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October 8, 2021

Holly R. Anderson, Clerk
Vermont Public Utility Commission
112 State Street, 4th floor
Montpelier, Vermont 05620-2701

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

Dear Holly,

On August 12, 2021, the Public Utility Commission ("Commission") issued a procedural Order in this docket requesting responsive comments by October 8, 2021. Several commenters have raised concerns about how the proposed rule amendments impact rights of notice and participation.¹ Comcast agrees that this proceeding presents an important opportunity to address such concerns. This letter suggests in particular how Rule 2 could be amended to promote fairness and provide meaningful opportunity for Attaching Entities to participate in Pole-Ownings Utilities' tariff filings.

Rule 2.200 contains rules of general applicability. Comcast wishes to address Rule 2.205(A) ("Notice to other Persons or Parties") as discussed below. Rule 2.205(A) should make it clear who should receive notice. Terms like "Party" and "defendant" are not defined. While the current rule requiring identification of interested parties should be retained, the process of how the Commission places "parties" on the service list should be made clear.

Under Rule 2.101 ("Scope and Construction of Rules"), the Rules apply to all Commission proceedings.² The proposed Rule 2.205(A) eliminates the requirement for an initiating party to file a statement identifying each party or other person to whom the Commission is required to give notice, and simply gives the Commission discretion to require any initiating party to file a proposed order of notice. The Commission's original proposal to amend Rule 2 did not make any substantive changes to Rule 2.205(A), and the Commission's Procedural Order requesting further

¹ See *Vermont Electric Cooperative, Inc.'s Comments to Public Utility Commission's Proposed Rule 2.200*, Case No. 20-2369, 9/17/21, at pp. 1-3 (discussing intervention standards); *Vermont Gas Systems' Comments to Proposed Revisions to Vermont Public Utility Commission Rule 2*, Case No. 20-2369, 9/17/21 (discussing notice to utilities of consumer complaints); *Comments of AllEarth Renewables, Inc. to Proposed Revisions to Vermont Public Utility Commission Rule 2*, Case No. 20-2369, 9/17/21 (discussing notice of and public access to tariff filings).

² Rule 2.106 ("Construction") provides that the Commission's rules are to "be liberally construed to secure the just and timely determination of all issues presented to the Commission." (Emphasis added).

comments did not specifically address this section³. However, the Commission's redline reveals a major change to Rule 2.205(A) that must be addressed. Many commenters have addressed intervention, but without notice the right to intervene is meaningless⁴.

Comcast respectfully requests that the Commission amend Rule 2.205(A) to include language ensuring, for every type of Commission proceeding, notice will be provided to persons and entities with interests that may be affected. This will require due diligence by the initiating party and the Commission to identify those persons and entities. At a minimum, the Commission should require the initiating party to file a proposed order of notice that identifies to the Commission each person entitled to intervene as of right under Rule 2.209(A) ("Intervention as of right"). Further, with respect to proposed tariff amendment proceedings, Pole-Ownning Utilities should be required to identify to the Commission all Attaching Entities.⁵ The Commission also should amend Rule 2.205(A) to ensure that either the initiating party or Commission will provide notice to the identified persons and entities.

I. Background

To become a "Party" before the Commission, a person must apply to intervene. <https://puc.vermont.gov/public-participation/introduction-participating-commission-processes>. To intervene, the person must be entitled to intervene as of right or meet the standard for permissive intervention under Rule 2.209(A) or (B), respectively. A person has a right to intervene when they demonstrate a substantial interest which may be adversely affected by the outcome of the proceeding that is the exclusive means of protecting that interest and the interest is not adequately protected by other parties. Rule 2.209(A).

In order to apply for intervention under Rule 2.209, a person must have notice that the proceeding is occurring. The current version of Rule 2.202 ("Initiation of Proceedings") contemplates service on "the named defendant or respondent . . . or other person or entity entitled to notice" However, the proposed Rule 2.202 eliminates these service requirements in favor of notice provided through ePUC. It is imperative that the Commission or the Clerk be informed as to which persons or parties are entitled to notice so that they may update the ePUC service list, in accordance with Rule 2.205. Without notice, those affected by tariff changes cannot seek intervention.

II. Rule 2.205 ("Notice to other Persons or Parties")

Under the current Rule 2.205(A) *the initiating party* is required to file a statement identifying each person or party "to whom or to which *the Commission or the Clerk is required to give notice* of such proceeding." (Emphasis added). Comcast understands this means the Clerk is

³ The Commission's Order Opening Rulemaking and Redline of August 27, 2020 did not propose substantive changes to Rule 2.205(A), and Rule 2.205(A) was not on the agenda for the Workshop on December 18, 2020. See Procedural Order Setting Agenda for December 18, 2020 Workshop. The Procedural Order Publishing Latest Proposed Changes to Rule 2 and Requesting Comments issued August 12, 2021 did not address Rule 2.205(A). However, the accompanying redline reflected a major proposed change to Rule 2.205(A).

⁴ As a civil lawsuit requires service of process, a Commission proceeding must require notice.

