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2.201 Practice Before the Commission

(A) Notice of appearance.

- (1) All notices of appearance must specifically state the party or participant that is being represented.
- (2) Attorneys must file a notice of appearance with respect to any proceeding in which they are representing a party or participant, except that for uncontested workshops, uncontested investigations, or rulemakings, attorneys may contact the clerk and ask to be added as a representative of a participant. In ePUC, this notice of appearance happens automatically when a new case or motion to intervene is filed (and no separate notice of appearance is required), but any other initial filing in an existing case must be accompanied by a separate notice of appearance.
- (3) *Pro se* or other representatives (whether representing only themselves or others) must likewise file a notice of appearance, except in the case of a consumer filing a consumer complaint, a system installer filing a net-metering registration or application, anyone filing a transfer form for a net-metering certificate of public good, or anyone filing public comments.
- (4) Although system installers filing a net-metering registration, application, or certificate of public good transfer form 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.
- (5) A copy of each notice of appearance must, on the same day it is filed, be served by the party filing it on all persons or parties on whose behalf a notice of appearance has been filed. A list of such persons and parties will be available through ePUC. The procedures for service are listed in Rule 2.204.
- (6) 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.

- (7) 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.
 - (8) 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 and appearances by State agencies and net-metering system installers.
- (1) Any individual may be a *pro se* representative in their own cause.
 - (2) In its discretion, the Commission may permit persons who are not attorneys to appear before it, including the following:
 - (i) A partnership may be represented by a partner.
 - (ii) A corporation, cooperative, or association may be represented by one of its officers or directors (or by an employee designated in writing by an officer or director, with the designation attached to the notice of appearance filed with the Commission).
 - (iii) A State agency may be represented by an employee designated in writing by the Secretary or Commissioner, with the designation attached to the notice of appearance filed with the Commission.
 - (iv) An applicant for a net-metering registration, application, or transfer of a certificate of public good 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.
 - (3) Each *pro se* or other representative must provide the identity and contact information of the affiliated party they represent, in addition to providing their own contact information
 - (4) In Commission proceedings, 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.

(C) Attorneys admitted elsewhere.

- (1) An attorney admitted to practice and in good standing in any other state may appear in particular proceedings with the permission of the Commission.
- (2) An attorney who previously was permitted to appear under this subsection of this rule does not need the Commission's permission 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.
- (3) 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.
- (4) 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.

(D) Withdrawal of appearance.

- (1) 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, such as another attorney. If a substitution of appearance might cause delay, then Commission approval is required.
- (2) A person appearing as a *pro se* representative for themselves may withdraw without permission of the Commission, which is deemed to constitute withdrawal of that person as a party.

(E) Ex parte communications.

- (1) Prohibited communications. Upon the filing in a contested case of a complaint, petition, application, or other filing that the Commission has treated as the same, 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, unless:
 - (a) all parties have consented to the communication;

- (b) there has been notice and opportunity for all parties to participate; or
 - (c) the communication is required for the disposition of *ex parte* proceedings authorized by law.
- (2) Allowed communications. Non-substantive *ex parte* communications with the clerk or other administrative employees regarding procedural, scheduling, technological, or administrative matters are allowed, even in contested cases, and no disclosure to other parties is required. Also, in an emergency situation in a contested case, *ex parte* communications are authorized, provided:
 - (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 Commission promptly notifies all other parties of the substance of the *ex parte* communication and allows an opportunity to respond.
- (3) Participation in decision. In general, a Commissioner, Commission employee, or agent of the Commission may not participate or advise (except as a witness) in the Commission's decision, recommended decision, or review 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:
 - (a) communications allowed under (2) above;
 - (b) communications that are required for disposition of *ex parte* proceedings authorized by law;
 - (c) communications that all parties have consented to; or
 - (d) 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 the Commission on any subject so as to cause or potentially cause the disqualification of a Commissioner, Commission employee, or agent of the Commission from participating in any manner in any proceeding may be

disqualified from 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 later decision by the Commission with respect to any proceeding that is the subject of such communication.

- (5) Exception. Despite any provision above, Commissioners, Commission employees, and agents of the Commission may communicate with other Commissioners, Commission employees, or agents, provided that none of the latter has engaged in communications prohibited by (1) above.
- (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 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 proceedings.

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

- (A) Initiation of proceedings. To initiate a proceeding, a party must file a complaint, petition, or other application 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 as certain condemnation proceedings);
 - (3) proceedings in which the party initiating the proceeding 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 may be 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 set forth in Rule 3 of the Vermont Rules of Appellate Procedure. 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:

- (1) 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.
 - (2) Reference to any applicable statutes, rules, Commission orders, or certificates of public good that are alleged to have been violated.
 - (3) The factual bases, preferably in the form of one or more signed affidavits or declarations using the template on the Commission's website, 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 2.210 (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 Filings

- (A) Every petition, motion, or other filing must be signed or electronically signed by an attorney or *pro se* or other representative of record in their individual name, with their email address and telephone number stated, with the exception of 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.
- (B) Pleadings need not be verified or accompanied by affidavit or declaration, except when specifically required by rule or statute.
- (C) The signature of an attorney or *pro se* or other representative constitutes a certification by that person that, based on a reasonable inquiry and a good-faith basis, to the best of their knowledge, information, and belief, all of the following are true:
 - (1) There are good grounds to support the petition, motion, or other filing;

- (2) All legal contentions are supported by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
 - (3) All factual contentions have evidentiary support, or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
 - (4) The petition, motion, or other filing is not being done for delay or any other inappropriate purpose.
- (D) Any violation of subsection (C) may be subject to sanctions under Rule 2.224.

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 must, on the same day on which it is filed, be served by the party filing the same on every other party who has filed a notice of appearance.
- (B) Service, how made.
- (1) Service on represented parties and participants. When service is required, it must be made on the attorneys and representatives who have filed notices of appearance.
 - (2) 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.
 - (3) 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.
 - (4) Electronic service for all ePUC users. In all cases, service is deemed to be made on 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 on whom service is required by the

applicable rules of procedure, and who are using ePUC to participate in a Commission proceeding.

- (5) 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 as any required certificates or notices regarding the exchange of discovery.
 - (6) Paper copies for non-ePUC users. In all cases, service may be made on non-ePUC users by mailing a copy of the filing, first-class postage prepaid, to the person whose notice of appearance is on file. For service on 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 on whom service is required by the applicable rules of procedure, and who are not using ePUC to participate in a Commission proceeding.
 - (7) 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.
- (1) Filing of all public documents must be accomplished through ePUC or by delivery to the Commission during the course of an evidentiary hearing, unless the document falls under one of the listed exceptions in Rule 2.110 or a waiver has been granted under Rule 2.107 for paper filing.
 - (2) Filing of documents for which confidential treatment is sought must be accomplished through the procedures listed in Rule 2.226.
 - (3) Regardless of the method of delivery employed, filing of all public documents occurs only upon receipt by the ePUC system or receipt by the Commission.
 - (4) Every filing constitutes a representation by the attorney or *pro se* or other representative signing the filing that a copy has been or will be served on the same day on which it is filed on every other party or participant on whose behalf a notice of appearance has been filed.

