

September 17, 2021

William J. Dodge
wdodge@drm.com

Via ePUC

Holly Anderson, Clerk
Vermont Public Utility Commission
112 State Street, 4th Floor
Montpelier, VT 05620-2701
holly.anderson@vermont.gov

Re: Case No. 20-2369-RULE: Downs Rachlin Martin PLLC's Comments to Public Utility Commission's Proposed Rule 2.200

Dear Holly Anderson:

Downs Rachlin Martin PLLC ("DRM") hereby submits its comments on the Public Utility Commission's ("PUC" or the "Commission") proposed Rule 2.200, on behalf of its practitioners representing a variety of clients before the Commission. DRM acknowledges the Commission's efforts to modernize Rule 2.200 procedures to decouple from the Vermont Rules of Civil Procedure.

DRM generally supports the bulk of the PUC's proposed changes; however, it wishes to underscore its concerns regarding the standards for Permissive Intervention and Intervention of Right under Rule 2.209, all as substantially set forth in particular by Attorney Wilschek on October 2, 2020, and which included the straightforward, alternative proposal to adopt a "particularized interest" test for intervention. The test is grounded in substantial, longstanding jurisprudence from state and federal law, all designed to ensure that an intervenor's interest in a proceeding is not purely general in nature. *E.g. Parker v. Town of Milton*, 669 Vt. 74 (1998) ; *Lujan v. Defenders of Wildlife*, 505 U.S. 555, 560 (1992)..

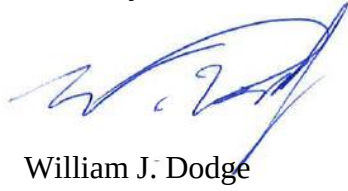
The Commission's response to Attorney Wilschek's alternative proposal of adopting the "particularized interest" test¹ fails to take into account the certainty of unnecessary delays and increased costs for telecommunications providers, public utilities, merchant generators, infrastructure providers, and other petitioners in siting proceedings by loosening the standards for intervention. No issue is taken with the Commission's conclusion that there ought to be an easier intervention standard for non-siting proceedings; however, that can be achieved by simply creating separate standards for siting and non-siting cases, rather than disregarding the sound reasons for requiring an intervenor to connect a stated interest in challenging a siting project to one or more statutory criteria.

¹ Proposed Revisions to Vermont Public Utility Commission Rule 2, Case No. 20-2369-RULE, Procedural Order of 08/12/2021 at 8 (concluding that "this [particularized interest] test would not translate well to a general rule for the Commission that would apply not only to siting cases, but to rate cases and all other matters that come before the Commission").

The Commission should not disregard the resulting increased regulatory costs required to adjudicate siting projects with a greater number of intervenors, all which ultimately will be passed on to Vermont end users. For these reasons, DRM echoes Attorney Wilschek's request for the Commission to maintain the existing, longstanding intervention rule, or to adopt the "particularized interest" test.

DRM looks forward to participating at subsequent workshops in this proceeding.

Sincerely,



William J. Dodge

WJD:TMR

20885730.1