



NATURAL RESOURCES BOARD

10 Baldwin Street
Montpelier, Vermont 05633-3201

September 29, 2020

VIA E-PUC

Vermont Public Utility Commission
Attn: Judith C. Whitney
112 State Street
Montpelier, VT 05620-2701

Re: *Proposed Revisions to Public Utility Commission Rule 2, Docket No. 20-2369-Rule.*

Ms. Whitney:

In response to the Public Utility Commission's August 27, 2020 Order Opening Rulemaking, the Vermont Natural Resources Board respectfully offers the following comments on the Commission's proposed revisions to Rule 2.206.

The proposed revisions to this rule state, in part: "The Commission may decline to consider a motion not made within 30 days after the facts that form the basis for the motion first arose." The Board suggests that basing the time period for filing a motion on the date when the facts forming the basis for the motion first arose, without regard to when the party filing the motion learned of the facts or should have reasonably learned of the facts, sets too rigid a deadline. As a result, the Commission may receive otherwise unnecessary motions to extend the deadline and parties to Commission proceedings may needlessly spend time and money litigating such motions to extend. The Commission would then have to spend its time adjudicating them. This could be avoided if the Commission were to either:

1. Set individual case deadlines for filing motions rather than establishing in rule a single deadline that applies to all cases;
2. Establish a deadline in rule that is measured backward from the date of any hearing, e.g., motions shall be filed no later than 30 days prior to any scheduled merits hearing; or
3. Establish a deadline in rule that is measured from other dates that typically appear in scheduling orders, e.g., motions shall be filed no later than 30 days after the Commission issues party status rulings or no later than 30 days after the conclusion of discovery.

At a minimum and because the proposed revisions to Rule 2.206 state that the Commission "may" decline to consider a motion, the Board recommends the Commission consider specifying in the rule the factors the Commission will review when determining whether to consider an untimely motion. Notifying parties of such factors in advance may assist in reducing both the number of motions to extend and the time and money parties spend litigating such motions.

Finally, if the Commission decides to keep the proposed revisions to Rule 2.206 as worded, the Board recommends it at least add to the end of the sentence something to the effect of "or within such other deadline as the Commission may establish by order in any individual proceeding." This

eliminates any ambiguity that the Commission may alter the motion deadline as the needs of any individual case warrant.

The Board thanks the Commission for considering these comments. If the Commission has any questions or concerns about them, please feel free to contact me at (802) 477-2346 or evan.meenan@vermont.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Evan Meenan', with a stylized, flowing script.

Evan Meenan
Associate General Counsel