

TARRANT, GILLIES & SHEMS

44 EAST STATE STREET
POST OFFICE BOX 1440
MONTPELIER, VT 05601-1440
(802) 223-1112

GERALD R. TARRANT
PAUL S. GILLIES
RONALD A. SHEMS

FAX: (802) 223-6225

MICHAEL J. TARRANT, II
STEPHEN F. COTEUS
NICHOLAS LOW

PARALEGAL
DOREEN M. PALMISANO

September 17, 2021

FILED VIA ePUC

Judith Whitney, Clerk Vermont
Vermont Public Utility Commission
112 State Street
Montpelier, VT 05620

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

Dear Mrs. Whitney:

On August 27, 2020, the Public Utility Commission (“Commission”) issued an order opening a rulemaking to begin review of Commission Rule 2. This order included an initial draft of proposed changes to Rule 2. The Commission solicited comments and then responsive comments to these proposed changes. On December 4, 2020, Comcast filed a letter responding to the comments of other participants.¹ The Commission held workshops on December 18, 2020 and January 21, 2021 to discuss in particular the suggestion by several commenters that the Commission eliminate all references to the Vermont Rules of Civil Procedure (VRCP) and instead incorporate relevant rules into Commission Rule 2.² Comcast participated in these workshops.

On August 12, 2021 the Commission issued an order publishing new proposed changes to Rule 2, which eliminate all references to the VRCP and instead incorporate relevant VRCP provisions into the proposed Rule 2. In this order the Commission requested that participants provide comments by September 17, 2021 and responses by October 8, 2021. Comcast appreciates the Commission’s thoughtful consideration of participants’ input and its hard work in preparing a comprehensive proposed revision to Rule 2. Comcast is grateful for the opportunity to file comments to the latest proposed changes to Rule 2, and does so herein.

At the outset, Comcast submits a global concern. While the proposed draft adapts and incorporates much of the VRCP, in many places the draft deviates from the precise wording of the VRCP. In the August 12, 2021 order the Hearing Officer noted his attempt to eliminate “legalese.”

¹ Comcast reiterates its prior comments and hereby incorporates that letter by reference.

² Procedural Order Scheduling Next Workshop for January 21, 2021 and Notice of Workshop (December 13, 2020).

Though Comcast recognizes the benefits of procedural rules that are more easily understood by non-lawyers, there are serious risks to such changes. Wherever language of the VRCP is modified, the years of legal precedent interpreting those rules is rendered less persuasive or inapplicable. Accordingly, there will be less predictability in procedural aspects of cases and new ancillary disputes over interpretation of these rules, which will drain resources of the parties, the public, and the Commission and delay proceedings. New precedent will have to be developed as questions over interpretation arise naturally in cases, which could take many years. For these reasons, Comcast supports hewing as closely to VRCP language as possible, deviating only where necessary to conform to PUC practice.

Comcast provides the following additional comments organized by reference to particular provisions:

Rule 2.201(C) Attorneys Admitted Elsewhere. Comcast often participates in Commission proceedings that involve specialized questions of federal law, for example, in proceedings involving cable CPGs or pole attachment rates that benefit from the representation by out-of-state attorneys with expertise in the subject matter. Accordingly, Comcast continues to support the proposed language under which an out-of-state attorney who previously was permitted to appear does not need the Commission's permission for later appearances on behalf of the same client subject to an attestation requirement.

Rule 2.204(E)(1)(b) Form of Filings. Comcast acknowledges and appreciates the Hearing Officer's receptiveness to creating an exception to page limits for post-hearing filings, which often must incorporate lengthy facts. The current proposed language applies the page limitation to all filings "other than post-hearing briefs." Comcast submits that post-hearing filings other than briefs also inhere the same length issues. Accordingly, Comcast suggests modifying the page-limit exception so that it applies to proposed findings of fact and conclusions of law and comments on a Proposal for Decision in addition to post-hearing briefs.

In addition, under the current draft, the page-limit exception for post-hearing filings applies only to principal briefs and responses thereto. Comcast submits that this exception should apply to reply filings as it does to principal briefs and responses.

Rule 2.209(B) Permissive Intervention. Comcast echoes the support by several previous commenters to retain the standard for permissive intervention requiring demonstration of a substantial interest.³ Comcast appreciates the Hearing Officer's thorough consideration of this proposed revision in the August 12, 2021 order, and will not rehash that discussion. However, Comcast suggests that while a lower standard of intervention may make sense in cases where the discrete physical location of a proposed project naturally limits the scope of potentially interested persons—such as Section 248(a) petitions—the same standard may prove unworkable in cases of statewide concern, such as cable CPG or rate cases. The Commission should consider modifying the provision to impose the "substantial interest" standard at least in cable CPG and rate cases.

³ See comments of Vermont Electric Cooperative, October 2, 2020 at 1-4; Vermont Gas Systems, October 2, 2020 at 1; Dunkiel Sanders, October 16, 2020 at 3-4; Downs, Rachlin, October 16, 2020 at 1; Renewable Energy Vermont, October 16, 2020 at 1-3; Memo of Green Lantern Development, October 16, 2020 at 1-2.

Rule 2.210(C)(3) Permissive Joinder. Comcast respectfully submits that the first sentence of this subsection should be deleted. The language “All persons may seek to join” suggests the opportunity for non-parties to move to intervene without a clear standard, even though such rights are covered by the intervention rules. The second sentence completely addresses the VRCP 20 standard and appropriately specifies that only an existing party or the Commission may initiate joinder.

Rule 2.230(M)(1) Specific Discovery Procedures. Comcast supports the Commission’s original proposal to limit each party to 25 interrogatories per round of discovery. Comcast also supports retaining language providing the Commission and/or Hearing Officer with discretion to modify this limit, which protects the public’s and parties’ interests in complex cases.

Rule 2.230(M)(2) Specific Discovery Procedures. The current proposed language states that interrogatories may be served only on a party “that is offering evidence.” Consent of the person or PUC approval is needed to serve interrogatories “on anyone (including a party) who is not testifying or offering evidence.” For at least two reasons, Comcast submits that any party should be permitted to serve interrogatories on any other party.

First, the proposed limitation may be difficult to implement or follow in certain instances. Although in practice the deadline for filing pre-filed testimony typically precedes discovery, there is no rule mandating that sequence. Any discovery conducted prior to submission of witness lists or pre-filed testimony would be objectionable under the proposed Rule on the basis that the party has not finally decided whether to offer evidence.

Second, the language threatens to dilute the responsibilities that come with party status. If a person successfully intervenes and thereby acquires the right to conduct discovery, file motions, and participate in any appeal, that person should also be subject to discovery so that other parties have a fair opportunity to probe the basis of their claims and interests.

Comcast looks forward to participating in this proceeding in order to elaborate on these general points.

Respectfully submitted,



Stephen F. Coteus
Its Attorney

cc: Service List via ePUC
Client