- (D) Number of copies. In the limited circumstances where Commission rules allow paper filings, all materials required to be filed must include an original only, except that paper filings of discovery responses under Rule 2.214 must include an original plus one copy.
- (E) Form of filings.
- (1) In general.
- (a) Except as provided in Rule 2.204(F), all filings must be typed using a common typeface, size 12 font, double-spaced, and formatted as 8 1/2" x 11" with at least 1" margins.
 - (b) All motions and briefs other than post-hearing briefs must be no more than 25 pages in length (excluding exhibits), all responses to motions and briefs other than post-hearing 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).
 - (c) The first page of every filing must include the case caption (the case name and the case number if a case number has been assigned) and must be headed by a descriptive title (e.g., "Applicant's Response to Hearing Officer's Request for Additional Information").
 - (d) All filings longer than 1 page must include in the upper right-hand corner of each page the case name and case number, the page number, and the date. This information is not required on the first page of a letter or other filing, provided that the case name, case number, and date appear somewhere on the first page.
 - (e) Filings must address the procedural and substantive matters that are before the Commission; they may not use inappropriate or derogatory language, and they may not make personal accusations that are speculative or are not directly related to the procedural and substantive matters that are before the Commission. Upon a motion by a party or upon the Commission's own initiative at any time, the Commission may strike from any filing any redundant, immaterial, impertinent, or scandalous matter.
- (2) Separate documents required.
- (a) Each document (e.g., each witness's prefiled testimony, each individual exhibit, etc.) must be identified and filed in ePUC separately.
 - (b) Individual documents may not be consolidated into a single larger document for filing in ePUC.

- (c) New motions may not be filed in the same document as a response or reply to a previously filed motion.
 - (d) 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.
- (a) An electronic filing may be submitted on any day, including holidays and weekends, and at any time.
 - (b) 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.
 - (c) 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.
 - (d) 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.
- (a) 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.
 - (b) The identifying case number must appear on all subsequent filings pertaining to that Commission proceeding.

- (c) However, a filing is not deemed accepted by the Commission until it meets the requirements of these rules and of the ePUC system.
- (6) Review of submission.
 - (a) A filing that initiates a case and 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.
 - (b) 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.
 - (c) 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.
 - (d) 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 (for text documents) 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.
- (a) 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.
 - (b) If the filing party 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).
 - (c) 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.
- (a) 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 2.224 and the

requirement in Rule 2.203(C) of, among other things, a reasonable inquiry and good-faith basis for all representations in written filings.

- (b) 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.
 - (c) A procedural document filed by non-electronic means must be signed as provided in the applicable rules of procedure.
 - (d) 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.
 - (a) 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.
 - (b) 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 before the evidentiary record is closed. The evidentiary record for a case is closed after the evidence to be considered in deciding a case has been entered into evidence:

- at an evidentiary hearing, or
- in a proposal for decision (if there is no evidentiary hearing), or
- in a final order (if there is no evidentiary hearing or proposal for decision).

Unless allowed automatically under an applicable statute or rule, or agreed to by all parties (without the Commission denying the amendment), such amendments require Commission approval. Proposed amendments must be clearly identified and must clearly indicate what changes are being made. In the event an amendment makes a substantial change to a filing, the Commission may order such additional notice to other parties and the public as justice may require.

- (2) Rate filings. Any filing to amend, supplement, or alter an existing rate filing or substantially revise the proof in support of a rate filing to increase, decrease, or substantiate a pending rate request must demonstrate that the change in filing or proof is necessary for the purpose of providing adequate and efficient service. This requirement is met if the new filing is the result of previously unknown costs or other circumstances (which could not have been known through reasonable diligence) that will be in effect during the affected rate period.

(H) Public access to and use of ePUC. Any person, including any member of the general public, may use ePUC to:

- (1) File public comments on any proceeding before the Commission. 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 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) 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.
- (B) Expenses. The expense of furnishing notice 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

- (A) Motions not made during a hearing must be in writing, filed within a reasonable period of time from when the issue arose or by a deadline established by rule or order, and, if they raise a substantial issue of law, must be accompanied by a brief or memorandum of law.
- (B) 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).
- (C) 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.
- (D) An opportunity to present evidence on a motion shall be provided, if requested, unless the Commission finds there to be no genuine issue as to any material fact. The request for an opportunity to present evidence shall include a statement of the evidence that the party wishes to offer. In any case, the Commission may decline to hear oral argument and may dispose of the motion without argument.
- (E) Unless otherwise directed by the Commission, responses to motions are due 14 days after the motion is filed, and replies are due 14 days after responses are filed.
- (F) 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.
- (G) If a motion seeks expedited resolution (that is, sooner than allowed by the standard 14-day response period and 14-day reply-to-response period, plus a time for Commission deliberations), this must be clearly stated in the title of the motion ("Expedited Motion to . . .").
- (H) 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.
- (I) A new motion may not be combined with a response to a motion.

- (J) A memorandum of law must be included in the same document as the motion it supports. However, any affidavit, declaration, 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.
- (K) All motions (except for motions to dismiss, for summary judgment, for a temporary restraining order, or for sanctions) must state whether the moving party has received consent for the relief requested from all other parties and participants.

2.207 Time

- (A) All filings (including electronic filings) must be submitted by 4:30 P.M. on a date that the Commission is open for business to count as being filed on that date.
- (B) In computing any time period in these rules, in any order, or in any applicable statute that does not specify a method of computing time:
- (1) Exclude the day of the event that triggers the period.
 - (2) Count every day, including intermediate Saturdays, Sundays, and legal holidays.
 - (3) Include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday (any day declared a holiday by the United States President, the United States Congress, or the State of Vermont), the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.
- (C) 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, 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 the applicant claims an interest in the proceeding and the applicant is so situated that the disposition of the proceeding may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

- (B) Permissive intervention. Upon timely application, a person may be permitted to intervene in any proceeding (1) when a statute or Commission rule confers a conditional right to intervene, or (2) when an applicant's claimed interest shares a question of law or fact in common with the subject of the proceeding. In exercising its discretion, 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 that party's participation, may require that party to join with other parties with respect to appearance by counsel, presentation of evidence, or other matters, and may otherwise limit 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 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 must be made as early as possible or by the date allowed under a scheduling order.

2.210 Joinder

- (A) Persons to be joined if feasible. A person shall be joined as a party in the case if:
- (1) in the person's absence complete relief cannot be accorded among those already parties, or
 - (2) the person claims an interest related to the subject of the case and is so situated that the disposition of the case in the person's absence may:
 - (a) as a practical matter impair or impede the person's ability to protect that interest, or
 - (b) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the person's claimed interest.
- (B) Reasons for nonjoinder. A petition or other initial filing shall state the names, if known to the filer, of any persons described in subsection (A) who are not joined, and the reasons why they are not joined.
- (C) Joinder by order of the Commission.
- (1) For a person described in subsection (A), if joinder is feasible but has not occurred, the Commission may order that the person be made a party.

- (2) For a person described in subsection (A), if joinder is not feasible, the Commission may determine whether in equity and good conscience the proceeding should continue among the parties before the Commission, or whether the proceeding should be dismissed because the absent person is indispensable. The factors to be considered by the Commission include:
- (a) to what extent an order rendered in the person's absence might be prejudicial to the person or those already parties,
 - (b) the extent to which, by protective provisions in the order, by the shaping of relief, or other measures, the prejudice can be lessened or avoided,
 - (c) whether an order rendered in the person's absence will be adequate, and
 - (d) whether the petitioning party will have an adequate remedy if the petition is dismissed for nonjoinder.
- (3) Permissive joinder. All persons may seek to join in one case if any question of law or fact common to all these persons will arise and may be decided in the case. Upon a motion by a party or on the Commission's own initiative, the Commission may join all persons who have an interest arising out of the same matter if any question of law or fact common to all of the joined persons may be resolved through an order in the case where the person is joined. Alternatively, the Commission may give leave to allow the person to file an *amicus* brief.
- (4) Misjoinder. The misjoinder of parties is not ground for dismissal of a case. Parties may be dropped or added by order of the Commission on motion of any party or on its own initiative at any stage of the case and on such terms as are just. Any part of a case may be severed and proceeded with separately.

