

Final Proposed Filing - Coversheet

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms shall be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of “Proposed Rule Postings” online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

* * * * *

**PLEASE REMOVE ANY COVERSHEET OR FORM NOT
REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!**

* * * * *

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Rule 2.000 Rules of Practice

_____, on 8/24/2022
/s/Anthony Z. Roisman (signature) (date)

Printed Name and Title:

Anthony Z. Roisman

Chair, Vermont Public Utility Commission

RECEIVED BY: _____

- ☐ Coversheet
- ☐ Adopting Page
- ☐ Economic Impact Analysis
- ☐ Environmental Impact Analysis
- ☐ Strategy for Maximizing Public Input
- ☐ Scientific Information Statement (if applicable)
- ☐ Incorporated by Reference Statement (if applicable)
- ☐ Clean text of the rule (Amended text without annotation)
- ☐ Annotated text (Clearly marking changes from previous rule)
- ☐ ICAR Minutes
- ☐ Copy of Comments
- ☐ Responsiveness Summary

1. TITLE OF RULE FILING:

Rule 2.000 Rules of Practice

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

22P010

3. ADOPTING AGENCY:

Vermont Public Utility Commission

4. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

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Agency: Vermont Public Utility Commission

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05602

Telephone: (802) 828-1158 Fax: (802) 828-3352

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Web URL *(WHERE THE RULE WILL BE POSTED)*:

<https://epuc.vermont.gov/?q=node/64/151626>

5. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: John Cotter, Esq.

Agency: Vermont Public Utility Commission

Mailing Address: 112 State Street, 4th Fl., Montpelier, VT
05602

Telephone: (802) 828-1161 Fax: (802) 828-3352

E-Mail: john.cotter@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE, EXEMPTING IT FROM INSPECTION AND COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

30 V.S.A. §§ 9, 11(a), 11a(b), & 208.

8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

Title 30 V.S.A. § 11(a) provides that "The forms, pleadings, and rules of practice and procedure before the Commission shall be prescribed by it. The Commission shall adopt rules . . ." Title 30 V.S.A. § 11a(b) authorizes the Commission to implement electronic filing and issuance of documents "by order, rule, procedure, or practice." Title 30 V.S.A. § 9 states that the Commission "shall have the powers of a court of record in the determination and adjudication of all matters over which it is given jurisdiction. It may render judgments, make orders and decrees, and enforce the same by any suitable process issuable by courts in this State." Title 30 V.S.A. § 208 provides that "A complaint to the Public Utility Commission may be made against a company subject to supervision under the provisions of this chapter concerning any claimed unlawful act or neglect adversely affecting the complainant . . ." The proposed amendments address each of the above-listed areas.

9. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.

10. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.

13. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

14. CONCISE SUMMARY (150 WORDS OR LESS):

The Commission has not comprehensively revised its rules of practice in many years. The proposed rule

will update the Commission's rules of practice to, among other things, (1) reflect the implementation of the Commission's electronic filing system, (2) more clearly identify the portions of the Vermont Rules of Civil Procedure that apply in Commission proceedings, (3) better facilitate public participation by non-lawyers in Commission proceedings by incorporating all rules of procedure into a single source and clarifying their meaning and application, making it easier for public participants to understand what rules apply, and (4) incorporate certain procedural changes that were made on an emergency basis during the COVID-19 pandemic, including clarifying that the Commission may hold status conferences and hearings remotely (and allow remote participation even at in-person hearings) and that parties may file documents without notarization.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

Clear and consistent rules of practice make it easier for stakeholders to participate in Commission proceedings and ensure that all stakeholders' procedural rights are protected.

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

There are currently three different sources that must be consulted to effectively participate in Commission proceedings: (1) the current version of Rule 2.000, (2) the Vermont Rules of Civil Procedure, which are currently incorporated by reference into Rule 2.000, and (3) the Commission's Procedures for Electronic Filing Using ePUC. This causes a degree of difficulty for participation in Commission proceedings because of the need to consult three different procedural rule sources, especially for non-attorney, citizen participants. The changes are intended to alleviate this difficulty by incorporating all rules of procedure into a single source and clarifying their meaning and application. The changes reflect the input and requests from a great many individuals and entities that have practiced before the Commission.

17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

Any individual, entity, or government agency appearing in proceedings before the Public Utility Commission. Examples include Vermont utilities, ratepayers, developers of and neighbors to proposed generation or transmission projects, public interest entities, state agencies such as the Vermont Department of Public Service, Agency of Natural Resources, and Agency of Agriculture, Food and Markets, and attorneys and non-attorneys representing the same.

18. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):

It is possible that the changes to Rule 2.000 will result in some economic impacts on parties in contested cases before the Public Utility Commission, including regulated utilities and their customers (Vermont ratepayers). Specifically, the rule amendments may help to facilitate additional public participation in contested cases at the Commission. This could result in an increase in the number of formal parties in more controversial cases, potentially raising litigation costs, although it could also lead to a decrease in costs by making the process of participation easier for all parties.

19. A HEARING WAS HELD.

20. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING, PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 6/21/2022

Time: 05:30 PM

Street Address: <https://meet.goto.com/911317925> OR call (877) 309-2073 and enter Pin# 911-317-925

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

6/28/2022

**KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE
SEARCHABILITY OF THE RULE NOTICE ONLINE).**

Public Utility Commission

rules of practice

Rule 2.000

ePUC

Adopting Page

Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

Rule 2.000 Rules of Practice

2. ADOPTING AGENCY:

Vermont Public Utility Commission

3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment if the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

#18-038, 30 000 2000 Rules of Practice, 09/15/2018

Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn’t appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

1. TITLE OF RULE FILING:

Rule 2.000 Rules of Practice

2. ADOPTING AGENCY:

Vermont Public Utility Commission

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

(1) Regulated utilities and project developers: Costs. Regulated utilities and developers of generation and transmission projects may experience an increase in litigation costs to the extent the rule amendments result in an increase in the number of parties to contested case proceedings, such as rate cases and siting cases for generation and transmission

facilities. It is not possible to anticipate or quantify any cost increases that may result in any given case. However, cost increases, if any, are expected only in a limited number of more controversial cases. Benefits. All rules of procedure are in one location, providing efficiency and a reduction in costs to petitioning utilities and project developers. Further, opportunities for increased public participation can decrease litigation costs if it leads to an earlier resolution of issues.

(2) Government agencies. Costs. It is possible that government agencies may see a small increase in costs from the amendments if the amendments result in an increase in the number of parties in more controversial cases. Any such increases are expected to be limited in most cases given that state agencies, with the exception of the Department of Public Service, tend to participate on a limited number of issues in most cases. Benefits. All rules of procedure are in one location, providing efficiency to participating state agencies. Further, opportunities for increased public participation can decrease litigation costs if it leads to an earlier resolution of issues.

(3) Vermont Ratepayers. Costs. To the extent that the amendments result in increased litigation costs to rate-regulated utilities, those utilities will likely seek to recover the costs in rates from Vermont ratepayers. However, impacts on individual ratepayers are expected to be small because those costs would be distributed among all of a utility's ratepayers. Benefits. Obtaining information on how to participate in contested case proceedings before the Commission will be simplified for ratepayers that wish to participate in those proceedings. Further, opportunities for increased public participation can decrease litigation costs if it leads to an earlier resolution of issues.

(4) Intervenors. Costs. The rule amendments are not expected to increase costs for citizens and entities (such as public interest groups) seeking to participate in contested case proceedings before the Commission.

Benefits. Obtaining information on how to participate in contested case proceedings before the Commission will be simplified for intervenors that wish to participate in those proceedings. Further, opportunities for increased public participation can decrease litigation costs if it leads to an earlier resolution of issues.

(5) Benefits generally. The rule amendments are expected to facilitate the process of participation in contested case proceedings before the Commission, resulting in greater public participation in regulated utility matters. This is consistent with the legislative intent behind Act 174 of 2016, which encouraged the Commission to facilitate public participation in all of its proceedings.

4. IMPACT ON SCHOOLS:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:

No impacts on schools are anticipated.

5. ALTERNATIVES: *CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.*

See response to number 4, above.

6. IMPACT ON SMALL BUSINESSES:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

The rule amendments are not expected to have any economic impact on small businesses outside of the potential litigation costs described above for regulated utilities and project developers, assuming that the smaller regulated utilities and project developers in Vermont fall into this category.

7. SMALL BUSINESS COMPLIANCE: *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

The rule amendments do not create any new compliance obligations for any entity appearing in a contested case before the Commission. Rather, they clarify the rules of procedure for participating in such cases.

8. COMPARISON:

COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

The alternative to the rule amendments is leaving the current scenario in place. As explained earlier, the current scenario, with different categories of procedural rules found in three different sources, is less efficient than the outcome expected from the rule amendments. There is no way to create separate requirements for small businesses. The Commission has written its procedural rules to be as efficient as possible for all contested case participants, regardless of their size.

9. SUFFICIENCY: *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

The Commission relied on its years of experience conducting contested case proceedings and the feedback it has received from participants in those proceedings. The Commission also conducted a process consisting of four rounds of comments and two workshops to receive feedback from interested persons and entities on the proposed rule amendments. The information received during this process, plus that gathered over years of experience conducting contested case proceedings, formed the basis for the Commission's assessment of potential economic impacts from the rule amendments.

Environmental Impact Analysis

Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

1. TITLE OF RULE FILING:

Rule 2.000 Rules of Practice

2. ADOPTING AGENCY:

Vermont Public Utility Commission

3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

The rule amendments are not expected to impact greenhouse gas emissions, unless they encourage an increase in the use of electronic filing. If electronic filing increases, then there will be downward pressure on the production and transport of hard copies for filing purposes, resulting in a minor net decrease in greenhouse gas emissions.

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*

There will be no impact to water.

5. **LAND:** *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*

There will be no impact to land.

6. **RECREATION:** *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*

There will be no impact to recreation.

7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*

There will be no impact to climate other than a possible minor decrease in greenhouse gas emissions as noted in response to number 3, above.

8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*

There will be no impact on other aspects of Vermont's environment.

9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

The analysis was conducted based on the Commission's experience with contested case proceedings. The rule amendments are procedural in nature and do not cause any impacts on the environment.

Public Input Maximization Plan

Instructions:

Agencies are encouraged to hold hearings as part of their strategy to maximize the involvement of the public in the development of rules. Please complete the form below by describing the agency's strategy for maximizing public input (what it did do, or will do to maximize the involvement of the public).

This form must accompany each filing made during the rulemaking process:

1. TITLE OF RULE FILING:

Rule 2.000 Rules of Practice

2. ADOPTING AGENCY:

Vermont Public Utility Commission

3. PLEASE DESCRIBE THE AGENCY'S STRATEGY TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE, LISTING THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

The Commission has maximized public input on the proposed rule amendments by contacting and engaging as many potentially interested persons, entities, and organizations as possible, both in a pre-rulemaking format to best inform the proposed amendments, and in a formal rulemaking format, through public hearings and written comments before and after the filing of the proposed rule with the Secretary of State.

The Commission held two workshops and solicited four rounds of comments on the proposed rule amendments from interested persons and entities, as well as a public hearing followed by a fifth round of written comments. The initial notice announcing the Commission's intent to adopt amendments to Rule 2.000 was sent to the Commission's stakeholder email distribution list, which contains approximately 380 recipients consisting of utilities, law firms, public interest groups, state agencies, trade groups, and others that have either participated in or expressed interest in Commission

Public Input

proceedings. A press release announcing the proposed rule amendments was also widely distributed.

In response to the initial announcement, the Commission received comments from approximately 20 participants, ranging from interested citizens, law firms, utilities, developers, public interest groups, and state agencies. Many of these also participated in the two workshops.

When the proposed rule was filed with the Secretary of State, the Commission again circulated the proposed amendments to the persons and entities that have actively participated in the development of the rule amendments so far. The Commission then scheduled a remote public hearing and received oral and written comments from the public.

The Commission also posted notice of the formal rulemaking on its website and distributed a memorandum from the Clerk of the Commission to the Commission's stakeholder email distribution list to again notify the original group of approximately 380 recipients of the commencement of the formal rulemaking process.

4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

To date, the following persons and organizations have participated in workshops or provided comments that assisted in developing the proposed rule amendments: the Vermont Department of Public Service, the Vermont Agency of Natural Resources, 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, 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,

Public Input

Valsangiacomo, Detora & McQuesten, P.C., and Dunkiel Saunders Elliott Raubvogel & Hand, PLLC.

During the formal rulemaking process, the Commission received input from Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC, and Vermonters for a Clean Environment.

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2.100 Scope and Construction of Rules

2.101 Applicability

These rules apply in all proceedings before the Commission.

2.102 Definitions

- (A) Commission: the Vermont Public Utility Commission and any Commissioner, hearing officer, clerk, or other Commission employee or agent authorized to act on behalf of the Commission.
- (B) Contested case: a proceeding, including ratemaking 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.
- (C) ePUC: the Commission's electronic case management filing system.
- (D) Filing (when used as a noun): any petition, application, complaint, motion, exhibit, report, or any other document required or permitted to be filed with the Commission in connection with any proceeding within the Commission's jurisdiction. This includes any ePUC submission. This does not include other electronic communications with the Commission that are not part of a proceeding within the Commission's jurisdiction. A filing is not part of the evidentiary record unless it is admitted into evidence.
- (E) Final order: an order from which an appeal lies. Unless the Commission specifies that an order is final (as to the entire matter or as to certain parties), an order is not final if there will be additional proceedings (other than compliance filings) in the same matter.
- (F) Order: any decision by the Commission, whether in writing or orally.
- (G) Person: any individual, group, corporation, cooperative, partnership, firm, association, or other entity or organization.
- (H) Proceeding: any case, docket, rulemaking, or other matter that is before the Commission.
- (I) Reply: a filing made in reply to another party's response.
- (J) Response: a filing made in response to another party's motion or other filing.
- (K) State: the State of Vermont.

2.103 Updates to These Rules and Non-Applicability of Vermont Rules of Civil Procedure

These rules are comprehensive. Where applicable, specific provisions of the Vermont Rules of Civil Procedure (including additions and amendments to those rules from Administrative Orders of the Vermont Supreme Court) have been adapted and written into these rules. The Vermont Rules of Civil Procedure therefore do not apply to Commission proceedings. These rules apply instead. However, any party may request the application of the Vermont Rules of Civil Procedure (in whole or in part) to a particular case, and the Commission may exercise its discretion to grant or deny that request. Further, to the extent that a provision of these rules is adapted from a related provision in the Vermont Rules of Civil Procedure, the Commission will look to caselaw (from the Commission and from the courts) as relevant precedent in interpreting these rules. Additionally, whenever the Vermont Rules of Civil Procedure are amended or updated through an Administrative Order of the Vermont Supreme Court or otherwise, or at any other time for good cause, the Commission may, in its discretion and without formal rulemaking, incorporate any amended or new provisions of the Vermont Rules of Civil Procedure into these rules, or make any other changes to Rule 2, by Commission order, with the updated Rule 2 being filed immediately with the Secretary of State as a final rule. Unless there is a need for an immediate amendment, the Commission will issue a proposed order for comment from stakeholders before the Commission issues a final order incorporating any amended or new provisions.

2.104 Conflicting Authority

In the event of a conflict or for any other reason on a case-by-case basis, any more specific Commission order or Commission rule shall prevail over these rules.

2.105 Proceedings Governed by These Rules

All proceedings are presumed to be governed by these rules. Proceedings may also be governed by other Commission rules, Vermont Supreme Court orders, Commission orders, applicable statutes, or any other rules or requirements that the Commission may order.

2.106 Construction

These rules shall be liberally construed to secure the just, timely, and inexpensive determination of all issues presented to the Commission.

2.107 Waiver of Rules

To prevent unnecessary hardship or delay, to prevent injustice, or for other good cause, the Commission may waive the application of a rule under such conditions as it may require, unless precluded by the rule or by statute. In an ongoing proceeding, to obtain a waiver, a person must file a motion pursuant to Rule 2.206. When there is not an ongoing proceeding, a waiver can be requested by filing a petition pursuant to Rule 2.202. Any motion or petition for a waiver must be accompanied by a concise explanation of the basis for the waiver.

2.108 Severability

If any of these rules is found by a court of competent jurisdiction to be illegal or void, the remainder are unaffected and continue in full force and effect.

2.109 Immediate Applicability and Repeal of Previously Issued Rules

When amendments to these rules of practice are made, those amendments go into effect immediately. Those amendments apply to pending proceedings, and all previously adopted rules of practice and amendments are repealed to the extent they are amended, unless the Commission determines (on its own or at the request of a party or participant) that a previous rule should continue to apply to a pending proceeding to avoid injustice or substantial inconvenience. For pending cases known as “legacy” cases in which the Commission has allowed the parties to file on paper, rather than in ePUC, the requirement to make filings in ePUC does not apply. For pending cases in which the Commission has already made substantive rulings based on a previous version of these rules, those substantive rulings remain in place and are not subject to reconsideration based solely on a change in these rules.

2.110 Use of ePUC for All Commission Proceedings

The provisions of these rules presume the use of ePUC unless specifically stated otherwise. All Commission proceedings and all filings in Commission proceedings must use ePUC, unless:

- (A) a filing is required to be made in paper by statute or under Rule 2.202,
- (B) a party or participant obtains a waiver under Rule 2.107 to allow for paper filings (for instance, because the person does not have high-speed internet in their home or office),
- (C) the filing is a consumer complaint or public comment,
- (D) a party or participant seeks confidential treatment of the filing (in which case a redacted version must still be filed in ePUC, but the allegedly confidential document must be filed in accordance with Rule 2.226), or
- (E) the filing is made by a bank or other financial institution and consists of a letter of credit or other legal documents requiring an original signature.

2.200 Procedures Generally Applicable

2.201 Practice Before the Commission

(A) Notice of appearance.

- (1) All notices of appearance must specifically state the party or participant that is being represented.
- (2) Attorneys must file a notice of appearance with respect to any proceeding in which they are representing a party or participant, except that for uncontested workshops, uncontested investigations, or rulemakings, attorneys may contact the clerk and ask to be added as a representative of a participant. In ePUC, this notice of appearance happens automatically when a new case or motion to intervene is filed (and no separate notice of appearance is required), but any other initial filing in an existing case must be accompanied by a separate notice of appearance.
- (3) *Pro se* or other representatives (whether representing only themselves or others) must likewise file a notice of appearance, except in the case of a consumer filing a consumer complaint, a system installer filing a net-metering registration or application, anyone filing a transfer form for a net-metering certificate of public good, anyone filing public comments, or when the notice of appearance happens automatically in ePUC because the *pro se* or other representative filed a new case or motion to intervene (and no separate notice of appearance is required).
- (4) Although system installers filing a net-metering registration, application, or certificate of public good transfer form need not file a notice of appearance, they must indicate (and keep up-to-date) the name and contact information of the person they are representing.
- (5) A copy of each notice of appearance must, on the same day it is filed, be served by the party filing it on all persons or parties on whose behalf a notice of appearance has been filed. A list of such persons and parties will be available through ePUC. The procedures for service are listed in Rule 2.204.
- (6) It is the responsibility of each representative for any party or participant that appears in front of the Commission (whether an attorney or *pro se*) to ensure that their contact information in ePUC is accurate and up-to-date at all times. The primary email address submitted for a representative must be the email address to which all notices of filings and issuance of Commission-generated documents for a particular Commission proceeding will be sent.
- (7) It is the responsibility of each representative for any party or participant that appears in front of the Commission (whether an attorney or *pro se*) to ensure that

they are familiar with all applicable Commission rules, including all of Rule 2 and all applicable rules that are referenced by Rule 2.

- (8) Electronic filing of any document through ePUC by or on behalf of a representative in a Commission proceeding constitutes consent by that official representative to be served with and to receive notice of any and all documents filed with or issued by the Commission via electronic service in that Commission proceeding.
- (B) Pro se appearances and appearances by State agencies and net-metering system installers.
- (1) Any individual may be a *pro se* representative in their own cause.
 - (2) In its discretion, the Commission may permit persons who are not attorneys to appear before it, including the following:
 - (i) A partnership may be represented by a partner.
 - (ii) A corporation, cooperative, or association may be represented by one of its officers or directors (or by an employee designated in writing by an officer or director, with the designation attached to the notice of appearance filed with the Commission).
 - (iii) A State agency may be represented by an employee designated in writing by the Secretary or Commissioner, with the designation attached to the notice of appearance filed with the Commission.
 - (iv) An applicant for a net-metering registration, application, or transfer of a certificate of public good may be represented by a system installer, so long as the installer certifies that the applicant has authorized the installer to file the registration or application on the applicant's behalf and also certifies that the applicant has signed a binding installation contract.
 - (3) Each *pro se* or other representative must provide the identity and contact information of the affiliated party they represent, in addition to providing their own contact information
 - (4) In Commission proceedings, all parties and *pro se* and other representatives must comply with all applicable rules, laws, practices, procedures, and other requirements, including all the obligations of an attorney admitted to practice in this state.
- (C) Attorneys admitted elsewhere.
- (1) An attorney admitted to practice and in good standing in any other state may appear in particular proceedings with the permission of the Commission.

- (2) An attorney who previously was permitted to appear under this subsection of this rule does not need the Commission's permission for later appearances that are on behalf of the same client, so long as the attorney submits an attestation that the attorney continues to represent that same client and that the attorney remains in good standing in another state.
 - (3) When an attorney admitted elsewhere enters a Commission proceeding, they accept all responsibilities that apply to all attorneys and *pro se* representatives that appear in front of the Commission. This includes the requirements that they keep all contact information up-to-date and that they be familiar with all applicable Commission rules, including all of Rule 2 and all applicable rules that are referenced by Rule 2.
 - (4) The Commission, in its discretion and at any time, may impose conditions on an attorney admitted in another state who seeks to appear before the Commission, including a requirement that the attorney work with local counsel.
- (D) Withdrawal of appearance.
- (1) Any person who has appeared on behalf of a party may withdraw only upon permission of the Commission or when a substitute appearance is filed by a properly designated representative of the party, such as another attorney. If a substitution of appearance might cause delay, then Commission approval is required.
 - (2) A person appearing as a *pro se* representative for themselves may withdraw without permission of the Commission, which is deemed to constitute withdrawal of that person as a party.
- (E) Ex parte communications.
- (1) Prohibited communications. Upon the filing in a contested case of a complaint, petition, application, or other filing that the Commission has treated as the same, the Commission may not communicate, directly or indirectly, in connection with any issue of fact with any party or any person, or in connection with any issue of law with any party or any employee, agent, or representative of any party, unless:
 - (a) all parties have consented to the communication;
 - (b) there has been notice and opportunity for all parties to participate;
or
 - (c) the communication is required for the disposition of *ex parte* proceedings authorized by law.

