

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 20-2369-RULE

Proposed revisions to Vermont Public Utility Commission Rule 2	
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Order entered: 04/01/2022

ORDER RESPONDING TO THE PARTICIPANTS' COMMENTS

I. INTRODUCTION

In today's Order, the Vermont Public Utility Commission ("Commission") responds to comments received during the final stages of the informal rulemaking process and notifies the participants that it is beginning the formal rulemaking process by filing a draft proposed rule with the Interagency Committee on Administrative Rules and the Secretary of State. Attached to this order is a document showing changes to the most recent draft proposed rule that was circulated by the hearing officer in this proceeding on August 12, 2021.

II. BACKGROUND

On August 27, 2020, the Commission opened this rulemaking proceeding to begin a review of Commission Rule 2 (the Commission's general rules of procedure). Rule 2 includes procedures that apply to all Commission proceedings. As the Commission noted when it opened this proceeding, it has been decades since the Commission reviewed Rule 2 in its entirety. Commission practices have changed significantly in those years, and the Commission has now moved to electronic filing and case management through ePUC. The Commission also noted when it opened this proceeding that, consistent with Act 174 of 2016, the Commission constantly seeks to facilitate public participation in all of its proceedings.¹

After this proceeding was opened, we assigned this matter to a hearing officer, and Commission staff held two workshops and received multiple rounds of comments from a broad array of participants. Participants included:

- the Vermont Department of Public Service;
- the Vermont Agency of Natural Resources;

¹ Order of 8/27/2020 at 1.

- the Vermont Natural Resources Board;
- Green Mountain Power Corporation;
- Vermont Electric Cooperative, Inc.;
- Vermont Gas Systems, Inc.;
- Consolidated Communications of Vermont, LLC, and Consolidated Communications of Northland Company;
- Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC (“Comcast”);
- Efficiency Vermont;
- Paul Brouha;
- Vermonters for a Clean Environment;
- Renewable Energy Vermont;
- Allco Renewable Energy Limited;
- Green Lantern Development, LLC;
- AllEarth Renewables, Inc.;
- Downs Rachlin Martin PLLC;
- Cindy Hill, Esq.;
- Sheehey Furlong & Behm;
- Valsangiacomo, Detora & McQuesten, P.C.; and
- Dunkiel Saunders Elliott Raubvogel & Hand, PLLC.

On August 12, 2021, in response to written and oral comments from participants, Commission staff issued a revised draft of potential changes to Rule 2. That draft document proposed a major rewrite of Rule 2 to adopt the suggestion made by a number of participants that the Commission eliminate all references to the Vermont Rules of Civil Procedure and instead incorporate relevant rules into Rule 2. Incorporating the relevant Vermont Rules of Civil Procedure into the proposed draft of Rule 2 made it much longer.

Commission staff then solicited two more rounds of comments from the participants on the latest proposed draft of Rule 2. Those comments were filed on September 17, 2021, and October 8, 2021.

III. COMMISSION DISCUSSION OF COMMENTS ON REVISED DRAFT RULE

The Commission thanks all of the participants for their substantial work and insightful comments on the proposed revisions to the rule. Below, we provide some responses to the issues raised by the final comments and reply comments filed in the informal rulemaking process.

A. Incorporating the Relevant Rules of Civil Procedure into Rule 2

Although the participants were split in their support or opposition to incorporating the relevant Vermont Rules of Civil Procedure directly into Rule 2, we conclude that this is an important and positive change to our rules of procedure. As some participants correctly noted, and as the hearing officer concluded, this change will make our proceedings more accessible:

One of the biggest benefits [of this proposed change] is to create a more user-friendly experience for the many non-lawyers who come into Commission proceedings and are not familiar with the Vermont Rules of Civil Procedure. Commission staff heard in comments and at the workshop that non-lawyer participants would benefit greatly from having one set of procedural rules—Rule 2—rather than having to also know the Vermont Rules of Civil Procedure.²

We agree. The benefits of having all of our rules of procedure accessible in one location outweigh any downsides to continuing to incorporate the Vermont Rules of Civil Procedure by reference.

One concern with this change is that it is not clear what happens when the Vermont Supreme Court updates the Vermont Rules of Civil Procedure. The proposed rule addresses that concern by providing the Commission with authority to update Rule 2 by Commission order, with appropriate process to allow for objections to any proposed changes. This is consistent with 30 V.S.A. § 9, which notes that the Commission has the powers of a court of record.