2.211 Consolidation of Hearings; Separate Hearings

- (A) Consolidation. When cases involving a common question of law or fact are pending before the Commission, it may order a joint hearing on any or all the matters at issue in the cases; it may, with consent of the parties, order all the cases consolidated; and it may make orders in these proceedings to avoid unnecessary costs or delay.
- (B) Separate hearings. The Commission, for convenience or to avoid prejudice, or when separate hearings will promote expedition and economy, may order a separate trial of any issue or issues.

2.212 Scheduling, Status Conferences, and Mediation

- (A) Scheduling and Status Conferences. In any proceeding, the Commission may direct the parties to appear before it at any time for a conference to consider scheduling and other matters, including:
- (1) simplifying the issues;
 - (2) amendments to filings;
 - (3) admissions of facts and of documents;
 - (4) limiting the number of expert witnesses;
 - (5) whether the case may be appropriate for mediation; and
 - (6) any other matters that may aid in the disposition of the case.
- (B) Mediation. Upon a motion by any party or on its own initiative, the Commission may order the parties to any proceeding to participate in mediation. All parties and their counsel must attend a scheduled mediation unless the parties stipulate otherwise or the Commission, for good cause, excuses a person from participation or authorizes a person to participate by telephone. At each mediation, each party must have in attendance a person who has settlement authority and authority to enter stipulations. With the agreement of all parties and the mediator, any nonparty having an interest that may be materially affected by the outcome of the proceeding, or whose presence is essential to its resolution, may attend a mediation in person or by counsel. The fees and expenses of a mediator selected by the parties will be agreed on by the parties and the mediator. In cases involving a petition, the petitioner is responsible for all fees and expenses of a mediator unless otherwise agreed or ordered. In all other cases, each party must pay an equal share of the fees and expenses of any selected or designated mediator unless otherwise agreed or ordered. Any party that believes it is financially unable to pay the fee may file a motion with the Commission requesting a different fee arrangement or that mediation not be required in the case.
- 2.213 Prefiled Testimony**
- (A) Direct case. Each party must prefile the direct testimony and exhibits of each witness it proposes to call in support of its direct case.
- (B) Rebuttal case. Each party must prefile the direct testimony and exhibits of each witness it proposes to call in rebuttal of the case of any other party.
- (C) Form of prefiled testimony.

- (1) 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 set forth below and with the requirements set forth in Rule 2.204(E).
- (2) Testimony filed in narrative format must include headers to identify subject-matter categories.
- (3) 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.
- (4) 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.
- (5) The prefiled testimony of each witness must be accompanied by a signed affidavit or declaration attesting that all statements 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.
- (6) Despite the provisions of Commission Rule 5.107(C)(7) or any other rule, in circumstances in which a notarized document is required, a filer may include the following language in lieu of notarization: "I declare that the above statement is true and accurate to the best of my knowledge and belief. I understand that if the above statement is false, I may be subject to sanctions by the Commission pursuant to 30 V.S.A. § 30." In Commission hearings in which a witness testifies by video or audio conference, the Commission may administer the oath remotely provided the Commission is satisfied as to the identity of any witness testifying remotely.

2.214 Discovery

- (A) Service of discovery requests and responses. All discovery requests and responses must be served on all parties and participants in accordance with Rule 2.204. Discovery requests served on parties or participants in a Commission proceeding must also be filed with the Commission in ePUC. In particular cases, the Commission may also direct that the parties file copies of discovery responses.
- (B) Discovery methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter on land or other property, for inspection and other purposes; and requests for admission.

- (C) Discovery procedures. All discovery must be done in accordance with the specific procedures outlined in Rule 2.230.

2.215 Conduct of Hearings

- (A) Commission witnesses. The Commission may call witnesses to testify as to any matter 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 may not communicate with 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 Commissioner, and any Commission staff or agent, may examine witnesses who testify in any proceeding.
- (C) Rulings by hearing officers. When a proceeding has been assigned to a hearing officer, the hearing 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 hearing officer. After the hearing officer has issued and served a proposal for decision, a party may bring 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, Remote Proceedings, and Deadlines for Objecting to Prefiled Testimony and Exhibits

- (A) Evidence. Evidentiary matters are governed by 3 V.S.A. § 810.
- (B) Participation or testimony by video or audio conference.
- (1) The Commission may preside remotely and may on its own initiative require parties, witnesses, counsel, or other necessary persons to participate or testify in a hearing or other proceeding by video or audio conference upon reasonable notice. The Commission may use contemporaneous video or audio conference transmission from one or more different remote locations.
 - (2) Any objections to an order, hearing notice, or any other notice requiring video or audio participation or testimony should be filed as soon as possible. Any response to an objection should also be filed as soon as possible.
 - (3) In any proceeding to be conducted by video or audio conference, the Commission may terminate or suspend the proceeding if the Commission finds that the connection itself or the circumstances of the call do not allow the Commission or

other parties to clearly hear one another or that the circumstance of the call are otherwise disruptive of the proceeding.

- (C) Use of exhibits. Where evidence to be presented consists of tabulations or figures so numerous as to make oral presentation impracticable, it must be presented in exhibit form. These exhibits must be summarized and explained in testimony.
- (D) Procedure for admitting and objecting to prefiled testimony and exhibits.
- (1) Prefiled testimony, if admitted into evidence, must be included in the transcript by including a link in the transcript to access each witness's electronically filed testimony and exhibits.
 - (2) Objections to the admissibility of prefiled testimony or exhibits, including objections to the admissibility of expert opinions, must be filed in writing at least 14 days before the evidentiary hearing (or, if the evidentiary hearing is canceled, then at least 14 days before the evidentiary hearing was scheduled 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 filed in writing within seven days of the objected-to filing, or at the hearing, whichever is earlier.
 - (3) 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.
- (E) Views and inspections. Upon notice to the parties, the Commission may, either on its own initiative or upon the request of a party, view or inspect any property 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 During Evidentiary Hearings

During an evidentiary hearing, all objections must be raised immediately or they are waived. If a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not prejudice the party. Later objections to the same legal point are unnecessary, and the later admission or exclusion of evidence of like nature shall be deemed to be subject to the same objection as originally stated.

2.218 Subpoenas

- (A) Only for testifying witnesses. Subpoenas shall not be used on members of the public who merely file public comments and do not submit testimony or offer other evidence, unless there is good cause to believe that a non-testifying person has critical information that

cannot reasonably be obtained in any other way.

(B) Form and issuance. Every subpoena shall

- (1) state the title of the action, the case number, and the Vermont Public Utility Commission; and
- (2) command each person to whom it is directed to attend and give testimony or to produce and permit inspection, copying, testing, or sampling of designated books, documents, electronically stored information, or tangible things in the possession, custody, or control of that person, or to permit inspection of premises, at a time and place therein specified; and
- (3) set forth the text of subsections (F) and (G) of this rule.

(C) Combined subpoenas allowed. A command to produce evidence or to permit inspection, copying, testing, or sampling may be joined with a command to appear at a hearing or at a deposition, or may be issued separately. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(D) Issuance by a party or attorney. The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney may also issue and sign a subpoena.

(E) Service on parties. A copy of every subpoena must be served on all parties to the case before or at the same time that it is served on the person to whom it is directed.

(F) Service on witness. A subpoena may be served by any person who is not a party and is at least 18 years of age, subject to the limitations on the service of subpoenas listed in subsection (A). Service of a subpoena on a person shall be made by delivering a copy to that person and, if the person's attendance is commanded, by tendering to that person with the subpoena the fees for one day's attendance and the mileage allowed by law. A subpoena may be served at any place within the state. When necessary, proof of service shall be made by filing in ePUC a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service.

