

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

CASE NUMBER 20-2369-RULE

PROPOSED REVISIONS TO VERMONT PUBLIC
UTILITY COMMISSION RULE 2.000

June 27, 2022
5:30 p.m.

Public Hearing held before the Vermont Public
Utility Commission via Go To Meeting on June 27, 2022,
beginning at 5:30 p.m.

P R E S E N T

HEARING OFFICER: Kyle Landis-Marinello
General Counsel

STAFF: Ann Bishop, Operations Director
John Cotter, Deputy General Counsel
Michael Tousley, Staff Attorney

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PARTICIPANTSPage

James White	6
Annette Smith	12

1 MR. LANDIS-MARINELLO: Welcome everyone.
2 Good evening and thank you for being here. This is
3 Vermont Public Utility Commission public hearing in
4 Case Number 20-2369-RULE regarding proposed revisions
5 to Vermont Public Utility Commission Rule 2. My name
6 is Kyle Landis-Marinello. I'm General Counsel at the
7 Vermont Public Utility Commission. Our Operations
8 Director Ann Bishop is here serving as the Go To
9 Meeting platform manager for this public hearing.
10 Also attending the public hearing today are Deputy
11 General Counsel John Cotter and Staff Attorney
12 Michael Tousley.

13 The purpose of tonight's hearing is to
14 provide an opportunity to hear input from the public
15 on this rulemaking. The comments received at this
16 hearing will be part of the public record in this
17 case. You can also provide written comments using
18 the Commission's online document management system
19 ePUC or by direct mail or email. You can comment in
20 the ePUC without establishing a log in. Please file
21 all comments by the deadline of July 5, 2022.
22 Contact information is provided on the Commission's
23 web site www.puc.vermont.gov. You can also subscribe
24 to this case in ePUC which means you'll receive an
25 email notification of any Commission order or filing

1 made by a participant in the case. More information
2 about how to participate in Commission proceedings is
3 available in the public participation section of the
4 Commission's web site.

5 Tonight's hearing will be transcribed by a
6 court reporter. This transcript, along with all
7 other comments received by the Commission, become
8 part of the case's public file so that Commission
9 members, staff, and participants can consider the
10 comments. The transcript will be available in ePUC
11 which is accessible directly online at ePUC.vermont.gov
12 or from links on the Commission's web site.

13 If a participant or member of the public
14 intends to record the public hearing via video or
15 audio, please indicate this when you provide your
16 name for the court reporter. Public comments can be
17 helpful in raising new issues or perspectives that
18 the Commission should consider so we look forward to
19 hearing your input.

20 We have some procedures for remote web
21 based public hearings. Due to the COVID-19 pandemic
22 the Commission is limiting in-person contact. As a
23 result this public hearing is being conducted
24 remotely. We're using the web-based platform Go To
25 Meeting. During this public hearing we'll be using

1 some special procedures uniquely related to using a
2 web-based platform. I'll read them now for the
3 benefit of all attendees and to ensure we have them
4 on the record.

5 Attendees may raise concerns about these
6 procedures either now or at any point during the
7 public hearing if the platform is not performing as
8 expected or if you're having difficulties. We expect
9 the public hearing will proceed more slowly than
10 usual. We may need to stop along the way to resolve
11 technical issues. We also recognize that because
12 we're all in remote locations such as our homes there
13 may be unexpected interruptions at these locations.
14 Anyone who anticipates speaking during the public
15 hearing should keep their cameras on until they
16 provided their public comments. It's helpful to see
17 you particularly when you're speaking.

18 Commission staff will not mute anyone's
19 microphone whether a participant or a member of the
20 public. This means you should keep yourself on mute
21 unless you are speaking. That will minimize
22 background noises. I'll ask each member of the
23 public whose cameras are on one at a time if they
24 would like to speak. I'll also ask whether anyone
25 participating by phone wishes to speak. It's

1 important we avoid talking over one another. Each
2 time you begin talking please identify yourself by
3 name for the court reporter. If your internet
4 connection cuts out, please try to rejoin Go To
5 Meeting or call in to the public hearing using the Go
6 To Meeting telephone number that was provided in the
7 public hearing notice. If at any point you become
8 aware of another participant or a member of the
9 public having trouble accessing the video or audio
10 feeds, please let us know immediately. We'll pause
11 the public hearing to try to resolve the issue.

12 Does anyone have any questions or
13 concerns about these procedures? Okay. With that
14 covered we'll now begin the substantive portion of
15 the public hearing. So I'll just ask if anyone wants
16 to make public comments you can go ahead and, Mr.
17 White, I see your camera is on. Would you like to
18 start? You're on mute.

19 MR. WHITE: Minor details. Yes. Thank
20 you very much. Thanks to the Commission and this has
21 been a long docket. It's a couple years in the
22 making. Kind of esoteric issues. You know
23 incorporating the Vermont Rules of Civil Procedure
24 into the PUC rules that's a pretty big task and
25 Comcast has participated throughout. I'm a Senior

1 Director of Regulatory Affairs for Comcast. We've
2 participated throughout in the workshops and filed a
3 couple sets of comments.

