

December 4, 2020

Via ePUC

Ms. Judith Whitney, Clerk
Vermont Public Utility Commission
112 State Street, Drawer 20
Montpelier, VT 05620-2701

**Re: Case No. 20-2369-RULE – Proposed revisions to Vermont Public Utility
Commission Rule 2
Response Comments**

Dear Ms. Whitney:

Dunkiel Saunders Elliott Raubvogel & Hand, PLLC (“Dunkiel Saunders”) provides the following response to the initial round of comments filed on or before October 16, 2020 on the proposed changes to Vermont Public Utility Commission Rule 2 (“Rule 2”) in the above-referenced proceeding. As with our initial comments, Dunkiel Saunders is providing this response on behalf of the firm, based on our experience as practitioners before the Commission, and not on behalf of any specific clients we represent before the Commission.

The Commission’s November 12, 2020 Procedural Order invited parties to respond to suggestions raised for the first time in the initial round of comments, and in particular the proposal by several parties to eliminate reference to the Vermont Rules of Civil Procedure (“V.R.C.P.”) and incorporate relevant rules in Rule 2. Our response comments solely address this issue. We support maintaining reference to the V.R.C.P. as currently contemplated in the proposed rule. Cases before the Commission can involve significant litigation; when necessary, the well-developed V.R.C.P. and established caselaw aid efficient resolution of cases and provide predictability for parties.

Although we agree that not all V.R.C.P. apply to or reflect Commission practice, the benefits of carving out those portions of the V.R.C.P., or specific rewriting provisions into PUC rules, are outweighed by several potential drawbacks: revision of the PUC rules to the extent necessary to separately capture all potential relevant scenarios would be a significant undertaking and the resulting consolidated rule would likely be extensive—the Act 250 rules, for example, exceed 60 pages, and Act 250 proceedings may not reach the complexity of a case before the Commission until they reach the Environmental Division, which itself applies the civil rules. Modifying Rule 2 to eliminate references to the V.R.C.P. also would inject significant uncertainty as to the application of caselaw whether developed by courts or the Commission.

This uncertainty will increase the cost and effort to litigate Commission cases and decrease the efficiency of proceedings.

Dunkiel Saunders appreciates that this suggestion is motivated by a desire for clarity and predictability in Commission practice. However, we believe on balance that these goals are better served by reference to the V.R.C.P. and the legal guidance that accompanies it. Over the course of this rulemaking, it may be that specific issues raised by application of the V.R.C.P. may be addressed in turn by modifying the corresponding Commission rule rather than abandoning the V.R.C.P. in their entirety.

Thank you for taking these comments into consideration. We look forward to discussing the proposed rule changes further with the Commission and Commission staff in this proceeding. Please don't hesitate to contact us with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Geoffrey H. Hand".

Geoffrey H. Hand, Esq.
Malachi T. Brennan, Esq.

On behalf of Dunkiel Saunders

cc: Service List (via ePUC)