B. Page Limits for Certain Filings

The revised draft maintains the proposal to impose page limits on certain filings. The Commission received comments recommending that there be no page limits for proposed findings of fact, conclusions of law, and comments on a proposal for decision. The Commission agrees that there should not be a page limit on proposed findings of fact and conclusions of law.

² Order of 8/12/21 at 2.

However, the Commission does conclude that there is a benefit to a page limit on comments on a proposal for decision. The revised proposed rule reflects these changes.

C. Entities Entitled to Automatic Notice

Comcast raised concerns about proposed changes to which parties receive automatic notice of certain filings. Specifically, Comcast is opposed to the deletion of the notice requirements of Commission Rule 2.205(A). In response to those concerns, the Commission has proposed additional language in Rule 2.204(A) regarding which entities are entitled to notice. The Commission further notes that Comcast's requests are better addressed in proceedings related to the Commission's specific notice requirements in other rules, such as the pole-attachment rule (Commission Rule 3.709).

D. Changes to the Rule on Intervention

The Commission received the most comments on the proposed changes to Commission Rule 2.209, which governs the standard for intervention in Commission proceedings. A number of participants expressed support for the current rule on intervention. Other parties expressed support for the proposed changes to that rule. As the hearing officer noted, "Commission Rule 2.209 currently imposes more stringent requirements than what is required under the Vermont Rules of Civil Procedure. The proposed change to the Commission's rules would bring the Commission's intervention requirements in line with the Vermont Rules of Civil Procedure."³

We agree with the proposal to change Rule 2.209 to bring it in line with the Vermont Rules of Civil Procedure. However, we also agree with the participants that argue that the hearing officer's proposed changes would expand intervention further than is appropriate. We therefore alter the proposed language to clarify that a potential intervenor must demonstrate that its interest is in the "matters that *must* be resolved in the proceeding," not just matters that are subject to the proceeding. This change properly aligns our rules of intervention with those of the Vermont Rules of Civil Procedure and ensures that we do not expand the scope of intervention beyond what is necessary to ensure that all potentially impacted parties are given party status.

³ Order of 8/12/21 at 7.

E. Closing of the Evidentiary Record

Some participants noted that the procedural rule regarding the closing of the evidentiary record should be moved to Commission Rule 2.216. We agree. The proposed rule now reflects that change. Further, in response to the request by participants that we allow for flexibility in the closing of the evidentiary record, this provision now notes that “the Commission, on its own initiative or upon a timely motion by a party” may allow for a different time at which the evidentiary record will close.

F. Other Miscellaneous Issues

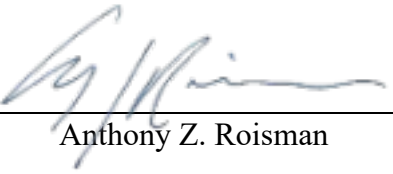
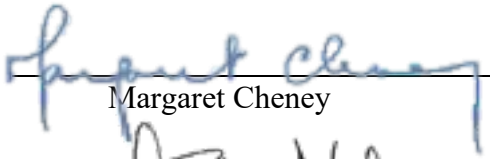
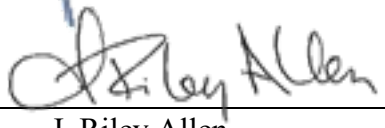
In this order, we have not addressed every issue raised by the participants, but instead focused on significant changes that we have made to the latest draft that was circulated to the participants. Where the participants suggested that we make further changes to the proposed rule, we have either incorporated those suggested changes into the revised draft, or we have reviewed those suggestions and concluded that the hearing officer’s proposed changes are preferable to what the participants requested.

IV. CONCLUSION

Further comments and participation in the amendment of Rule 2 should follow the formal rulemaking procedures described in the Vermont Administrative Procedure Act. The Commission will process the rulemaking in ePUC and will retain the same case number (20-2369-RULE).

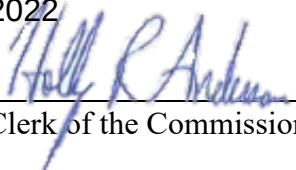
SO ORDERED.

Dated at Montpelier, Vermont, this 1st day of April, 2022.

	)	
Anthony Z. Roisman	)	PUBLIC UTILITY
	)	
	)	COMMISSION
Margaret Cheney	)	
	)	
	)	OF VERMONT
J. Riley Allen	)	

OFFICE OF THE CLERK

Filed: April 1, 2022

Attest: 
Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

PUC Case No. 20-2369-RULE - SERVICE LIST

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