- (2) Allowed communications. Non-substantive *ex parte* communications with the clerk or other administrative employees regarding procedural, scheduling, technological, or administrative matters are allowed, even in contested cases, and no disclosure to other parties is required. Also, in an emergency situation in a contested case, *ex parte* communications are authorized, provided:
- (a) the Commission reasonably believes that no party will gain a procedural or tactical advantage as a result of the *ex parte* communication regarding the emergency, and
 - (b) the Commission promptly notifies all other parties of the substance of the *ex parte* communication and allows an opportunity to respond.
- (3) Participation in decision. In general, a Commissioner, Commission employee, or agent of the Commission may not participate or advise (except as a witness) in the Commission's decision, recommended decision, or review of a pending, contested case if the person has communicated about any facts regarding the case with any person or party, or has communicated about any issue of law with any party or any employee, agent, or representative of any party. However, the prohibition in this provision does not apply to any of the following:
- (a) communications allowed under (2) above;
 - (b) communications that are required for disposition of *ex parte* proceedings authorized by law;
 - (c) communications that all parties have consented to; or
 - (d) when there has been notice and opportunity for all parties to participate.
- (4) Improper communications by parties. Any person or party who, directly or through an employee, agent, or representative, communicates or attempts to communicate with the Commission on any subject so as to cause or potentially cause the disqualification of a Commissioner, Commission employee, or agent of the Commission from participating in any manner in any proceeding may be disqualified from later participation in the proceeding, may be dismissed as a party to the proceeding, may be held in contempt of the Commission under the Commission's powers as a court of record under 30 V.S.A. § 9, and/or may be deemed to have waived any objection to the later decision by the Commission with respect to any proceeding that is the subject of such communication.

- (5) Exception. Despite any provision above, Commissioners, Commission employees, and agents of the Commission may communicate with other Commissioners, Commission employees, or agents, provided that none of the latter has engaged in communications prohibited by (1) above.
- (6) Facilitation and mediation. An employee or agent of the Commission may, with the consent of the parties, confer separately with a party or their representative in an effort to mediate or settle proceedings pending before the Commission. Pursuant to (1), above, such employee or agent of the Commission may not participate in rendering a decision in such proceedings.

2.202 Initiation of Proceedings, Referrals of Proceedings, and Participation in Proceedings

- (A) Initiation of proceedings. To initiate a proceeding, a party must file a complaint, petition, or other application in ePUC. Paper filings may initiate proceedings only in the following instances:
 - (1) consumer complaints;
 - (2) proceedings that are statutorily required to be filed in paper (such as certain condemnation proceedings);
 - (3) proceedings in which the party initiating the proceeding cannot file or receive documents electronically (if a party or participant seeks a Rule 2.107 waiver of the requirement to file in ePUC, good cause may be demonstrated by an attestation that the person does not have high-speed internet in their home or office); and
 - (4) notices of appeal from a final decision of the Commission to the Vermont Supreme Court. Notices of appeal must be filed in paper with the clerk of the Commission, with any entry fee paid in the manner set forth in Rule 3 of the Vermont Rules of Appellate Procedure. A request by an ePUC user for permission from the Commission to appeal to the Vermont Supreme Court before the Commission issues a final judgment must be filed in ePUC and should not be accompanied by a paper filing.
- (B) Enforcement proceedings and referrals of enforcement proceedings. For enforcement proceedings, whether initiated by a member of the public, a party, or the Commission, the Commission may at any time refer the matter to the Department of Public Service in accordance with applicable statutory provisions. Although not required, it is preferable that any filing that seeks to initiate an enforcement proceeding at the Commission include, at a minimum, the following:
 - (1) A statement of whether the matter has been brought to the Department of Public Service for evaluation of an administrative citation under 30 V.S.A. § 30(h) and,

if so, what the Department concluded (to the extent that the conclusion is public and not a matter of confidential negotiations). If the matter was not brought to the Department's attention, the statement should explain why it was not brought to the Department.

- (2) Reference to any applicable statutes, rules, Commission orders, or certificates of public good that are alleged to have been violated.
 - (3) The factual bases, preferably in the form of one or more signed affidavits or declarations using the template on the Commission's website, for each alleged violation.
- (C) Participation in proceedings. To file anything with the Commission, other than a public comment or a paper filing allowed under Rule 2.210 (including any filing by a user who must file in paper because they cannot file or receive documents electronically), a user must first log into ePUC's public portal using a user name and password. A person, entity, or group of persons functioning as a single entity may use ePUC to file a motion to intervene in a Commission proceeding or, as provided in other Commission rules related to certain specific types of proceedings, a notice of intervention in a Commission proceeding.

2.203 Signing of Petitions, Motions, and All Other Filings

- (A) Every petition, motion, or other filing must be signed or electronically signed by an attorney or *pro se* or other representative of record in their individual name, with their email address and telephone number stated, with the exception of prefiled testimony (which is signed and attested to by its author, in accordance with Rule 2.213(C)) and exhibits or other attachments to another filing.
- (B) Pleadings need not be verified or accompanied by affidavit or declaration, except when specifically required by rule or statute.
- (C) The signature of an attorney or *pro se* or other representative constitutes a certification by that person that, based on a reasonable inquiry and a good-faith basis, to the best of their knowledge, information, and belief, all of the following are true:
 - (1) There are good grounds to support the petition, motion, or other filing;
 - (2) All legal contentions are supported by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

- (3) All factual contentions have evidentiary support, or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
 - (4) The petition, motion, or other filing is not being done for delay or any other inappropriate purpose.
- (D) Any violation of subsection (C) may be subject to sanctions under Rule 2.224.

2.204 Pleadings and Other Filings; Service, Filing, Form, and Amendment

- (A) Service, when required. In addition to any other requirement imposed by law, every filing must, on the same day on which it is filed, be served by the party filing the same on every other party who has filed a notice of appearance and on every party that is entitled to notice by statute, rule, Commission order, or Rule 2.205.
- (B) Service, how made.
- (1) Service on represented parties and participants. When service is required on a party that has made a notice of appearance, service must be made on the attorneys and representatives who have filed notices of appearance.
 - (2) ePUC users and non-ePUC users. Parties or participants who are using ePUC to participate in a Commission proceeding (ePUC users) will have their email addresses included on the “People” tab in ePUC, while parties or participants who are not using ePUC to participate in a Commission proceeding (non-ePUC users) will have only their physical mailing addresses included on the “People” tab in ePUC.
 - (3) Service on State agencies through ePUC. When a party or participant initiates a Commission proceeding in ePUC, service on any State agency that is entitled to service must occur through ePUC. For petition filings labeled “Other” in ePUC, the party or participant should contact the clerk to ensure that State agencies (in addition to the Department of Public Service) are added to the ePUC case and served.
 - (4) Electronic service for all ePUC users. In all cases, service is deemed to be made on all ePUC users in that proceeding by automatic notification through ePUC. ePUC will send email notification of a filing made via ePUC with a link to access the document filed to all parties or persons on whom service is required by the applicable rules of procedure, and who are using ePUC to participate in a Commission proceeding.

- (5) No certificate of service when service is entirely through ePUC. In cases where all parties and participants are ePUC users, no certificate of service is required. This rule does not relieve anyone of any obligation to file other certifications, such as any required certificates or notices regarding the exchange of discovery.
 - (6) Paper copies for non-ePUC users. In all cases, service may be made on non-ePUC users by mailing a copy of the filing, first-class postage prepaid, to the person whose notice of appearance is on file. For service on non-ePUC users, service may also be made by personal delivery or by any other means authorized by the person entitled to service. The filer, or the Commission in the case of a Commission-issued document, must serve a paper copy of an electronically filed document on all parties or persons on whom service is required by the applicable rules of procedure, and who are not using ePUC to participate in a Commission proceeding.
 - (7) Certificates of service. When a party or participant in a Commission proceeding serves paper copies, a certificate of service is required. A certificate of service must include the names and addresses of entities or individuals who are served with a paper copy of a filing. A certificate of service need not include the names and addresses of any entities or individuals for whom service is effectuated electronically using ePUC.
- (C) Filing, manner and significance.
- (1) Filing of all public documents must be accomplished through ePUC or by delivery to the Commission during the course of an evidentiary hearing, unless the document falls under one of the listed exceptions in Rule 2.110 or a waiver has been granted under Rule 2.107 for paper filing.
 - (2) Filing of documents for which confidential treatment is sought must be accomplished through the procedures listed in Rule 2.226.
 - (3) Regardless of the method of delivery employed, filing of all public documents occurs only upon receipt by the ePUC system or receipt by the Commission.
 - (4) Every filing constitutes a representation by the attorney or *pro se* or other representative signing the filing that a copy has been or will be served on the same day on which it is filed on every other party or participant on whose behalf a notice of appearance has been filed.
- (D) Number of copies. In the limited circumstances where Commission rules allow paper filings, all materials required to be filed must include an original only, except that paper filings of discovery responses under Rule 2.214 must include an original plus one copy.

(E) Form of filings.(1) In general.

- (a) Except as provided in Rule 2.204(F), all filings must be typed using a common typeface, size 12 font, double-spaced, and formatted as 8 1/2" x 11" with at least 1" margins.
- (b) All motions, briefs, and comments—other than proposed orders, proposed findings of fact and conclusions of law, and post-hearing briefs—must be:
 - (i) no more than 25 pages in length (excluding exhibits),
 - (ii) no more 15 pages in length (excluding exhibits) for responses, and
 - (iii) no more than 10 pages in length (excluding exhibits) for replies.
- (c) The first page of every filing must include the case caption (the case name and the case number if a case number has been assigned) and must be headed by a descriptive title (e.g., “Applicant’s Response to Hearing Officer’s Request for Additional Information”).
- (d) All filings longer than 1 page must include in the upper right-hand corner of each page the case name and case number, the page number, and the date. This information is not required on the first page of a letter or other filing, provided that the case name, case number, and date appear somewhere on the first page.
- (e) Filings must address the procedural and substantive matters that are before the Commission; they may not use inappropriate or derogatory language, and they may not make personal accusations that are speculative or are not directly related to the procedural and substantive matters that are before the Commission. Upon a motion by a party or upon the Commission’s own initiative at any time, the Commission may strike from any filing any redundant, immaterial, impertinent, or scandalous matter.

(2) Separate documents required.

- (a) Each document (e.g., each witness’s prefiled testimony, each individual exhibit, etc.) must be identified and filed in ePUC separately.
- (b) Individual documents may not be consolidated into a single larger document for filing in ePUC.
- (c) New motions may not be filed in the same document as a response or reply to a previously filed motion.

- (d) Service lists that are not part of an initial filing in a case may be combined into a single document with any other filing, except for prefiled testimony or exhibits.
- (3) Document numbers required. When parties or participants provide lists of prefiled testimony and exhibits that have been previously filed in ePUC, whether by filing such a list in ePUC or by hand delivery at a hearing, the list must include the ePUC document number for each document that was prefiled using ePUC. (Each document filed electronically via ePUC is assigned an individual document number, formatted as a number followed by a forward slash followed by another number – e.g., 123456/456789.) Guidance for accessing and including the ePUC document numbers assigned to prefiled testimony and exhibits can be found on the Commission’s website.
- (4) Time of submission.
 - (a) An electronic filing may be submitted on any day, including holidays and weekends, and at any time.
 - (b) A filing is considered filed on the date it is submitted if submitted by 4:30 P.M. on a date that the Commission is open for business.
 - (c) A filing submitted after 4:30 P.M. or on a weekend, holiday, or any other day the Commission is not open for business will be considered filed on the next business day.
 - (d) Failure of any system other than ePUC will not excuse a failure to comply with a filing deadline unless the Commission exercises its discretion to extend the deadline. If ePUC or any of its subsystems is unavailable due to system maintenance or failure, the Commission will issue a notice (in the ePUC portal and on the Commission’s website) extending any deadlines that occurred during the time that ePUC was unavailable.
- (5) Receipt of submission.
 - (a) The ePUC system will automatically acknowledge receipt of any filing and will provide an identifying case number in the email confirmation of any initial filing that has been acknowledged by ePUC.
 - (b) The identifying case number must appear on all subsequent filings pertaining to that Commission proceeding.
 - (c) However, a filing is not deemed accepted by the Commission until it meets the requirements of these rules and of the ePUC system.

(6) Review of submission.

- (a) A filing that initiates a case and has been submitted via ePUC will be reviewed by the Commission for compliance with the requirements of these procedures and the ePUC system, and with any applicable statutes and Commission rules.
- (b) After review of the filing, the Commission will electronically notify the filer if the filing cannot be processed until specified actions have been taken as required by these procedures and the ePUC system, and by any applicable statutes and Commission rules.
- (c) If a filing has not been accepted, a filer may submit a corrected filing. The Commission will accept a corrected filing if it meets all requirements of these procedures, the ePUC system, and any applicable statutes and Commission rules.
- (d) When a corrected filing has been accepted, the date and time of filing for all purposes under the Commission's rules of procedure are the date and time that the corrected filing was submitted.

(7) Component parts of single document. When component parts of a single document are filed separately using ePUC (e.g., separate signature pages from multiple parties to a settlement agreement), each party that files a separate component must provide a name for that component in the appropriate ePUC field, clearly indicating the nature of the component filing and the specific document that the component filing is intended to be a part of (e.g., "Signature page of 123 Solar to settlement agreement with Agency of Natural Resources").

(8) Corrected documents. Documents filed for the purpose of correcting previously filed documents may be filed in ePUC by selecting the "revised" option from the appropriate filing screen. The new document will then appear in ePUC. The previously filed document will still appear in ePUC but will be marked as "superseded."

(9) Filing only in open cases. If the status of a case, found in the upper-right corner of the case screen in ePUC, reads "closed," a filer must contact the clerk of the Commission before filing any document that the filer believes is or may be related to the closed case. The clerk will assist the filer in determining whether it is appropriate to make the new filing in the closed case or to initiate a new case with a different case number when making the filing.

(10) Prohibited documents. A document cannot be submitted via ePUC if it:

- (a) is not created or saved in searchable PDF, searchable PDF/A, Excel (.xls or .xlsx), jpeg, .ptx, Powerpoint (.ppt or .pptx), MS Word (.doc or .docx), MP4, or AVI format;
 - (b) is larger than 50 MB, unless it is filed in segments no larger than 50 MB; or
 - (c) contains a virus detected by the ePUC system.
- (11) Requirements for electronic documents. An electronically filed document that has been submitted via ePUC will be accepted by the Commission only if:
 - (a) it has been formatted as required by the Commission's rules of procedure and is clearly legible, and (for text documents) word-searchable, in the electronic format in which it is filed;
 - (b) any password protection or other security device has been removed; and
 - (c) all information required to be included with the filing has been submitted.
- (12) Different formats for documents.
 - (a) Documents that cannot be filed in any of the supported formats must be filed with the Commission and served on other parties or participants to a Commission proceeding in paper copy.
 - (b) If the filing party has an electronic version of a document, then they should also provide the Commission with an electronic version of the document (in addition to filing a paper copy with the Commission).
 - (c) Parties or participants to a Commission proceeding may agree among themselves to exchange electronically documents that are not in an ePUC-supported format in place of serving each other with paper copies.
- (13) Signatures of representatives of parties and participants.
 - (a) Where a signature is required, the electronic filing of a petition, pleading, motion, or other document constitutes the representative's signature on the document and for all other purposes under the applicable rules of procedure, including the imposition of sanctions under Rule 2.224 and the requirement in Rule 2.203(C) of, among other things, a reasonable inquiry and good-faith basis for all representations in written filings.
 - (b) An electronically filed document that requires a signature must include a signature block containing the representative's typed-in name, preceded

by “/s/” or an electronic facsimile of the signature, a scanned copy of it, or another form of electronic signature as defined in 9 V.S.A. § 271(9), and the name, address, telephone number, and email address of the person signing the document.

- (c) A procedural document filed by non-electronic means must be signed as provided in the applicable rules of procedure.
- (d) Any document filed jointly must contain the signature of each representative in the form provided above. If such a document is filed electronically, the act of filing by or on behalf of a representative constitutes a representation that all the other signers consented to the filing of the document.

(14) Signatures of Commission personnel.

- (a) Commissioners, hearing officers, the clerk, and other Commission personnel may sign any Commission-generated document created and to be issued or entered in electronic form with an electronic facsimile signature followed by a signature block containing the signer’s typed name and title. That signature has the same effect as a handwritten signature on a non-electronic document.
- (b) An electronic facsimile signature of a Commissioner, hearing officer, or the clerk on a Commission-generated document filed in the ePUC electronic filing system is presumed valid. Unauthorized use of an electronic facsimile signature will render invalid the document that was issued with the unauthorized signature unless the Commissioner, hearing officer, or clerk ratifies the use of their signature.

(F) Special rules for certain exhibits. Exhibits need not comply with the typewriting or size requirement of Rule 2.204(E) if it is impracticable to do so (e.g., a spreadsheet that is more user-friendly when submitted in electronic form).

(G) Amendments in pending proceedings.

- (1) In general. Proposed amendments to any filing may be made at any time before the evidentiary record is closed. Unless allowed automatically under an applicable statute or rule, or agreed to by all parties (without the Commission denying the amendment), such amendments require Commission approval. Proposed amendments must be clearly identified and must clearly indicate what changes are being made. In the event an amendment makes a substantial change to a filing, the Commission may order such additional notice to other parties and the public as justice may require.

- (2) Rate filings. Any filing to amend, supplement, or alter an existing rate filing or substantially revise the proof in support of a rate filing to increase, decrease, or substantiate a pending rate request must demonstrate that the change in filing or proof is necessary for the purpose of providing adequate and efficient service. This requirement is met if the new filing is the result of previously unknown costs or other circumstances (which could not have been known through reasonable diligence) that will be in effect during the affected rate period.
- (H) Public access to and use of ePUC. Any person, including any member of the general public, may use ePUC to:
- (1) File public comments on any proceeding before the Commission. Comments related to a specific Commission proceeding should be filed in the case number for that proceeding. (If a person does not know the case number, they should contact the clerk before filing to obtain the case number.) The Commission in its discretion may prohibit a filer from using ePUC upon a determination that the filer has abused the ePUC system by repeated filing of irrelevant, abusive, or duplicative documents or information.
- (2) Subscribe to receive notification of the filing of any documents filed by parties or issued by the Commission in any Commission proceeding. To subscribe to a case, a user must log into ePUC (creating an account if necessary), search for the case to which the person would like to subscribe, select “Subscribe to a Case” from the “Select Action” drop-down menu, and fill in the fields on that screen. A person who wishes to stop subscribing to a case or update the email address used to subscribe should contact the clerk at puc.clerk@vermont.gov.
- (3) Search for and view all public case information and all public documents in any Commission proceeding.

2.205 Notice to Other Persons or Parties

- (A) Notice also provided to certain entities affected by proposed changes to pole-attachment terms or tariffs. At the beginning of a proceeding that proposes to make changes to existing pole-attachment terms or tariffs, proposes a new pole-attachment tariff, or seeks approval of a program involving pole-attachment rates, the pole-owning entity must provide notice of the filing to all entities that currently have equipment attached or have applied to attach equipment to one or more poles owned by the pole-owning entity.
- (B) Orders of notice. The Commission may require any party who seeks the granting or denial of any form of relief to file a proposed order of notice.

- (C) Expenses. The expense of furnishing notice must be borne by the party on whose behalf or for whose benefit such notice is given.

2.206 Motions, Responses to Motions, and Replies in Support of Motions

- (A) Motions not made during a hearing must be in writing, filed within a reasonable period of time from when the issue arose or by a deadline established by rule or order, and, if they raise a substantial issue of law, must be accompanied by a brief or memorandum of law.
- (B) All motions, responses, and replies must comply with all of the filing requirements of these rules, including the page limitations of Rule 2.204(E)(1).
- (C) Motions made during a hearing may be required to be put in writing and supported by a brief or memorandum of law within such period as the Commission may direct.
- (D) An opportunity to present evidence on a motion shall be provided, if requested, unless the Commission finds there to be no genuine issue as to any material fact. The request for an opportunity to present evidence shall include a statement of the evidence that the party wishes to offer. In any case, the Commission may decline to hear oral argument and may dispose of the motion without argument.
- (E) Unless otherwise directed by the Commission, responses to motions are due 14 days after the motion is filed, and replies are due 14 days after responses are filed.
- (F) If a party seeks leave to file a sur-reply, or make any other filing that is not allowed under applicable rules, it must do so by motion. The motion must set forth good cause as to why the matter could not have been raised in an earlier filing.
- (G) If a motion seeks expedited resolution (that is, sooner than allowed by the standard 14-day response period and 14-day reply-to-response period, plus a time for Commission deliberations), this must be clearly stated in the title of the motion (“Expedited Motion to . . .”).
- (H) A motion requesting alternative forms of relief (i.e., requesting that the Commission grant relief in one form or another based on related facts) may be filed as a single document. A response or reply to such a motion may also be filed as a single document.
- (I) A new motion may not be combined with a response to a motion.
- (J) A memorandum of law must be included in the same document as the motion it supports. However, any affidavit, declaration, exhibit, or other supporting matter or attachment to a motion or response must be filed as a separate document and must identify the motions or

responses to which the supporting matter relates and must be referenced in the motions or responses unless it is filed after them.

- (K) All motions (except for motions to dismiss, for summary judgment, for a temporary restraining order, or for sanctions) must state whether the moving party has received consent for the relief requested from all other parties and participants.

2.207 Time

- (A) All filings (including electronic filings) must be submitted by 4:30 P.M. on a date that the Commission is open for business to count as being filed on that date.
- (B) In computing any time period in these rules, in any order, or in any applicable statute that does not specify a method of computing time:
- (1) Exclude the day of the event that triggers the period.
 - (2) Count every day, including intermediate Saturdays, Sundays, and legal holidays.
 - (3) Include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday (any day declared a holiday by the United States President, the United States Congress, or the State of Vermont), the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.
- (C) Absent extraordinary circumstances, any motion to extend a deadline must be filed at least 3 days before the deadline and must set forth good cause why the extension should be granted.

