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Ms. Judith Whitney, Clerk
Vermont Public Utility Commission
EPUC

RE: Case No. 20-2369: Vermont Electric Cooperative, Inc.'s Comments to Public Utility Commission's Proposed Rule 2.200.

Dear Ms. Whitney:

Vermont Electric Cooperative, Inc. (VEC), hereby submits its comments on the Public Utility Commission's (PUC's) proposed Rule 2.200. VEC greatly appreciates the PUC's efforts to update Rule 2.200 to reflect modern procedures, including use of ePUC which has worked very well for VEC. VEC supports the majority of the PUC's proposed changes and provides comments on two proposed rule changes.

Proposed rule 2.204(E). This proposed change establishes page limits for briefs. Rule 2.223 requires briefs that are over 10 pages to contain a cover page and a table of contents. The PUC should modify proposed Rule 2.204 (E) to exclude the cover page and table of contents from the page limit as they are non-substantive documents. Vermont Rule of Appellate Procedure 32 contains similar exclusions from the page/word limits.

Proposed rule 2.209. The proposed rule removes important thresholds for intervention. For the reasons set forth below, VEC believes that this change will unnecessarily increase costs for VEC and other petitioners in proceedings before the PUC. Lowering the intervention threshold allows a person without a substantial interest to intervene in a proceeding, potentially causing delays, commitment of additional resources (time and money), all of which will result in increased regulatory costs to VEC members and other Vermont ratepayers. If the PUC adopts its proposed rule, VEC asks that the PUC detail how this change will increase costs for utilities and their customers when it submits the new rule to the Legislature.

VEC respectfully requests the PUC to maintain the existing intervention rule. In the alternative, the PUC should consider adopting the intervention standards set forth in the Act 250 statute because those thresholds are defined and they are supported with extensive case law to provide guidance as to their interpretation. More importantly, the Act 250 intervention standards have been widely accepted by Vermonters as sufficient to balance the needs of parties who stand to be impacted by an application with the needs of applicants for an efficient and cost-effective process.¹

The Proposed Rule Changes Eliminate Important Assurances That PUC Proceedings Will Be Fair and Efficient. The proposed rule changes effectively remove any intervention barrier. The PUC has described the current intervention thresholds, which require would-be intervenors to “articulate a substantial, particularized interest that will be affected by the outcome of [a] proceeding” as the “most fundamental element for intervening.”² Under the current thresholds (including the need to prove that no alternative means exist to protect an interest), the PUC has appropriately denied intervention in some cases,³ and in other instances, granted intervention after an organization demonstrated how its members would be particularly and substantially harmed by a utility’s proposal, had no alternative means to protect that interest, and no other party represented their interests.⁴ These are important gate-keeping functions that allow the PUC to exercise its special expertise to balance protections for entities that show real interests at stake with the general need to ensure a fair and efficient process for petitioners.

The proposed rule removes the requirement that would-be intervenors have a “substantial” interest in the proceeding. Instead, the proposed rule requires only a showing of an “interest.” The proposed rule also removes the requirement that an entity seeking party status demonstrate that the proceeding could adversely affect that entity. And it removes the requirement to demonstrate that the PUC proceeding is the exclusive means to protect that interest, for both intervention by right and permissive intervention.

¹ The Legislature recently underwent a multi-year review of Act 250, which resulted in proposed legislative changes. The Act 250 public participation statutes were not controversial based on VEC’s understanding of the process.

² *Petition of Green Mountain Power Corporation for approval to invest in hydroelectric generation facilities located outside Vermont*, Case No. 8827 (Order Denying Motion for Reconsideration Jan. 5, 2017) (denying Allco Renewable Energy Limited’s motion to intervene in a Section 248 proceeding involving GMP’s proposed investment in an out-of-state generation facility).

³ See e.g., *Investigation into Vermont Electric Cooperative, Inc.’s tariff filing requesting an overall rate increase in the amount of 14.35%, and proposed rate design changes, to take effect December 1, 2005*, Doc. No. 7120 (Order Re Town of Brunswick Motion to Intervene Jan. 5, 2006) (denying town intervention on issue of whether town could be served by any company other than VEC because 30 V.S.A. § 251(d) provided alternative means to address issue and granting town intervention on alleged customer service issues).

⁴ See e.g., *Investigation into Village of Morrisville Water and Light Department’s tariff filing, requesting rate design changes, to take effect September 1, 2007* (Order of Oct. 1, 2007) (granting AARP permissive intervention in a rate proceeding when it proved that its members “could be uniquely impacted.”); compare with *Tariff Filing of Central Vermont Public Service Corp requesting a 12.9% rate increase.*, Doc. No. 6120 (Order of July 30, 1999) (denying Hydro-Quebec intervention as of right and permissive intervention because, in part, it failed to identify its substantial interest in the proceeding and whether its interests are adequately represented by other parties).