4 Our issue really relates to notice and
5 the big question is when a petition comes before the
6 Commission how does the PUC compile the list of
7 parties entitled to receive notice, in essence the
8 service list. One of the goals of the Commission in
9 this case is to increase public participation and one
10 of the issues in the case is again the standard for
11 intervention. Now there's intervention as a right
12 when you have a really substantial interest. There's
13 permissive intervention. There's been argument about
14 that and the Commission's addressed that, but you
15 can't apply to intervene unless you know about the
16 case, and I find it -- you mentioned that in the
17 beginning, Kyle, that there's information on the
18 public -- on the web site about public participation.
19 It talks about advanced notice, but if you're at that
20 point, you already know about a case. I mean you
21 need to know about the case and intervene in order to
22 get in it, and there's nothing on the PUC web site
23 that really clarifies how the Commission compiles
24 these service lists.

25 So Comcast's interest is mainly that we

1 are an attaching entity. Like many other service
2 providers in telecommunications service we attach to
3 utility poles. We pay rates for that. There are
4 other terms and conditions; how we get on the poles,
5 et cetera. Those -- all those rules and those costs
6 are governed by tariffs filed by pole owners at the
7 PUC. They function as contracts. There are no pole
8 attachment agreements. Vermont is different than
9 other states. In most states there are pole
10 attachment agreements the pole owners and pole
11 attaching entities enter into and sign. They can't
12 be unilaterally amended. You sign a contract for
13 anything and someone tries to change the cost that
14 would never be allowed. It wouldn't be allowed in
15 court. Certainly if someone came in and said we need
16 -- there's a provision in the contract we need to
17 change the rate and it's allowed, you would certainly
18 ask the other party, they would have intervention as
19 a right or they might be a mandatory joiner under the
20 Vermont Rules of Civil Procedure.

21 So we believe that the Commission did
22 address our issue to a degree in its order and
23 comments dated April 1. Commission proposes to
24 eliminate a requirement in Rule 2.205(a) whereby the
25 petitioner in a case basically identifies those that

1 are interested in the case. They have to do some due
2 diligence to figure out who that might be. That's
3 been removed and instead something happens in ePUC
4 and the Commission is proposing to add some language
5 to 2.204(a) so that any service of any document, any
6 pleading in a case would go to any party identified
7 entitled by statute, rule, or order, and the
8 Commission then goes on to say well Comcast's issue
9 might be better dealt with in a rule amendment.
10 3.709 is the notice provision in the pole rules.
11 Well those rules what they basically say is a pole
12 owner can raise our rates. They can file -- do a
13 hypothetical and this has happened. They can file to
14 raise our pole rates and ultimately pole rates, if
15 they increase our rates, ultimately that flows
16 through to customers. You know it's just part of the
17 cost of doing business. They can file a pole rate
18 change on July 1, ask for approval, the effective
19 date would be January 1, they can get PUC approval,
20 and right now the rule says we get 60 days notice of
21 the rate increase, but it's already been approved.
22 We would get notice November 1 that the rate change
23 has taken effect. We don't get notice of the tariff
24 filing where we can go in and seek to oppose that
25 rate increase or seek clarification on it.

1 So we believe that under -- that in
2 these types of cases we should be put on the service
3 list. There are many instances where the Commission
4 when they realize that a docket is of general
5 interest, for example, if it's about the telecom
6 industry they will say okay we realize all the
7 telecom entities they need to be put on the list, and
8 go way back to order 5903 service quality docket way
9 back in 1998 or something like that, and the
10 Commission said at that time well all the ILECs they
11 need to be parties, obviously it's going to affect
12 them, and we believe that under -- just under the
13 current rules that we're entitled to notice, you
14 know, that recognition from the Commission without
15 having to go through the very time consuming,
16 lengthy, and arduous task of a separate rule
17 amendment under 3.709, and so that's, you know, it's
18 a very particularized interest, but I think it kind
19 of goes to the bigger question how does the
20 Commission compile service lists, how does it get
21 notice.

22 I think, you know, in cases of generic
23 interest such as poles and you're going to change the
24 rates anybody with attachment -- any company like
25 Comcast, all of them, all the broadband providers,

1 you're going to change the terms of the deal, they
2 deserve notice in advance or contemporaneous with the
3 tariff filing. So a very particularized interest,
4 but it goes to kind of the bigger picture how does
5 notice work. So very much appreciate your listening
6 and for your time, and we will be filing written
7 comments on July 5th and be happy to answer any
8 questions you might have. Thank you very much.

9 MR. LANDIS-MARINELLO: Okay. Thank you,
10 Mr. White, and yeah with those written comments it's
11 always helpful to staff if there's a particular
12 redline included in that, that you're requesting.