2.208 Defective Filings

The Commission may refuse to accept for filing or, after filing, may at any time reject any filing that fails to conform to the requirements of this rule or is otherwise substantially defective or insufficient. A filing is substantially insufficient if, for instance, it fails to include all material information required by statute or rule.

2.209 Intervention

- (A) Intervention as of right. Upon timely application, anyone shall be permitted to intervene in any proceeding (1) when a statute or Commission rule confers an unconditional right to intervene, or (2) when the applicant claims an interest in the matters that must be resolved in the proceeding and the applicant is so situated that the disposition of the proceeding may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.
- (B) Permissive intervention. Upon timely application, a person may be permitted to intervene in any proceeding (1) when a statute or Commission rule confers a conditional

right to intervene, or (2) when an applicant's claimed interest shares a question of law or fact in common with the matters that must be resolved in the proceeding. In exercising its discretion, the Commission must consider whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.

- (C) Conditions. Where a party has been granted intervention, the Commission may restrict that party's participation, may require that party to join with other parties with respect to appearance by counsel, presentation of evidence, or other matters, and may otherwise limit that party's participation, all as the interests of justice and economy of adjudication require. The Commission has discretion in determining when to order joint representation, but may not require a State agency to be represented jointly with any other party.
- (D) Procedure. An application to intervene must be made by notice (if notice is allowed by statute or Commission rule) or by motion made in accordance with these rules. The motion must be made as early as possible or by the date allowed under a scheduling order.

2.210 Joinder

- (A) Persons to be joined if feasible. A person shall be joined as a party in the case if:
- (1) in the person's absence complete relief cannot be accorded among those already parties, or
 - (2) the person claims an interest related to the subject of the case and is so situated that the disposition of the case in the person's absence may:
 - (a) as a practical matter impair or impede the person's ability to protect that interest, or
 - (b) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the person's claimed interest.
- (B) Reasons for nonjoinder. A petition or other initial filing shall state the names, if known to the filer, of any persons described in subsection (A) who are not joined, and the reasons why they are not joined.
- (C) Joinder by order of the Commission.
- (1) For a person described in subsection (A), if joinder is feasible but has not occurred, the Commission may order that the person be made a party.

- (2) For a person described in subsection (A), if joinder is not feasible, the Commission may determine whether in equity and good conscience the proceeding should continue among the parties before the Commission, or whether the proceeding should be dismissed because the absent person is indispensable. The factors to be considered by the Commission include:
- (a) to what extent an order rendered in the person's absence might be prejudicial to the person or those already parties,
 - (b) the extent to which, by protective provisions in the order, by the shaping of relief, or other measures, the prejudice can be lessened or avoided,
 - (c) whether an order rendered in the person's absence will be adequate, and
 - (d) whether the petitioning party will have an adequate remedy if the petition is dismissed for nonjoinder.
- (3) Permissive joinder. Upon a motion by a party or on the Commission's own initiative, the Commission may join all persons who have an interest arising out of the same matter if any question of law or fact common to all of the joined persons may be resolved through an order in the case where the person is joined. Alternatively, the Commission may give leave to allow the person to file an *amicus* brief.
- (4) Misjoinder. The misjoinder of parties is not ground for dismissal of a case. Parties may be dropped or added by order of the Commission on motion of any party or on its own initiative at any stage of the case and on such terms as are just. Any part of a case may be severed and proceeded with separately.

2.211 Consolidation of Hearings; Separate Hearings

- (A) Consolidation. When cases involving a common question of law or fact are pending before the Commission, it may order a joint hearing on any or all the matters at issue in the cases; it may, with consent of the parties, order all the cases consolidated; and it may make orders in these proceedings to avoid unnecessary costs or delay.
- (B) Separate hearings. The Commission, for convenience or to avoid prejudice, or when separate hearings will promote expedition and economy, may order a separate trial of any issue or issues.

2.212 Scheduling, Status Conferences, and Mediation

- (A) Scheduling and Status Conferences. In any proceeding, the Commission may direct the parties to appear before it at any time for a conference to consider scheduling and other matters, including:

- (1) simplifying the issues;
 - (2) amendments to filings;
 - (3) admissions of facts and of documents;
 - (4) limiting the number of expert witnesses;
 - (5) whether the case may be appropriate for mediation; and
 - (6) any other matters that may aid in the disposition of the case.
- (B) Mediation. Upon a motion by any party or on its own initiative, the Commission may order the parties to any proceeding to participate in mediation. All parties and their counsel must attend a scheduled mediation unless the parties stipulate otherwise or the Commission, for good cause, excuses a person from participation or authorizes a person to participate by telephone. At each mediation, each party must have in attendance a person who has settlement authority and authority to enter stipulations. With the agreement of all parties and the mediator, any nonparty having an interest that may be materially affected by the outcome of the proceeding, or whose presence is essential to its resolution, may attend a mediation in person or by counsel. The fees and expenses of a mediator selected by the parties will be agreed on by the parties and the mediator. In cases involving a petition, the petitioner is responsible for all fees and expenses of a mediator unless otherwise agreed or ordered. In all other cases, each party must pay an equal share of the fees and expenses of any selected or designated mediator unless otherwise agreed or ordered. Any party that believes it is financially unable to pay the fee may file a motion with the Commission requesting a different fee arrangement or that mediation not be required in the case.
- 2.213 Prefiled Testimony**
- (A) Direct case. Each party must prefile the direct testimony and exhibits of each witness it proposes to call in support of its direct case.
- (B) Rebuttal case. Each party must prefile the direct testimony and exhibits of each witness it proposes to call in rebuttal of the case of any other party.
- (C) Form of prefiled testimony.
- (1) The preferred form for prefiled testimony is question-and-answer form. However, such testimony may be filed in narrative form, provided that it is typewritten and conforms with the requirements set forth below and with the requirements set forth in Rule 2.204(E).

- (2) Testimony filed in narrative format must include headers to identify subject-matter categories.
- (3) The preferred format for all prefiled testimony is to have line numbers in the left-hand margin of each page. However, prefiled testimony without line numbers will be accepted if necessary.
- (4) The prefiled testimony of each witness must be preceded by a brief statement, on a separate page, summarizing the testimony and exhibits referred to in the testimony. The summary is not evidence.
- (5) The prefiled testimony of each witness must be accompanied by a signed affidavit or declaration attesting that all statements are true and accurate to the best of the witness's knowledge and belief, and that the witness is subject to sanctions for contempt and perjury if any statements are false.
- (6) Despite the provisions of Commission Rule 5.107(C)(7) or any other rule, in circumstances in which a notarized document is required, a filer may include the following language in lieu of notarization: "I declare that the above statement is true and accurate to the best of my knowledge and belief. I understand that if the above statement is false, I may be subject to sanctions by the Commission pursuant to 30 V.S.A. § 30." In Commission hearings in which a witness testifies by video or audio conference, the Commission may administer the oath remotely provided the Commission is satisfied as to the identity of any witness testifying remotely.

2.214 Discovery

- (A) Service of discovery requests and responses. All discovery requests and responses must be served on all parties and participants in accordance with Rule 2.204. Discovery requests served on parties or participants in a Commission proceeding must also be filed with the Commission in ePUC. In particular cases, the Commission may also direct that the parties file copies of discovery responses.
- (B) Discovery methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter on land or other property, for inspection and other purposes; and requests for admission.
- (C) Discovery procedures. Unless the Commission, on its own initiative or upon a timely motion by a party, allows otherwise, all discovery must be done in accordance with the specific procedures outlined in Rule 2.230.

2.215 Conduct of Hearings

- (A) Commission witnesses. The Commission may call witnesses to testify as to any matter at issue in any proceeding. Except for non-substantive procedural, scheduling, or administrative matters, or as required to establish the subject matter and scheduling of the testimony to be offered, the Commission may not communicate with witnesses on the subject of their testimony unless it is done in open hearing or upon notice and opportunity for all parties to participate.
- (B) Examination of witnesses by Commission and staff. Any Commissioner, and any Commission staff or agent, may examine witnesses who testify in any proceeding.
- (C) Rulings by hearing officers. When a proceeding has been assigned to a hearing officer, the hearing officer may make rulings of law on procedural matters, on the admission or exclusion of evidence, and on any other matters necessary to conclude proceedings before the hearing officer. After the hearing officer has issued and served a proposal for decision, a party may bring those rulings to the Commission for review by requesting, pursuant to 3 V.S.A. § 811, the opportunity to file exceptions and to present briefs and oral argument.

2.216 Evidence, Remote Proceedings, and Deadlines for Objecting to Prefiled Testimony and Exhibits

- (A) Evidence. Evidentiary matters are governed by 3 V.S.A. § 810.
- (B) Participation or testimony by video or audio conference.
- (1) The Commission may preside remotely and may, either on its own initiative or upon the request of a party, require or allow parties, witnesses, counsel, or other necessary persons to participate or testify in a hearing or other proceeding by video or audio conference upon reasonable notice. The Commission may use contemporaneous video or audio conference transmission from one or more different remote locations.
 - (2) Any objections to an order, hearing notice, or any other notice requiring video or audio participation or testimony should be filed as soon as possible. Any response to an objection should also be filed as soon as possible.
 - (3) In any proceeding to be conducted by video or audio conference, the Commission may terminate or suspend the proceeding if the Commission finds that the connection itself or the circumstances of the call do not allow the Commission or other parties to clearly hear one another or that the circumstance of the call are otherwise disruptive of the proceeding.

- (C) Use of exhibits. Where evidence to be presented consists of tabulations or figures so numerous as to make oral presentation impracticable, it must be presented in exhibit form. These exhibits must be summarized and explained in testimony.
- (D) Procedure for admitting and objecting to prefiled testimony and exhibits.
- (1) Prefiled testimony, if admitted into evidence, must be included in the transcript by including a link in the transcript to access each witness's electronically filed testimony and exhibits.
 - (2) Objections to the admissibility of prefiled testimony or exhibits, including objections to the admissibility of expert opinions, must be filed in writing at least 14 days before the evidentiary hearing (or, if the evidentiary hearing is canceled, then at least 14 days before the evidentiary hearing was scheduled under the most recent approved schedule). However, if the prefiled testimony or exhibits are filed in the 21 days directly preceding the evidentiary hearing, then objections must be filed in writing within seven days of the objected-to filing, or at the hearing, whichever is earlier.
 - (3) If an objection to the admissibility of prefiled testimony or exhibits is filed, all parties may file a response, but no replies in support of the objection are allowed without permission of the Commission.
- (E) Views and inspections. Upon notice to the parties, the Commission may, either on its own initiative or upon the request of a party, view or inspect any property that is the subject of or is related to the subject of any proceeding. A view or inspection may be made before, during, or after the hearing.
- (F) Closing of the record. Unless the Commission, on its own initiative or upon a timely motion by a party, determines otherwise (for instance, in a scheduling order), the evidentiary record for a case is closed after all of the evidence to be considered in deciding a case has been entered into evidence:
- at an evidentiary hearing, or
 - in a proposal for decision (if there is no evidentiary hearing), or
 - in a final order (if there is no evidentiary hearing or proposal for decision).

2.217 Objections During Evidentiary Hearings

During an evidentiary hearing, all objections must be raised immediately or they are waived. If a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not prejudice the party. Later objections to the same legal point are unnecessary, and the later admission or exclusion of evidence of like nature shall be deemed to be subject to the same objection as originally stated.

2.218 Subpoenas

- (A) Only for testifying witnesses. Subpoenas shall not be used on members of the public who merely file public comments and do not submit testimony or offer other evidence, unless there is good cause to believe that a non-testifying person has critical information that cannot reasonably be obtained in any other way.
- (B) Form and issuance. Every subpoena shall
- (1) state the title of the action, the case number, and the Vermont Public Utility Commission; and
 - (2) command each person to whom it is directed to attend and give testimony or to produce and permit inspection, copying, testing, or sampling of designated books, documents, electronically stored information, or tangible things in the possession, custody, or control of that person, or to permit inspection of premises, at a time and place therein specified; and
 - (3) set forth the text of subsections (F) and (G) of this rule.
- (C) Combined subpoenas allowed. A command to produce evidence or to permit inspection, copying, testing, or sampling may be joined with a command to appear at a hearing or at a deposition, or may be issued separately. A subpoena may specify the form or forms in which electronically stored information is to be produced.
- (D) Issuance by a party or attorney. The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney may also issue and sign a subpoena.
- (E) Service on parties. A copy of every subpoena must be served on all parties to the case before or at the same time that it is served on the person to whom it is directed.
- (F) Service on witness. A subpoena may be served by any person who is not a party and is at least 18 years of age, subject to the limitations on the service of subpoenas listed in subsection (A). Service of a subpoena on a person shall be made by delivering a copy to that person and, if the person's attendance is commanded, by tendering to that person with the subpoena the fees for one day's attendance and the mileage allowed by law. A subpoena may be served at any place within the state. When necessary, proof of service shall be made by filing in ePUC a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service.

(G) Protection of persons subject to subpoenas.

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The Commission may enforce this duty and impose on the party or attorney in breach of this duty an appropriate sanction, which may include lost earnings and a reasonable attorney's fee.
- (2) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents, or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition or hearing.
- (3) A person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve on the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to the requested production or to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the Commission. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.
- (4) On timely motion, or on the Commission's own initiative, the Commission may quash or modify the subpoena if it:
 - (a) fails to allow reasonable time for compliance;
 - (b) requires a resident of this state to travel to attend a deposition more than 50 miles one way unless the Commission otherwise orders, or requires a nonresident of this state to travel to attend a deposition at a place more than 50 miles from the place of service unless another convenient place is fixed by order of the Commission;
 - (c) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
 - (d) subjects a person to undue burden.

- (5) To protect a person subject to or affected by the subpoena, the Commission may quash or modify the subpoena, or, if the party on whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship and ensures that the person to whom the subpoena is addressed will be reasonably compensated, the Commission may order appearance or production only under specified conditions, if a subpoena:
- (a) requires disclosure of a trade secret or other confidential research, development, or commercial information;
 - (b) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or
 - (c) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 50 miles one way to attend a hearing.
- (H) Duties in responding to subpoena.
- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
 - (2) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.
 - (3) A person responding to a subpoena need not produce the same electronically stored information in more than one form.
 - (4) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the Commission may nonetheless order discovery from such sources if the requesting party shows good cause. The Commission may specify conditions for the discovery.
 - (5) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as hearing preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the

documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

- (6) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as hearing preparation materials, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the Commission under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.
- (I) Contempt. Failure by any person without adequate excuse to obey a subpoena served on that person may be deemed contempt. Adequate excuse for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided in this rule. The provisions of 12 V.S.A. §§ 1623-1624 shall apply to failure by any person without adequate excuse to obey a subpoena served on that person.
- 2.219 Summary Judgment**
- (A) Motion for summary judgment or partial summary judgment. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The Commission may grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The Commission should state on the record the reasons for granting or denying the motion.
- (B) Time to file and oppose a motion. A party may file a motion for summary judgment at any time until 30 days after the close of all discovery, unless a different time is set by stipulation or Commission order. The adverse party may file a memorandum in opposition and a statement of disputed facts and affidavits or declarations, if any, up to 30 days after the service of the motion on the party. The moving party may file a reply memorandum within 14 days after service of the opposition. The Commission may also allow a surreply memorandum.
- (C) Procedures.
- (1) Supporting factual positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
- (a) Filing a separate and concise statement of undisputed material facts or a separate and concise statement of disputed facts, consisting of numbered

paragraphs with specific citations to particular parts of materials, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

- (b) Showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.
 - (2) Objection that a fact is not supported by admissible evidence. A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.
 - (3) Materials not cited. The Commission need consider only the materials cited in the required statements of fact, but it may consider other materials in the record.
 - (4) Affidavits and declarations. An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.
- (D) When facts are unavailable to the nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the Commission may:
- (1) defer considering the motion or deny it;
 - (2) allow time to obtain affidavits or declarations or to take discovery; or
 - (3) issue any other appropriate order.
- (E) Failing to properly support or address a fact. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by this rule, the Commission may:
- (1) give an opportunity to properly support or address the fact;
 - (2) consider the fact undisputed for purposes of the motion;
 - (3) grant summary judgment if the motion and supporting materials (including the facts considered undisputed) show that the movant is entitled to it; or
 - (4) issue any other appropriate order.

- (F) Judgment independent of the motion. After giving notice and a reasonable time to respond, the Commission may:
- (1) grant summary judgment for a nonmovant;
 - (2) grant the motion on grounds not raised by a party; or
 - (3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.
- (G) Failing to grant all the requested relief. If the Commission does not grant all the relief requested by the motion, it may enter an order stating any material fact that is not genuinely in dispute and treating the fact as established in the case.
- (H) Affidavit or declaration submitted in bad faith. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the Commission—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

2.220 Withdrawal of Petitions

- (A) Voluntary withdrawal. A petitioner may voluntarily withdraw a petition, application, or registration without order of the Commission by filing a notice of dismissal in any case in which no adverse party has filed substantive comments in response to the petition. A net-metering registration will be deemed voluntarily withdrawn if the registrant fails to respond to an objection raised by the interconnecting utility.
- (B) Withdrawal by stipulation. A petition, application, or registration may be dismissed by filing a stipulation of dismissal signed by all parties who have appeared in the action.
- (C) Withdrawal by order of the Commission. Except as provided in paragraphs (A) and (B) of this subsection, an action shall not be dismissed except by order of the Commission and on such terms and conditions as the Commission deems proper.
- (D) Without prejudice. Unless otherwise specified in a voluntary notice of dismissal, a stipulation, or a Commission order, a dismissal under this rule is without prejudice.

2.221 Motions to Alter or Amend an Order, Relief from Order, and Harmless Error

- (A) Motion to alter or amend an order.
- (1) Grounds. The Commission may on motion grant a new hearing or alter or amend an order on all or part of the issues for any of the reasons for which new hearings have been granted in actions at law or in suits in equity in the courts of this state. On a motion for a new hearing or to alter or amend an order, the Commission may

open the proceeding and reconsider a final order if one has been entered, take additional testimony, amend findings of fact and conclusions of law, or make new findings and conclusions, and may direct the entry of a new judgment.

- (2) Time for motion. A motion for a new hearing or to alter or amend an order shall be filed not later than 28 days after the order is issued.
 - (3) Time for serving affidavits or declarations. When a motion for new hearing or to alter or amend an order is based on affidavits or declarations, they shall be filed with the motion. An opposing party has 14 days after service of the motion within which to file opposing affidavits or declarations. The Commission may permit reply affidavits and declarations.
 - (4) On initiative of the Commission. Not later than 28 days after an order, the Commission may on its own initiative order a new hearing or alter or amend an order for any reason for which it might have granted a new hearing or altered or amended an order on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Commission may grant a motion, if timely served, for a new hearing or to alter or amend an order, for a reason not stated in the motion. In either case, the Commission shall specify in the order the grounds for ordering a new hearing or altering or amending an order.
- (B) Relief from order.
- (1) Clerical mistakes. Clerical mistakes in judgments, orders, or other parts of the record, and errors arising from oversight or omission may be corrected by the Commission at any time on its own initiative or on the motion of any party and after such notice, if any, as the Commission orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the Supreme Court, and thereafter while the appeal is pending may be so corrected with leave of the Supreme Court.
 - (2) Mistakes, inadvertence, excusable neglect, newly discovered evidence, fraud, etc. On motion and on such terms as are just, the Commission may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (i) mistake, inadvertence, surprise, or excusable neglect; (ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new hearing under subsection (A) of this rule; (iii) fraud, misrepresentation, or other misconduct of an adverse party; (iv) the judgment is void; (v) the judgment has been satisfied, released, or discharged, or a previous judgment on which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (vi) any other reason justifying relief from the operation of the judgment. The motion

shall be filed within a reasonable time, and for reasons (i), (ii), and (iii) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subsection does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of the Commission to entertain an independent action to relieve a party from a judgment, order, or proceeding. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

- (C) Harmless error. No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the Commission or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the Commission inconsistent with substantial justice. The Commission at every stage of the proceeding must disregard any error or defect in the proceeding that does not affect the substantial rights of the parties.

2.222 Proposed Findings of Fact

- (A) In any case the Commission may require each party to file proposed findings of fact. Each proposed finding must deal concisely with a single fact or with a group of facts so interrelated that they cannot reasonably be treated separately.
- (B) Proposed findings must be consecutively numbered and must be in logical sequence.
- (C) Where the party claims to have established more than one ultimate fact, proposed findings must be arranged into separate groups, appropriately identified as to subject matter.
- (D) Each proposed finding must contain a citation or citations to the specific part or parts of the record (including page number and line number, where available) containing the evidence supporting the proposed finding.

2.223 Briefs

- (A) Briefs must address each issue of law that a party desires the Commission to consider.
- (B) Whenever a brief addresses more than one issue, it must be divided into sections that separately address each issue.
- (C) Briefs longer than 10 pages must contain, immediately after the cover page, a table of contents.

2.224 Sanctions

- (A) An attorney or *pro se* or other representative who fails, after having been requested by the Commission to do so, to comply with these rules or any Commission order may be suspended from further participation in the proceeding or, for such period of time as the Commission finds to be just, from participation in other proceedings.
- (B) In addition, if proposed findings of facts fail to comply with Rule 2.222, that party may be deemed to have withdrawn its offers and claims of proof and to have waived its right to a finding by the Commission regarding that fact; and with respect to any issue of law as to which a party has failed to conform to the requirements of Rule 2.223, that party may be deemed to have waived any claims of law on that issue.
- (C) If, after notice and a reasonable opportunity to respond, the Commission determines that subsection (A) or (B) has been violated, or that there has been a violation of Rule 2.203(C), the Commission may, subject to the conditions stated below, impose an appropriate sanction on the attorneys, law firms, or parties that have violated or are responsible for the violation.
- (1) A motion for sanctions under this rule shall be made separately from other motions or requests, shall describe the specific conduct alleged to violate this rule or Rule 2.203(C), and shall explain all efforts made toward having the alleged violator voluntarily withdraw or correct the challenged filing, claim, defense, contention, allegation, or denial. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.
 - (2) On its own initiative, the Commission may enter an order describing the specific conduct that appears to violate this rule or Rule 2.203(C) and directing an attorney, law firm, or party to show cause why it has not caused a violation.
 - (3) When imposing sanctions, the Commission shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed. A sanction shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. The sanction may consist of, or include, directives of a nonmonetary nature or an order to pay a penalty.

