12 font, double-spaced, and formatted as 8 1/2" x 11" in size with at least 1" margins.

- All ~~filings~~motions and briefs must be ~~endorsed~~no more than 25 pages in length (excluding exhibits), all responses to motions and briefs must be no more than 15 pages in length (excluding exhibits), and all reply filings must be no more than 10 pages in length (excluding exhibits).

- All filings longer than 1 page must include in the upper right-hand corner ~~with~~of each page the name and ~~docket~~case number of the, the page number, and the date. This information is not required on the first page of a letter or other filing, provided that the name, case, the page numbering of the filing and the date upon

~~which it was prepared. Page numbering shall show both the number of the particular page and the total number of pages comprising, and date appear somewhere on the filing first page.~~

~~• Filings ~~shall~~ must be headed by a descriptive title. The~~
~~• Filings must address the procedural and substantive matters that are before the Commission; they must not use inappropriate or the clerk may refuse derogatory language, and they must not make personal accusations that are speculative or are not directly related to accept the procedural and substantive matters that are before the Commission.~~

(2) Separate documents required.

- ~~• Each document (e.g., each witness's prefiled testimony, each individual exhibit, etc.) must be identified and filed in ePUC separately.~~
- ~~• Individual documents must not be consolidated into a single larger document for filing or, after in ePUC.~~
- ~~• Service lists that are not part of an initial filing, in a case may be combined into a single document with any other filing, except for prefiled testimony or exhibits.~~

(3) Document numbers required. When parties or participants provide lists of prefiled testimony and exhibits that have been previously filed in ePUC, whether by filing such a list in ePUC or by hand delivery at a hearing, the list must include the ePUC document number for each document that was prefiled using ePUC. (Each document filed electronically via ePUC is assigned an individual document number formatted as a number followed by a forward slash followed by another number, e.g. 123456/456789.) Guidance for accessing and including the ePUC document numbers assigned to prefiled testimony and exhibits can be found on the Commission's website.

(4) Time of submission.

- ~~• An electronic filing may be submitted on any day, including holidays and weekends, and at any time reject any filing which fails to conform.~~
- ~~• A filing is considered filed on the date it is submitted if submitted by 4:30 P.M. on a date that the Commission is open for business.~~
- ~~• A filing submitted after 4:30 P.M. or on a weekend, holiday, or any other day the Commission is not open for business will be considered filed on the next business day.~~
- ~~• Failure of any system other than ePUC will not excuse a failure to comply with a filing deadline unless the Commission exercises its discretion to extend the deadline. If ePUC or any of its subsystems is unavailable due to system maintenance or failure, the Commission will issue a notice (in the ePUC~~

portal and on the Commission's website) extending any deadlines that occurred during the time that ePUC was unavailable.

(5) Receipt of submission.

• The ePUC system will automatically acknowledge receipt of any filing and will provide an identifying case number in the email confirmation of any initial filing that has been acknowledged by ePUC.

• The identifying case number must appear on all subsequent filings pertaining to that Commission proceeding.

• However, a filing is not deemed accepted by the Commission until it meets the requirements of this rule, provided, that if no substantial prejudice will occur to any other party, these rules and of the ePUC system.

(6) Review of submission.

• An initial filing that has been submitted via ePUC will be reviewed by the Commission for compliance with the requirements of these procedures and the ePUC system, and with any applicable statutes and Commission rules.

• After review of the filing, the Commission will electronically notify the filer if the filing cannot be processed until specified actions have been taken as required by these procedures and the ePUC system, and by any applicable statutes and Commission rules.

• If a filing has not been accepted, a filer may submit a corrected filing. The Commission will accept a corrected filing if it meets all requirements of these procedures, the ePUC system, and any applicable statutes and Commission rules.

• When a corrected filing has been accepted, the date and time of filing for all purposes under the Commission's rules of procedure are the date and time that the corrected filing was submitted.

(7) Component parts of single document. When component parts of a single document are filed separately using ePUC (e.g., separate signature pages from multiple parties to a settlement agreement), each party that files a separate component must provide a name for that component in the appropriate ePUC field, clearly indicating the nature of the component filing and the specific document that the component filing is intended to be a part of (e.g., "Signature page of 123 Solar to settlement agreement with Agency of Natural Resources").

(8) Corrected documents. Documents filed for the purpose of correcting previously filed documents may be filed in ePUC by selecting the "revised" option from the appropriate filing screen. The new document will then appear in ePUC. The previously filed document will still appear in ePUC but will be marked as "superseded."

(9) Filing only in open cases. If the status of a case, found in the upper right corner of the case screen in ePUC, reads “closed,” a filer must contact the clerk of the Commission before filing any document that the filer believes is or may be related to the closed case. The clerk will assist the filer in determining whether it is appropriate to make the new filing in the closed case or to initiate a new case with a different case number when making the filing.

(10) Prohibited documents. A document cannot be submitted via ePUC if it:

(a) is not created or saved in searchable PDF, searchable PDF/A, Excel (.xls or .xlsx), jpeg, .ptx, Powerpoint (.ppt or .pptx), MS Word (.doc or .docx), MP4, or AVI format;

(b) is larger than 50 MB, unless it is filed in segments no larger than 50 MB; or

(c) contains a virus detected by the ePUC system.

(11) Requirements for electronic documents. An electronically filed document that has been submitted via ePUC will be accepted by the Commission only if:

(a) it has been formatted as required by the Commission’s rules of procedure and is clearly legible, and word-searchable, in the electronic format in which it is filed;

(b) any password protection or other security device has been removed; and

(c) all information required to be included with the filing has been submitted.

(12) Different formats for documents.

• Documents that cannot be filed in any of the supported formats must be filed with the Commission and served on other parties or participants to a Commission proceeding in paper copy.

• If the filing party ~~shall be afforded~~ has an electronic version of a document, then they should also provide the Commission with an electronic version of the document (in addition to filing a paper copy with the Commission).

• Parties or participants to a Commission proceeding may agree among themselves to exchange electronically documents that are not in an ePUC-supported format in place of serving each other with paper copies.

(13) Signatures of representatives of parties and participants.