(G) Protection of persons subject to subpoenas.

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The Commission may enforce this duty and impose on the party or attorney in breach of this duty an appropriate sanction, which may include lost earnings and a reasonable attorney's fee.

- (2) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents, or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition or hearing.
- (3) A person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve on the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to the requested production or to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the Commission. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.
- (4) On timely motion, or on the Commission's own initiative, the Commission may quash or modify the subpoena if it:
 - (a) fails to allow reasonable time for compliance;
 - (b) requires a resident of this state to travel to attend a deposition more than 50 miles one way unless the Commission otherwise orders, or requires a nonresident of this state to travel to attend a deposition at a place more than 50 miles from the place of service unless another convenient place is fixed by order of the Commission;
 - (c) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
 - (d) subjects a person to undue burden.
- (5) To protect a person subject to or affected by the subpoena, the Commission may quash or modify the subpoena, or, if the party on whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship and ensures that the person to whom the subpoena is addressed will be reasonably compensated, the Commission may order appearance or production only under specified conditions, if a subpoena:

- (a) requires disclosure of a trade secret or other confidential research, development, or commercial information;
- (b) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or
- (c) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 50 miles one way to attend a hearing.

(H) Duties in responding to subpoena.

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.
- (3) A person responding to a subpoena need not produce the same electronically stored information in more than one form.
- (4) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the Commission may nonetheless order discovery from such sources if the requesting party shows good cause. The Commission may specify conditions for the discovery.
- (5) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as hearing preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
- (6) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as hearing preparation materials, the person making the claim may notify any party that received the information of the claim and the

basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the Commission under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

- (I) Contempt. Failure by any person without adequate excuse to obey a subpoena served on that person may be deemed contempt. Adequate excuse for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided in this rule. The provisions of 12 V.S.A. §§ 1623-1624 shall apply to failure by any person without adequate excuse to obey a subpoena served on that person.

2.219 Summary Judgment

- (A) Motion for summary judgment or partial summary judgment. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The Commission may grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The Commission should state on the record the reasons for granting or denying the motion.
- (B) Time to file and oppose a motion. A party may file a motion for summary judgment at any time until 30 days after the close of all discovery, unless a different time is set by stipulation or Commission order. The adverse party may file a memorandum in opposition and a statement of disputed facts and affidavits or declarations, if any, up to 30 days after the service of the motion on the party.
- (C) Procedures.
- (1) Supporting factual positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
- (a) Filing a separate and concise statement of undisputed material facts or a separate and concise statement of disputed facts, consisting of numbered paragraphs with specific citations to particular parts of materials, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
- (b) Showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

- (2) Objection that a fact is not supported by admissible evidence. A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.
 - (3) Materials not cited. The Commission need consider only the materials cited in the required statements of fact, but it may consider other materials in the record.
 - (4) Affidavits and declarations. An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.
- (D) When facts are unavailable to the nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the Commission may:
- (1) defer considering the motion or deny it;
 - (2) allow time to obtain affidavits or declarations or to take discovery; or
 - (3) issue any other appropriate order.
- (E) Failing to properly support or address a fact. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by this rule, the Commission may:
- (1) give an opportunity to properly support or address the fact;
 - (2) consider the fact undisputed for purposes of the motion;
 - (3) grant summary judgment if the motion and supporting materials (including the facts considered undisputed) show that the movant is entitled to it; or
 - (4) issue any other appropriate order.
- (F) Judgment independent of the motion. After giving notice and a reasonable time to respond, the Commission may:
- (1) grant summary judgment for a nonmovant;
 - (2) grant the motion on grounds not raised by a party; or
 - (3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

- (G) Failing to grant all the requested relief. If the Commission does not grant all the relief requested by the motion, it may enter an order stating any material fact that is not genuinely in dispute and treating the fact as established in the case.
- (H) Affidavit or declaration submitted in bad faith. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the Commission—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

2.220 Withdrawal of Petitions

- (A) Voluntary withdrawal. A petitioner may voluntarily withdraw a petition, application, or registration without order of the Commission by filing a notice of dismissal in any case in which no adverse party has filed substantive comments in response to the petition. A net-metering registration will be deemed voluntarily withdrawn if the registrant fails to respond to an objection raised by the interconnecting utility.
- (B) Withdrawal by stipulation. A petition, application, or registration may be dismissed by filing a stipulation of dismissal signed by all parties who have appeared in the action.
- (C) Withdrawal by order of the Commission. Except as provided in paragraphs (A) and (B) of this subsection, an action shall not be dismissed except by order of the Commission and on such terms and conditions as the Commission deems proper.
- (D) Without prejudice. Unless otherwise specified in a voluntary notice of dismissal, a stipulation, or a Commission order, a dismissal under this rule is without prejudice.

2.221 Motions to Alter or Amend an Order, Relief from Order, and Harmless Error

- (A) Motion to alter or amend an order.
 - (1) Grounds. The Commission may on motion grant a new hearing or alter or amend an order on all or part of the issues for any of the reasons for which new hearings have been granted in actions at law or in suits in equity in the courts of this state. On a motion for a new hearing or to alter or amend an order, the Commission may open the proceeding and reconsider a final order if one has been entered, take additional testimony, amend findings of fact and conclusions of law, or make new findings and conclusions, and may direct the entry of a new judgment.
 - (2) Time for motion. A motion for a new hearing or to alter or amend an order shall be filed not later than 28 days after the order is issued.

- (3) Time for serving affidavits or declarations. When a motion for new hearing or to alter or amend an order is based on affidavits or declarations, they shall be filed with the motion. An opposing party has 14 days after service of the motion within which to file opposing affidavits or declarations. The Commission may permit reply affidavits and declarations.
- (4) On initiative of the Commission. Not later than 28 days after an order, the Commission may on its own initiative order a new hearing or alter or amend an order for any reason for which it might have granted a new hearing or altered or amended an order on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Commission may grant a motion, if timely served, for a new hearing or to alter or amend an order, for a reason not stated in the motion. In either case, the Commission shall specify in the order the grounds for ordering a new hearing or altering or amending an order.
- (B) Relief from order.
- (1) Clerical mistakes. Clerical mistakes in judgments, orders, or other parts of the record, and errors arising from oversight or omission may be corrected by the Commission at any time on its own initiative or on the motion of any party and after such notice, if any, as the Commission orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the Supreme Court, and thereafter while the appeal is pending may be so corrected with leave of the Supreme Court.
- (2) Mistakes, inadvertence, excusable neglect, newly discovered evidence, fraud, etc. On motion and on such terms as are just, the Commission may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (i) mistake, inadvertence, surprise, or excusable neglect; (ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new hearing under subsection (A) of this rule; (iii) fraud, misrepresentation, or other misconduct of an adverse party; (iv) the judgment is void; (v) the judgment has been satisfied, released, or discharged, or a previous judgment on which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (vi) any other reason justifying relief from the operation of the judgment. The motion shall be filed within a reasonable time, and for reasons (i), (ii), and (iii) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subsection does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of the Commission to entertain an independent action to relieve a party from a judgment, order, or proceeding. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

- (C) Harmless error. No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the Commission or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the Commission inconsistent with substantial justice. The Commission at every stage of the proceeding must disregard any error or defect in the proceeding that does not affect the substantial rights of the parties.