2.225 Proposed Schedules

- (A) The parties must make all reasonable efforts to reach agreement on, and jointly file, a proposed schedule as early as possible and no later than three days before a scheduling conference. If the parties cannot agree on all scheduling matters, they should make separate filings that indicate what scheduling matters all parties have agreed to and what matters are in dispute.

- (B) In cases without a statutory deadline for Commission action, a proposed schedule may provide the parties with time to negotiate before establishing a formal litigation schedule. In that situation, a proposed schedule could be as simple as:
- Deadline for motions to intervene;
 - Deadline for responses to motions to intervene;
 - Deadline for replies to responses to motions to intervene; and
 - Deadline for parties to file a settlement agreement or a proposed litigation schedule.
- (C) Although the parties are free to agree to alternate terms to propose to the Commission, proposed litigation schedules should generally include the following items:
- Date for public hearing (if any);
 - Date for site visit (if any);
 - Deadline for motions to intervene;
 - Deadline for responses to motions to intervene;
 - Deadline for replies to responses to motions to intervene;
 - Deadlines for filing prefiled testimony;
 - Schedule for discovery on each set of prefiled testimony, including last date for filing requests and due date for responses;
 - Deadline for objections to prefiled testimony;
 - Evidentiary hearing;
 - Deadline for filing post-hearing briefs; and
 - Deadline for filing post-hearing reply briefs.
- (D) Where appropriate, the proposed schedule may include other items, such as deadlines for motions to dismiss and summary judgment motions. When practicable, parties should include specific calendar dates in proposed schedules rather than dates based on the timing of a previous filing.

2.226 Confidential Information Protocol

(A) General rule.

- (1) All documents filed with the Commission are presumed to be public.
- (2) The marking of a document as “confidential” does not render that document confidential.
- (3) To assert confidentiality of a document, the filing must include one or both of the following:
 - (a) a cover letter identifying the date and case number of the specific Commission order, statute, court order, or other State or federal agency decision that recognizes the confidentiality of the document, or

(b) a motion for confidential treatment.

(B) Process for filing information that a party asserts to be confidential.

- (1) All assertedly confidential documents must bear a stamp on every page marking the document as “Confidential.”
- (2) Until the Commission issues procedures for filing confidential information in ePUC, any confidential information must be filed by email with the clerk or filed in paper and must have the word “Confidential” as the first word of the subject line. In contested cases, the content of this email or paper cover letter must be simultaneously served on all other parties, with the attached assertedly confidential documents also simultaneously served on those parties that have signed the confidentiality agreement. For non-paper parties who have signed the relevant protective agreement, service may be done by cc’ing those parties on the email to the clerk.
- (3) Whenever a party files an assertedly confidential document, that party must simultaneously file a public, non-confidential version of the document in ePUC, unless the party asserts that the entirety of the document is confidential (in which case a document making that allegation must be filed in ePUC). The public, non-confidential version of the document must contain the asserted legal basis for each redaction, in a manner that allows the reader to know which redaction is based on which asserted legal basis for confidentiality.

(C) Form of motions for confidential treatment.

- (1) A motion for confidential treatment must set forth the basis for confidentiality, including any relevant citations to exemptions from public disclosure under the Vermont Public Records Act.
- (2) The motion must be accompanied by a document-specific (or information-specific) averment of the basis for keeping confidential any document (or information) that the party wishes to keep under seal.
- (3) The averment must list a specific expiration date for keeping the information under seal (usually no more than three years) and must explain in detail why the information must be kept confidential for that length of time.
- (4) The motion must also address each of the following questions:
 - (a) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information that should be protected?

- (b) Does the matter sought to be protected contain Critical Energy Infrastructure Information (CEII), as that term is defined by the Federal Energy Regulatory Commission?
- (c) Does the matter sought to be protected contain information related to a utility's cybersecurity program?
- (d) Would disclosure of the information cause a cognizable harm sufficient to warrant confidential treatment?
- (e) Has the party seeking protection shown "good cause" for invoking the Commission's protection?

2.227 Procedural Changes During State of Emergency

If the Governor of the State of Vermont declares a state of emergency, the Commission may issue orders temporarily altering any procedural requirements of Commission rules.

2.228 Recusal

- (A) A motion for recusal of a Commissioner or hearing officer shall be made as soon as practicable after the cause or ground becomes known.
- (B) Motions for recusal shall be accompanied by an affidavit, a declaration, or a certificate of a party's attorney, stating the reason for it and when such reason was first known.
- (C) The Commissioner or hearing officer whose recusal is sought shall either recuse themselves or, without ruling on the motion, refer the motion to the other Commissioners (or to all of the Commissioners when it concerns a hearing officer).
- (D) A Commissioner or hearing officer who may be recused for any reason other than personal bias or prejudice may disclose on the record the basis of their potential recusal and may advise the parties and their lawyers that they may consider, out of the presence of the Commissioner or hearing officer, whether to move for recusal. If, seven days after disclosure, no party has moved for recusal, the Commissioner or hearing officer may participate in the proceeding.

2.229 Recording of Proceedings

- (A) The Commission may record any of its own proceedings.
- (B) Any member of the press or public may record any Commission hearing, oral argument, or other public proceeding, under the following conditions:
 - (1) Anyone recording a proceeding (by video or audio) must disclose this at the beginning of the proceeding.
 - (2) Recordings shall not interfere in any way with the proceeding.

- (3) Recordings shall not capture private discussions between and among:
 - (a) Commissioners and Commission staff at the bench, or
 - (b) attorneys and their clients.
- (4) The Commission may permit, prohibit, terminate, limit, or postpone the recording or transmitting of all or any part of a proceeding, and the use of any device, in the hearing room or public meeting room and areas immediately adjacent to it on the Commission's own initiative or on the request of a party or witness in the proceeding. Upon notice to the parties, to the person requesting the order, to any person or entity designated by the media to be notified on behalf of all potentially interested members of the media, and to any person who has filed a request to be heard on this particular motion, the Commission must hold a prompt hearing on the motion. In acting under this provision, the Commission will favor allowing the recording of all public proceedings and will only restrict such recording if the entity recording the proceeding has violated subsection (B)(1), (2), or (3) of this rule, or if the Commission concludes that one or more of the following factors weighs strongly and overwhelmingly in favor of restricting the right to record:
 - (a) the impact of recording or transmitting on the rights of the parties to a fair hearing;
 - (b) whether the private nature of testimony outweighs its public value;
 - (c) the likelihood that physical, emotional, economic, or proprietary injury may be caused to a witness, a party, or other person or entity;
 - (d) the age, mental condition, and medical condition of the party or witness; and
 - (e) any other good cause.

2.230 Specific Discovery Procedures

(A) Discovery scope and limits.

- (1) Scope in general. Unless otherwise limited by Commission order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's legal arguments and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

- (2) Limitations on frequency and extent.
- (a) Specific limitations on electronically stored information. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the Commission may nonetheless order discovery from such sources if the requesting party shows good cause. The Commission may specify conditions for the discovery.
- (b) Orders limiting frequency or extent of discovery. On motion or on its own, the Commission must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that:
- (i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;
 - (ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or
 - (iii) the proposed discovery is outside the scope permitted by this rule.
- (3) Insurance agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person conducting an insurance business may be liable to satisfy the requirements of any Commission order. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.
- (4) Hearing preparation: materials. Subject to other provisions of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under this rule and prepared in anticipation of litigation or for a hearing by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only after a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Commission shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation. A party may obtain without the required showing

a statement concerning the action or its subject matter previously made by that party.

(5) Trial preparation: experts.

(a) Identification and deposition of an expert who may testify.

- (i) A party may through interrogatories require any other party:
 - (I) to identify each person the other party may use at a hearing to present expert testimony under Vermont Rules of Evidence 702, 703, or 705, whether or not the witness may also testify from personal knowledge as to any fact at issue in the case;
 - (II) to state the subject matter and the substance of the facts and opinions as to which the expert is expected to testify; and
 - (III) to provide a summary of the grounds for each opinion.
- (ii) A party may depose any person who has been identified in an answer to an interrogatory as an expert whose opinions may be presented at a hearing.
- (iii) A party may obtain by request for production or subpoena any final report of the opinions to be expressed by an expert who has been identified in an answer to an interrogatory as an expert whose opinions may be presented at a hearing, as well as the basis and reasons for the opinions and any exhibits that will be used to summarize or support them.
- (iv) Any questions a party asks of another party's expert witness—whether through interrogatories, depositions, or requests for production—must be related to the expert witness's testimony.

(b) Hearing-preparation protection for draft disclosures and certain reports. Subsection (A)(4) of this rule protects drafts of any disclosure of an expert identified by a party and drafts of any report prepared by such an expert, regardless of the form in which the draft is recorded.

(c) Hearing-preparation protection for communications between a party's attorney and certain expert witnesses. Subsection (A)(4) of this rule protects communications between the party's attorney and any party-identified expert whose opinions may be presented at trial, regardless of

the form of the communications, except to the extent that the communications:

- (i) relate to compensation for the expert's study or testimony;
 - (ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or
 - (iii) identify assumptions that the party's attorney provided and that the expert witness relied on in forming the opinions to be expressed.
- (d) Expert employed only for hearing preparation. A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for a hearing and who is not expected to be called as a witness at a hearing, only after a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.
- (e) Payment. Unless a party alleges, and the Commission finds, that another party has abused the discovery process (e.g., seeking discovery for no purpose other than delay), each party shall be responsible for any fees incurred by its experts in responding to discovery or attending depositions.
- (6) Claims of privilege or protection of hearing-preparation materials.
- (a) Information withheld. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as hearing-preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.
 - (b) Information produced. If information is produced in discovery that is subject to a claim of privilege or of protection as hearing-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the Commission under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must

take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

- (B) Protective orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the Commission may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place or the allocation of expenses for the discovery or disclosure; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the Commission; (6) that a deposition after being sealed be opened only by order of the Commission; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; and (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Commission. If the motion for a protective order is denied in whole or in part, the Commission may, on such terms and conditions as are just, order that any party or person provide or permit discovery, and may award expenses incurred in relation to the motion.
- (C) Sequence and timing of discovery. Unless the Commission upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence. The fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.
- (D) Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under a duty to supplement or correct the response to include information later acquired with respect to the following matters if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing:
- (1) any question directly addressed to
 - (a) the identity and location of persons having knowledge of discoverable matters; and
 - (b) the identity of each person expected to be called as an expert witness at a hearing, the subject matter on which the person is expected to testify, and the substance of the person's testimony;

- (2) any other previous response to an interrogatory, request for production, or request for admission; and
 - (3) any matter by order of the Commission, agreement of the parties, or at any time before a hearing through new requests for supplementation of previous responses.
- (E) Discovery conference.
- (1) At any time, upon motion or on its own initiative, the Commission may direct the parties to appear before it for a conference on the subject of discovery. The Commission may do so upon motion by the attorney for any party if the motion includes:
 - (a) a statement of the issues as they then appear;
 - (b) a proposed plan and schedule of discovery, including any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced;
 - (c) any limitations proposed to be placed on discovery;
 - (d) any other proposed orders with respect to discovery; and
 - (e) a statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion.
 - (2) Each party and each party's attorney is under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be filed not later than 14 days after service of the motion.
 - (3) Following the discovery conference, the Commission may enter an order tentatively identifying the issues for discovery purposes, including any issues about preserving discoverable information, any issues about discovery of electronically stored information including the form or forms in which it should be produced, and any issues about claims of privilege or protection as hearing-preparation materials; establishing a plan and schedule for discovery; setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.
 - (4) The Commission may combine the discovery conference with a status conference.

(F) Signing of discovery requests, responses, and objections.

- (1) Every request for discovery or response or objection to discovery made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose email and postal address shall be included. A party who is not represented by an attorney shall sign the request, response, or objection and state the party's email and postal address. The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is: (i) consistent with these rules and warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; (ii) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (iii) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.
- (2) If without substantial justification a certification is made in violation of the rule, the Commission, upon motion or on its own initiative, shall impose on the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

(G) Objections and motions related to discovery procedure.

- (1) Counsel and opposing counsel have the obligation to make good-faith efforts among themselves to resolve or reduce all differences related to discovery procedures and to avoid filing unnecessary motions.
- (2) No motions related to discovery shall be filed unless counsel making the motion has conferred with opposing counsel or has attempted to confer about the discovery issues between them in detail in a good-faith effort to eliminate or reduce the area of controversy, and to arrive at a mutually satisfactory resolution. If the consultations of counsel do not fully resolve the discovery issues, counsel making a discovery motion shall file with the Commission, as part of their motion papers, an affidavit, a declaration, or a certificate of a party's attorney subject to the obligations of Vermont Rules of Civil Procedure Rule 11 certifying that they have conferred or attempted to confer with counsel for the opposing party in an

effort in good faith to resolve by agreement the issues raised by the motion without the intervention of the Commission, and have been unable to reach an agreement. If some of the issues raised by the motion have been resolved by agreement, the affidavit or declaration shall specify the issues so resolved and the issues remaining unresolved and the reasons for that. The affidavit or declaration shall set forth the date or dates of the consultation with opposing counsel, and the names of the participants.

- (3) Except when the motion is based solely on the failures described in subsection (P)(4) of this rule (“Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection”), memoranda with respect to any discovery motion shall contain a concise statement of the nature of the case and a specific listing of each of the items of discovery sought or opposed, and immediately following each specification shall set forth the reason why the item should be allowed or disallowed.
- (H) Pending appeal. If an appeal has been taken from a Commission order or before the taking of an appeal if the time for that has not expired, any party seeking to take discovery must file a motion seeking the Commission’s permission and must state the need for such discovery.
- (I) Persons before whom depositions may be taken.
- (1) Within the State of Vermont. Within the state, depositions shall be taken before a justice of the peace or notary public or a person appointed by the Commission.
- (2) Elsewhere. In another state or country, depositions shall be taken before someone who is authorized to administer oaths by the laws of the place where the examination is held or of the laws of the United States, or before a person appointed by a court.
- (3) Administering oaths. A person appointed by the Commission or a court as provided in paragraphs (1) and (2) of this subsection has power to administer oaths and take testimony.
- (4) Written stipulations. Unless the Commission orders otherwise, the parties may by written stipulation:
- (a) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and
- (b) modify the procedures provided by these rules for other methods of discovery.

(J) Depositions upon oral examination.

- (1) Length of deposition. Unless the Commission allows otherwise, each oral deposition is limited to no more than seven hours.
- (2) When depositions may be taken and who may be deposed. After a case is filed, any party may take the testimony of any person (including a party) who is offering evidence, by deposition upon oral examination. The attendance of witnesses may be compelled by subpoena, but a subpoena is not necessary for compelling the attendance of a party offering evidence or a testifying witness sponsored by a party. Commission approval (or the written consent of the person to be deposed) is required for the deposition of anyone (including a party) who is not testifying or offering evidence.
- (3) Notice of examination: general requirements; special notice; method of recording; production of documents and things; deposition of organization; deposition by telephone.
 - (a) A party desiring to take the deposition of any person upon oral examination shall give notice in writing to every other party to the action at least 14 days before the time of taking the deposition, unless the Commission orders otherwise. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If the written notice seeks materials to be produced, the materials sought shall be attached to or included in the notice. For any party or any witness sponsored by a party, written notice served on all parties (or their counsel for any party that is represented by counsel) is sufficient, and no subpoena is necessary. For any other witness, if a subpoena is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.
 - (b) If a party shows that when the party was served with notice under this subsection (J)(3) the party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition, the deposition may not be used against the party.
 - (c) A deposition shall be recorded stenographically unless the notice of taking states that it is to be recorded by sound or sound-and-visual means. The party taking the deposition shall bear the cost of recording. Any party may arrange for a transcription to be made from the recording of a

deposition taken by stenographic or non-stenographic means. If a deposition is to be recorded by non-stenograph means, the notice of taking shall specify: the method of recording; the equipment to be used; the name, address, and employer of the operator of the equipment; and the identity of the person who will administer the oath. The oath may be administered by an attorney for one of the parties who is also a notary. Upon motion of a party or on its own initiative, the Commission may impose such additional conditions as are necessary to ensure that testimony to be recorded by non-stenographic means will be accurate and trustworthy and to protect the interests of parties and witnesses.

- (d) Any party or witness may at their own expense concurrently record a deposition by a method other than that being used by the party taking the deposition. All parties present and the witness shall be advised that the concurrent recording is being made. A person making a concurrent recording shall permit the parties and the witness to review the recording and shall furnish a duplicate to the witness or any party on request and tender of the actual cost of the duplicate.
- (e) Unless otherwise agreed by the parties, a deposition shall be conducted before someone who is appointed or designated under this rule and shall begin with a statement on the record by that person that includes: (i) the person's name and business address; (ii) the date, time, and place of the deposition; (iii) the name of the deponent; (iv) the administration of the oath or affirmation to the deponent; and (v) an identification of all persons present. If the deposition is recorded by non-stenographic means, the person recording the deposition shall repeat items (i) through (iii) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the person recording the deposition shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and any exhibits, or concerning other pertinent matters. Any objections, any changes by the witness, the witness's signature identifying the deposition as the witness's own or the statement of the person recording the deposition that is required if the witness does not sign, and the certification of the person recording the deposition shall be set forth in writing to accompany a deposition recorded by non-stenographic means.
- (f) The notice to a party deponent may be accompanied by a request that the party at the taking of the deposition produce and permit inspection and

copying of designated books, papers, documents, or tangible things that constitute or contain matters within the scope of discovery. The party deponent may, within seven days after service of the notice, serve on the party taking the deposition written objection to inspection or copying of any or all of the designated materials. If objection is made, the party taking the deposition shall not be entitled to inspect the materials except pursuant to an order of the Commission. The party taking the deposition may move at any time for an order with respect to any objection to the request or any part of it, or any failure to produce or permit inspection as requested.

- (g) In a party's notice, that party may name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This paragraph does not preclude taking a deposition by any other procedure authorized in these rules.
- (h) The parties may stipulate in writing or the Commission may (upon motion) order that a deposition be taken by telephone or other remote electronic means. For the purposes of this rule, a deposition taken by such means is taken at the place where the deponent is to answer questions.

(4) Examination and cross-examination; record of examination; oath; objections.

- (a) Examination and cross-examination of witnesses may proceed as permitted at a hearing under the provisions of the Vermont Rules of Evidence. The person recording the deposition, or someone acting under their direction and in their presence, shall put the witness on oath and shall record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means allowed by this rule. If requested by one of the parties, the testimony shall be transcribed.
- (b) All objections made at the time of the examination to the qualifications of the person taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the person recording the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions

in a sealed envelope on the party taking the deposition, and the party taking the deposition shall transmit them to the person recording the deposition, who shall give them to the witness and record the answers verbatim.

(5) Objections; motion to terminate or limit examination.

- (a) Any objection to evidence during a deposition shall be stated concisely and in a nonargumentative and nonsuggestive manner. A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the Commission, or to present a motion under paragraph (c) below.
- (b) If the Commission finds that conduct has impeded or delayed the examination and has prevented a fair examination of the deponent, the Commission may extend the time for taking the deposition and may impose on the persons responsible an appropriate sanction.
- (c) At any time during a deposition, on motion of a party or of the deponent and after a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the Commission may order the person recording the examination to stop taking the deposition, or may limit the scope and manner of taking the deposition. If the order terminates the examination, it shall be resumed thereafter only by order of the Commission. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

(6) Submission to witness; changes; signing. When the non-stenographic recording of a deposition is available, or the testimony in a stenographic deposition is fully transcribed, the deposition shall be submitted to the witness for review unless such review is waived by the witness and the parties. Any changes in form or substance that the witness desires to make shall be submitted in writing to the person who recorded the deposition with a statement signed by the witness of the reasons for making such changes within 30 days after submission of the deposition to the witness. The person who recorded the deposition shall indicate in the certificate prescribed by subsection (J)(7) whether any changes were submitted and, if so, shall append the changes and the statement of reasons. The deposition, or a written statement that a non-stenographic deposition is the witness's own, shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill, cannot be found, or refuses to sign. If the deposition or statement is not signed by the witness within 30 days of its submission to the witness, the person who recorded the deposition shall sign it

and state on the record the fact of the waiver or of the witness's illness, absence, or refusal to sign, together with the reason, if any, given for that refusal; and the deposition may then be used as fully as though signed unless the Commission orders otherwise for good cause shown.

(7) Certification and filing by person who recorded the deposition; exhibits; copies; notice of filing.

- (a) The person who recorded the deposition shall certify that the witness was duly sworn in and that the deposition is a true record of the testimony given by the witness. This certificate shall be in writing and accompany the record of the deposition. Unless otherwise ordered by the Commission, the person who recorded the deposition shall securely seal the deposition in an envelope or package endorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the Commission or send it to the attorney who arranged for the transcript or recording (or to the Commission if it cannot be sent to a designated attorney), who shall store it under conditions that protect it against loss, destruction, tampering, or deterioration.
- (b) Upon the request of a party, documents and things produced for inspection during the examination of a witness shall be marked for identification and annexed to the deposition, and may be inspected and copied by any party, except that if the person producing the materials wishes to retain them the person may (i) offer copies to be marked for identification and annexed to the deposition and to serve as originals, if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (ii) offer the originals to be marked for identification after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the Commission, pending final disposition of the case.
- (c) Unless otherwise ordered by the Commission or agreed by the parties, the person recording the deposition shall retain stenographic notes of any deposition taken stenographically or a copy of the recording of any deposition taken by any other method. After payment of reasonable charges, the person who recorded the deposition shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

- (K) Deposition upon written questions. If a party wishes to take a deposition upon written questions, that party must file a motion with the Commission requesting permission to do so.
- (L) Use of depositions.
- (1) Evidentiary use. At the hearing or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition (if admissible under the rules of evidence applied as though the witness were then present and testifying) may be used against any party who was present or represented at the taking of the deposition or who had due notice of it, in accordance with any of the following provisions:
- (a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness or for any other purpose permitted by the Vermont Rules of Evidence.
- (b) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under subsection (J)(3)(g) of this rule to testify on behalf of a public or private corporation, partnership, association, or governmental agency that is a party may be used by an adverse party for any purpose.
- (c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Commission finds that the witness (i) is exempted by ruling of the Commission on the ground of privilege from testifying concerning the subject matter of the deposition; or (ii) persists in refusing to testify concerning the subject matter of the deposition despite an order of the Commission to do so; or (iii) testifies to a lack of memory of the subject matter of the deposition; or (iv) is unable to be present at the hearing because of death or then-existing physical or mental illness or infirmity; or (v) is absent from the hearing and the proponent of the deposition has been unable to procure the witness's attendance by process or other reasonable means. A deponent is not unavailable as a witness if the exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing the witness from attending or testifying.
- (d) If only part of a deposition is offered in evidence by a party, an adverse party may require the offeror to introduce any other part that should, in fairness, be considered with the part introduced, and any party may introduce any other parts.