• Where a signature is required, the electronic filing of a petition, pleading, motion, or other document constitutes the representative's signature on the document and for all other purposes under the applicable rules of procedure, including the imposition of sanctions under Rule 11 of the Vermont Rules of Civil Procedure, which requires a reasonable opportunity to cure the defect, and such cure, if made, shall be deemed to relate to the original date of filing, inquiry and good-faith basis for all representations in written filings.

(F) Special rules for certain exhibits. Exhibits need not comply with the typewriting or size requirement of Rule 2.204(E) when their purpose or content makes it impracticable to do so, but in all cases where it is not manifestly impracticable to do so, exhibits shall be so designed that they can be folded to a size 8 1/2" x 11". The identity and page number of any exhibit which measures, or which is folded to measure 8 1/2" x 11", shall appear in the upper right hand corner when the exhibit is positioned with the 8 1/2" side as its top and bottom. The identification and page number shall be set out horizontally when the exhibit is positioned in the manner described in the preceding sentence. The Commission or the clerk may refuse to accept for filing, or after filing, may at any time reject any exhibit which fails to conform to the requirements of this rule, provided, that if no substantial prejudice will occur to any other party, the filing party shall be offered a reasonable opportunity to cure the defect, and such cure, if made, shall be deemed to relate to the original date of filing.

• An electronically filed document that requires a signature must include a signature block containing the representative's typed-in name, preceded by "/s/" or an electronic facsimile of the signature, a scanned copy of it, or another form of electronic signature as defined in 9 V.S.A. § 271(9), and the name, address, telephone number, and email address of the person signing the document.

• A procedural document filed by non-electronic means must be signed as provided in the applicable rules of procedure.

• Any document filed jointly must contain the signature of each representative in the form provided above. If such a document is filed electronically, the act of filing by or on behalf of a representative constitutes a representation that all the other signers consented to the filing of the document.

(14) Signatures of Commission personnel.

• Commissioners, hearing officers, the clerk, and other Commission personnel may sign any Commission-generated document created and to be issued or entered in electronic form with an electronic facsimile signature followed by a signature block containing the signer's typed name and title. That signature has the same effect as a handwritten signature on a non-electronic document.

• An electronic facsimile signature of a Commissioner, hearing officer, or the clerk on a Commission-generated document filed in the ePUC electronic filing

system is presumed valid. Unauthorized use of an electronic facsimile signature will render invalid the document that was issued with the unauthorized signature unless the Commissioner, hearing officer, or clerk ratifies the use of their signature.

(F) Special rules for certain exhibits. Exhibits need not comply with the typewriting or size requirement of Rule 2.204(E) if it is impracticable to do so (e.g., a spreadsheet that is more user-friendly when submitted in electronic form).

(G) Amendments in pending proceedings.

(1) In general. Proposed amendments to any filing may be made at any time. ~~If unobjected to by any party within ten days of filing or at the commencement of any hearing in which the amended matter is at issue, whichever is earlier, such amendments shall be deemed effective, except that the Commission may at any time dismiss any proposed amendments which it finds to have the effect of unreasonably delaying any proceeding or unreasonably adversely affecting the rights of any party. Where objection is made, amendments shall not be allowed unless the Commission finds (a) that they will not unreasonably delay any proceeding or unreasonably adversely affect the rights of any party and (b) that the requirements of subsection (2), if applicable, are satisfied. The Commission may condition the acceptance of any amendment as justice may require. An amendment which is allowed over objection shall be deemed effective as of the date it is approved, unless for good cause, the Commission orders that it shall be effective as of a different date.~~ before the evidentiary record is closed, but (unless allowed automatically under an applicable statute or rule) require Commission approval. Proposed amendments ~~shall~~must be clearly identified ~~as such~~ and ~~shall~~must clearly indicate ~~the~~what changes ~~they effect~~are being made. In the event an amendment makes a substantial change ~~into~~ a filing, the Commission may order such additional notice to other parties and the public as justice may require.

(2) Rate filings. ~~No party may. Any filing to~~ amend, supplement, or alter an existing filing or substantially revise the proof in support of ~~such a~~ filing ~~in order~~ to increase, decrease, or substantiate a pending rate request ~~unless, upon hearing, it is demonstrated that such a change in filing or proof is necessary for the purpose of providing adequate and efficient service or for the purpose of avoiding the implementation of rates which exceed a level which is just and reasonable. A change in a filing or in the proof in support thereof shall be deemed to be necessary for the purpose of providing adequate service if the costs or other circumstances reflected therein occurred or were imposed or were incurred prior to such change and/or if such costs or circumstances will be operative or in effect during all of the period within which the rates to be based thereon will be in effect; provided, that the Commission may disallow any~~

~~such change if the costs or other circumstances reflected therein were known to or, by the exercise of reasonable diligence could have been known to, the party filing the same substantially prior to such filing must comply with 30 V.S.A. § 225.~~

- (H) ~~Custody. Once it has been filed,~~ Public access to and use of ePUC. Any person, including any ~~filing shall remain in the custody of~~ member of the general public, may use ePUC to:
- (1) ~~File public comments on any proceeding before the Commission until other lawful disposition shall have been made at the conclusion of the.~~ Comments related to a specific Commission proceeding should be filed in the case number for that proceeding. (If a person does not know the case number, they should contact the clerk before filing to obtain the case number.) The Commission in its discretion may prohibit a filer from using ePUC upon a determination that the filer has abused the ePUC system by repeated filing of irrelevant, abusive, or otherwise duplicative documents or information.
 - (2) ~~Subscribe to receive notification of the filing of any documents filed by parties or issued by the Commission in any Commission proceeding. To subscribe to a case, a user must log into ePUC (creating an account if necessary), search for the case to which the person would like to subscribe, select "Subscribe to a Case" from the "Select Action" drop-down menu, and fill in the fields on that screen. A person who wishes to stop subscribing to a case or update the email address used to subscribe should contact the clerk at puc.clerk@vermont.gov.~~
 - (3) ~~Search for and view all public case information and all public documents in any Commission proceeding.~~

2.205 Notice to other Persons or Parties

- (A) ~~Statement regarding persons entitled to notice. At the commencement of any proceeding, the party. When initiating the same shall a proceeding, the initiating party must~~ file a statement identifying by name and address, as well as email address (if known) and telephone number (if known), each person, party, or other entity ~~to whom or to for~~ which the Commission ~~or the Clerk~~ is required to give notice ~~of such proceeding~~.
- (B) Orders of notice. The Commission may require any party who seeks the granting or denial of any form of relief to file a proposed order of notice.
- (C) Expenses. The expense of furnishing notice ~~shall~~must be borne by the party on whose behalf or for whose benefit such notice is given.

