



Case No. 20-2369-RULE

October 8, 2021

VCE Reply to Comments on Draft Rule 2

Vermonters for a Clean Environment, Inc. responds to comments submitted on the draft update to Rule 2.

VRCP

Some commenters prefer to keep the VRCP. VCE greatly appreciates the draft Rule that incorporates relevant rules from the VRCP into Rule 2. This makes the rules much more accessible to the general public that must now participate in the PUC in siting cases. Continuing to use VRCP in addition to the PUC rules creates a strong bias in favor of applicants and disadvantages Vermont citizen participants.

The entities that support continuing the use of VRCP rather than adding the relevant rules to Rule 2 are represented by highly skilled attorneys. Citizens have enough challenges learning about the proposed project, learning how to participate at the PUC using ePUC, plus reading Rule 2 and any other PUC rules that may apply to a specific type of project.

The addition of having to sort through more than 100 rules in the VRCP and understand them imposes an unreasonable burden on *pro se* parties. We do not find that the addition of several pages makes the Rule 2 document any more unwieldy that it is already. It does enable a citizen intervenor to have one document in front of them to consult when a petitioner's attorney cites a Rule during an evidentiary hearing. The current use of VRCP is sometimes used as a weapon to disempower citizen intervenors.

Since the utilities with highly paid attorneys want to keep the current system, perhaps they will pay for an attorney or provide Intervenor Funding for citizen intervenors to more effectively participate in the PUC's highly legalistic process, which is already a very high bar for participation by the average Vermont citizen.

Intervention

Some commenters object to the PUC's proposed change to the intervention standard, arguing that a greater number of intervenors increases costs, and that the Department of Public Service is an effective public advocate. VCE disagrees.

It would be helpful to this proceeding for the PUC to produce a spreadsheet of siting cases it has adjudicated in the last decade, noting in each case how many citizens have intervened and participated. A reasonable guess is "not very many." As long as the PUC is the only venue in which Vermont citizens can protect their interests regarding land use siting for energy projects, petitioners need to accept that citizens have a right to participate, regardless of how many. The PUC already requires intervenors with similar interests to consolidate with only one spokesperson.

Petitioners can reduce their costs by doing more work up front, prior to filing their petitions, to address the issues that interested citizens raise about proposed projects. Too many applicants file petitions that are half-baked and really should not have been filed until more work with community members has been done. The PUC should not be a venue for constantly changing projects in response to what the people who live in the area identify as issues.

Regarding notice and comment requirements, VCE has assisted parties in participation in more than one case where inadequate notice was provided. Public comment is not in the evidentiary record on which the decision is made, and can be a distraction for the public if they do not understand the role that public comment plays in the PUC's process. Public comment is no substitute for intervention. VCE supports the draft Rule that enables Vermont citizens to intervene in the PUC's process.

The Department of Public Service does not represent Vermont citizens who are faced with a siting case in their neighborhood or community. When operating at its best, DPS attorneys may assist citizens in understanding the PUC process and answer questions. However, the current reality is that DPS attorneys have been unresponsive to citizen inquiries regarding participation in the PUC process.

VEC claims that "...the PUC process already includes public participation opportunities and taxpayer/utility-funded public-interest representation..." This is rather disingenuous, as the public participation opportunities referred to are public comment which have no value in the evidentiary record, and the taxpayer/utility-funded public-interest representation is, as VEC notes, primarily about rates, mergers and financial issues. Any notion that DPS is helpful to the average Vermonter in siting cases is inaccurate.

It is no surprise that utilities and developers wish to keep Vermont citizens from intervening and participating in PUC proceedings. VCE has observed that it is rare when a petitioner does not object to a Vermont citizen's intervention, regardless of how justified on the merits. The entire process is not friendly or welcoming to Vermonters who find themselves faced with a project that requires PUC participation.

If this Rule change is identifying a conflict between the PUC's role in utility rate cases versus its role in siting cases, VCE is open to moving land use siting cases to Act 250, but some work on intervention standards would be necessary due to the effective decline in the ability for people with affected interests to participate, unless they are direct adjainers. Alternatively, a more collaborative process at the PUC could be developed prior to the contested case process.

Discovery

One commenter supports the original proposal to limit discovery to 25 interrogatories. This is similar to the current standard in the net-metering rule (20 question limit), which VCE initially supported due to what we have witnessed with the abuse of discovery on *pro se* parties. However, we no longer support limits on discovery interrogatories in net-metering cases or in general, due to the complexity of issues in so many of the cases that come before the PUC. We do support a swift response from the PUC to allegations that

petitioners are abusing the discovery process by overwhelming *pro se* parties with hundreds of questions.

One commenter objects to the draft rule's limitation of discovery served only on a party that is offering evidence. VCE supports the draft rule, but would not object to the option of an opposing party being required to show cause why it is necessary to serve discovery on a party who is not offering evidence. Our primary concern is how hostile petitioner attorneys are towards citizen intervenors, and how skilled they can be at intimidating *pro se* parties.

Amendments in proceedings

VCE supports VEC's recommendations regarding Amendments in proceedings, such that the PUC has flexibility post-evidentiary hearing and post-oral argument to seek more evidence if it will result in resolving issues that are raised late in the proceeding.

Respectfully submitted this 8thth day of October, 2021,

/s/ Annette Smith

Annette Smith
Executive Director
Vermonters for a Clean Environment, Inc.
789 Baker Brook Road
Danby, VT 05739
(802) 446-2094
vce@vermontel.net