- (e) Substitution of parties does not affect the right to use depositions previously taken. A deposition previously taken may also be used as permitted by the Vermont Rules of Evidence.
- (2) Objections to admissibility. An objection may be made at a hearing to receiving in evidence any deposition or part of it for any reason that would require the exclusion of the evidence if the witness were present and testifying.
- (3) Form of presentation. Except as otherwise directed by the Commission, a party offering deposition testimony pursuant to this rule may offer it in stenographic or non-stenographic form, but, if in non-stenographic form, the party shall also provide the Commission with a transcript of the portions so offered.
- (4) Effect of errors and irregularities in depositions.
 - (a) As to notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served on the party giving the notice.
 - (b) As to disqualification of person recording the deposition. Objection to taking a deposition because of disqualification of the person before whom it will be taken is waived unless made before the deposition begins or as soon afterward as the disqualification becomes known or could be discovered with reasonable diligence.
 - (c) As to taking of deposition.
 - (i) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one that might have been obviated or removed if presented at that time.
 - (ii) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind that might be obviated, removed, or cured if promptly presented, are waived unless timely objection to them is made at the taking of the deposition.
 - (iii) Objections to the form of written questions are waived unless served in writing on the party propounding them within the time allowed for serving the succeeding cross or other questions and within seven days after service of the last questions authorized.

(d) As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the person recording the deposition are waived unless a motion to suppress the deposition or some part of it is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(M) Interrogatories.

- (1) Number. At the request of a party or on its own initiative, the Commission may restrict the number of written interrogatories, including all subparts, that a party may serve on any other party per round of discovery.
- (2) Availability; procedures for use. Any party may serve on any other party that is offering evidence written interrogatories to be answered by the party served or—if the party served is a public or private corporation, a partnership, an association, or governmental agency—to be answered by an officer or agent of that organization, who shall furnish such information as is available to the party. After the case begins, interrogatories may, without leave of the Commission, be served on any party that is offering evidence. Commission approval (or the written consent of the person being asked to answer interrogatories) is required to serve interrogatories on anyone (including a party) who is not testifying or offering evidence.
- (3) Answering interrogatories. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The interrogatory being answered, or objected to, shall be reproduced before the answer or objection. The answers are to be signed by the person making them, and the objections signed by the attorney (or *pro se* party if unrepresented) making them. The party on whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories. The Commission may allow a shorter or longer time. The party submitting the interrogatories may move for an order with respect to any objection to or other failure to answer an interrogatory.
- (4) Scope; use at trial. Interrogatories may relate to any matters that can be inquired into under the rules of discovery, and the answers may be used to the extent permitted by the rules of evidence. An otherwise proper interrogatory is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but

the Commission may order that such an interrogatory need not be answered until after designated discovery has been completed, until after a status conference, or until another later time.

- (5) Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records, including electronically stored information, of the party on whom the interrogatory has been served or from an examination, audit, or inspection of such business records, including a compilation, abstract, or summary of them, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.
- (N) Production of documents and things and entry on land.
- (1) Scope. Any party may serve on any other party that is offering evidence a request (a) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect, copy, test, or sample any designated documents or electronically stored information (including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by the respondent into reasonably usable form) or to inspect and copy, test, or sample any designated tangible things that constitute or contain matters within the scope of discovery and are in the possession, custody, or control of the party on whom the request is served; or (b) to permit entry on designated land or other property in the possession or control of the party on whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of discovery.
- (2) Procedure.
- (a) The request may, without leave of the Commission, be served on any party that is offering evidence in the proceeding. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the

form or forms in which electronically stored information is to be produced.

- (b) The party on whom a request is served shall provide a written response within 30 days after the service of the request. The Commission may allow a shorter or longer time. For each item or category, the response must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons. The responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection, provided that, on a showing by the requesting party of a reasonable need, the Commission may order inspection. An objection must state whether any responsive materials are being withheld and the basis of that objection. If objection is made to part of an item or category, the objection must specify the part and permit inspection of the rest. Each specific request shall be reproduced before the response. If objection is made to the requested form or forms for producing electronically stored information—or if no form was specified in the request—the responding party must state the form or forms it intends to use. The party submitting the request may move for an order under this rule with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.
- (c) Unless the parties otherwise agree, or the Commission otherwise orders:
 - (i) a party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request;
 - (ii) if a request does not specify the form or forms for producing electronically stored information, a responding party must produce the information in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable; and
 - (iii) a party need not produce the same electronically stored information in more than one form.

(O) Requests for admission.

- (1) Request for admission. A party may serve on any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of discovery set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served

with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of the Commission, be served on any party after the case begins.

- (2) Form of requests and answers. Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the Commission may allow, the party to whom the request is directed serves on the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. The request being addressed shall be reproduced before the objection or answer. If objection is made, the reasons for it shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for a hearing may not, on that ground alone, object to the request; the party may deny the matter or set forth reasons why the party cannot admit or deny it.
- (3) Motions and objections to requests. The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the Commission determines that an objection is justified, the Commission shall order that an answer be served. If the Commission determines that an answer does not comply with the requirements of this rule, the Commission may order either that the matter is admitted or that an amended answer be served. The Commission may, in lieu of these orders, determine that final disposition of the request be made at a discovery or status conference or at a designated time before a hearing.
- (4) Effect of admission. Any matter admitted under this rule is conclusively established unless the Commission on motion or its own initiative permits withdrawal or amendment of the admission. The Commission may permit withdrawal or amendment when the presentation of the merits of the action will be subserved and the party who obtained the admission fails to satisfy the Commission that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an

admission by the party for any other purpose, nor may the admission be used against the party in any other proceeding.

(P) Failure to make discovery; sanctions.

- (1) Motion for order compelling discovery. A party, after reasonable notice to other parties and other affected persons, may apply for an order compelling discovery. If a deponent fails to answer a question or a party fails to answer an interrogatory or allow inspection, or if an answer is evasive or incomplete, the discovering party may move for an order compelling an answer or production or inspection. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.
- (2) Failure to comply with order. If a deponent or party fails to comply with a Commission order related to discovery, the deponent or party, and any attorney advising the deponent or party, or both, may be subject to sanctions, which may include any of the following:
 - (a) an order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the case in accordance with the arguments of the party obtaining the order;
 - (b) an order prohibiting that party from introducing designated matters in evidence;
 - (c) an order striking out part or all of the filings, including prefiled testimony and other evidence, or staying further proceedings until the order is obeyed, or dismissing the proceeding or any part of it;
 - (d) an order treating as a contempt the failure to obey any orders; and
 - (e) an order requiring the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses caused by the failure, unless the Commission finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.
- (3) Failure to supplement; refusal to admit. A party that without substantial justification fails to supplement responses as required is not, unless such failure is harmless, permitted to use as evidence at a hearing, or on a motion, any witness or information not so disclosed.
- (4) Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. If a party or an officer, director, or managing agent of a party or a person designated under these rules to testify on behalf of a party fails to appear before the person who is to take a properly served deposition, fails to object or comply with a properly served request for production, fails to serve answers or objections to properly served interrogatories, or fails to serve a

written response to a properly served request for production or inspection, the Commission may make such orders in regard to the failure as are just. The failure to act as described in this subsection may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by these rules.

- (5) Failure to participate in the framing of a discovery plan. If a party or a party's attorney fails to participate in good faith in the framing of a discovery plan by agreement, the Commission may, after opportunity for hearing, require such party or attorney to pay to any other party the reasonable expenses caused by the failure.
- (6) Failure to preserve electronically stored or other evidence. If electronically stored or other evidence that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the Commission, upon finding prejudice to another party from loss of the evidence, may order measures no greater than necessary to cure the prejudice.
- (Q) Discovery by the Commission.
 - (1) The procedures listed in this rule may be used by the Commission, and the Commission may do so without any limitation on the number or form of requests that may be made by the Commission.
 - (2) The availability of such procedures does not in any way limit the authority of the Commission, including the authority to inquire into and examine any proceeding within the jurisdiction of the Commission, to examine books, accounts, and papers of any person or entity subject to the Commission's jurisdiction, or to enter and examine the property of any person or entity subject to the Commission's jurisdiction.
- (R) Discovery requests and responses.
 - (1) Discovery requests served on parties or participants in a Commission proceeding must be filed with the Commission in ePUC.
 - (2) Unless otherwise directed by the Commission, discovery responses need not be filed with the Commission, but parties and participants must file a certificate of service evidencing service of discovery responses on those parties or participants who are entitled to receive service of the responses.
 - (3) If the Commission directs that discovery responses be filed with the Commission, the narrative responses must be filed in ePUC. Attachments must be filed in an electronic format outside of ePUC such as on a CD.

2.300 Consumer Complaints**2.301 Definition**

A consumer complaint is a complaint filed by any person (whether an individual, corporation, association, partnership, or other entity) receiving service or entitled to receive service from a utility regulated by the Commission seeking a refund of charges or an order requiring a utility to comply in a reasonable manner with any applicable tariff, statute, rule, or order of the Commission.

2.302 Form and Content

A consumer complaint must set forth in writing a short and plain statement of facts showing that the complainant is entitled to relief. The statement must be signed by the consumer. Despite the foregoing, the Commission may in its discretion treat any written communication to it concerning a proceeding within its jurisdiction to be a claim for relief.

2.303 Acknowledgment of Complaints

The Commission will acknowledge receipt of all written complaints. If the Commission does not refer the complaint to the Department of Public Service, the Commission will send a copy of the complaint to the subject of the complaint and any affected utility.

2.304 Referral to the Department of Public Service

In its discretion, the Commission may refer any consumer complaint to the Department of Public Service and request the Department to attempt to resolve the dispute. If the consumer complaint is not referred, if the Department refuses to accept the referral, or if the Department is unable to resolve the matter, then the Commission may open an investigation, order a response from the utility, and set the complaint for a hearing if (assuming the allegations in the complaint to be true) there are reasonable grounds to believe there has been a violation of tariffs, statutes, rules, or other orders of the Commission. If, assuming that the allegations of the complaint are true, there are no reasonable grounds to believe there has been a violation, the Commission must dismiss the consumer complaint.

2.305 Hearings on Consumer Complaints

In setting a case for hearing, the Commission must set the earliest date possible and specifically set forth the issues to be resolved. Those issues, unless the requirements of justice dictate otherwise, must be the only issues addressed at the hearing. If issues in addition to those so specified are to be heard, the parties must be afforded a reasonable time to prepare and respond.

2.306 Representation by Persons Not Admitted to Practice

Despite the provisions of Rule 2.201, the Commission may in its discretion permit consumers to be represented in consumer complaint proceedings by persons who are not admitted to the practice of law, provided that such representatives demonstrate a sufficient

familiarity with these rules and with all applicable substantive and procedural provisions of law. Except for the requirement of admission to practice, such representatives must comply with all rules, laws, practices, procedures, and other requirements applicable to proceedings before the Commission.

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2.400 Proceedings Other Than Consumer Complaints**2.401 Tariff Filings**

- (A) General. Tariff filings, including amendments to existing tariffs, must be accompanied by a concise narrative description of their nature and effect, stated in terminology that is comprehensible to the general public.
- (B) Amendments. Except where substantially the whole of a separately identified section of a tariff is affected, an amendment to an existing tariff must be accompanied by a redline version showing all changes.
- (C) New services. Where a tariff filing covers a new service, or a modification of an existing service, estimates of revenues and costs attributable to such service for each of the three years succeeding the introduction of the new or modified service must be included with the filing. Schedules containing the information called for by this provision must be accompanied by a statement of the name of the person or persons responsible for their preparation, together with a description of any underlying documentation. The underlying documentation must be available through discovery immediately after the filing.

2.402 Rate Proceedings

- (A) Justification for change in rates. To enable the Commission to determine whether new rates proposed by any utility should be further investigated or suspended, all rate filings must contain complete and substantial justification for the proposed change, including the following:
- (1) detailed calculation of cost of service;
 - (2) detailed calculation of cost of capital;
 - (3) rate base calculation;
 - (4) the effect of the filing on annual operating revenues;
 - (5) projected construction expenditures by category for each of the following two years;
 - (6) for electric utilities, a detailed statement of purchased power and production costs (with fuel costs separately stated) by source for the 12 months leading up to the filing and a similar statement of projected purchased power and production costs by source for the 12 months succeeding the filing. Such costs for both periods

must be shown net of sales to other utilities or, in the alternative, revenues from such sales must be separately stated.

- (B) Changes from previous order. Where a request for a change in rates proposes or utilizes any change in the ratemaking methodology or principles approved or utilized by the Commission in the most recent rate order affecting the same utility, such change must be clearly identified, and a statement of the reasons for such change must be given.
- (C) Exhibits and other information. In the case of a municipality or cooperative that has filed a notice of change in rates, if the Commission gives notice that it intends to investigate such change, then the municipality or cooperative must file exhibits, names of witnesses, and a statement of the purpose of their testimony within 30 days of the giving of such notice. Except in the discretion of the Commission, a utility may not introduce into evidence in its direct case exhibits that do not comply with this rule. This provision shall not be deemed to constitute a limitation on the Commission's authority to require the prefiling of direct testimony in any case at such time as the Commission may prescribe.

2.403 Petitions for Declaratory Rulings

Pursuant to 3 V.S.A. § 808, an interested person may petition the Commission for a declaratory ruling as to the applicability of any statutory provision or of any rule or order of the Commission. The petition must identify the statute, rule, or order involved, must include a proposed order of notice, and must be accompanied by a brief that conforms to the requirements of Rule 2.223. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate.

2.404 Petitions for Adoption of Rules

Pursuant to 3 V.S.A. § 806, an interested person may petition the Commission requesting the promulgation, amendment, or repeal of a rule. The petition must describe the action requested, must state the reasons for the request, and must include a proposed order of notice.

2.405 Request for Tariff Investigation

Any interested person or entity may request that the Commission initiate an investigation pursuant to 30 V.S.A. § 227 into the justness and reasonableness of a utility's tariffs. Whether to undertake such an investigation is within the Commission's discretion.

2.406 Injunctions

(A) Definitions.

- (1) Temporary restraining order: an injunctive remedy that is issued either *ex parte* or under circumstances where the respondent has not been afforded an adequate opportunity to present its defense at a hearing held upon such notice as is otherwise required by law.

- (2) Preliminary injunction: an injunctive remedy issued after a hearing held upon legal notice but where the proceedings have not allowed the parties adequate opportunity to avail themselves of all procedures provided for by these rules and by all other provisions of law. A preliminary injunction cannot remain in effect beyond the conclusion of the proceeding in which it is issued.
 - (3) Permanent injunction: an injunctive remedy issued as final relief after a hearing held upon legal notice and where the proceedings have allowed the parties adequate opportunity to avail themselves of all procedures provided for by these rules and by all other provisions of law.
- (B) Particular requirements for temporary restraining orders; examination of witnesses by the Commission.
- (1) A petition for a temporary restraining order must be accompanied by affidavits or declarations attesting to all of its factual allegations.
 - (2) The Commission may require any facts alleged in the affidavits, declarations, or verified petition to be presented in oral testimony and may examine any witness testifying to such facts as to any matter that is relevant to the subject matter of the proceeding.
 - (3) The petitioner must deliver a copy of the petition to the respondent before filing or, if such delivery would require delay that might cause irreparable harm, as soon as possible. If actual delivery to the respondent has not been made before filing, the petitioner must notify the respondent or its attorney by telephone or by other means at the earliest possible time.
 - (4) A temporary restraining order may be issued only where it clearly appears from specific facts shown by the affidavits, declarations, or verified petition, and by testimony if required by the Commission, that substantial, immediate, and irreparable injury, loss or damage, or danger to health or safety will result before a hearing can be held upon proper notice.
- (C) Further proceedings after issuance of a temporary restraining order.
- (1) A petition for a temporary restraining order, whether it is so designated, also constitutes a petition for a preliminary injunction and a permanent injunction.
 - (2) A hearing on a preliminary or permanent injunction must be held as soon as practicable, unless the parties agree to a later date.
 - (3) Wherever possible, the Commission must attempt to make a final disposition of the proceeding, but if the proceedings do not allow the parties adequate

opportunity to avail themselves of all procedures provided for by these rules and by all other provisions of law, then only a preliminary injunction may be issued.

- (4) If a temporary restraining order has previously been issued, it shall continue in force until a decision is rendered on the preliminary injunction or the permanent injunction, as the case may be, unless it is dissolved by its terms or by further order of the Commission.
- (D) Particular requirements for preliminary injunctions; further proceedings after issuance.
- (1) An application for a preliminary injunction, unless made in consequence of an application for a temporary restraining order as provided above, must be made by motion in connection with a petition for a permanent injunction.
 - (2) No preliminary injunction may issue unless the petitioner establishes that the irreparable injury that will be caused to the petitioner if a preliminary injunction is denied (discounted by the probability that the respondent will prevail in the proceedings on the permanent injunction) will be greater than any injury that the granting of the preliminary injunction will cause to the respondent.
 - (3) If a preliminary injunction is issued, the Commission must schedule such further proceedings as may be required for the permanent injunction; and the preliminary injunction shall continue in force until a decision is rendered on a permanent injunction unless it is dissolved by its own terms or by further order of the Commission.
 - (4) Unless the Commission otherwise orders, the record made in connection with the temporary restraining order and the preliminary injunction shall also constitute part of the record in the proceedings on the permanent injunction.
- (E) Other matters.
- (1) Conditions. The Commission must condition the issuance of a temporary restraining order or a preliminary injunction with such terms as justice and equity may require, including the giving of adequate security in favor of the respondent.
 - (2) Severance. In its discretion, the Commission may order the severance of proceedings on a request for injunctive relief from proceedings for other relief.
 - (3) Motion to dissolve. A motion to dissolve a temporary restraining order or preliminary injunction may be made at any time. The motion must state why the further proceedings scheduled on the matter are insufficient to protect the rights and interests of the moving party.

- (4) Hearing officers. Unless the Commission determines that it will expedite the resolution of the proceeding or will otherwise further the ends of justice, no application for a temporary restraining order will be heard by a hearing officer.
- (5) Form of injunctions. A temporary restraining order, preliminary injunction, or permanent injunction must state the date and hour of its issuance and must be accompanied by findings of fact on all of the issues specified or referred to in this rule.

2.407 Forms for Certain Purposes

The following forms, which are available on request and many of which are available on the Commission's website, must be used for submissions to the Commission when applicable:

- notice of intervention
- motion to intervene
- certificate of public good municipal notice
- net-metering hearing request
- net-metering certificate of public good transfer
- net-metering certificate of public good transfer for net-metering systems sold separately from sale of land
- net-metering certificate of public good holder certification
- checklist for applications for net-metering systems greater than 50 kW that are not located on a roof and are not a hydroelectric facility
- net-metering registration
- net-metering application
- Department of Public Service and Public Utility Commission application fee
- Agency of Natural Resources application fee
- telecommunications certificate of public good registration
- mergers and acquisitions notification
- billing aggregators registration
- cellular provider registration
- interruption of electric service reports
- disconnection of service reports
- cable TV applications

2.408 Emergency Commission Action

- (A) When the Governor has proclaimed a state of emergency pursuant to 20 V.S.A. § 9, a person or entity may request that the Commission, or the Commission may on its own, take emergency action to prevent imminent financial injury, loss, damage, or hardship to ratepayers or a regulated entity, provided such injury, loss, damage, or hardship is related to the state of emergency. This rule governs requests that the Commission take emergency action, unless a more specific procedure is prescribed by another rule or statute.

- (B) Particular requirements for emergency requests.
- (1) Emergency action can be requested by filing a petition pursuant to this rule and Rule 2.202. In an ongoing proceeding, emergency action can be requested by filing a motion pursuant to this rule and Rule 2.206.
 - (2) The title of the filing requesting emergency action must include “Request for Emergency Commission Action Pursuant to Commission Rule 2.408.”
 - (3) A petition or motion for emergency action must be accompanied by affidavits or declarations attesting to all of its factual allegations.
 - (4) The Commission may require any facts alleged in the affidavits or declarations to be presented in oral testimony and may examine any witness testifying to such facts as to any matter that is relevant to the subject matter of the request.
 - (5) Unless the Commission otherwise orders, the record made in connection with the request for emergency action shall also constitute part of the record in any further proceedings relevant to the subject matter of the request.
- (C) Procedure.
- (1) Emergency action may be ordered either *ex parte*, without comments from other parties, or under circumstances where other parties have not been afforded an opportunity to present evidence at a hearing held upon such notice as is otherwise required by law.
 - (2) The Commission will only take emergency action where it clearly appears from specific facts shown by the affidavits or declarations, and by testimony if required by the Commission, that substantial immediate and irreparable financial injury, loss, damage, or hardship will result to ratepayers or a regulated entity before a proceeding concludes or a hearing can be held upon proper notice.
- (D) Duration. A Commission decision to take emergency action shall continue in force until the term designated in the order taking emergency action expires, unless it is dissolved by further order of the Commission.
- (E) Requests for extension or termination. The requesting party may file a motion to extend the emergency action. A motion to extend the emergency action must conform to the requirements of an initial filing for emergency action as described above in subsection (B). The requesting party may file a motion to end the emergency action at an earlier date.