2.206 Motions, Responses to Motions, and Replies in Support of Motions

• Motions not made during ~~the~~ hearing ~~shall~~ must be in writing and, if they raise a substantial issue of law, ~~shall~~ must be accompanied by a brief or memorandum of law.

• All motions, responses, and replies must comply with all of the filing requirements of these rules, including the page limitations of Rule 2.204(E)(1).

• Motions made during a hearing may be required to be put in writing and supported by a brief or memorandum of law within such period as the Commission may direct. ~~The Commission may decline to consider a motion not made within a reasonable time after the issue first arises with respect to the moving party.~~

2.207 Time

~~The provisions of the Vermont Rules of Civil Procedure, Rule 6 (a) and 6 (b) (Time—Computation and Enlargement) shall apply in proceedings before the Commission.~~

2.208 Defective Filings

~~Substantially defective or insufficient filings~~• The Commission may ~~be rejected~~ decline to consider a motion not made within 30 days after the facts that form the basis for the motion first arose.

• Unless otherwise directed by the Commission, ~~provided, that if it will not unreasonably delay any proceeding nor unreasonably adversely affect the rights of any party, the Commission shall allow a reasonable opportunity to a party responses to cure any defect or insufficiency. A filing which is found to be defective or insufficient shall not be deemed to have been cured until the date on which the last document~~ motions are due 14 days after the motion is filed ~~which removes the defect or makes the, and replies are due 14 days after responses are filed.~~

• If a party seeks leave to file a sur-reply, or make any other filing that is not allowed under applicable rules, it must do so by motion. The motion must set forth good cause as to why the matter could not have been raised in an earlier filing ~~complete. A-~~. The motion must not attach the filing for which the moving party seeks leave to file (e.g., the sur-reply itself).

• If a motion seeks expedited resolution (that ~~is substantially insufficient if, inter alia, sooner than the standard 14-day response period and 14-day reply-to-response period, plus a time for Commission deliberations, would allow~~), this must be clearly stated in the title of the motion (e.g., “Expedited Motion to . . .”).

• A motion requesting alternative forms of relief (i.e., requesting that the Commission grant relief in one form or another based on related facts) may be filed as a single document. A response or reply to such a motion may also be filed as a single document.

• A new motion may not be combined with a response to a motion.

• A memorandum of law must be included in the same document as the motion it supports. However, any affidavit, exhibit, or other supporting matter or attachment to a motion or response must be filed as a separate document and must identify the motions or responses to which the supporting matter relates and must be referenced in the motions or responses unless it is filed after them.

• Any motion, other than a motion to dismiss or for summary judgment or for a temporary restraining order, must state whether the moving party has sought and received consent for the relief requested from all other parties and participants.

2.207 Time

The provisions of the Vermont Rules of Civil Procedure, Rule 6(a) and 6(b) (Time - Computation and Enlargement) apply in proceedings before the Commission. Absent extraordinary circumstances, any motion to extend a deadline must be filed at least 3 days before the deadline and must set forth good cause why the extension should be granted.

2.208 Defective Filings

The Commission may refuse to accept for filing or, after filing, may at any time reject any filing that fails to conform to the requirements of this rule or is otherwise substantially defective or insufficient. A filing is substantially insufficient if, for instance, it fails to include all material information required by statute or rule.

2.209 Intervention

- (A) Intervention as of right. Upon timely application, ~~a person~~anyone shall be permitted to intervene in any proceeding (1) when a statute or Commission rule confers an unconditional right to intervene; ~~or~~ (2) when ~~a statute confers a conditional right to intervene and the condition or conditions are satisfied; or~~ (3) when the applicant ~~demonstrates a substantial~~claims an interest ~~which may be adversely affected by the outcome in the proceeding and the applicant is so situated that the disposition of the proceeding, where the proceeding affords the exclusive means by which the applicant can~~ may as a practical matter impair or impede the applicant's ability to protect that interest ~~and where, unless the applicant's~~applicant's interest is ~~not~~ adequately represented by existing parties.
- (B) Permissive intervention. Upon timely application, a person may ~~in the discretion of the Commission,~~ be permitted to intervene in any proceeding ~~when the applicant demonstrates a substantial~~(1) when a statute or Commission rule confers a conditional right to intervene, or (2) when an applicant's claimed interest ~~which may be affected by~~shares a question of law or fact in common with the ~~outcome~~subject of the proceeding. In exercising its discretion ~~in this paragraph,~~ the Commission shall consider (1) ~~whether the applicant's interest will be adequately protected by other parties;~~ (2) ~~whether alternative means exist by which the applicant's interest can be protected;~~ and (3), the Commission must consider whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.
- (C) Conditions. Where a party has been granted intervention, the Commission may restrict ~~such party's~~that party's participation ~~to only those issues in which the party has demonstrated an interest,~~ may require ~~such~~that party to join with other parties with respect to appearance

by counsel, presentation of evidence or other matters, ~~or~~ and may otherwise limit ~~such party's~~ that party's participation, all as the interests of justice and economy of adjudication require. The Commission has discretion in determining when to order joint representation, but may not require a State agency to be represented jointly with any other party.

- (D) **Procedure.** An application to intervene ~~shall be~~ must be made by notice (if notice is allowed by statute or Commission rule) or by motion made in accordance with these rules. The motion ~~shall~~ must be made as early as possible and within ~~a reasonable time~~ 30 days after the right to intervene first accrues ~~and shall specifically state the manner in which the conditions of this rule are satisfied, unless a later date is allowed under a scheduling order.~~

2.210 Joinder

The provisions of the Vermont Rules of Civil Procedure, Rules 19 (Joinder of Persons Needed for Just Adjudication), 20 (Permissive Joinder of Parties), and 21 (Misjoinder and Nonjoinder of Parties) ~~shall~~ apply in proceedings before the Commission.

2.211 Consolidation of Hearings; Separate Hearings

The provisions of the Vermont Rules of Civil Procedure, Rule 42 (Consolidation; Separate Trials) ~~shall~~ apply in proceedings before the Commission.