These proposed changes inappropriately eliminate the direct connection a movant has historically needed to prove between the claimed interest and the issues at stake in the PUC proceeding. They also remove the PUC's ability to exercise its specialized expertise and discretion to manage its cases in an efficient and cost-effective way. Arguably, any Vermont ratepayer or resident – or even competitors of the petitioner – could have an “interest” in many types of Commission proceedings, with the potential to create confusion and delay, often with the cost borne by ratepayers.

The Proposed Intervention Standards Are Not Appropriate Because The PUC Is Materially Different From a Court. The PUC seeks to adopt an intervention rule similar to that applied by courts. But the PUC is materially different from a court because the PUC is a quasi-judicial body that exercises special policy and technical expertise. The PUC has the responsibility to manage its process and apply its specialized expertise to screen out inappropriate interventions and thereby ensure a fair, timely, and cost-effective process.

In addition, unlike courts, the PUC has a responsibility to protect state ratepayers and should exercise a gate-keeping authority to ensure that unnecessary litigation costs are not passed on to Vermont ratepayers.

Further, the court system does not have the equivalent of the Department of Public Service or Agency of Natural Resources – agencies that must appear in many cases and represent the public interest. Lowering the intervention threshold as the PUC has proposed will remove the PUC's discretion to limit intervention to only those people/entities with a substantial interest in the proceeding and it would open the door to intervenors whose only interests are general in nature and adequately represented by the Vermont Department of Public Service or other state agencies.

Act 147 Does Not Address Intervention. The PUC supports the proposed rule based on Act 147. But Act 147 does not require the PUC to change the intervention standard nor does it discuss the existing intervention standard. The Act requires the “establishment of a working group to review current processes for citizen participation in PSB proceedings” and requires the working group to “make recommendations to promote increased ease of citizen participation in those proceedings.” Through the implementation of ePUC, the PUC has made citizen participation significantly easier by creating greater access to case files, and by creating an easy method to make public comments. Act 147 does not require the PUC to open every proceeding to intervenors who cannot demonstrate that they have a substantial interest at stake that is not adequately represented by another party.

Other Impacts of Adopting Proposed Rule. The PUC has developed case law over the decades interpreting its current intervention rule. This new rule would render that case law irrelevant. Moreover, the proposed rule does not adopt V.R.C.P. 24 in its entirety; rather, the proposed rule is a modification of V.R.C.P. 24 and it is unclear whether V.R.C.P. 24 case law would even apply to the proposed rule. Creating a new rule thus is inefficient for all parties, creates uncertainty, and may be more costly to implement given lack of precedent for litigants to cite. VEC's review of V.R.C.P. 24 demonstrated that it predominately applies to cases that are unlike the policy/legislative/administrative proceedings that the PUC handles.

Comparison of Proposed Changes to Act 250 Intervention Standard. If the PUC is looking to change the intervention rule, VEC suggests that it consider the intervention standard codified in Title 10 for Act 250 proceedings where adjoining property owners or other persons must demonstrate a “particularized interest protected by Act 250.” 10 V.S.A. § 6085(c)(1). The Act 250 case law developed by the courts require movants to meet a two-part test based on the statutory language. First, “the person asserting party status must first allege an interest protected by Act 250 that is particular to them, rather than a general policy concern shared with the public.”⁵ The impacts on the would-be party must be “concrete.”⁶ Second, the party status requestor must show a “reasonable possibility that the Commission decision may affect its particularized interest.” The court requires the movant to “demonstrate more than a causal connection” and “unsupported assertions with vaguely defined interests do not suffice” as “an offer of proof must be specific and concrete.”⁷

Adopting the Act 250 standard would serve the important purpose of the existing PUC intervention standards – ensuring that those with real interests at stake can participating while limiting unfettered and perhaps frivolous attempts to unduly delay proceedings. It would also create consistency among two bodies with similar quasi-legislative functions. And it would come with a body of case law to assist parties and the PUC in assessing individual intervention requests.

In sum, VEC submits that the PUC should either maintain the existing intervention rule or adopt the same standards that apply in Act 250 matters.

Sincerely,



Joslyn Wilschek, Esq.

⁵ *In re Pion Sand and Gravel Pit*, Doc. No. 245-12-09 Vtec, at 7 (Vt. Super. Ct. Env'tl. Div. July 2, 2010) (Durkin, J.).

⁶ *In re RCC Atlantic, Inc.* Doc. No. 163-7-08, at 9 (Vt. Super. Ct. Env'tl. Div. May 8, 2009) (Durkin, J.); *Hinesburg Hannaford Act 250 Permit*, Doc. No. 113-8-14 Vtec at 2-3 (Vt. Super. Ct. Env'tl. Div. Feb. 4, 2015) (Walsh, J.).

⁷ *In re Bennington Wal-Mart Demolition/Constr. Permit*, Doc. No. 158-10-11 Vtec, at 9-10 (Vt. Super. Ct. Env'tl. Div. Apr. 24, 2012) (Walsh, J.).