- (F) Opportunity for objections and further proceedings. If emergency action is taken, the Commission will schedule such further proceedings as may be required or requested by other parties. The emergency action shall continue in force as described above in subsection (D).
- (G) Other matters.
- (1) Conditions. The Commission may condition emergency action with such terms as justice and equity may require.
 - (2) Hearing officers. Unless the Commission determines that it will expedite the resolution of the proceeding or will otherwise further the ends of justice, requests for emergency action will be heard directly by the Commissioners.
 - (3) Form of emergency action. An order authorizing emergency action must be accompanied by findings of fact on all of the issues specified or referred to in this rule, including that (a) the imminent injury, loss, damage, or hardship is related to the state of emergency; and (b) the emergency action is necessary to prevent imminent financial injury, loss, damage, or hardship to ratepayers or a regulated entity.

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2.100 Scope and Construction of Rules

2.101 Applicability

These rules ~~shall~~ apply in all proceedings before the Commission.

2.102 Definitions

- ~~(A)~~ (A) Commission: the Vermont Public Utility Commission and any Commissioner, hearing examiner appointed by the Commission wherever the context admits of such a construction.
- ~~(B)~~ (A) Clerk: the officer, clerk, or other Commission employee or agent authorized to act on behalf of the Commission.
- (B) Contested case: a proceeding, including ratemaking 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.
- (C) ePUC: the Commission's electronic case management filing system.
- ~~(C)~~ (D) Filing (when used as a noun): any petition, application, complaint, motion, exhibit, report, or any other document or thing of any description which is required or permitted to be filed with the Commission in connection with a pending case any proceeding within the Commission's jurisdiction. This includes any ePUC submission. This does not include other electronic communications with the Commission that are not part of a proceeding within the Commission's jurisdiction. A filing is not part of the evidentiary record unless it is admitted into evidence.
- (E) Final order: an order from which an appeal lies. Unless the Commission specifies that an order is final (as to the entire matter or as to certain parties), an order is not final if there will be additional proceedings (other than compliance filings) in the same matter.
- (F) Order: any decision by the Commission, whether in writing or orally.
- (G) Person: any individual, group, corporation, cooperative, partnership, firm, association, or other entity or organization.
- (H) Proceeding: any case, docket, rulemaking, or other matter that is before the Commission.
- (I) Reply: a filing made in reply to another party's response.

(J) Response: a filing made in response to another party's motion or other filing.

(K) State: the State of Vermont.

2.103 Updates to These Rules and Non-Applicability of Vermont Rules of Civil Procedure

~~The Vermont Rules of Civil Procedure, whether specifically adopted herein by reference or whether made applicable by Rule 2.105, below, shall, subject to Rule 2.104, below, apply in the form in which they exist on June 1, 1982 and as they may thereafter from time to time be amended. References in such rules to any judge or to any trial court shall be deemed to be a reference to the Commission; references to the clerk of the court shall be deemed to be references to the clerk of the Commission; references to trials shall be deemed to be references to hearings; references to complaints shall be deemed to be references to petitions, applications or complaints; and references to actions shall be deemed to be references to proceedings before the Commission. Where less than the whole of any rule of the Vermont Rules of Civil Procedures is specifically adopted by reference, the provisions of the remainder thereof shall not apply except by specific order of the Commission issued pursuant to Rule 2.107.~~

These rules are comprehensive. Where applicable, specific provisions of the Vermont Rules of Civil Procedure (including additions and amendments to those rules from Administrative Orders of the Vermont Supreme Court) have been adapted and written into these rules. The Vermont Rules of Civil Procedure therefore do not apply to Commission proceedings. These rules apply instead. However, any party may request the application of the Vermont Rules of Civil Procedure (in whole or in part) to a particular case, and the Commission may exercise its discretion to grant or deny that request. Further, to the extent that a provision of these rules is adapted from a related provision in the Vermont Rules of Civil Procedure, the Commission will look to caselaw (from the Commission and from the courts) as relevant precedent in interpreting these rules. Additionally, whenever the Vermont Rules of Civil Procedure are amended or updated through an Administrative Order of the Vermont Supreme Court or otherwise, or at any other time for good cause, the Commission may, in its discretion and without formal rulemaking, incorporate any amended or new provisions of the Vermont Rules of Civil Procedure into these rules, or make any other changes to Rule 2, by Commission order, with the updated Rule 2 being filed immediately with the Secretary of State as a final rule. Unless there is a need for an immediate amendment, the Commission will issue a proposed order for comment from stakeholders before the Commission issues a final order incorporating any amended or new provisions.

2.104 Conflicting Authority

~~In the event of any conflict between the provisions of for any other Rule or General Order of thereason on a case-by-case basis, any more specific Commission and these rules, the former order or Commission rule shall prevail. In the event of any conflict between over these rules.~~
~~otherwise applicable provisions of the Vermont Rules of Civil Procedure and any Rule or~~

~~General Order of the Commission, including any provision of these rules, the latter shall prevail.~~

2.105 ~~Procedures Not Specifically~~ Proceedings Governed by These Rules

~~Procedures not specifically governed herein shall~~ All proceedings are presumed to be governed by these rules. Proceedings may also be governed by ~~the other Commission rules,~~ Vermont Rules of Civil Procedure, by any Supreme Court orders, Commission orders, applicable Rule statutes, or General Order, any other rules or by any applicable statute requirements that the Commission may order.

2.106 Construction

These rules shall be liberally construed to secure the just ~~and,~~ timely, and inexpensive determination of all issues presented to the Commission.

2.107 Waiver of Rules

~~In order to~~ To prevent unnecessary hardship or delay, ~~in order to~~ prevent injustice, or for other good cause, the Commission may waive the application of a rule ~~upon~~ under such conditions as it may require, unless precluded by the rule, ~~itself, or by statute or by statute.~~ In an ongoing proceeding, to obtain a waiver, a person must file a motion pursuant to Rule 2.206. When there is not an ongoing proceeding, a waiver can be requested by filing a petition pursuant to Rule 2.202. Any motion or petition for a waiver must be accompanied by a concise explanation of the basis for the waiver.

2.108 Severability

~~In the event that~~ If any of these rules is found by a court of competent jurisdiction to be illegal or void, the remainder ~~shall be deemed~~ are unaffected and ~~shall~~ continue in full force and effect.

2.109 Immediate Applicability and Repeal of ~~Prior~~ Previously Issued Rules

~~Rules of practice and any amendments or additions thereto previously adopted by the Commission are hereby repealed, except that with respect to any proceeding pending on the effective date hereof, the Commission may apply any provision of such prior rules where the failure to do so would work an injustice or substantial inconvenience.~~

When amendments to these rules of practice are made, those amendments go into effect immediately. Those amendments apply to pending proceedings, and all previously adopted rules of practice and amendments are repealed to the extent they are amended, unless the Commission determines (on its own or at the request of a party or participant) that a previous rule should continue to apply to a pending proceeding to avoid injustice or substantial inconvenience. For pending cases known as “legacy” cases in which the Commission has allowed the parties to file

on paper, rather than in ePUC, the requirement to make filings in ePUC does not apply. For pending cases in which the Commission has already made substantive rulings based on a previous version of these rules, those substantive rulings remain in place and are not subject to reconsideration based solely on a change in these rules.

2.110 Use of ePUC for All Commission Proceedings

The provisions of these rules presume the use of ePUC unless specifically stated otherwise. All Commission proceedings and all filings in Commission proceedings must use ePUC, unless:

- (A) a filing is required to be made in paper by statute or under Rule 2.202,
- (B) a party or participant obtains a waiver under Rule 2.107 to allow for paper filings (for instance, because the person does not have high-speed internet in their home or office),
- (C) the filing is a consumer complaint or public comment,
- (D) a party or participant seeks confidential treatment of the filing (in which case a redacted version must still be filed in ePUC, but the allegedly confidential document must be filed in accordance with Rule 2.226), or
- (E) the filing is made by a bank or other financial institution and consists of a letter of credit or other legal documents requiring an original signature.

2.200 PROCEDURES GENERALLY APPLICABLE Procedures Generally Applicable**2.201 Practice Before the Commission**

(A) Notice of appearance. ~~Attorneys shall file a written notice~~

- (1) All notices of appearance must specifically state the party or participant that is being represented.
- (2) Attorneys must file a notice of appearance with respect to any matter proceeding in which they are representing a party. Except or participant, except that for uncontested workshops, uncontested investigations, or rulemakings, attorneys may contact the clerk and ask to be added as a representative of a participant. In ePUC, this notice of appearance happens automatically when a new case or motion to intervene is filed (and no separate notice of appearance is required), but any other initial filing in an existing case must be accompanied by a separate notice of appearance.
- (3) Pro se or other representatives (whether representing only themselves or others) must likewise file a notice of appearance, except in the case of a consumer filing a consumer complaint, a system installer filing a net-metering registration or application, anyone filing a transfer form for a net-metering certificate of public good, anyone filing public comments, or when the notice of appearance happens automatically in ePUC because the pro se representatives shall likewise file a notice of appearance. Except as otherwise provided by law, a party whose attorney has failed to comply with this requirement, or a party appearing by a pro se representative who has failed to comply with the requirements of this rule, shall or other representative filed a new case or motion to intervene (and no separate notice of appearance is required).
- (4) Although system installers filing a net-metering registration, application, or certificate of public good transfer form need not be entitled to notice or service of any document in connection with such matter, whether such notice or service is required file a notice of appearance, they must indicate (and keep up-to-be made by the Commission, by a party or by a date) the name and contact information of the person seeking party status. they are representing.
- (5) A copy of each notice of appearance shall must, on the same day on which it is filed, be served by the party filing the same upon it on all persons or parties on whose behalf a notice of appearance has been filed. A list of such persons and parties will be provided by the clerk upon request available through ePUC. The procedures for service are listed in Rule 2.204.

- (6) It is the responsibility of each representative for any party or participant that appears in front of the Commission (whether an attorney or *pro se*) to ensure that their contact information in ePUC is accurate and up-to-date at all times. The primary email address submitted for a representative must be the email address to which all notices of filings and issuance of Commission-generated documents for a particular Commission proceeding will be sent.
- (7) It is the responsibility of each representative for any party or participant that appears in front of the Commission (whether an attorney or *pro se*) to ensure that they are familiar with all applicable Commission rules, including all of Rule 2 and all applicable rules that are referenced by Rule 2.
- (8) Electronic filing of any document through ePUC by or on behalf of a representative in a Commission proceeding constitutes consent by that official representative to be served with and to receive notice of any and all documents filed with or issued by the Commission via electronic service in that Commission proceeding.
- (B) *Pro se* appearances. ~~For purposes of these rules a person appearing pursuant to the authority of this section shall and appearances by State agencies and net-metering system installers.~~
- (1) Any individual may be known as a *pro se* representative. in their own cause.
- (2) In its discretion, the Commission may permit persons who are not attorneys to appear before it as follows: a, including the following:
- (i) A partnership may be represented by a partner, and a.
- (ii) A corporation, cooperative, or association may be represented by an officer thereof one of its officers or directors (or by an employee designated in writing by an officer thereof. Such permission shall be given in all proceedings unless, because of their factual or legal complexity or because of the number of parties, the Commission is of the opinion that there is a substantial possibility that the participation of a *pro se* representative will unnecessarily prolong such proceeding or will result in inadequate exposition of factual or legal matters. Notwithstanding the foregoing, any individual may be a *pro se* representative in his or her own cause. This rule shall in no respect relieve any person or party from the necessity of compliance with any applicable rule, law, practice, procedure or other requirement. Except as provided in Rule 2.201(D), anyone appearing as a *pro se* representative shall be under or director, with the designation attached to the notice of appearance filed with the Commission).

- (iii) A State agency may be represented by an employee designated in writing by the Secretary or Commissioner, with the designation attached to the notice of appearance filed with the Commission.
 - (iv) An applicant for a net-metering registration, application, or transfer of a certificate of public good may be represented by a system installer, so long as the installer certifies that the applicant has authorized the installer to file the registration or application on the applicant's behalf and also certifies that the applicant has signed a binding installation contract.
 - (3) Each *pro se* or other representative must provide the identity and contact information of the affiliated party they represent, in addition to providing their own contact information
 - (4) In Commission proceedings, all parties and *pro se* and other representatives must comply with all applicable rules, laws, practices, procedures, and other requirements, including all the obligations of an attorney admitted to practice in this state with respect to the matter in which such person appears.
- (C) Attorneys admitted elsewhere.
 - (1) An attorney admitted to practice and in good standing in any other state ~~or American or common law jurisdiction~~ may appear in particular ~~matters~~ proceedings with the permission of the Commission.
 - (2) An attorney who previously was permitted to appear under this subsection of this rule does not need the Commission's permission of the Commission, provided that such attorney must have ~~eo~~ for later appearances that are on behalf of the same client, so long as the attorney submits an attestation that the attorney continues to represent that same client and that the attorney remains in good standing in another state.
 - (3) When an attorney admitted elsewhere enters a Commission proceeding, they accept all responsibilities that apply to all attorneys and *pro se* representatives that appear in front of the Commission. This includes the requirements that they keep all contact information up-to-date and that they be familiar with all applicable Commission rules, including all of Rule 2 and all applicable rules that are referenced by Rule 2.
 - (4) The Commission, in its discretion and at any time, may impose conditions on an attorney admitted in another state who seeks to appear before the Commission.

including a requirement that the attorney work with local counsel of record who is admitted to practice in Vermont.

(D) Withdrawal of appearance. ~~An attorney~~

(1) Any person who has appeared on behalf of a party may withdraw only upon permission of the Commission. ~~or when a substitute appearance is filed by a properly designated representative of the party, such as another attorney. If a substitution of appearance might cause delay, then Commission approval is required.~~

(2) A person appearing as a *pro se* representative for themselves may withdraw without permission of the Commission, ~~provided, that if other counsel has not appeared for such person, such withdrawal shall be~~ which is deemed to constitute withdrawal of that person as a party.

(E) Ex parte communications.

(1) Prohibited communications. ~~Unless required for the disposition of ex parte matters authorized by law, upon~~ Upon the filing in a contested case of a complaint, petition, application, or other filing ~~which that~~ the Commission has treated as the same, ~~no member, employee, or agent of~~ the Commission may not communicate, directly or indirectly, in connection with any issue of fact, with any party or any person, or, in connection with any issue of law, with any party or any employee, agent, or representative of any party, ~~except with the consent of~~ unless:

(a) all parties or upon have consented to the communication;

(b) there has been notice and opportunity for all parties to participate;
or

(c) the communication is required for the disposition of ex parte proceedings authorized by law.

(2) Where circumstances require, Allowed communications. ~~Non-substantive ex parte communications with the clerk or other administrative employees regarding procedural, scheduling, technological, or administrative matters are allowed, even in contested cases, and no disclosure to other parties is required. Also, in an emergency situation in a contested case, ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits are authorized, provided:~~

~~(a) the member, employee, or agent of (a) the~~ the
Commission reasonably believes that no party will gain a

procedural or tactical advantage as a result of the *ex parte* communication regarding the emergency, and

- (b) ~~the member, employee, or agent of~~ _____ the Commission ~~makes provision promptly to notify~~ notifies all other parties of the substance of the *ex parte* communication and allows an opportunity to respond.
- (3) Participation in decision. ~~Unless~~ In general, a Commissioner, Commission employee, or agent of the Commission may not participate or advise (except as a witness) in the Commission's decision, recommended decision, or review of a pending, contested case if the person has communicated about any facts regarding the case with any person or party, or has communicated about any issue of law with any party or any employee, agent, or representative of any party. However, the prohibition in this provision does not apply to any of the following:
- (a) communications allowed under (2) above;
 - (b) communications that are required for disposition of *ex parte* ~~matters~~ proceedings authorized by law, ~~any member, employee or agent of the Commission who has, in connection with a pending, contested case, except with the consent of;~~
 - (c) communications that all parties or upon have consented to; or
 - (d) when there has been notice and opportunity for all parties to participate, ~~communicated in connection with any issue of fact with any party or interested person or, in connection with any issue of law, with any party or any employee, agent or representative of any party, shall not participate or advise in the decision, recommended decision or Commission review except as a witness or as counsel in public proceedings.~~
- (4) Improper communications by parties. Any person or party who, directly or through an employee, agent, or representative, communicates or attempts to communicate with ~~any member, employee or agent of~~ the Commission on any subject so as to cause, or ~~with the intent to potentially~~ potentially cause, the disqualification of ~~such member, a~~ Commissioner, Commission employee, or agent ~~of the Commission~~ from participating in any manner in any proceeding, may be disqualified from ~~subsequent~~ later participation in the proceeding, may be dismissed as a party to the proceeding, may be held in contempt of the Commission under the Commission's powers as a court of record under 30 V.S.A. § 9, and/or may be deemed to have waived any objection to the ~~subsequent~~ later

decision by the Commission with respect to any ~~matter which~~proceeding that is the subject of such communication.

- (5) ~~Exception~~Notwithstanding. ~~Despite~~ any provision ~~of subparagraph (1) or (3),~~ above, ~~members, Commissioners, Commission~~ employees, and agents of the Commission may communicate with other ~~members, Commissioners, Commission~~ employees, or agents, provided that none of the latter has engaged in communications prohibited by (1) above.
- (6) Facilitation and mediation. An employee or agent of the Commission may, with the consent of the parties, confer separately with a party or their representative in an effort to mediate or settle ~~matters~~proceedings pending before the Commission. Pursuant to (1), above, such employee or agent of the Commission may not participate in rendering a decision in such ~~matters~~proceedings.

2.202 Initiation of Proceedings, Referrals of Proceedings, and Participation in Proceedings

~~Except for cases initiated by the Commission, (A)~~ Initiation of proceedings. To initiate a

~~proceeding is initiated by filing, a party must file a complaint, petition, or other application with the Clerk at the Commission's office during normal business hours. If the named defendant or respondent is a utility, service of process shall be completed by the Clerk who shall send a copy of the filing in ePUC. Paper filings may initiate proceedings only in the following instances:~~

- (1) consumer complaints;
- (2) proceedings that are statutorily required to be filed in paper (such as certain condemnation proceedings);
- (3) proceedings in which initiates the proceeding to such utility by certified mail, return receipt requested. If the named defendant, respondent, or other person or entity entitled to notice is not a utility, then the party initiating the proceeding shall procure a summons from the Clerk and shall cannot file or receive documents electronically (if a party or participant seeks a Rule 2.107 waiver of the requirement to file in ePUC, good cause the summons, together with the filing which initiates the proceeding, to may be served on such defendant to respondent demonstrated by an attestation that the person does not have high-speed internet in their home or office); and
- (4) notices of appeal from a final decision of the Commission to the Vermont Supreme Court. Notices of appeal must be filed in paper with the clerk of the Commission, with any entry fee paid in the manner provided by set forth in Rule 3 of the Vermont Rules of Civil Appellate Procedure within thirty days after such. A request by an ePUC user for permission from the Commission to appeal to the

Vermont Supreme Court before the Commission issues a final judgment must be filed in ePUC and should not be accompanied by a paper filing.

(B) Enforcement proceedings and referrals of enforcement proceedings. For enforcement proceedings, whether initiated by a member of the public, a party, or the Commission, the Commission may at any time refer the matter to the Department of Public Service in accordance with applicable statutory provisions. Although not required, it is preferable that any filing that seeks to initiate an enforcement proceeding at the Commission include, at a minimum, the following:

(1) A statement of whether the matter has been brought to the Department of Public Service for evaluation of an administrative citation under 30 V.S.A. § 30(h) and, if so, what the Department concluded (to the extent that the conclusion is public and not a matter of confidential negotiations). If the matter was not brought to the Department's attention, the statement should explain why it was not brought to the Department.

(2) Reference to any applicable statutes, rules, Commission orders, or certificates of public good that are alleged to have been violated.

(3) The factual bases, preferably in the form of one or more signed affidavits or declarations using the template on the Commission's website, for each alleged violation.

(C) Participation in proceedings. To file anything with the Commission, other than a public comment or a paper filing allowed under Rule 2.210 (including any filing by a user who must file in paper because they cannot file or receive documents electronically), a user must first log into ePUC's public portal using a user name and password. A person, entity, or group of persons functioning as a single entity may use ePUC to file a motion to intervene in a Commission proceeding or, as provided in other Commission rules related to certain specific types of proceedings, a notice of intervention in a Commission proceeding.

2.203 Signing of Petitions, Motions, and All Other Pleadings Filings

(A) Every petition, motion, or other pleading shall filing must be signed or electronically signed by at least one an attorney or pro se or other representative of record in his their individual name, whose with their email address and telephone number shall be stated, with the exception of prefiled testimony (which is signed and attested to by its author, in accordance with Rule 2.213(C)) and exhibits or other attachments to another filing.

~~(B). Except when otherwise specifically provided by rule or statute, pleadings~~ Pleadings need not be verified or accompanied by affidavit— or declaration, except when specifically required by rule or statute.

(C) The signature of an attorney or *pro se* or other representative constitutes a ~~certificate by him that~~ certification by that person that, based on a reasonable inquiry and a good-faith basis, to the best of such subscriber's ~~their~~ knowledge, information, and belief ~~there, all of the following are true:~~

- (1) There are good grounds to support ~~it; and that it the~~ petition, motion, or other filing;
- (2) All legal contentions are supported by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (3) All factual contentions have evidentiary support, or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) The petition, motion, or other filing is not ~~interposed being done~~ for delay; or any other inappropriate purpose.

(D) Any violation of subsection (C) may be subject to sanctions under Rule 2.224.

2.204 Pleadings and Other Filings; Service, Filing, Form, and Amendment

(A) Service, when required. In addition to any other requirement imposed by law, every filing ~~shall~~ must, on the same day on which it is filed, be served by the party filing the same ~~upon~~ on every other party who has filed a notice of appearance, ~~unless the and on every party that is entitled to notice by statute, rule,~~ Commission ~~for good cause otherwise directs~~ order, or Rule 2.205.

(B) Service, how made. ~~Whenever under these rules~~

- (1) Service on represented parties and participants. ~~When~~ service is required ~~to on a party that has made a notice of appearance, service must be made on a party, it shall be made upon the attorney or pro se representative whose appearance has been~~ attorneys and representatives who have filed on behalf of ~~notices of appearance.~~
- (2) ePUC users and non-ePUC users. Parties or participants who are using ePUC to participate in a Commission proceeding (ePUC users) will have their email addresses included on the “People” tab in ePUC, while parties or participants who are not using ePUC to participate in a Commission proceeding (non-ePUC users) will have only their physical mailing addresses included on the “People” tab in ePUC.