2.212 ~~Prehearing~~ Scheduling and Status Conferences

In any proceeding, the Commission may, ~~and in any rate case, the Commission shall~~ direct the parties to appear before it at any time for a conference to consider ~~the following~~ scheduling and other matters, including:

- (A) ~~the simplification of~~ simplifying the issues;
- (B) ~~the necessity or desirability of~~ amendments to ~~any filing~~ filings;
- (C) ~~the possibility of obtaining~~ admissions of ~~fact and~~ facts and of documents ~~which will avoid unnecessary proof~~;
- (D) ~~the limitation of~~ limiting the number of expert witnesses; and
- (E) ~~such~~ any other matters that may aid in the disposition of the case.

~~The Commission shall make an order which recites the action taken at the conference, including any agreements made by the parties. When entered, such order controls the subsequent course of the proceeding unless later modified.~~

2.213 Prefiled Testimony

- (A) Direct case. ~~Within such time as may be directed by the Commission,~~ Each party ~~shall file~~must prefile the direct testimony and exhibits of each witness it proposes to call in support of its direct case.
- (B) Rebuttal case. ~~In its discretion,~~ Each party must prefile the ~~Commission may direct any party to file the~~ testimony and exhibits of each witness it proposes to call in rebuttal of the case of any other party.
- (C) Form of prefiled testimony.
- The preferred form for prefiled testimony is question/-and-answer form. However, such testimony may be filed in narrative form, provided that it is typewritten and conforms with the requirements for spacing and line numbering set forth below and the requirements set forth in Rule 2.204(E). Testimony filed in narrative format shall include headers to identify subject matter categories. All testimony shall be typed and double spaced. Line numbers shall be placed in the left hand margin of each page. The prefiled testimony of each witness shall be preceded by a brief statement, set forth on a separate page, containing a summary of the testimony and exhibits referred to in such testimony. The summary shall not be admitted as evidence set forth below and with the requirements set forth in Rule 2.204(E).
 - Testimony filed in narrative format must include headers to identify subject-matter categories.
 - The preferred format for all prefiled testimony is to have line numbers in the left-hand margin of each page. However, prefiled testimony without line numbers will be accepted if necessary.
 - The prefiled testimony of each witness must be preceded by a brief statement, on a separate page, summarizing the testimony and exhibits referred to in the testimony. The summary is not evidence.
 - The prefiled testimony of each witness must be accompanied by a signed affidavit or declaration attesting that all statement are true and accurate to the best of the witness's knowledge and belief, and that the witness is subject to sanctions for contempt and perjury if any statements are false.

2.214 Discovery

- (A) In general.
- The provisions of Vermont Rules of Civil Procedure, Rules 26 (General Provisions Governing Discovery), 27 (Discovery Before Action or Pending Appeal), 28 (Persons Before Whom Depositions May Be Taken), 29 (Stipulations Regarding Discovery Procedure), 30 (Depositions Upon Oral Examination), 31 (Depositions Upon Written Questions), 32 (Use of Depositions in Court proceedings), 33 (Interrogatories to Parties), 34 (Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes), 36 (Request for Admission), and 37 (Failure to Make Discovery; Sanctions) shall apply in proceedings before the Commission. ~~The availability of these~~

~~procedures shall not limit the availability of any other means of discovery provided by statute or otherwise.~~

~~• The availability of these procedures does not limit the availability of any other means of discovery provided by statute or otherwise.~~

~~• The availability of these procedures does not limit the rights of any State agency to investigate parties to a proceeding, or matters related to a proceeding, under other statutory or regulatory authority, even where there is overlap with a Commission proceeding.~~

~~• Unless the Commission allows otherwise, each oral deposition is limited to no more than 7 hours.~~

~~• Unless the Commission allows otherwise, and except for tariff cases under 30 V.S.A. §§ 225-227 or under a Commission-approved alternative regulation plan, no party may serve on any other party more than 25 written interrogatories, including all subparts, per round of discovery.~~

(B) Discovery by the Commission.

~~• The procedures enumerated listed in 2.214(A) may be used by the Commission or its members, agents or employees, but, and the Commission may do so without any limitation on the number or form of requests that may be made by the Commission.~~

~~• The availability of such procedures shall does not in no any way limit the authority of the Commission, its members, agents or employees, including but not limited to the authority to inquire into and examine any matter proceeding within the jurisdiction of the Commission, to examine books, accounts, and papers of any person or entity subject to the Commission's Commission's jurisdiction, or to enter and examine the property of any person or entity subject to the Commission's Commission's jurisdiction.~~

(C) Discovery requests and responses.

~~• Discovery requests served on parties or participants in a Commission proceeding must be filed with the Commission in ePUC.~~

~~• Unless otherwise directed by the Commission, discovery responses need not be filed with the Commission, but parties and participants must file a certificate of service evidencing service of discovery responses on those parties or participants that are entitled to receive service of the responses.~~

~~• If the Commission directs that discovery responses be filed with the Commission, the narrative responses must be filed in ePUC. Attachments must be filed in an electronic format outside of ePUC such as via CD.~~

2.215 Conduct of Hearings

(A) Commission witnesses. ~~In its discretion,~~ The Commission may call witnesses to testify as to any matter ~~in at~~ issue in any proceeding. Except for non-substantive procedural, scheduling, or administrative matters, or as required to establish the subject matter and

scheduling of the testimony to be offered, the Commission ~~shall~~must not communicate with ~~such~~ witnesses on the subject of their testimony unless it is done in open hearing or upon notice and opportunity for all parties to participate.

- (B) Examination of witnesses by Commission and staff. Any ~~member of the Commissioner, and any~~ Commission, ~~and any member of its~~ staff or agent, may examine witnesses who testify in any proceeding.
- (C) Rulings by hearing examiners-officers. When a ~~matter~~proceeding has been assigned to a hearing ~~examiner, such examiner~~officer, the officer may make rulings of law on procedural matters, on the admission or exclusion of evidence, and on any other matters necessary to conclude proceedings before the ~~examiner-officer~~. After the hearing ~~examiner-officer~~ has issued and served a proposal for decision, a party ~~may~~may bring ~~such~~those rulings to the Commission for review by requesting, pursuant to 3 V.S.A. § 811, the opportunity to file exceptions and to present briefs and oral argument.