2.222 Proposed Findings of Fact

- (A) In any case the Commission may require each party to file proposed findings of fact. Each proposed finding must deal concisely with a single fact or with a group of facts so interrelated that they cannot reasonably be treated separately.
- (B) Proposed findings must be consecutively numbered and must be in logical sequence.
- (C) 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.
- (D) 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

- (A) Briefs must address each issue of law that a party desires the Commission to consider.
- (B) Whenever a brief addresses more than one issue, it must be divided into sections that separately address each issue.
- (C) Briefs longer than 10 pages must contain, immediately after the cover page, a table of contents.

2.224 Sanctions

- (A) An attorney or *pro se* or other representative who fails, after having been requested by the Commission to do so, to 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.
- (B) In addition, if proposed findings of facts fail to comply with Rule 2.222, 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 that fact; and with respect to any issue of law

as to which a party has failed to conform to the requirements of Rule 2.223, that party may be deemed to have waived any claims of law on that issue.

- (C) If, after notice and a reasonable opportunity to respond, the Commission determines that subsection (A) or (B) has been violated, or that there has been a violation of Rule 2.203(C), the Commission may, subject to the conditions stated below, impose an appropriate sanction on the attorneys, law firms, or parties that have violated or are responsible for the violation.
- (1) A motion for sanctions under this rule shall be made separately from other motions or requests, shall describe the specific conduct alleged to violate this rule or Rule 2.203(C), and shall explain all efforts made toward having the alleged violator voluntarily withdraw or correct the challenged filing, claim, defense, contention, allegation, or denial. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.
 - (2) On its own initiative, the Commission may enter an order describing the specific conduct that appears to violate this rule or Rule 2.203(C) and directing an attorney, law firm, or party to show cause why it has not caused a violation.
 - (3) When imposing sanctions, the Commission shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed. A sanction shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. The sanction may consist of, or include, directives of a nonmonetary nature or an order to pay a penalty.

2.225 Proposed Schedules

- (A) 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.
- (B) 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.

- (C) 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.
- (D) 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.

- (1) All documents filed with the Commission are presumed to be public.
- (2) The marking of a document as “confidential” does not render that document confidential.
- (3) To assert confidentiality of a document, the filing must include one or both of the following:
 - (a) 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
 - (b) a motion for confidential treatment.

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

- (1) All assertedly confidential documents must bear a stamp on every page marking the document as “Confidential.”
- (2) Until the Commission issues procedures for filing confidential information in ePUC, any confidential information must be filed by email with the clerk or filed

in paper and must have the word “Confidential” as the first word of the subject line. In contested cases, the content of this email or paper cover letter 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.

- (3) 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.

- (1) 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.
- (2) 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.
- (3) The averment must list a specific expiration date for keeping the information under seal (usually no more than three years) and must explain in detail why the information must be kept confidential for that length of time.
- (4) The motion must also address each of the following questions:
 - (a) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information that should be protected?
 - (b) Does the matter sought to be protected contain Critical Energy Infrastructure Information (CEII), as that term is defined by the Federal Energy Regulatory Commission?
 - (c) Does the matter sought to be protected contain information related to a utility’s cybersecurity program?

- (d) Would disclosure of the information cause a cognizable harm sufficient to warrant confidential treatment?
- (e) 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.

2.228 Recusal

- (A) A motion for recusal of a Commissioner or hearing officer shall be made as soon as practicable after the cause or ground becomes known.
- (B) Motions for recusal shall be accompanied by an affidavit, a declaration, or a certificate of a party’s attorney, stating the reason for it and when such reason was first known.
- (C) The Commissioner or hearing officer whose recusal is sought shall either recuse themselves or, without ruling on the motion, refer the motion to the other Commissioners (or to all of the Commissioners when it concerns a hearing officer).
- (D) A Commissioner or hearing officer who may be recused for any reason other than personal bias or prejudice may disclose on the record the basis of their potential recusal and may advise the parties and their lawyers that they may consider, out of the presence of the Commissioner or hearing officer, whether to move for recusal. If, seven days after disclosure, no party has moved for recusal, the Commissioner or hearing officer may participate in the proceeding.

2.229 Recording of Proceedings

- (A) The Commission may record any of its own proceedings.
- (B) Any member of the press or public may record any Commission hearing, oral argument, or other public proceeding, under the following conditions:
 - (1) Anyone recording a proceeding (by video or audio) must disclose this at the beginning of the proceeding.
 - (2) Recordings shall not interfere in any way with the proceeding.
 - (3) Recordings shall not capture private discussions between and among:
 - (a) Commissioners and Commission staff at the bench, or
 - (b) attorneys and their clients.
 - (4) The Commission may permit, prohibit, terminate, limit, or postpone the recording or transmitting of all or any part of a proceeding, and the use of any device, in the

hearing room or public meeting room and areas immediately adjacent to it on the Commission's own initiative or on the request of a party or witness in the proceeding. Upon notice to the parties, to the person requesting the order, to any person or entity designated by the media to be notified on behalf of all potentially interested members of the media, and to any person who has filed a request to be heard on this particular motion, the Commission must hold a prompt hearing on the motion. In acting under this provision, the Commission will favor allowing the recording of all public proceedings and will only restrict such recording if the entity recording the proceeding has violated subsection (B)(1), (2), or (3) of this rule, or if the Commission concludes that one or more of the following factors weighs strongly and overwhelmingly in favor of restricting the right to record:

- (a) the impact of recording or transmitting on the rights of the parties to a fair hearing;
- (b) whether the private nature of testimony outweighs its public value;
- (c) the likelihood that physical, emotional, economic, or proprietary injury may be caused to a witness, a party, or other person or entity;
- (d) the age, mental condition, and medical condition of the party or witness; and
- (e) any other good cause.

2.230 Specific Discovery Procedures

(A) Discovery scope and limits.

- (1) Scope in general. Unless otherwise limited by Commission order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's legal arguments and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.
- (2) Limitations on frequency and extent.
 - (a) Specific limitations on electronically stored information. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the Commission may nonetheless order discovery from such

sources if the requesting party shows good cause. The Commission may specify conditions for the discovery.

- (b) Orders limiting frequency or extent of discovery. On motion or on its own, the Commission must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that:
 - (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
 - (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or
 - (iii) the proposed discovery is outside the scope permitted by this rule.
- (3) Insurance agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person conducting an insurance business may be liable to satisfy the requirements of any Commission order. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.
- (4) Hearing preparation: materials. Subject to other provisions of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under this rule and prepared in anticipation of litigation or for a hearing by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only after a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Commission shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation. A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party.
- (5) Trial preparation: experts.
 - (a) Identification and deposition of an expert who may testify.
 - (i) A party may through interrogatories require any other party:
 - (I) to identify each person the other party may use at a hearing to present expert testimony under Vermont Rules of

Evidence 702, 703, or 705, whether or not the witness may also testify from personal knowledge as to any fact at issue in the case;

(II) to state the subject matter and the substance of the facts and opinions as to which the expert is expected to testify; and

(III) to provide a summary of the grounds for each opinion.

(ii) A party may depose any person who has been identified in an answer to an interrogatory as an expert whose opinions may be presented at a hearing.

(iii) A party may obtain by request for production or subpoena any final report of the opinions to be expressed by an expert who has been identified in an answer to an interrogatory as an expert whose opinions may be presented at a hearing, as well as the basis and reasons for the opinions and any exhibits that will be used to summarize or support them.

(iv) Any questions a party asks of another party's expert witness—whether through interrogatories, depositions, or requests for production—must be related to the expert witness's testimony.

(b) Hearing-preparation protection for draft disclosures and certain reports. Subsection (A)(4) of this rule protects drafts of any disclosure of an expert identified by a party and drafts of any report prepared by such an expert, regardless of the form in which the draft is recorded.

