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October 2, 2020

Commission Chair Anthony Roisman
Public Utility Commission
112 State Street
Montpelier, VT 05620-2601

Re: Case No. 20-2369-RULE – Efficiency Vermont Comments on Proposed Rule 2.000

Dear Chair Roisman,

Efficiency Vermont has reviewed the proposed changes to Rule 2 put forth by the Public Utility Commission (“Commission” or “PUC”) in its August 27, 2020 Order initiating Case No. 20-2369-RULE. As a general matter, Efficiency Vermont supports the Commission’s effort to update and revise Commission Rule 2, and recognizes the Commission’s attempts to prioritize clarity and efficiency throughout the regulatory filing processes. Reducing the burden of regulatory proceedings is an admirable objective and can help lower costs for all parties involved in proceedings, including Efficiency Vermont. A limited number of the proposed changes to Rule 2.204(E) and 2.214(A), however, do raise some concerns for Efficiency Vermont. Specifically, Efficiency Vermont responds to the Commission’s request for “input from stakeholders on whether to impose page limitations and, if so, whether the suggested page limits are appropriate and whether any exceptions should be written into the rule.”¹ Efficiency Vermont provides the following comments.

Proposed Rule 2.204(E) assigns page limits to “all motions, briefs, responses, and replies,” requiring motions and briefs be no more than 25 pages, responses be no more than 15 pages, and replies be no more than 10 pages. Efficiency Vermont observes that in the contested cases in which it has participated over the past year, including Case Nos. 19-0397 and 19-3272, Efficiency Vermont and other parties filed motions, briefs, and replies that significantly exceed the proposed page limits. Efficiency Vermont draws attention to 3 V.S.A. § 809(c), which provides in a contested case proceeding that “opportunity shall be given to all parties to respond and present evidence and argument on all issues involved”. While Efficiency Vermont does not view the objectives of Proposed Rule 2 and Section 809(c) as incompatible, it does caution that adhering to the proposed page limits may limit or restrict the evidence and arguments parties are able to put forward. Efficiency Vermont notes that while it may be possible to limit the length of

¹ As requested on page 3 of the Commission’s 8/27/20 Order in this proceeding.

an argument, it is often difficult to limit the length of a statement of facts or proposed findings. Efficiency Vermont cautions that it could work within the terms of Proposed Rule 2 as drafted, but compliance with Section 809(c) would likely require repeated and regular submission of Motions for Waiver of page limitations in certain proceedings as permitted under Proposed Rule 2.107. Alternative solutions include striking the page limit requirements from Proposed Rule 2.204(E), or only making the page limit applicable to the argument (not proposed findings or statements of fact). However, it would be Efficiency Vermont's preference to write an exception into the Rule that excludes complex EEU proceedings (such as Demand Resources Plan ("DRP") Proceedings, Overall Performance Assessments ("OPA"), and avoided cost proceedings) from the page limit requirement from Proposed Rule 2.204(E).

Proposed Rule 2.214(A) also includes the additions of discovery restrictions, requiring that "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." Similar to the observation described above, Efficiency Vermont notes multiple instances in the contested cases in which it has participated over the past year (Case Nos. 19-0397 and 19-3272) of parties serving written interrogatories that significantly exceeds the Proposed Rule's 25-interrogatory limit. Efficiency Vermont recognizes a benefit of discovery limitations is that they prevent one party from overwhelming another party with lengthy depositions and voluminous and burdensome written information and document requests². While Efficiency Vermont does not believe that it has experienced or caused the act of overwhelming a party in any of our proceedings, we recognize there are rules in place to protect parties from this behavior.³ It may also be worth noting that due to the highly technical nature of many of the efficiency proceedings, it may sometimes be necessary to seek clarification and discovery questions on multiple topics from a single filing. In the cases mentioned previously, a limitation on questions may stymie a party from fully investigating or understanding the full scope and breadth of another party's proposal.

For this reason, Efficiency Vermont believes there is an important balance to strike with Section 809(c) by ensuring it is feasible for all parties to fairly respond and present evidence and argument on all issues involved. Efficiency Vermont's preference would be for the discovery limitations to be removed, but if the Commission feels strongly that an interrogatory limit be established, Efficiency Vermont recommends that the exception list in Proposed Rule 2.214(A) be extended to include contested case proceedings commenced under 30 V.S.A. § 209. This would include DRP proceedings, OPAs, and avoided cost proceedings that are comparable for the EEUs to distribution utility rate cases where there can be many complicated issues and a multiplicity of witnesses and parties.

In conclusion, while Efficiency Vermont could work within the terms of the Proposed Rule 2 as drafted, compliance would likely require repeated and regular submission of Motions for Waiver under Proposed Rule 2.107 of page and interrogatory limitations in certain

² See page 4 of the Commission's 8/27/20 Order in this proceeding.

³ The Vermont Rules of Civil Procedure ("V.R.C.P.") provide terms to address parties that seek to abuse the Rules of Discovery and the Commission is well positioned to manage this concern and has done so in numerous prior proceedings; See V.R.C.P. Rules 26-37.

predictable proceedings in order for the proceeding to afford participants the full opportunity to participate as called for under Section 809(c). It is Efficiency Vermont's belief that the recommendations put forth in this filing reflect the necessary modifications to reduce the burden that repeatedly filing Motions for Waivers would entail.

Efficiency Vermont appreciates the opportunity to submit written filings and would be pleased to answer questions from the Commission or other interested parties.

Sincerely,



David C. Westman

Director, Regulatory Affairs