2.216 Evidence and Deadlines for Objecting to Prefiled Testimony and Exhibits

- (A) General rule. Evidentiary matters are governed by ~~303~~ V.S.A. § 810. In addition, except as to matters covered by the ~~succeeding other~~ paragraphs of this rule, the provisions of the Vermont Rules of Civil Procedure, Rules 43 (Evidence), 43.1 (Participation or Testimony by Video or Audio Conference), 44 (Proof of Official Record), and 44.1 (Determination of Foreign Law) ~~shall~~ apply in proceedings before the Commission.
- (B) Use of exhibits. Where evidence to be presented consists of tabulations or figures so numerous as to make oral presentation impracticable, it ~~shall~~must be presented in exhibit form. ~~Such~~ These exhibits ~~shall~~must be summarized and explained in testimony.
- (C) Procedure ~~with respect for~~ admitting and objecting to prefiled testimony and exhibits.
- Prefiled testimony, if admitted into evidence, ~~shall~~must be included in the transcript, by including a link in the transcript to access each witness's electronically filed testimony and exhibits.
 - Objections to the admissibility of prefiled testimony or exhibits ~~shall, including objections to the admissibility of expert opinions, must~~ be filed in writing ~~not more than thirty days after such evidence has been prefiled at least 14 days before the evidentiary hearing (or five, if the evidentiary hearing is cancelled, then at least 14 days before the date on which such evidence is to be heard at the evidentiary hearing was scheduled to occur under the most recent approved schedule).~~ However, if the prefiled testimony or exhibits are filed in the 21 days directly preceding the evidentiary hearing, then objections must be offered filed in writing within seven days of the objected-to filing, or at the hearing, whichever is earlier.

• If an objection to the admissibility of prefiled testimony or exhibits is filed, all parties may file a response, but no replies in support of the objection are allowed without permission of the Commission.

- (D) Views and inspections. Upon notice to the parties, the Commission may, either upon its own motion or upon the request of a party, view or inspect any property ~~which~~that is the subject of or is related to the subject of any proceeding. A view or inspection may be made before, during, or after the hearing.

2.217 Objections and Exceptions

The provisions of the Vermont Rules of Civil Procedure, Rule 46 (Exceptions Unnecessary) ~~shall~~ apply in proceedings before the Commission.

2.218 Subpoenas

The provisions of the Vermont Rules of Civil Procedure, Rule 45 (Subpoena) ~~shall~~ apply in proceedings before the Commission.

2.219 Summary Judgment

The provisions of the Vermont Rules of Civil Procedure, Rule 56 (Summary Judgment) ~~shall~~ apply in proceedings before the Commission.

2.220 Harmless Error

The provisions of the Vermont Rules of Civil Procedure, Rule 61 (Harmless Error) ~~shall~~ apply in proceedings before the Commission.

2.221 Relief from Order

The provisions of the Vermont Rules of Civil Procedure, Rule 60 (Relief from Judgment or Order) ~~shall~~ apply in proceedings before the Commission.

2.222 Proposed Findings of Fact

• In any case the Commission may require each party to file proposed findings of fact. Such proposed findings shall conform to the requirements for finding for the Superior Court. Each proposed finding shall~~must~~ deal concisely with a single fact or with a group of facts so interrelated that they cannot reasonably be treated separately. Proposed findings shall be consecutively numbered and shall be in logical sequence. Where the party claims to have established more than one ultimate fact, proposed findings shall be arranged into separate groups, appropriately identified as to subject matter. Each proposed finding shall contain a citation or citations to the specific part or parts of the record containing the evidence upon which the proposed finding is based.

• Proposed findings must be consecutively numbered and must be in logical sequence.
• Where the party claims to have established more than one ultimate fact, proposed findings must be arranged into separate groups, appropriately identified as to subject matter.

• Each proposed finding must contain a citation or citations to the specific part or parts of the record (including page number and line number, where available) containing the evidence supporting the proposed finding.

2.223 Briefs

• Briefs ~~shall~~must address each issue of law ~~which~~that a party desires the Commission to consider.

• Whenever a brief addresses more than one issue, it ~~shall~~must be suitably divided into sections ~~which~~that separately address each issue. Such a brief shall

• Briefs longer than 10 pages must contain, immediately ~~following~~after the cover page, a ~~detailed~~ table of contents.

2.224 Sanctions

• An attorney or pro se representative who fails, after having been requested by the Commission to do so, to ~~submit proposed findings or briefs, or who manifestly fails to conform to the requirements respecting findings or briefs as specified in Rules 2.222 and 2.223,~~ comply with these rules or any Commission order may be suspended from further participation in the proceeding or, for such period of time as the Commission finds to be just, from participation in other proceedings.

• In addition, ~~or in the alternative, if proposed findings of facts fail to comply with respect to any fact as to which a party has manifestly failed to conform to the requirements of Rule 2.220, such~~222, ~~that~~ that party may be deemed to have withdrawn its offers and claims of proof and to have waived its right to a finding by the Commission regarding ~~such~~that fact; and with respect to any issue of law as to which a party has ~~manifestly~~ failed to conform to the requirements of Rule 2.223, ~~such~~that party may be deemed to have waived any claims of law ~~with respect to such~~on that issue, and the claims of opposing parties with respect thereto may be deemed to be the law of the case.

2.225 Proposed Schedules

The parties must make all reasonable efforts to reach agreement on, and jointly file, a proposed schedule as early as possible and no later than three days before a scheduling conference. If the parties cannot agree on all scheduling matters, they should make separate filings that indicate what scheduling matters all parties have agreed to and what matters are in dispute.

In cases without a statutory deadline for Commission action, a proposed schedule may provide the parties with time to negotiate before establishing a formal litigation schedule. In that situation, a proposed schedule could be as simple as:

- Deadline for motions to intervene;
- Deadline for responses to motions to intervene;
- Deadline for replies to responses to motions to intervene; and
- Deadline for parties to file a settlement agreement or a proposed litigation schedule.