- (3) Service on State agencies through ePUC. When a party or participant initiates a Commission proceeding in ePUC, service on any State agency that is entitled to service must occur through ePUC. For petition filings labeled “Other” in ePUC, the party or participant should contact the clerk to ensure that State agencies (in addition to the Department of Public Service) are added to the ePUC case and served.
- (4) Electronic service for all ePUC users. In all cases, service is deemed to be made on all ePUC users in that proceeding by automatic notification through ePUC. ePUC will send email notification of a filing made via ePUC with a link to access the document filed to all parties or persons on whom service is required by the applicable rules of procedure, and who are using ePUC to participate in a Commission proceeding.
- (5) No certificate of service when service is entirely through ePUC. In cases where all parties and participants are ePUC users, no certificate of service is required. This rule does not relieve anyone of any obligation to file other certifications, such party as any required certificates or notices regarding the exchange of discovery.
- (6) Paper copies for non-ePUC users. In all cases, service may be made on non-ePUC users by mailing a copy of the filing, first-class postage prepaid, to the person whose notice of appearance is on file; but. For service on non-ePUC users, service may also be made by personal delivery or by any other means authorized by the person entitled to service. The filer, or the Commission in the case of a Commission-issued document, must serve a paper copy of an electronically filed document on all parties or persons on whom service is required by the applicable rules of procedure, and who are not using ePUC to participate in a Commission proceeding.
- (7) Certificates of service. When a party or participant in a Commission proceeding serves paper copies, a certificate of service is required. A certificate of service must include the names and addresses of entities or individuals who are served with a paper copy of a filing. A certificate of service need not include the names and addresses of any entities or individuals for whom service is effectuated electronically using ePUC.
- (C) Filing, manner and significance.
- (1) Filing shall of all public documents must be accomplished by delivery to the clerk at the office of the Commission through ePUC or by delivery to the Commission during the course of an evidentiary hearing—, unless the document falls under

one of the listed exceptions in Rule 2.110 or a waiver has been granted under Rule 2.107 for paper filing.

(2) Filing of documents for which confidential treatment is sought must be accomplished through the procedures listed in Rule 2.226.

(3) Regardless of the method of delivery employed, filing of all public documents occurs only upon receipt by the ~~clerke~~PUC system or receipt by the Commission, as the case may be. Such.

(4) Every filing ~~shall constitute~~constitutes a representation by the attorney or *pro se* or other representative signing the ~~same~~filing that a copy ~~thereof~~ has been or will be served on the same day on which it is filed ~~upon~~on every other party or participant on whose behalf a notice of appearance has been filed.

(D) Number of copies. ~~Except as provided herein, or as otherwise ordered by the~~In the limited circumstances where Commission rules allow paper filings, all materials required to be filed ~~shall require~~must include an original and six copies of each document. The exceptions to this rule are as follows:

~~Rule 2.205 (Statement Regarding Persons Entitled to Notice) — Original only, except that paper filings of discovery responses under Rule 2.214 must include an original~~plus one copy.

~~Rule 2.214 (Discovery Responses) — One copy only.~~

~~Rule 2.302 (Consumer Complaints) — Original only.~~

~~Rule 2.401 (Tariffs) — Original plus nine copies.~~

~~Rule 2.403 (Petition for Declaratory Ruling) — Original plus five copies.~~

~~Rule 2.404 (Petition for Adoption of Rules) — Original plus five copies.~~

(E) Form of Filings Generally. ~~filings.~~

(1) In general.

(a) Except as provided in Rule 2.204(F), all filings ~~shall~~must be ~~typewritten on paper~~typed using a common typeface, size 12 font, double-spaced, and formatted as 8 1/2" x 11" in size. All filings ~~shall be endorsed in the upper right hand corner with the~~with at least 1" margins.

(b) All motions, briefs, and comments—other than proposed orders, proposed findings of fact and conclusions of law, and post-hearing briefs—must be:

(i) no more than 25 pages in length (excluding exhibits),

(ii) no more 15 pages in length (excluding exhibits) for responses, and

(iii) no more than 10 pages in length (excluding exhibits) for replies.

- (c) The first page of every filing must include the case caption (the case name and docket the case number of the case, the page numbering of the filing and the date upon which it was prepared. Page numbering shall show both the if a case number of the particular page and the total number of pages comprising the filing. Filings shall has been assigned) and must be headed by a descriptive title. The Commission or the clerk may refuse to accept for filing or, after filing, may at any time reject any filing which fails to conform to the requirements of this rule, provided, that if no substantial prejudice will occur to any other party, the filing party shall be afforded (e.g., "Applicant's Response to Hearing Officer's Request for Additional Information").
- (d) All filings longer than 1 page must include in the upper right-hand corner of each page the case name and case number, the page number, and the date. This information is not required on the first page of a letter or other filing, provided that the case name, case number, and date appear somewhere on the first page.
- (e) Filings must address the procedural and substantive matters that are before the Commission; they may not use inappropriate or derogatory language, and they may not make personal accusations that are speculative or are not directly related to the procedural and substantive matters that are before the Commission. Upon a motion by a party or upon the Commission's own initiative at any time, the Commission may strike from any filing any redundant, immaterial, impertinent, or scandalous matter.
- (2) Separate documents required.
- (a) Each document (e.g., each witness's prefiled testimony, each individual exhibit, etc.) must be identified and filed in ePUC separately.
- (b) Individual documents may not be consolidated into a single larger document for filing in ePUC.
- (c) New motions may not be filed in the same document as a response or reply to a previously filed motion.
- (d) Service lists that are not part of an initial filing in a case may be combined into a single document with any other filing, except for prefiled testimony or exhibits.
- (3) Document numbers required. When parties or participants provide lists of prefiled testimony and exhibits that have been previously filed in ePUC, whether

by filing such a list in ePUC or by hand delivery at a hearing, the list must include the ePUC document number for each document that was prefiled using ePUC. (Each document filed electronically via ePUC is assigned an individual document number, formatted as a number followed by a forward slash followed by another number – e.g., 123456/456789.) Guidance for accessing and including the ePUC document numbers assigned to prefiled testimony and exhibits can be found on the Commission’s website.

(4) Time of submission.

- (a) An electronic filing may be submitted on any day, including holidays and weekends, and at any time.
- (b) A filing is considered filed on the date it is submitted if submitted by 4:30 P.M. on a date that the Commission is open for business.
- (c) A filing submitted after 4:30 P.M. or on a weekend, holiday, or any other day the Commission is not open for business will be considered filed on the next business day.
- (d) Failure of any system other than ePUC will not excuse a failure to comply with a filing deadline unless the Commission exercises its discretion to extend the deadline. If ePUC or any of its subsystems is unavailable due to system maintenance or failure, the Commission will issue a notice (in the ePUC portal and on the Commission’s website) extending any deadlines that occurred during the time that ePUC was unavailable.

(5) Receipt of submission.

- (a) The ePUC system will automatically acknowledge receipt of any filing and will provide an identifying case number in the email confirmation of any initial filing that has been acknowledged by ePUC.
- (b) The identifying case number must appear on all subsequent filings pertaining to that Commission proceeding.
- (c) However, a filing is not deemed accepted by the Commission until it meets the requirements of these rules and of the ePUC system.

(6) Review of submission.

- (a) A filing that initiates a case and has been submitted via ePUC will be reviewed by the Commission for compliance with the requirements of these procedures and the ePUC system, and with any applicable statutes and Commission rules.

- (b) After review of the filing, the Commission will electronically notify the filer if the filing cannot be processed until specified actions have been taken as required by these procedures and the ePUC system, and by any applicable statutes and Commission rules.
- (c) If a filing has not been accepted, a filer may submit a corrected filing. The Commission will accept a corrected filing if it meets all requirements of these procedures, the ePUC system, and any applicable statutes and Commission rules.
- (d) When a corrected filing has been accepted, the date and time of filing for all purposes under the Commission's rules of procedure are the date and time that the corrected filing was submitted.
- (7) Component parts of single document. When component parts of a single document are filed separately using ePUC (e.g., separate signature pages from multiple parties to a settlement agreement), each party that files a separate component must provide a name for that component in the appropriate ePUC field, clearly indicating the nature of the component filing and the specific document that the component filing is intended to be a part of (e.g., "Signature page of 123 Solar to settlement agreement with Agency of Natural Resources").
- (8) Corrected documents. Documents filed for the purpose of correcting previously filed documents may be filed in ePUC by selecting the "revised" option from the appropriate filing screen. The new document will then appear in ePUC. The previously filed document will still appear in ePUC but will be marked as "superseded."
- (9) Filing only in open cases. If the status of a case, found in the upper-right corner of the case screen in ePUC, reads "closed," a filer must contact the clerk of the Commission before filing any document that the filer believes is or may be related to the closed case. The clerk will assist the filer in determining whether it is appropriate to make the new filing in the closed case or to initiate a new case with a different case number when making the filing.
- (10) Prohibited documents. A document cannot be submitted via ePUC if it:
- (a) is not created or saved in searchable PDF, searchable PDF/A, Excel (.xls or .xlsx), jpeg, .ptx, Powerpoint (.ppt or .pptx), MS Word (.doc or .docx), MP4, or AVI format;
 - (b) is larger than 50 MB, unless it is filed in segments no larger than 50 MB;
or

- (c) contains a virus detected by the ePUC system.
- (11) Requirements for electronic documents. An electronically filed document that has been submitted via ePUC will be accepted by the Commission only if:
- (a) it has been formatted as required by the Commission's rules of procedure and is clearly legible, and (for text documents) word-searchable, in the electronic format in which it is filed;
- (b) any password protection or other security device has been removed; and
- (c) all information required to be included with the filing has been submitted.
- (12) Different formats for documents.
- (a) Documents that cannot be filed in any of the supported formats must be filed with the Commission and served on other parties or participants to a Commission proceeding in paper copy.
- (b) If the filing party has an electronic version of a document, then they should also provide the Commission with an electronic version of the document (in addition to filing a paper copy with the Commission).
- (c) Parties or participants to a Commission proceeding may agree among themselves to exchange electronically documents that are not in an ePUC-supported format in place of serving each other with paper copies.
- (13) Signatures of representatives of parties and participants.
- (a) Where a signature is required, the electronic filing of a petition, pleading, motion, or other document constitutes the representative's signature on the document and for all other purposes under the applicable rules of procedure, including the imposition of sanctions under Rule 2.224 and the requirement in Rule 2.203(C) of, among other things, a reasonable opportunity to cure the defect, and such cure, if made, shall be deemed to relate to the original date of filing, inquiry and good-faith basis for all representations in written filings.
- ~~(F) Special rules for certain exhibits. Exhibits need not comply with the typewriting or size requirement of Rule 2.204(E) when their purpose or content makes it impracticable to do so, but in all cases where it is not manifestly impracticable to do so, exhibits shall be so designed that they can be folded to a size 8 1/2" x 11". The identity and page number of any exhibit which measures, or which is folded to measure 8 1/2" x 11", shall appear in the upper right hand corner when the exhibit is positioned with the 8 1/2" side as its top~~

and bottom. ~~The identification and page number shall be set out horizontally when the exhibit is positioned in the manner described in the preceding sentence. The Commission or the clerk may refuse to accept for filing, or after filing, may at any time reject any exhibit which fails to conform to the requirements of this rule, provided, that if no substantial prejudice will occur to any other party, the filing party shall be offered a reasonable opportunity to cure the defect, and such cure, if made, shall be deemed to relate to the original date of filing.~~

(b) An electronically filed document that requires a signature must include a signature block containing the representative's typed-in name, preceded by "/s/" or an electronic facsimile of the signature, a scanned copy of it, or another form of electronic signature as defined in 9 V.S.A. § 271(9), and the name, address, telephone number, and email address of the person signing the document.

(c) A procedural document filed by non-electronic means must be signed as provided in the applicable rules of procedure.

(d) Any document filed jointly must contain the signature of each representative in the form provided above. If such a document is filed electronically, the act of filing by or on behalf of a representative constitutes a representation that all the other signers consented to the filing of the document.

(14) Signatures of Commission personnel.

(a) Commissioners, hearing officers, the clerk, and other Commission personnel may sign any Commission-generated document created and to be issued or entered in electronic form with an electronic facsimile signature followed by a signature block containing the signer's typed name and title. That signature has the same effect as a handwritten signature on a non-electronic document.

(b) An electronic facsimile signature of a Commissioner, hearing officer, or the clerk on a Commission-generated document filed in the ePUC electronic filing system is presumed valid. Unauthorized use of an electronic facsimile signature will render invalid the document that was issued with the unauthorized signature unless the Commissioner, hearing officer, or clerk ratifies the use of their signature.

(F) Special rules for certain exhibits. Exhibits need not comply with the typewriting or size requirement of Rule 2.204(E) if it is impracticable to do so (e.g., a spreadsheet that is more user-friendly when submitted in electronic form).

(G) Amendments in pending proceedings.

(1) In general. Proposed amendments to any filing may be made at any time. ~~If unobjected to by any party within ten days of filing or at the commencement of any hearing in which the amended matter is at issue, whichever is earlier, before the evidentiary record is closed. Unless allowed automatically under an applicable statute or rule, or agreed to by all parties (without the Commission denying the amendment), such amendments shall be deemed effective, except that the Commission may at any time dismiss any proposed amendments which it finds to have the effect of unreasonably delaying any proceeding or unreasonably adversely affecting the rights of any party. Where objection is made, amendments shall not be allowed unless the Commission finds (a) that they will not unreasonably delay any proceeding or unreasonably adversely affect the rights of any party and (b) that the requirements of subsection (2), if applicable, are satisfied. The Commission may condition the acceptance of any amendment as justice may require. An amendment which is allowed over objection shall be deemed effective as of the date it is approved, unless for good cause, the Commission orders that it shall be effective as of a different date.~~ require Commission approval. Proposed amendments ~~shall~~must be clearly identified as such and ~~shall~~must clearly indicate ~~the~~what changes ~~they effect~~are being made. In the event an amendment makes a substantial change ~~into~~ a filing, the Commission may order such additional notice to other parties and the public as justice may require.

(2) Rate Filings. ~~No party may filings. Any filing to~~ amend, supplement, or alter an existing rate filing or substantially revise the proof in support of ~~such a~~ rate filing ~~in order~~ to increase, decrease, or substantiate a pending rate request ~~unless, upon hearing, it is demonstrated that such a~~ must demonstrate that the change in filing or proof is necessary for the purpose of providing adequate and efficient service or for the purpose of avoiding the implementation of rates which exceed a level which is just and reasonable. A change in a filing or in the proof in support thereof shall be deemed to be necessary for the purpose of providing adequate service if the. This requirement is met if the new filing is the result of previously unknown costs or other circumstances ~~reflected therein occurred or were imposed or were incurred prior to such change and/or if such costs or circumstances will be operative or in effect during all of the period within which the rates to be based thereon will be in effect; provided, that the Commission may disallow any such change if the costs or other circumstances reflected therein were (which could not have been~~ known to or, by the exercise of through reasonable diligence ~~could have~~

been known to, the party filing the same substantially prior to such filing.) that will be in effect during the affected rate period.

(H) Custody. Once it has been filed, Public access to and use of ePUC. Any person, including any filing shall remain in the custody of member of the general public, may use ePUC to:

(1) File public comments on any proceeding before the Commission until other lawful disposition shall have been made at the conclusion of the. Comments related to a specific Commission proceeding should be filed in the case number for that proceeding. (If a person does not know the case number, they should contact the clerk before filing to obtain the case number.) The Commission in its discretion may prohibit a filer from using ePUC upon a determination that the filer has abused the ePUC system by repeated filing of irrelevant, abusive, or otherwise duplicative documents or information.

(2) Subscribe to receive notification of the filing of any documents filed by parties or issued by the Commission in any Commission proceeding. To subscribe to a case, a user must log into ePUC (creating an account if necessary), search for the case to which the person would like to subscribe, select "Subscribe to a Case" from the "Select Action" drop-down menu, and fill in the fields on that screen. A person who wishes to stop subscribing to a case or update the email address used to subscribe should contact the clerk at puc.clerk@vermont.gov.

(3) Search for and view all public case information and all public documents in any Commission proceeding.

2.205 Notice to ~~other~~ Other Persons or Parties

(A) Statement regarding persons entitled to notice. At the commencement of any proceeding, the party initiating the same shall file a statement identifying by name and address each person, party or other entity to whom or to which the Commission or the Clerk is required to give notice of such proceeding.

(A) Notice also provided to certain entities affected by proposed changes to pole-attachment terms or tariffs. At the beginning of a proceeding that proposes to make changes to existing pole-attachment terms or tariffs, proposes a new pole-attachment tariff, or seeks approval of a program involving pole-attachment rates, the pole-owning entity must provide notice of the filing to all entities that currently have equipment attached or have applied to attach equipment to one or more poles owned by the pole-owning entity.

(B) Orders of notice. The Commission may require any party who seeks the granting or denial of any form of relief to file a proposed order of notice.

- (C) Expenses. The expense of furnishing notice ~~shall~~must be borne by the party on whose behalf or for whose benefit such notice is given.

2.206 Motions, Responses to Motions, and Replies in Support of Motions

- (A) Motions not made during ~~the~~ hearing ~~shall~~must be in writing, filed within a reasonable period of time from when the issue arose or by a deadline established by rule or order, and, if they raise a substantial issue of law, ~~shall~~must be accompanied by a brief or memorandum of law.
- (B) All motions, responses, and replies must comply with all of the filing requirements of these rules, including the page limitations of Rule 2.204(E)(1).
- (C) Motions made during a hearing may be required to be put in writing and supported by a brief or memorandum of law within such period as the Commission may direct. ~~The Commission may decline to consider a motion not made within a reasonable time after the issue first arises with respect to the moving party.~~
- (D) An opportunity to present evidence on a motion shall be provided, if requested, unless the Commission finds there to be no genuine issue as to any material fact. The request for an opportunity to present evidence shall include a statement of the evidence that the party wishes to offer. In any case, the Commission may decline to hear oral argument and may dispose of the motion without argument.
- (E) Unless otherwise directed by the Commission, responses to motions are due 14 days after the motion is filed, and replies are due 14 days after responses are filed.
- (F) If a party seeks leave to file a sur-reply, or make any other filing that is not allowed under applicable rules, it must do so by motion. The motion must set forth good cause as to why the matter could not have been raised in an earlier filing.
- (G) If a motion seeks expedited resolution (that is, sooner than allowed by the standard 14-day response period and 14-day reply-to-response period, plus a time for Commission deliberations), this must be clearly stated in the title of the motion (“Expedited Motion to . . .”).
- (H) A motion requesting alternative forms of relief (i.e., requesting that the Commission grant relief in one form or another based on related facts) may be filed as a single document. A response or reply to such a motion may also be filed as a single document.
- (I) A new motion may not be combined with a response to a motion.

- (J) A memorandum of law must be included in the same document as the motion it supports. However, any affidavit, declaration, exhibit, or other supporting matter or attachment to a motion or response must be filed as a separate document and must identify the motions or responses to which the supporting matter relates and must be referenced in the motions or responses unless it is filed after them.
- (K) All motions (except for motions to dismiss, for summary judgment, for a temporary restraining order, or for sanctions) must state whether the moving party has received consent for the relief requested from all other parties and participants.

2.207 Time

- ~~The provisions~~ (A) All filings (including electronic filings) must be submitted by 4:30 P.M. on a date that the Commission is open for business to count as being filed on that date.
- (B) In computing any time period in these rules, in any order, or in any applicable statute that does not specify a method of the computing time:
- (1) Exclude the day of the event that triggers the period.
 - (2) Count every day, including intermediate Saturdays, Sundays, and legal holidays.
 - (3) Include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday (any day declared a holiday by the United States President, the United States Congress, or the State of Vermont Rules of Civil Procedure, Rule 6 (a) and 6 (b) (Time Computation and Enlargement) shall apply in proceedings), the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.
- (C) Absent extraordinary circumstances, any motion to extend a deadline must be filed at least 3 days before the Commission deadline and must set forth good cause why the extension should be granted.

2.208 Defective Filings

Substantially ~~The Commission may refuse to accept for filing or, after filing, may at any time reject any filing that fails to conform to the requirements of this rule or is otherwise~~ substantially defective or insufficient filings may be rejected by the Commission, provided, that if it will not unreasonably delay any proceeding nor unreasonably adversely affect the rights of any party, the Commission shall allow a reasonable opportunity to a party to cure any defect or insufficiency. A filing which is found to be defective or. A filing is substantially insufficient shall not be deemed to have been cured until the date on which the last document is filed which removes the defect or makes the filing complete. A filing is substantially insufficient if, inter alia if, for instance, it fails to include all material information required by statute or rule.

2.209 Intervention

- (A) Intervention as of right. Upon timely application, ~~a person~~anyone shall be permitted to intervene in any proceeding (1) when a statute or Commission rule confers an unconditional right to intervene~~;~~, or (2) when ~~a statute confers a conditional right to intervene and the condition or conditions are satisfied;~~ or (3) when the applicant demonstrates a substantial~~claims an~~ interest ~~which may be adversely affected by the outcome in the matters that must be resolved in the proceeding and the applicant is so situated that the disposition of the proceeding, where the proceeding affords the exclusive means by which may as a practical matter impair or impede the applicant can applicant's ability to protect that interest and where, unless the applicant's~~applicant's interest is ~~not~~ adequately represented by existing parties.
- (B) Permissive intervention. Upon timely application, a person may~~, in the discretion of the Commission,~~ be permitted to intervene in any proceeding (1) when the applicant demonstrates a substantial~~statute or Commission rule confers a conditional right to intervene, or (2) when an applicant's claimed~~ interest ~~which may share a question of law or fact in common with the matters that must be affected by the outcome of resolved in the proceeding.~~ In exercising its discretion ~~in this paragraph,~~ the Commission ~~shall~~must consider ~~(1) whether the applicant's interest will be adequately protected by other parties; (2) whether alternative means exist by which the applicant's interest can be protected; and (3) whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.~~
- (C) Conditions. Where a party has been granted intervention, the Commission may restrict ~~such party's~~that party's participation ~~to only those issues in which the party has demonstrated an interest,~~ may require ~~such~~that party to join with other parties with respect to appearance by counsel, presentation of evidence, or other matters, ~~or and~~ may otherwise limit ~~such party's~~that party's participation, all as the interests of justice and economy of adjudication require. The Commission has discretion in determining when to order joint representation, but may not require a State agency to be represented jointly with any other party.
- (D) Procedure. An application to intervene ~~shall be~~must be made by notice (if notice is allowed by statute or Commission rule) or by motion made in accordance with these rules. The motion must be made as early as possible or by the date allowed under a scheduling order.

