

VIA ePUC

September 17, 2021

Ms. Holly Anderson, Clerk
VERMONT PUBLIC UTILITY COMMISSION
People's United Bank Building,
4th Floor 112 State Street
Montpelier, VT 05620-2701

Re: Case No. 20-2369 - RULE: 08/12/21 Proposed revisions to Vermont Public
Utility Commission Rule 2

Dear Ms. Anderson,

On behalf of Sheehey Furlong & Behm P.C., I submit the following comments on the 08/12/21 changes the Public Utility Commission ("Commission") has proposed to make to Commission Rule 2.

Our comments are focused on the Commission's proposal to adapt and write into Commission Rule 2 numerous, additional procedural rules and to eliminate reference to and application of the Vermont Rules of Civil Procedure ("V.R.C.P."). We fully agree that Commission Rules should be clear and accessible for all participants in Commission proceedings. However, we respectfully submit our view that on balance continuing to reference the V.R.C.P. better advances those goals than rewriting and greatly expanding Commission Rule 2. We support maintaining the reference to and incorporation of the V.R.C.P. for the following reasons.

First, incorporating the V.R.C.P. by reference allows for modification of those rules applicable in Commission proceedings without modifying Commission Rule 2. The V.R.C.P. are revised frequently, and accordingly, if the Commission intends to keep its Rules consistent with the V.R.C.P. there would need to be regular Commission rulemaking proceedings. Proposed Rule 2.103 states the following proposal for addressing amendments made to the V.R.C.P.:

Additionally, whenever the Vermont Rules of Civil Procedure are amended or updated through an Administrative Order of the Vermont Supreme Court or otherwise, the Commission may, in its discretion, incorporate any amended or new provisions of the Vermont Rules of Civil Procedure into these rules by Commission order. Unless there is a need to act immediately, the Commission will issue a proposed order for comment from stakeholders before the Commission issues a final order incorporating any amended or new provisions.

It is not apparent to us that the Commission's proposal to further modify Rule 2 to incorporate V.R.C.P. revisions pursuant to a Commission order complies with the Vermont Administrative Procedure Act, which establishes the procedure for modifying administrative rules.

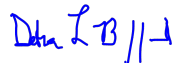
Second, it is our view that directing users of the Commission Rules to the applicable V.R.C.P. will provide users with greater clarity as to the purpose and intended application of a given rule because there is caselaw and explanatory notes for the V.R.C.P., which are not incorporated into Commission Rule 2.

Finally, proposed revised Rule 2.200 is 59 pages long. While it now incorporates rules that could apply in proceedings before the Commission, many of those rules are infrequently used in practice before the Commission. Substantially expanding Rule 2, specifically Rule 2.200, creates a different type of accessibility challenge because the Rule becomes unwieldy. We suggest a better approach to improving accessibility is to maintain the reference to and incorporation of the V.R.C.P. and to ensure the online version of Commission Rule 2 has functioning hyperlinks to take users of the Rule directly to the referenced rule in the V.R.C.P.

We thank the Commission and its staff for the considerable time and effort spent on the 08/12/21 comprehensive update proposed to Commission Rule 2. We appreciate the opportunity to submit comments. If you have any questions on these comments, please do not hesitate to contact me.

Sincerely,

SHEEHEY FURLONG & BEHM P.C.



Debra L. Bouffard

DLB/ams