Although the parties are free to agree to alternate terms to propose to the Commission, proposed litigation schedules should generally include the following items:

- Date for public hearing (if any);
- Date for site visit (if any);
- Deadline for motions to intervene;
- Deadline for responses to motions to intervene;
- Deadline for replies to responses to motions to intervene;
- Deadlines for filing prefiled testimony;
- Schedule for discovery on each set of prefiled testimony, including last date for filing requests and due date for responses;
- Deadline for objections to prefiled testimony;
- Evidentiary hearing;
- Deadline for filing post-hearing briefs; and
- Deadline for filing post-hearing reply briefs.

Where appropriate, the proposed schedule may include other items, such as deadlines for motions to dismiss and summary judgment motions. When practicable, parties should include specific calendar dates in proposed schedules rather than dates based on the timing of a previous filing.

2.226 Confidential Information Protocol

(A) General rule.

- All documents filed with the Commission are presumed to be public.
- The marking of a document as “confidential” does not render that document confidential.
- To assert confidentiality of a document, the filing must include one or both of the following: (1) a cover letter identifying the date and case number of the specific Commission order, statute, court order, or other State or federal agency decision that recognizes the confidentiality of the document, or (2) a motion for confidential treatment.

(B) Process for filing information that a party asserts to be confidential.

- All assertedly confidential documents must bear a stamp on every page marking the document as “Confidential.”
- Until the Commission issues procedures for filing confidential information in ePUC, any confidential information must be filed by email with the clerk and must have the word “Confidential” as the first word of the subject line. In contested cases, the content of this email must be simultaneously served on all other parties, with the attached assertedly confidential documents also simultaneously served on those parties that have signed the confidentiality agreement. For non-paper parties who have signed the relevant protective agreement, service may be done by cc’ing those parties on the email to the clerk.

• Whenever a party files an assertedly confidential document, that party must simultaneously file a public, non-confidential version of the document in ePUC, unless the party asserts that the entirety of the document is confidential (in which case a document making that allegation must be filed in ePUC). The public, non-confidential version of the document must contain the asserted legal basis for each redaction, in a manner that allows the reader to know which redaction is based on which asserted legal basis for confidentiality.

(C) Form of motions for confidential treatment.

• A motion for confidential treatment must set forth the basis for confidentiality, including any relevant citations to exemptions from public disclosure under the Vermont Public Records Act.

• The motion must be accompanied by a document-specific (or information-specific) averment of the basis for keeping confidential any document (or information) that the party wishes to keep under seal.

• The averment must list a specific expiration date for keeping the information under seal (usually no more than 3 years) and must explain in detail why the information must be kept confidential for that length of time.

• The motion must also address each of the following questions: (1) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information that should be protected? (2) Does the matter sought to be protected contain Critical Energy Infrastructure Information (CEII), as that term is defined by the Federal Energy Regulatory Commission? (3) Would disclosure of the information cause a cognizable harm sufficient to warrant confidential treatment? (4) Has the party seeking protection shown “good cause” for invoking the Commission’s protection?

2.227 Procedural Changes During State of Emergency

If the Governor of the State of Vermont declares a state of emergency, the Commission may issue orders temporarily altering any procedural requirements of Commission rules.

2.300 Consumer Complaints

2.301 Definition

A consumer complaint is a complaint filed by any person (whether an individual, corporation, association, partnership or other entity) receiving service or entitled to receive service from a utility regulated by the Commission seeking a refund of charges ~~and/or~~ an order requiring a utility to comply in a reasonable manner with any applicable tariff, statute, rule, or order of the Commission.

2.302 Form and Content

A consumer complaint ~~shall~~must set forth in writing a short and plain statement of facts showing that the complainant is entitled to relief. The statement ~~shall~~must be signed by the consumer. ~~Notwithstanding~~ Despite the foregoing, the Commission may in its discretion treat any written communication to it concerning a ~~matter~~proceeding within its jurisdiction to be a claim for relief.

2.303 Acknowledgment and Distribution of Complaints

The Commission ~~shall~~will acknowledge receipt of all written complaints ~~and shall send a copy thereof to the affected utility.~~

2.304 Referral to the Department of Public Service

In its discretion, the Commission may refer any consumer complaint to the Department of Public Service and request the Department to attempt to resolve the dispute. If the consumer complaint is not ~~thus~~ referred, if the Department ~~of Public Service~~ refuses to accept the referral, or if the Department is unable to resolve the matter, then the Commission may open an investigation, order a response from the utility, and set the complaint for a hearing, if it ~~finds~~finds, assuming that the allegations of the consumer complaint are true, that there is a probability of a violation of tariffs, statutes, rules or other orders of the Commission, ~~shall set the complaint for a hearing.~~ If, assuming that the allegations of the consumer complaint are true, there is no probability of such a violation, ~~it shall~~the Commission must dismiss the consumer complaint.

2.305 Hearings on Consumer Complaints

In setting a case for hearing, the Commission ~~shall assign a docket number~~must set the earliest date possible and ~~shall~~ specifically set forth the issues to be resolved, ~~which.~~ Those issues, unless the requirements of justice dictate otherwise, ~~shall~~must be the only issues ~~controversial~~addressed at the hearing. If issues in addition to those so specified are to be heard, the parties ~~shall~~must be afforded a reasonable time to prepare and respond. ~~The hearing shall be assigned by the clerk for the earliest practicable date.~~

2.306 Representation by Persons Not Admitted to Practice

~~Notwithstanding~~ Despite the provisions of Rule 2.201, the Commission may in its discretion permit consumers to be represented in consumer complaint proceedings by persons who are not

admitted to the practice of law, provided that such representatives ~~shall~~ demonstrate a sufficient familiarity with these rules and with all applicable substantive and procedural provisions of law ~~applicable to such proceedings.~~ Except for the requirement of admission to practice, such representatives ~~shall~~must comply with all rules, laws, practices, procedures, and other requirements applicable to proceedings before the Commission.

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2.400 ~~Matters~~ Proceedings Other Than Consumer Complaints

2.401 Tariff Filings

- (A) General. Tariff filings, including amendments to existing tariffs, ~~shall~~must be accompanied by a concise, narrative description of their nature and effect, stated in terminology ~~which~~that is comprehensible to the general public.
- (B) Amendments. Except where substantially the whole of a separately identified section of a tariff is affected, an amendment to an existing tariff ~~shall~~must be accompanied by a ~~separate explanatory~~redline version ~~which shows deleted material in brackets and broken underline and new material in solid underlines~~showing all changes.
- (C) New services. Where a tariff filing covers a new service, or a modification of an existing service, estimates of revenues and costs attributable to such service for each of the three years succeeding the introduction of the new or modified service ~~must be included with the filing~~. Schedules containing the information called for by this provision ~~shall~~must be accompanied by a statement of the name of the person or persons responsible for their preparation, together with a description of any underlying documentation ~~which~~. The underlying documentation ~~shall~~must be available through discovery immediately after the filing.