(c) Hearing-preparation protection for communications between a party's attorney and certain expert witnesses. Subsection (A)(4) of this rule protects communications between the party's attorney and any party-identified expert whose opinions may be presented at trial, regardless of the form of the communications, except to the extent that the communications:

(i) relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the party's attorney provided and that the expert witness relied on in forming the opinions to be expressed.

- (d) Expert employed only for hearing preparation. A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for a hearing and who is not expected to be called as a witness at a hearing, only after a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.
 - (e) Payment. Unless a party alleges, and the Commission finds, that another party has abused the discovery process (e.g., seeking discovery for no purpose other than delay), each party shall be responsible for any fees incurred by its experts in responding to discovery or attending depositions.
 - (6) Claims of privilege or protection of hearing-preparation materials.
 - (a) Information withheld. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as hearing-preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.
 - (b) Information produced. If information is produced in discovery that is subject to a claim of privilege or of protection as hearing-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the Commission under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.
- (B) Protective orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the Commission may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place or the allocation of expenses for the discovery or disclosure; (3) that the discovery may be had only by a method of discovery

other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the Commission; (6) that a deposition after being sealed be opened only by order of the Commission; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; and (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Commission. If the motion for a protective order is denied in whole or in part, the Commission may, on such terms and conditions as are just, order that any party or person provide or permit discovery, and may award expenses incurred in relation to the motion.

- (C) Sequence and timing of discovery. Unless the Commission upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence. The fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.
- (D) Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under a duty to supplement or correct the response to include information later acquired with respect to the following matters if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing:
- (1) any question directly addressed to
 - (a) the identity and location of persons having knowledge of discoverable matters; and
 - (b) the identity of each person expected to be called as an expert witness at a hearing, the subject matter on which the person is expected to testify, and the substance of the person's testimony;
 - (2) any other previous response to an interrogatory, request for production, or request for admission; and
 - (3) any matter by order of the Commission, agreement of the parties, or at any time before a hearing through new requests for supplementation of previous responses.
- (E) Discovery conference.
- (1) At any time, upon motion or on its own initiative, the Commission may direct the parties to appear before it for a conference on the subject of discovery. The

Commission may do so upon motion by the attorney for any party if the motion includes:

- (a) a statement of the issues as they then appear;
 - (b) a proposed plan and schedule of discovery, including any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced;
 - (c) any limitations proposed to be placed on discovery;
 - (d) any other proposed orders with respect to discovery; and
 - (e) a statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion.
- (2) Each party and each party's attorney is under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be filed not later than 14 days after service of the motion.
- (3) Following the discovery conference, the Commission may enter an order tentatively identifying the issues for discovery purposes, including any issues about preserving discoverable information, any issues about discovery of electronically stored information including the form or forms in which it should be produced, and any issues about claims of privilege or protection as hearing-preparation materials; establishing a plan and schedule for discovery; setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.
- (4) The Commission may combine the discovery conference with a status conference.
- (F) Signing of discovery requests, responses, and objections.
- (1) Every request for discovery or response or objection to discovery made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose email and postal address shall be included. A party who is not represented by an attorney shall sign the request, response, or objection and state the party's email and postal address. The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information,

and belief formed after a reasonable inquiry it is: (i) consistent with these rules and warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; (ii) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (iii) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

- (2) If without substantial justification a certification is made in violation of the rule, the Commission, upon motion or on its own initiative, shall impose on the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

(G) Objections and motions related to discovery procedure.

- (1) Counsel and opposing counsel have the obligation to make good-faith efforts among themselves to resolve or reduce all differences related to discovery procedures and to avoid filing unnecessary motions.
- (2) No motions related to discovery shall be filed unless counsel making the motion has conferred with opposing counsel or has attempted to confer about the discovery issues between them in detail in a good-faith effort to eliminate or reduce the area of controversy, and to arrive at a mutually satisfactory resolution. If the consultations of counsel do not fully resolve the discovery issues, counsel making a discovery motion shall file with the Commission, as part of their motion papers, an affidavit, a declaration, or a certificate of a party's attorney subject to the obligations of Vermont Rules of Civil Procedure Rule 11 certifying that they have conferred or attempted to confer with counsel for the opposing party in an effort in good faith to resolve by agreement the issues raised by the motion without the intervention of the Commission, and have been unable to reach an agreement. If some of the issues raised by the motion have been resolved by agreement, the affidavit or declaration shall specify the issues so resolved and the issues remaining unresolved and the reasons for that. The affidavit or declaration shall set forth the date or dates of the consultation with opposing counsel, and the names of the participants.

- (3) Except when the motion is based solely on the failures described in subsection (P)(4) of this rule (“Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection”), memoranda with respect to any discovery motion shall contain a concise statement of the nature of the case and a specific listing of each of the items of discovery sought or opposed, and immediately following each specification shall set forth the reason why the item should be allowed or disallowed.
- (H) Pending appeal. If an appeal has been taken from a Commission order or before the taking of an appeal if the time for that has not expired, any party seeking to take discovery must file a motion seeking the Commission’s permission and must state the need for such discovery.
- (I) Persons before whom depositions may be taken.
- (1) Within the State of Vermont. Within the state, depositions shall be taken before a justice of the peace or notary public or a person appointed by the Commission.
- (2) Elsewhere. In another state or country, depositions shall be taken before someone who is authorized to administer oaths by the laws of the place where the examination is held or of the laws of the United States, or before a person appointed by a court.
- (3) Administering oaths. A person appointed by the Commission or a court as provided in paragraphs (1) and (2) of this subsection has power to administer oaths and take testimony.
- (4) Written stipulations. Unless the Commission orders otherwise, the parties may by written stipulation:
- (a) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and
- (b) modify the procedures provided by these rules for other methods of discovery.
- (J) Depositions upon oral examination.
- (1) Length of deposition. Unless the Commission allows otherwise, each oral deposition is limited to no more than seven hours.
- (2) When depositions may be taken and who may be deposed. After a case is filed, any party may take the testimony of any person (including a party) who is offering evidence, by deposition upon oral examination. The attendance of

witnesses may be compelled by subpoena, but a subpoena is not necessary for compelling the attendance of a party offering evidence or a testifying witness sponsored by a party. Commission approval (or the written consent of the person to be deposed) is required for the deposition of anyone (including a party) who is not testifying or offering evidence.

(3) Notice of examination: general requirements; special notice; method of recording; production of documents and things; deposition of organization; deposition by telephone.

- (a) A party desiring to take the deposition of any person upon oral examination shall give notice in writing to every other party to the action at least 14 days before the time of taking the deposition, unless the Commission orders otherwise. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If the written notice seeks materials to be produced, the materials sought shall be attached to or included in the notice. For any party or any witness sponsored by a party, written notice served on all parties (or their counsel for any party that is represented by counsel) is sufficient, and no subpoena is necessary. For any other witness, if a subpoena is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.
- (b) If a party shows that when the party was served with notice under this subsection (J)(3) the party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition, the deposition may not be used against the party.
- (c) A deposition shall be recorded stenographically unless the notice of taking states that it is to be recorded by sound or sound-and-visual means. The party taking the deposition shall bear the cost of recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by stenographic or non-stenographic means. If a deposition is to be recorded by non-stenograph means, the notice of taking shall specify: the method of recording; the equipment to be used; the name, address, and employer of the operator of the equipment; and the identity of the person who will administer the oath. The oath may be administered by an attorney for one of the parties who is also a notary. Upon motion of a party or on its own initiative, the Commission may impose such additional conditions as are necessary to ensure that

testimony to be recorded by non-stenographic means will be accurate and trustworthy and to protect the interests of parties and witnesses.