⁵ Pole-Ownning Utilities are in the best position to identify all Attaching Entities on their poles.

required to place such names on the service list⁶. The language of current Rule 2.205(A) at its core correctly recognizes that potentially affected persons and entities must be identified and given notice, from which intervention rights are derived. The proposed language eliminates this requirement and substitutes the vague term “proposed order of notice”.

Neither the existing nor the proposed Rule 2.205(A) is clear about who is entitled to Advance Notice. See <https://puc.vermont.gov/public-participation/frequently-asked-questions/glossary-terms#advance-notice>. Given the paramount importance of who should be entitled to notice Comcast believes the Rule should be clearer about who the initiating party and/or Commission must identify as requiring notice.

As noted above, Rule 2.205(A) must require identification of potentially affected parties and require that advance notice to given to those identified. As an Attaching Entity in Vermont Comcast submits that 30 V.S.A. § 225(a) requires advanced notice to Attaching Entities of a tariff filing by a Pole-Ownning Utility. This statute (“Rate schedules”) requires “such notice to parties affected by such schedules as the Commission shall direct.”⁷ The PUC can direct the manner of notice, but notice must be provided. Although Comcast understands the proposed Rule 2.205 as empowering the Commission in its discretion to require the initiating party to identify affected or interested persons, Comcast believes the Rule should make this requirement mandatory, or alternatively, require the initiating party to notify interested persons directly.

III. Recommendation.

Rule 2.205(A) should require the initiating party to identify all persons meeting the standard for intervention as of right, e.g., those with a substantial interest that may be adversely affected by the outcome, the proceeding affords the exclusive means by which the applicant can protect that interest, and the applicant’s interest is not adequately represented by existing parties.⁸ Further, Rule 2.205(A) should require the initiating party or the Commission to provide notice to those identified.

Attaching Entities as defined in Rule 3.702(B) (Definitions – Attaching Entity) fall within this category of parties to be notified. As regulated entities operating within a competitive field, Attaching Entities’ interests cannot adequately be represented by any other party. While it is Commission practice to have the Vermont Department of Public Service review proposed tariff filings prior to approval, these tariffs are effectively contracts between Pole-Ownning Utilities and a competitive field of Attaching Entities. Attaching Entities are uniquely positioned with the information, expertise, and motivation to consider (and if necessary, oppose) the impact of the proposed tariff amendments on their facilities and operations.

Tariffs of Pole-Ownning Utilities cover more than just rates; they cover the terms and conditions of service. Tariffs are substitutes for negotiated pole attachment agreements. Just as a

⁶ Ideally, Rule 2.205(A) would explain how the Commission will compile the service list.

⁷ Under 30 V.S.A. § 226(a), the Commission can allow a temporary rate increase, but only after “public notice and preliminary hearing”.

⁸ 3 V.S.A. §801(5) defines a “Party” as “each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party”.

contract or a pole attachment agreement cannot be unilaterally amended, a tariff of a Pole-Ownning Utility should not be allowed to be modified or amended without notice to Attaching Entities with a reasonable opportunity to assess the proposal, to intervene and offer comments and recommendations.⁹

Under the proposed Rule 2.210 ("Joinder") the standard of V.R.C.P. 19 is effectively applied to all Commission proceedings. We believe Attaching Entities would be automatically joined as interested parties under the joinder rule. Rule 2.210(A)(2) covers Attaching Entities because they have an interest in the proceeding and disposition of a tariff amendment may "impair or impede" the Attaching Entity's ability to protect its interests. This is an appropriate time to make Rule 2.205(A) clear who should receive notice. Even if Attaching Entities are not automatically joined as parties, they are entitled to notice of the proceeding.

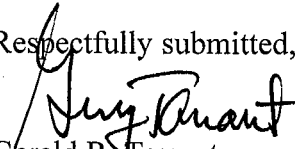
In addition, tariff filings are contested cases under the Vermont Administrative Procedures Act. 3 V.S.A. § 801.¹⁰ Therefore "all parties shall be given an opportunity for hearing after reasonable notice." 3 V.S.A. § 809(a).

CONCLUSION

For the foregoing reasons, Comcast respectfully requests the Commission to amend Commission Rule 2.205(A) to require that the initiating party be required to file a proposed order of notice to identify to the Commission and its Clerk, to the best of that party's information, knowledge and belief, each person or entity entitled to intervene as of right under Rule 2.209(A), or alternatively, for Pole-Ownning Utilities in all tariff filings to identify all Attaching Entities in such proposed order of notice.

Given the importance of this issue a short workshop may be appropriate.

Respectfully submitted,


Gerald R. Tarrant
Its Attorney

cc: Service List
Client

⁹ Broadband providers cannot effectively plan access to utility pole infrastructure if tariff provisions related to pole rates or insurance coverage (or any other term or condition) may change mid planning or construction without effective notice.

¹⁰ Under the Vermont A.P.A. a " 'contested case' means a proceeding, including but not restricted to rate-making and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." 3 V.S.A. § 810(b)(2).