2.402 Rate Proceedings

- (A) Justification for change in rates. ~~In order~~ To enable the Commission to determine whether new rates proposed by any utility should be further investigated or suspended, all rate filings ~~shall~~must contain complete and substantial justification for the proposed change, including the following: (1) detailed calculation of cost of service; (2) detailed calculation of cost of capital; (3) rate base calculation; (4) the effect of the filing on annual operating revenues; (5) projected construction expenditures by category for each of the following two years; (6) for electric utilities, a detailed statement of purchased power and production costs (with fuel costs separately stated) by source for the 12 months ~~prior~~leading up to the filing and a similar statement of projected purchased power and production costs by source for the 12 months succeeding the filing; ~~Such costs for both periods shall~~must be shown net of sales to other utilities or, in the alternative, revenues from such sales ~~shall~~must be separately stated.
- (B) Changes from previous order. Where a request for a change in rates proposes or utilizes any change in the ratemaking methodology or principles approved or utilized by the Commission in the most recent rate order affecting the same utility, such change ~~shall~~must be clearly identified, and a statement of the reasons for such change ~~shall~~must be given.

- (C) Exhibits and other information. ~~A utility whose rates are suspended shall, within thirty days from the date of the suspension order, file ten copies of all exhibits it intends to use in the hearing thereon, together with the names of witnesses it intends to call in its direct case, and a short statement of the purposes of the testimony of each witness.~~ In the case of a municipality or cooperative ~~which~~that has filed a notice of change in rates, if the Commission gives notice that it intends to investigate such change, then the municipality or cooperative ~~shall must~~ file ~~similar~~ exhibits, names of witnesses and a statement of the purpose of their testimony within ~~thirty~~30 days of the giving of such notice. Except in the discretion of the Commission, a utility ~~shall may~~ not ~~be permitted to~~ introduce into evidence in its direct case exhibits ~~which are~~that do not ~~filed in accordance~~comply with this rule. This provision shall not be deemed to constitute a limitation on the ~~Commission's~~Commission's authority to require the prefiling of direct testimony in any case at such time as the Commission ~~may~~may prescribe.

2.403 Petitions for Declaratory Rulings

Pursuant to 3 V.S.A. § 808, an interested person may petition the Commission for a declaratory ruling as to the applicability of any statutory provision or of any rule or order of the Commission. The petition ~~shall must~~ identify the statute, rule, or order involved, ~~shall must~~ include a proposed order of notice, and ~~shall must~~ be accompanied by a brief ~~which that~~ conforms to the requirements of Rule 2.223.

2.404 Petitions for Adoption of Rules

Pursuant to 3 V.S.A. § 806, an interested person may petition the Commission requesting the promulgation, amendment, or repeal of a rule. The petition ~~shall must~~ describe the action requested, ~~shall must~~ state the reasons for the request, and ~~shall must~~ include a proposed order of notice.

2.405 Request for Tariff Investigation

Any interested person or entity may request that the Commission initiate an investigation pursuant to 30 V.S.A. § 227 into the justness and reasonableness of a ~~utility's~~utility's tariffs. Whether ~~or not~~ to undertake such an investigation ~~shall be~~is within the ~~Commission's~~Commission's discretion.

2.406 Injunctions

(A) Definitions.

- (1) Temporary restraining order: an injunctive remedy ~~which that~~ is issued either ex parte or under circumstances where the respondent has not been afforded an adequate opportunity to present its defense at a hearing held upon such notice as is otherwise required by law.

- (2) Preliminary injunction: an injunctive remedy issued after a hearing held upon legal notice but where the proceedings have not allowed the parties adequate opportunity to avail themselves of all procedures provided for by these rules and by all other provisions of law. A preliminary injunction cannot remain in effect beyond the conclusion of the proceeding in which it is issued.
- (3) Permanent injunction: an injunctive remedy issued as final relief after a hearing held upon legal notice and where the proceedings have allowed the parties adequate opportunity to avail themselves of all procedures provided for by these rules and by all other ~~provision~~provisions of law.

(B) Particular requirements for temporary restraining orders; examination of witnesses by the Commission.

- A petition for a temporary restraining order must be ~~verified or must be~~ accompanied by affidavits attesting to all of its factual ~~legations~~allegations.
- The Commission may require any facts alleged in the affidavits or verified petition to be presented in oral testimony and may examine any witness testifying to such facts as to any matter ~~which that~~ is relevant to the subject matter of the proceeding.
- The petitioner ~~shall~~must deliver a copy of the petition to the respondent before filing or, if such delivery would require delay ~~which that~~ might cause irreparable harm, as soon ~~thereafter~~ as possible. If actual delivery to the respondent has not been made ~~prior to before~~ filing, the petitioner ~~shall~~must notify the respondent or its attorney by telephone or by other means at the earliest possible time ~~thereafter~~.
- A temporary restraining order may be issued only where it clearly appears from specific facts shown by the affidavits or the verified petition, and by testimony if required by the Commission, that substantial immediate and irreparable injury, loss or damage, or danger to health or safety, will result ~~to the petitioner~~ before a hearing can be held upon proper notice.

(C) Further proceedings after issuance of a temporary restraining order.

- A petition for a temporary restraining order, whether ~~or not~~ it is so designated, ~~shall also constitute~~constitutes a petition for a preliminary injunction and ~~or~~ a permanent injunction. ~~Unless precluded by the existing scheduling of other matters, or unless the respondent does not object to longer scheduling,~~
- A hearing upon ~~such a~~ preliminary or permanent injunction ~~shall~~must be held ~~within forty-five days and as soon as practicable, unless the parties agree to a decision rendered within sixty days~~later date.
- Wherever possible, the Commission ~~shall~~must attempt to make a final disposition of the ~~matter~~proceeding, but if the proceedings do not allow the parties adequate opportunity to avail themselves of all procedures provided for by these rules and by all other provisions of law, then only a preliminary injunction may be issued.