- (d) Any party or witness may at their own expense concurrently record a deposition by a method other than that being used by the party taking the deposition. All parties present and the witness shall be advised that the concurrent recording is being made. A person making a concurrent recording shall permit the parties and the witness to review the recording and shall furnish a duplicate to the witness or any party on request and tender of the actual cost of the duplicate.
- (e) Unless otherwise agreed by the parties, a deposition shall be conducted before someone who is appointed or designated under this rule and shall begin with a statement on the record by that person that includes: (i) the person's name and business address; (ii) the date, time, and place of the deposition; (iii) the name of the deponent; (iv) the administration of the oath or affirmation to the deponent; and (v) an identification of all persons present. If the deposition is recorded by non-stenographic means, the person recording the deposition shall repeat items (i) through (iii) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the person recording the deposition shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and any exhibits, or concerning other pertinent matters. Any objections, any changes by the witness, the witness's signature identifying the deposition as the witness's own or the statement of the person recording the deposition that is required if the witness does not sign, and the certification of the person recording the deposition shall be set forth in writing to accompany a deposition recorded by non-stenographic means.
- (f) The notice to a party deponent may be accompanied by a request that the party at the taking of the deposition produce and permit inspection and copying of designated books, papers, documents, or tangible things that constitute or contain matters within the scope of discovery. The party deponent may, within seven days after service of the notice, serve on the party taking the deposition written objection to inspection or copying of any or all of the designated materials. If objection is made, the party taking the deposition shall not be entitled to inspect the materials except pursuant to an order of the Commission. The party taking the deposition may move at any time for an order with respect to any objection to the

request or any part of it, or any failure to produce or permit inspection as requested.

- (g) In a party's notice, that party may name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This paragraph does not preclude taking a deposition by any other procedure authorized in these rules.
 - (h) The parties may stipulate in writing or the Commission may (upon motion) order that a deposition be taken by telephone or other remote electronic means. For the purposes of this rule, a deposition taken by such means is taken at the place where the deponent is to answer questions.
- (4) Examination and cross-examination; record of examination; oath; objections.
- (a) Examination and cross-examination of witnesses may proceed as permitted at a hearing under the provisions of the Vermont Rules of Evidence. The person recording the deposition, or someone acting under their direction and in their presence, shall put the witness on oath and shall record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means allowed by this rule. If requested by one of the parties, the testimony shall be transcribed.
 - (b) All objections made at the time of the examination to the qualifications of the person taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the person recording the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition, and the party taking the deposition shall transmit them to the person recording the deposition, who shall give them to the witness and record the answers verbatim.
- (5) Objections; motion to terminate or limit examination.
- (a) Any objection to evidence during a deposition shall be stated concisely and in a nonargumentative and nonsuggestive manner. A party may

instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the Commission, or to present a motion under paragraph (c) below.

- (b) If the Commission finds that conduct has impeded or delayed the examination and has prevented a fair examination of the deponent, the Commission may extend the time for taking the deposition and may impose on the persons responsible an appropriate sanction.
 - (c) At any time during a deposition, on motion of a party or of the deponent and after a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the Commission may order the person recording the examination to stop taking the deposition, or may limit the scope and manner of taking the deposition. If the order terminates the examination, it shall be resumed thereafter only by order of the Commission. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.
- (6) Submission to witness; changes; signing. When the non-stenographic recording of a deposition is available, or the testimony in a stenographic deposition is fully transcribed, the deposition shall be submitted to the witness for review unless such review is waived by the witness and the parties. Any changes in form or substance that the witness desires to make shall be submitted in writing to the person who recorded the deposition with a statement signed by the witness of the reasons for making such changes within 30 days after submission of the deposition to the witness. The person who recorded the deposition shall indicate in the certificate prescribed by subsection (J)(7) whether any changes were submitted and, if so, shall append the changes and the statement of reasons. The deposition, or a written statement that a non-stenographic deposition is the witness's own, shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill, cannot be found, or refuses to sign. If the deposition or statement is not signed by the witness within 30 days of its submission to the witness, the person who recorded the deposition shall sign it and state on the record the fact of the waiver or of the witness's illness, absence, or refusal to sign, together with the reason, if any, given for that refusal; and the deposition may then be used as fully as though signed unless the Commission orders otherwise for good cause shown.
- (7) Certification and filing by person who recorded the deposition; exhibits; copies; notice of filing.

- (a) The person who recorded the deposition shall certify that the witness was duly sworn in and that the deposition is a true record of the testimony given by the witness. This certificate shall be in writing and accompany the record of the deposition. Unless otherwise ordered by the Commission, the person who recorded the deposition shall securely seal the deposition in an envelope or package endorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the Commission or send it to the attorney who arranged for the transcript or recording (or to the Commission if it cannot be sent to a designated attorney), who shall store it under conditions that protect it against loss, destruction, tampering, or deterioration.
- (b) Upon the request of a party, documents and things produced for inspection during the examination of a witness shall be marked for identification and annexed to the deposition, and may be inspected and copied by any party, except that if the person producing the materials wishes to retain them the person may (i) offer copies to be marked for identification and annexed to the deposition and to serve as originals, if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (ii) offer the originals to be marked for identification after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the Commission, pending final disposition of the case.
- (c) Unless otherwise ordered by the Commission or agreed by the parties, the person recording the deposition shall retain stenographic notes of any deposition taken stenographically or a copy of the recording of any deposition taken by any other method. After payment of reasonable charges, the person who recorded the deposition shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.
- (K) Deposition upon written questions. If a party wishes to take a deposition upon written questions, that party must file a motion with the Commission requesting permission to do so.
- (L) Use of depositions.
- (1) Evidentiary use. At the hearing or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition (if admissible under the rules of evidence applied as though the witness were then present and testifying)

may be used against any party who was present or represented at the taking of the deposition or who had due notice of it, in accordance with any of the following provisions:

- (a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness or for any other purpose permitted by the Vermont Rules of Evidence.
 - (b) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under subsection (J)(3)(g) of this rule to testify on behalf of a public or private corporation, partnership, association, or governmental agency that is a party may be used by an adverse party for any purpose.
 - (c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Commission finds that the witness (i) is exempted by ruling of the Commission on the ground of privilege from testifying concerning the subject matter of the deposition; or (ii) persists in refusing to testify concerning the subject matter of the deposition despite an order of the Commission to do so; or (iii) testifies to a lack of memory of the subject matter of the deposition; or (iv) is unable to be present at the hearing because of death or then-existing physical or mental illness or infirmity; or (v) is absent from the hearing and the proponent of the deposition has been unable to procure the witness's attendance by process or other reasonable means. A deponent is not unavailable as a witness if the exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing the witness from attending or testifying.
 - (d) If only part of a deposition is offered in evidence by a party, an adverse party may require the offeror to introduce any other part that should, in fairness, be considered with the part introduced, and any party may introduce any other parts.
 - (e) Substitution of parties does not affect the right to use depositions previously taken. A deposition previously taken may also be used as permitted by the Vermont Rules of Evidence.
- (2) Objections to admissibility. An objection may be made at a hearing to receiving in evidence any deposition or part of it for any reason that would require the exclusion of the evidence if the witness were present and testifying.