13 MR. WHITE: I think one question the
14 proposed amendment says 2.204(a) that anybody making
15 service basically can serve anybody entitled by
16 statute, regulation, or order. Well that order we've
17 asked several times informally for the Commission to
18 put us on notice of tariff filings in the context of
19 when we've got a beef that we haven't gotten a
20 notice. We hope the Commission would have been
21 responsive to that and it hasn't happened yet, but if
22 it could happen by order, that's what's required
23 instead of changing -- actually doing rulemaking. It
24 goes through ICAR and LCAR and Secretary of State and
25 everything like that, that would be helpful to know,

1 but in the first instance we don't think that should
2 be necessary. So thank you.

3 MR. LANDIS-MARINELLO: Okay. Thank you
4 for your comments. We have a few other folks on the
5 line. You obviously don't have to make comments if
6 you're here just to listen in, but if anyone would
7 like to, I would give an option for them either
8 unmute themselves, if you're comfortable turn your
9 cameras on, that would be great. Ms. Smith, would
10 you like to go next?

11 MS. SMITH: Hi. This is Annette Smith
12 with Vermonters For a Clean Environment. I have one
13 comment and I will note that we did participate in
14 the rulemaking and my comment is something that has
15 come up since then. Actually I have two comments.
16 The first comment is thank you very much for
17 incorporating the relevant portions of the Rules of
18 Civil Procedure into one rule. It is -- it's going
19 to make it -- it's not that it's easy for pro se
20 parties to participate, but it's going to make it
21 much easier than to have to try and go through more
22 than a hundred rules to figure out what to do.

23 So my comment has to do with the notice
24 of appearance, and as I indicated this has come up
25 recently in a couple of cases, and so I looked at the

1 draft rule here and I think it's not clear enough.
2 So on your page 4, 2.201 I'm specifically looking at
3 number 2 and number 3. So in number 2 it says in
4 ePUC this notice of appearance happens automatically
5 when a new case or motion to intervene is filed and
6 no separate notice of appearance is required, but
7 then under the pro se part it says that pro se
8 representatives must likewise file a notice of
9 appearance except now what I've observed in two
10 different cases at the PUC is that in one case an
11 attorney complained that pro se parties hadn't put in
12 their notice of appearance and so the hearing officer
13 required that to be done, which surprised me because
14 I thought that filing a motion to intervene and using
15 the form was an automatic notice of appearance as it
16 says in number 2 here. So what I'm suggesting is --
17 and then in another case a different hearing officer
18 said no notice of appearance was required to be filed
19 because that was automatic with the motion to
20 intervene.

21 So number 2 is specific to attorneys and
22 that's where it contains the language that the notice
23 of appearance happens automatically when a new case
24 or motion to intervene is filed. Well I think that
25 that needs to be repeated in the pro se part to say

1 that when a motion to intervene is filed then no
2 separate notice of appearance is required when using
3 ePUC. Do you follow what I'm saying? So without
4 that language about it being automatic also in number
5 3, it's really unclear. It's still confusing for a
6 pro se party because then there's this except, you
7 know, they must file a notice of appearance. So it
8 appears to me that if you just take number 3, then
9 you have to file a notice of appearance, and that
10 note that it's automatic when you file a motion to
11 intervene isn't part of number 3, it's only in number
12 2.

13 So that's my comment and I hope that you
14 can -- it's a relatively minor thing, but for pro se
15 parties I think that it's important to make it as
16 clear as possible and this is not as clear as it
17 could be. So thank you.

18 MR. LANDIS-MARINELLO: All right. Thank
19 you. Yeah that's helpful. We'll take a look at
20 that. All right. We have a couple other people on.
21 Would either of them like to speak? Okay. If no one
22 else would like to speak, I'll just open it up again
23 if Ms. Valentine Fossum or Ms. Grundhauser would like
24 to speak.

25 MS. GRUNDHAUSER: Thank you. My name is

1 Grace Grundhauser. I'm just listening for Green
2 Mountain Power, but thank you for inviting. Thank
3 you.

4 MS. VALENTINE FOSSUM: Likewise I'm just
5 listening.

6 MR. LANDIS-MARINELLO: Okay great. Well
7 thank you everyone for coming, and if no one else has
8 any additional comments, thank you again for
9 participating. We really appreciate you taking the
10 time to give us these comments and raise concerns,
11 and as a reminder the deadline for filing any written
12 public comments is July 5, 2022, and with that we are
13 adjourned. Thank you very much and have a good
14 evening.

15 (Adjourned at 5:50 p.m.)
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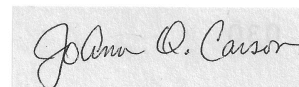
C E R T I F I C A T E

I, JoAnn Q. Carson, do hereby certify that I recorded by stenographic means the public hearing re: Case Number 20-2369-RULE via Go To Meeting on June 27, 2022, beginning at 5:30 p.m.

I further certify that the foregoing testimony was taken by me stenographically and thereafter reduced to typewriting, and the foregoing 15 pages are a transcript of the stenograph notes taken by me of the evidence and the proceedings, to the best of my ability.

I further certify that I am not related to any of the parties thereto or their Counsel, and I am in no way interested in the outcome of said cause.

Dated at Burlington, Vermont, this 28th day of June, 2022.



JoAnn Q. Carson