• If a temporary restraining order has previously been issued, it shall continue in force until a decision is rendered on the preliminary injunction or the permanent injunction, as the case may be, unless it is dissolved by its terms or by further order of the Commission.

(D) Particular ~~requirement~~requirements for preliminary injunctions; further proceedings after issuance.

• An application for a preliminary injunction, unless made in consequence of an application for a temporary restraining order as provided above, ~~shall~~must be made by motion in connection with a petition for a permanent injunction.

• No preliminary injunction may issue unless the petitioner establishes that the irreparable injury ~~which~~that will be caused to it if a preliminary injunction is denied, discounted by the probability that the respondent will prevail in the proceedings on the permanent injunction, will be greater than any injury ~~which~~that the granting of the preliminary injunction will cause to the respondent.

• If a preliminary injunction is issued, the Commission ~~shall~~must schedule such further proceedings as may be required for the permanent injunction; and the preliminary injunction shall continue in force until a decision is rendered on ~~such~~a permanent injunction unless it is dissolved by its own terms or by further order of the Commission.

• Unless the Commission otherwise orders, the record made in connection with the temporary restraining order and the preliminary injunction shall also constitute part of the record in the proceedings on the permanent injunction.

(B)(E) Other matters.

(1) Conditions. The Commission ~~shall~~must condition the issuance of a temporary restraining order or a preliminary injunction with such terms as justice and equity may require, including the giving of adequate security in favor of the respondent. ~~Severance.~~

(2) Severance. In its discretion, the Commission may order the ~~severance~~severance of proceedings on a request for injunctive relief from proceedings for other relief.

(3) Motion to dissolve. A motion to dissolve a temporary restraining order or preliminary injunction may be made at any time. The motion ~~shall~~must state why the further proceedings scheduled on the matter are insufficient to protect the rights and interests of the moving party.

(4) Hearing ~~examiners~~officers. Unless the Commission determines that it will expedite the resolution of the ~~matter~~proceeding or will otherwise further the ends of justice, no application for a temporary restraining order will be heard by a hearing ~~examiner~~officer.

- (5) Form of injunctions. A temporary restraining order, preliminary injunction, or permanent injunction ~~shall~~must state the date and hour of its issuance and ~~shall~~must be accompanied by findings of fact upon all of the issues specified or referred to in this rule.

2.407 Forms for Certain Purposes

The following forms, which are available on request and many of which are available on the Commission's website, must be used for submissions to the Commission: ~~annual reports, gross revenue tax reports, property valuation reports, accident reports,~~ when applicable:

- notice of intervention
- motion to intervene
- net-metering hearing request
- certificate of public good municipal notice
- net-metering certificate of public good transfer
- net-metering certificate of public good transfer for net-metering systems sold separately from sale of land
- net-metering certificate of public good holder certification
- checklist for applications for net-metering systems greater than 50 kW that are not located on a roof and are not a hydroelectric facility
- net-metering registration
- net-metering application
- Department of Public Service and Public Utility Commission application fee
- Agency of Natural Resources application fee
- telecommunications certificate of public good registration
- mergers and acquisitions notification
- billing aggregators registration
- cellular provider registration
- interruption of electric service reports,
- disconnection of service reports ~~and~~
- cable TV applications.

2.408 Emergency Commission Action

- (A) When the Governor has proclaimed a state of emergency pursuant to 20 V.S.A. § 9, a person or entity may request that the Commission, or the Commission may on its own, take emergency action to prevent imminent financial injury, loss, damage, or hardship to ratepayers or a regulated entity, provided such injury, loss, damage, or hardship is related to the state of emergency. This rule governs requests that the Commission take emergency action, unless a more specific procedure is prescribed by another rule or statute.

- (B) Particular requirements for emergency requests.

• Emergency action can be requested by filing a petition pursuant to this rule and Rule 2.202. In an ongoing proceeding, emergency action can be requested by filing a motion pursuant to this rule and Rule 2.206.

• The title of the filing requesting emergency action must include “Request for Emergency Commission Action Pursuant to Commission Rule 2.408.”

• A petition or motion for emergency action must be accompanied by affidavit(s) attesting to all of its factual allegations.

• The Commission may require any facts alleged in the affidavit(s) to be presented in oral testimony and may examine any witness testifying to such facts as to any matter that is relevant to the subject matter of the request.

• Unless the Commission otherwise orders, the record made in connection with the request for emergency action shall also constitute part of the record in any further proceedings relevant to the subject matter of the request.

(C) Procedure.

• Emergency action may be ordered either ex parte, without comments from other parties, or under circumstances where other parties have not been afforded an opportunity to present evidence at a hearing held upon such notice as is otherwise required by law.

• The Commission will only take emergency action where it clearly appears from specific facts shown by the affidavit(s), and by testimony if required by the Commission, that substantial immediate and irreparable financial injury, loss, damage, or hardship will result to ratepayers or a regulated entity before a proceeding concludes or a hearing can be held upon proper notice.

(D) Duration. A Commission decision to take emergency action shall continue in force until the term designated in the order taking emergency action expires, unless it is dissolved by further order of the Commission.

(E) Requests for extension or termination. The requesting party may file a motion to extend the emergency action. A motion to extend the emergency action must conform to the requirements of an initial filing for emergency action as described above in subsection (B). The requesting party may file a motion to end the emergency action at an earlier date.

(F) Opportunity for objections and further proceedings. If emergency action is taken, the Commission will schedule such further proceedings as may be required or requested by other parties. The emergency action shall continue in force as described above in subsection (D).

(G) Other matters

(1) Conditions. The Commission may condition emergency action with such terms as justice and equity may require.

- (2) Hearing officers. Unless the Commission determines that it will expedite the resolution of the proceeding or will otherwise further the ends of justice, requests for emergency action will be heard directly by the Commissioners.
- (3) Form of emergency action. An order authorizing emergency action must be accompanied by findings of fact upon all of the issues specified or referred to in this rule, including that (a) the imminent injury, loss, damage, or hardship is related to the state of emergency; and (b) the emergency action is necessary to prevent imminent financial injury, loss, damage, or hardship to ratepayers or a regulated entity.