- (3) Form of presentation. Except as otherwise directed by the Commission, a party offering deposition testimony pursuant to this rule may offer it in stenographic or non-stenographic form, but, if in non-stenographic form, the party shall also provide the Commission with a transcript of the portions so offered.
- (4) Effect of errors and irregularities in depositions.
- (a) As to notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served on the party giving the notice.
- (b) As to disqualification of person recording the deposition. Objection to taking a deposition because of disqualification of the person before whom it will be taken is waived unless made before the deposition begins or as soon afterward as the disqualification becomes known or could be discovered with reasonable diligence.
- (c) As to taking of deposition.
- (i) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one that might have been obviated or removed if presented at that time.
- (ii) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind that might be obviated, removed, or cured if promptly presented, are waived unless timely objection to them is made at the taking of the deposition.
- (iii) Objections to the form of written questions are waived unless served in writing on the party propounding them within the time allowed for serving the succeeding cross or other questions and within seven days after service of the last questions authorized.
- (d) As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the person recording the deposition are waived unless a motion to suppress the deposition or some part of it is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(M) Interrogatories.

- (1) Number. At the request of a party or on its own initiative, the Commission may restrict the number of written interrogatories, including all subparts, that a party may serve on any other party per round of discovery.
- (2) Availability; procedures for use. Any party may serve on any other party that is offering evidence written interrogatories to be answered by the party served or—if the party served is a public or private corporation, a partnership, an association, or governmental agency—to be answered by an officer or agent of that organization, who shall furnish such information as is available to the party. After the case begins, interrogatories may, without leave of the Commission, be served on any party that is offering evidence. Commission approval (or the written consent of the person being asked to answer interrogatories) is required to serve interrogatories on anyone (including a party) who is not testifying or offering evidence.
- (3) Answering interrogatories. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The interrogatory being answered, or objected to, shall be reproduced before the answer or objection. The answers are to be signed by the person making them, and the objections signed by the attorney (or *pro se* party if unrepresented) making them. The party on whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories. The Commission may allow a shorter or longer time. The party submitting the interrogatories may move for an order with respect to any objection to or other failure to answer an interrogatory.
- (4) Scope; use at trial. Interrogatories may relate to any matters that can be inquired into under the rules of discovery, and the answers may be used to the extent permitted by the rules of evidence. An otherwise proper interrogatory is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the Commission may order that such an interrogatory need not be answered until after designated discovery has been completed, until after a status conference, or until another later time.
- (5) Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records, including electronically stored information, of the party on whom the interrogatory has been served or from an examination, audit, or inspection of such business records, including a

compilation, abstract, or summary of them, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(N) Production of documents and things and entry on land.

(1) Scope. Any party may serve on any other party that is offering evidence a request (a) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect, copy, test, or sample any designated documents or electronically stored information (including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by the respondent into reasonably usable form) or to inspect and copy, test, or sample any designated tangible things that constitute or contain matters within the scope of discovery and are in the possession, custody, or control of the party on whom the request is served; or (b) to permit entry on designated land or other property in the possession or control of the party on whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of discovery.

(2) Procedure.

(a) The request may, without leave of the Commission, be served on any party that is offering evidence in the proceeding. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form or forms in which electronically stored information is to be produced.

(b) The party on whom a request is served shall provide a written response within 30 days after the service of the request. The Commission may allow a shorter or longer time. For each item or category, the response must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons. The responding party may state that it will produce

copies of documents or of electronically stored information instead of permitting inspection, provided that, on a showing by the requesting party of a reasonable need, the Commission may order inspection. An objection must state whether any responsive materials are being withheld and the basis of that objection. If objection is made to part of an item or category, the objection must specify the part and permit inspection of the rest. Each specific request shall be reproduced before the response. If objection is made to the requested form or forms for producing electronically stored information—or if no form was specified in the request—the responding party must state the form or forms it intends to use. The party submitting the request may move for an order under this rule with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

- (c) Unless the parties otherwise agree, or the Commission otherwise orders:
 - (i) a party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request;
 - (ii) if a request does not specify the form or forms for producing electronically stored information, a responding party must produce the information in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable; and
 - (iii) a party need not produce the same electronically stored information in more than one form.

(O) Requests for admission.

- (1) Request for admission. A party may serve on any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of discovery set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of the Commission, be served on any party after the case begins.
- (2) Form of requests and answers. Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the Commission may allow, the party to whom the request is directed serves on the party requesting the admission a written answer or objection addressed to the matter,

signed by the party or by the party's attorney. The request being addressed shall be reproduced before the objection or answer. If objection is made, the reasons for it shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for a hearing may not, on that ground alone, object to the request; the party may deny the matter or set forth reasons why the party cannot admit or deny it.

- (3) Motions and objections to requests. The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the Commission determines that an objection is justified, the Commission shall order that an answer be served. If the Commission determines that an answer does not comply with the requirements of this rule, the Commission may order either that the matter is admitted or that an amended answer be served. The Commission may, in lieu of these orders, determine that final disposition of the request be made at a discovery or status conference or at a designated time before a hearing.
 - (4) Effect of admission. Any matter admitted under this rule is conclusively established unless the Commission on motion or its own initiative permits withdrawal or amendment of the admission. The Commission may permit withdrawal or amendment when the presentation of the merits of the action will be subserved and the party who obtained the admission fails to satisfy the Commission that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission by the party for any other purpose, nor may the admission be used against the party in any other proceeding.
- (P) Failure to make discovery; sanctions.
- (1) Motion for order compelling discovery. A party, after reasonable notice to other parties and other affected persons, may apply for an order compelling discovery. If a deponent fails to answer a question or a party fails to answer an interrogatory or allow inspection, or if an answer is evasive or incomplete, the discovering party may move for an order compelling an answer or production or inspection.

When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

- (2) Failure to comply with order. If a deponent or party fails to comply with a Commission order related to discovery, the deponent or party, and any attorney advising the deponent or party, or both, may be subject to sanctions, which may include any of the following:
 - (a) an order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the case in accordance with the arguments of the party obtaining the order;
 - (b) an order prohibiting that party from introducing designated matters in evidence;
 - (c) an order striking out part or all of the filings, including prefiled testimony and other evidence, or staying further proceedings until the order is obeyed, or dismissing the proceeding or any part of it;
 - (d) an order treating as a contempt the failure to obey any orders; and
 - (e) an order requiring the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses caused by the failure, unless the Commission finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.
- (3) Failure to supplement; refusal to admit. A party that without substantial justification fails to supplement responses as required is not, unless such failure is harmless, permitted to use as evidence at a hearing, or on a motion, any witness or information not so disclosed.
- (4) Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. If a party or an officer, director, or managing agent of a party or a person designated under these rules to testify on behalf of a party fails to appear before the person who is to take a properly served deposition, fails to object or comply with a properly served request for production, fails to serve answers or objections to properly served interrogatories, or fails to serve a written response to a properly served request for production or inspection, the Commission may make such orders in regard to the failure as are just. The failure to act as described in this subsection may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by these rules.
- (5) Failure to participate in the framing of a discovery plan. If a party or a party's attorney fails to participate in good faith in the framing of a discovery plan by agreement, the Commission may, after opportunity for hearing, require such party

or attorney to pay to any other party the reasonable expenses caused by the failure.

- (6) Failure to preserve electronically stored or other evidence. If electronically stored or other evidence that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the Commission, upon finding prejudice to another party from loss of the evidence, may order measures no greater than necessary to cure the prejudice.
- (Q) Discovery by the Commission.
- (1) The procedures listed in this rule may be used by the Commission, and the Commission may do so without any limitation on the number or form of requests that may be made by the Commission.
- (2) The availability of such procedures does not in any way limit the authority of the Commission, including the authority to inquire into and examine any proceeding within the jurisdiction of the Commission, to examine books, accounts, and papers of any person or entity subject to the Commission's jurisdiction, or to enter and examine the property of any person or entity subject to the Commission's jurisdiction.
- (R) Discovery requests and responses.
- (1) Discovery requests served on parties or participants in a Commission proceeding must be filed with the Commission in ePUC.
- (2) 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 who are entitled to receive service of the responses.
- (3) 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 on a CD.