2.210 Joinder

- (A) Persons to be joined if feasible. A person shall be joined as a party in the case if:
- (1) in the person's absence complete relief cannot be accorded among those already parties, or

- (2) the person claims an interest related to the subject of the case and is so situated that the disposition of the case in the person's absence may:
- (a) as a practical matter impair or impede the person's ability to protect that interest, or
- (b) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the person's claimed interest.
- (B) Reasons for nonjoinder. A petition or other initial filing shall be made within a reasonable time after the right to intervene first accrues and shall specifically state the manner in which the conditions of this rule names, if known to the filer, of any persons described in subsection (A) who are satisfied not joined, and the reasons why they are not joined.
- 2.210(C) Joinder by order of the Commission.**
~~The provisions of the Vermont Rules of Civil Procedure, Rules 19 (Joinder of Persons Needed for Just Adjudication); 20 (Permissive Joinder of Parties); and 21 (Misjoinder and Nonjoinder of Parties) shall apply in proceedings before the Commission.~~
- (1) For a person described in subsection (A), if joinder is feasible but has not occurred, the Commission may order that the person be made a party.
- (2) For a person described in subsection (A), if joinder is not feasible, the Commission may determine whether in equity and good conscience the proceeding should continue among the parties before the Commission, or whether the proceeding should be dismissed because the absent person is indispensable. The factors to be considered by the Commission include:
- (a) to what extent an order rendered in the person's absence might be prejudicial to the person or those already parties,
- (b) the extent to which, by protective provisions in the order, by the shaping of relief, or other measures, the prejudice can be lessened or avoided,
- (c) whether an order rendered in the person's absence will be adequate, and
- (d) whether the petitioning party will have an adequate remedy if the petition is dismissed for nonjoinder.
- (3) Permissive joinder. Upon a motion by a party or on the Commission's own initiative, the Commission may join all persons who have an interest arising out of the same matter if any question of law or fact common to all of the joined persons

may be resolved through an order in the case where the person is joined. Alternatively, the Commission may give leave to allow the person to file an amicus brief.

- (4) Misjoinder. The misjoinder of parties is not ground for dismissal of a case. Parties may be dropped or added by order of the Commission on motion of any party or on its own initiative at any stage of the case and on such terms as are just. Any part of a case may be severed and proceeded with separately.

2.211 Consolidation of Hearings; Separate Hearings

~~The provisions of the Vermont Rules of Civil Procedure, Rule 42 (Consolidation; Separate Trials) shall apply in proceedings before the Commission.~~

- (A) Consolidation. When cases involving a common question of law or fact are pending before the Commission, it may order a joint hearing on any or all the matters at issue in the cases; it may, with consent of the parties, order all the cases consolidated; and it may make orders in these proceedings to avoid unnecessary costs or delay.
- (B) Separate hearings. The Commission, for convenience or to avoid prejudice, or when separate hearings will promote expedition and economy, may order a separate trial of any issue or issues.

2.212 Prehearing Scheduling, Status Conferences, and Mediation

- (A) Scheduling and Status Conferences. In any proceeding, the Commission may, and in any rate case, the Commission shall direct the parties to appear before it at any time for a conference to consider the followingscheduling and other matters, including:
- (A) ~~the simplification of~~ simplifying the issues;
- (B) ~~the necessity or desirability of~~ (2) amendments to ~~any filing~~ filings;
- (C) ~~the possibility of obtaining~~ (3) admissions of ~~fact an facts~~ facts and of documents which will avoid unnecessary proof;
- (D) ~~the limitation of~~ (4) limiting the number of expert witnesses;
- (E) ~~such~~ (5) whether the case may be appropriate for mediation; and
- (6) any other matters that may aid in the disposition of the case.

~~The Commission shall make an order which recites the action taken at the conference, including any agreements made by the parties. When entered, such order controls the subsequent course of the proceeding unless later modified.~~

(B) Mediation. Upon a motion by any party or on its own initiative, the Commission may order the parties to any proceeding to participate in mediation. All parties and their counsel must attend a scheduled mediation unless the parties stipulate otherwise or the Commission, for good cause, excuses a person from participation or authorizes a person to participate by telephone. At each mediation, each party must have in attendance a person who has settlement authority and authority to enter stipulations. With the agreement of all parties and the mediator, any nonparty having an interest that may be materially affected by the outcome of the proceeding, or whose presence is essential to its resolution, may attend a mediation in person or by counsel. The fees and expenses of a mediator selected by the parties will be agreed on by the parties and the mediator. In cases involving a petition, the petitioner is responsible for all fees and expenses of a mediator unless otherwise agreed or ordered. In all other cases, each party must pay an equal share of the fees and expenses of any selected or designated mediator unless otherwise agreed or ordered. Any party that believes it is financially unable to pay the fee may file a motion with the Commission requesting a different fee arrangement or that mediation not be required in the case.

2.213 Prefiled Testimony

(A) Direct case. ~~Within such time as may be directed by the Commission, each~~Each party shall file must prefile the direct testimony and exhibits of each witness it proposes to call in support of its direct case.

(B) Rebuttal case. ~~In its discretion, Each party must prefile the Commission may direct any party to file the~~ testimony and exhibits of each witness it proposes to call in rebuttal of the case of any other party.

(C) Form of prefiled testimony.

(1) The preferred form for prefiled testimony is question/and-answer form. However, such testimony may be filed in narrative form, provided that it is typewritten and conforms with the requirements for spacing and line numbering set forth below and the requirements set forth in Rule 2.204(E). Testimony filed in narrative format shall include headers to identify subject matter categories. All testimony shall be typed and double spaced. Line numbers shall be placed in the left hand margin of each page. The prefiled testimony of each witness shall be preceded by a brief statement, set forth on a separate page, containing a summary of the testimony and exhibits referred to in such testimony. The summary shall not be admitted as evidence. set forth below and with the requirements set forth in Rule 2.204(E).

(2) Testimony filed in narrative format must include headers to identify subject-matter categories.

- (3) The preferred format for all prefiled testimony is to have line numbers in the left-hand margin of each page. However, prefiled testimony without line numbers will be accepted if necessary.
- (4) The prefiled testimony of each witness must be preceded by a brief statement, on a separate page, summarizing the testimony and exhibits referred to in the testimony. The summary is not evidence.
- (5) The prefiled testimony of each witness must be accompanied by a signed affidavit or declaration attesting that all statements are true and accurate to the best of the witness's knowledge and belief, and that the witness is subject to sanctions for contempt and perjury if any statements are false.
- (6) Despite the provisions of Commission Rule 5.107(C)(7) or any other rule, in circumstances in which a notarized document is required, a filer may include the following language in lieu of notarization: "I declare that the above statement is true and accurate to the best of my knowledge and belief. I understand that if the above statement is false, I may be subject to sanctions by the Commission pursuant to 30 V.S.A. § 30." In Commission hearings in which a witness testifies by video or audio conference, the Commission may administer the oath remotely provided the Commission is satisfied as to the identity of any witness testifying remotely.

2.214 Discovery

- (A) ~~In general. The provisions of Vermont Rules of Civil Procedure, Rules 26 (General Provisions Governing Discovery), 27 (Discovery Before Action Or Pending Appeal), 28 (Persons Before Whom Depositions May Be Taken), 29 (Stipulations Regarding Discovery Procedure), 30 (Depositions Upon Oral Examination), 31 (Depositions Upon Written Questions), 32 (Use of Depositions In Court proceedings), 33 (Interrogatories To Parties), 34 (Production of Documents And Things And Entry Upon Land For Inspection And Other Purposes), 36 (Request For Admission) and 37 (Failure To Make Discovery; Sanctions) shall apply in proceedings before the Commission. The availability of these procedures shall not limit the availability of any other means of discovery provided by statute or otherwise.~~
- (A) Service of discovery requests and responses. All discovery requests and responses must be served on all parties and participants in accordance with Rule 2.204. Discovery requests served on parties or participants in a Commission proceeding must also be filed with the Commission in ePUC. In particular cases, the Commission may also direct that the parties file copies of discovery responses.
- (B) Discovery methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories;

production of documents or things or permission to enter on land or other property, for inspection and other purposes; and requests for admission.

(C) Discovery procedures. Unless the Commission, on its own initiative or upon a timely motion by a party, allows otherwise, all discovery must be done in accordance with the specific procedures outlined in Rule 2.230.

~~(B) Discovery by the Commission. The procedures enumerated in 2.214(A) may be used by the Commission or its members, agents or employees, but the availability of such procedures shall in no way limit the authority of the Commission, its members, agents or employees, including but not limited to the authority to inquire into and examine any matter within the jurisdiction of the Commission, to examine books, accounts and papers of any person or entity subject to the Commission's jurisdiction or to enter and examine the property of any person or entity subject to the Commission's jurisdiction.~~

2.215 Conduct of Hearings

(A) Commission witnesses. In its discretion, theThe Commission may call witnesses to testify as to any matter ~~in~~at issue in any proceeding. Except for non-substantive procedural, scheduling, or administrative matters, or as required to establish the subject matter and scheduling of the testimony to be offered, the Commission ~~shall~~may not communicate with ~~such~~ witnesses on the subject of their testimony unless it is done in open hearing or upon notice and opportunity for all parties to participate.

(B) Examination of witnesses by Commission and staff. Any ~~member of the Commissioner, and any~~ Commission, ~~and any member of its~~ staff or agent, may examine witnesses who testify in any proceeding.

(C) Rulings by hearing ~~examiners~~officers. When a ~~matter~~proceeding has been assigned to a hearing ~~examiner, such examiner~~officer, the hearing officer may make rulings of law on procedural matters, on the admission or exclusion of evidence, and on any other matters necessary to conclude proceedings before the ~~examiner~~hearing officer. After the hearing ~~examiner~~officer has issued and served a proposal for decision, a party ~~may~~may bring ~~such~~those rulings to the Commission for review by requesting, pursuant to 3 V.S.A. § 811, the opportunity to file exceptions and to present briefs and oral argument.

2.216 Evidence, Remote Proceedings, and Deadlines for Objecting to Prefiled Testimony and Exhibits

(A) General rule. Evidence. Evidentiary matters are governed by ~~303~~ V.S.A. § 810. ~~In addition, except as to matters covered~~

(B) Participation or testimony by video or audio conference.

- (1) The Commission may preside remotely and may, either on its own initiative or upon the succeeding paragraphs request of this rule a party, require or allow parties, witnesses, counsel, or other necessary persons to participate or testify in a hearing or other proceeding by video or audio conference upon reasonable notice. The Commission may use contemporaneous video or audio conference transmission from one or more different remote locations.
- (2) Any objections to an order, hearing notice, or any other notice requiring video or audio participation or testimony should be filed as soon as possible. Any response to an objection should also be filed as soon as possible.
- (3) In any proceeding to be conducted by video or audio conference, the provisions Commission may terminate or suspend the proceeding if the Commission finds that the connection itself or the circumstances of the Vermont Rules call do not allow the Commission or other parties to clearly hear one another or that the circumstance of Civil Procedure, Rules 43 (Evidence), 44 (Proof of the call are otherwise disruptive of Official Record) and 44.1 (Determination of Foreign Law) shall apply in proceedings before the Commission the proceeding.
- (BC) Use of exhibits. Where evidence to be presented consists of tabulations or figures so numerous as to make oral presentation impracticable, it ~~shall~~must be presented in exhibit form. ~~Such~~These exhibits ~~shall~~must be summarized and explained in testimony.
- (ED) Procedure with respect for admitting and objecting to prefiled testimony and exhibits.
- (1) Prefiled testimony, if admitted into evidence, shall must be included in the transcript— by including a link in the transcript to access each witness’s electronically filed testimony and exhibits.
- (2) Objections to the admissibility of prefiled testimony or exhibits shall, including objections to the admissibility of expert opinions, must be filed in writing not more than thirty days after such evidence has been prefiled at least 14 days before the evidentiary hearing (or five, if the evidentiary hearing is canceled, then at least 14 days before the date on which such evidence is to evidentiary hearing was scheduled under the most recent approved schedule). However, if the prefiled testimony or exhibits are filed in the 21 days directly preceding the evidentiary hearing, then objections must be offered filed in writing within seven days of the objected-to filing, or at the hearing, whichever is earlier.
- (D)(3) If an objection to the admissibility of prefiled testimony or exhibits is filed, all parties may file a response, but no replies in support of the objection are allowed without permission of the Commission.

(E) Views and inspections. Upon notice to the parties, the Commission may, either ~~upon~~ on its own ~~motion~~ initiative or upon the request of a party, view or inspect any property ~~which~~ that is the subject of or is related to the subject of any proceeding. A view or inspection may be made before, during, or after the hearing.

(F) Closing of the record. Unless the Commission, on its own initiative or upon a timely motion by a party, determines otherwise (for instance, in a scheduling order), the evidentiary record for a case is closed after all of the evidence to be considered in deciding a case has been entered into evidence:

- at an evidentiary hearing, or
- in a proposal for decision (if there is no evidentiary hearing), or
- in a final order (if there is no evidentiary hearing or proposal for decision).

2.217 Objections During Evidentiary Hearings

During an evidentiary hearing, all objections must be raised immediately or they are waived. If a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not prejudice the party. Later objections to the same legal point are unnecessary, and ~~Exceptions~~ the later admission or exclusion of evidence of like nature shall be deemed to be subject to the same objection as originally stated.

2.218 Subpoenas

~~The provisions of the Vermont Rules of Civil Procedure, Rule 46 (Exceptions Unnecessary) shall apply in proceedings before the Commission.~~

2.218 Subpoenas

~~The provisions~~ (A) Only for testifying witnesses. Subpoenas shall not be used on members of the public who merely file public comments and do not submit testimony or offer other evidence, unless there is good cause to believe that a non-testifying person has critical information that cannot reasonably be obtained in any other way.

(B) Form and issuance. Every subpoena shall

(1) state the title of the Vermont Rules action, the case number, and the Vermont Public Utility Commission; and

(2) command each person to whom it is directed to attend and give testimony or to produce and permit inspection, copying, testing, or sampling of designated books, documents, electronically stored information, or tangible things in the possession, custody, or control of Civil Procedure, Rule 45 (Subpoena) shall apply in proceedings that person, or to permit inspection of premises, at a time and place therein specified; and

- (3) set forth the text of subsections (F) and (G) of this rule.
- (C) Combined subpoenas allowed. A command to produce evidence or to permit inspection, copying, testing, or sampling may be joined with a command to appear at a hearing or at a deposition, or may be issued separately. A subpoena may specify the form or forms in which electronically stored information is to be produced.
- (D) Issuance by a party or attorney. The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney may also issue and sign a subpoena.
- (E) Service on parties. A copy of every subpoena must be served on all parties to the case before the or at the same time that it is served on the person to whom it is directed.
- (F) Service on witness. A subpoena may be served by any person who is not a party and is at least 18 years of age, subject to the limitations on the service of subpoenas listed in subsection (A). Service of a subpoena on a person shall be made by delivering a copy to that person and, if the person's attendance is commanded, by tendering to that person with the subpoena the fees for one day's attendance and the mileage allowed by law. A subpoena may be served at any place within the state. When necessary, proof of service shall be made by filing in ePUC a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service.
- (G) Protection of persons subject to subpoenas.
- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The Commission may enforce this duty and impose on the party or attorney in breach of this duty an appropriate sanction, which may include lost earnings and a reasonable attorney's fee.
- (2) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents, or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition or hearing.
- (3) A person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve on the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises or to producing electronically stored information in the form or forms requested. If objection is

made, the party serving the subpoena shall not be entitled to the requested production or to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the Commission. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

- (4) On timely motion, or on the Commission's own initiative, the Commission may quash or modify the subpoena if it:
- (a) fails to allow reasonable time for compliance;
 - (b) requires a resident of this state to travel to attend a deposition more than 50 miles one way unless the Commission otherwise orders, or requires a nonresident of this state to travel to attend a deposition at a place more than 50 miles from the place of service unless another convenient place is fixed by order of the Commission;
 - (c) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
 - (d) subjects a person to undue burden.
- (5) To protect a person subject to or affected by the subpoena, the Commission may quash or modify the subpoena, or, if the party on whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship and ensures that the person to whom the subpoena is addressed will be reasonably compensated, the Commission may order appearance or production only under specified conditions, if a subpoena:
- (a) requires disclosure of a trade secret or other confidential research, development, or commercial information;
 - (b) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or
 - (c) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 50 miles one way to attend a hearing.

(H) Duties in responding to subpoena.

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.
- (3) A person responding to a subpoena need not produce the same electronically stored information in more than one form.
- (4) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the Commission may nonetheless order discovery from such sources if the requesting party shows good cause. The Commission may specify conditions for the discovery.
- (5) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as hearing preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.
- (6) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as hearing preparation materials, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the Commission under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.
- (I) Contempt. Failure by any person without adequate excuse to obey a subpoena served on that person may be deemed contempt. Adequate excuse for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the

limits provided in this rule. The provisions of 12 V.S.A. §§ 1623-1624 shall apply to failure by any person without adequate excuse to obey a subpoena served on that person.

2.219 Summary Judgment

~~The provisions of the Vermont Rules of Civil Procedure, Rule 56 (Summary Judgment) shall apply in proceedings before the Commission.~~

- (A) Motion for summary judgment or partial summary judgment. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The Commission may grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The Commission should state on the record the reasons for granting or denying the motion.
- (B) Time to file and oppose a motion. A party may file a motion for summary judgment at any time until 30 days after the close of all discovery, unless a different time is set by stipulation or Commission order. The adverse party may file a memorandum in opposition and a statement of disputed facts and affidavits or declarations, if any, up to 30 days after the service of the motion on the party. The moving party may file a reply memorandum within 14 days after service of the opposition. The Commission may also allow a surreply memorandum.
- (C) Procedures.
- (1) Supporting factual positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
- (a) Filing a separate and concise statement of undisputed material facts or a separate and concise statement of disputed facts, consisting of numbered paragraphs with specific citations to particular parts of materials, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
- (b) Showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.
- (2) Objection that a fact is not supported by admissible evidence. A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.
- (3) Materials not cited. The Commission need consider only the materials cited in the required statements of fact, but it may consider other materials in the record.

- (4) Affidavits and declarations. An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.
- (D) When facts are unavailable to the nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the Commission may:
- (1) defer considering the motion or deny it;
 - (2) allow time to obtain affidavits or declarations or to take discovery; or
 - (3) issue any other appropriate order.
- (E) Failing to properly support or address a fact. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by this rule, the Commission may:
- (1) give an opportunity to properly support or address the fact;
 - (2) consider the fact undisputed for purposes of the motion;
 - (3) grant summary judgment if the motion and supporting materials (including the facts considered undisputed) show that the movant is entitled to it; or
 - (4) issue any other appropriate order.
- (F) Judgment independent of the motion. After giving notice and a reasonable time to respond, the Commission may:
- (1) grant summary judgment for a nonmovant;
 - (2) grant the motion on grounds not raised by a party; or
 - (3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.
- (G) Failing to grant all the requested relief. If the Commission does not grant all the relief requested by the motion, it may enter an order stating any material fact that is not genuinely in dispute and treating the fact as established in the case.
- (H) Affidavit or declaration submitted in bad faith. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the Commission—after notice

and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

2.220 Harmless ErrorWithdrawal of Petitions

The provisions of the Vermont Rules of Civil Procedure, Rule 61 (Harmless Error) shall apply in proceedings before the Commission.

- (A) Voluntary withdrawal. A petitioner may voluntarily withdraw a petition, application, or registration without order of the Commission by filing a notice of dismissal in any case in which no adverse party has filed substantive comments in response to the petition. A net-metering registration will be deemed voluntarily withdrawn if the registrant fails to respond to an objection raised by the interconnecting utility.
- (B) Withdrawal by stipulation. A petition, application, or registration may be dismissed by filing a stipulation of dismissal signed by all parties who have appeared in the action.
- (C) Withdrawal by order of the Commission. Except as provided in paragraphs (A) and (B) of this subsection, an action shall not be dismissed except by order of the Commission and on such terms and conditions as the Commission deems proper.
- (D) Without prejudice. Unless otherwise specified in a voluntary notice of dismissal, a stipulation, or a Commission order, a dismissal under this rule is without prejudice.

2.221 Motions to Alter or Amend an Order, Relief from Order, and Harmless Error

The provisions of the Vermont Rules of Civil Procedure, Rule 60 (Relief From Judgment Or Order) shall apply in proceedings before the Commission.

- (A) Motion to alter or amend an order.
 - (1) Grounds. The Commission may on motion grant a new hearing or alter or amend an order on all or part of the issues for any of the reasons for which new hearings have been granted in actions at law or in suits in equity in the courts of this state. On a motion for a new hearing or to alter or amend an order, the Commission may open the proceeding and reconsider a final order if one has been entered, take additional testimony, amend findings of fact and conclusions of law, or make new findings and conclusions, and may direct the entry of a new judgment.
 - (2) Time for motion. A motion for a new hearing or to alter or amend an order shall be filed not later than 28 days after the order is issued.
 - (3) Time for serving affidavits or declarations. When a motion for new hearing or to alter or amend an order is based on affidavits or declarations, they shall be filed with the motion. An opposing party has 14 days after service of the motion

within which to file opposing affidavits or declarations. The Commission may permit reply affidavits and declarations.

- (4) On initiative of the Commission. Not later than 28 days after an order, the Commission may on its own initiative order a new hearing or alter or amend an order for any reason for which it might have granted a new hearing or altered or amended an order on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Commission may grant a motion, if timely served, for a new hearing or to alter or amend an order, for a reason not stated in the motion. In either case, the Commission shall specify in the order the grounds for ordering a new hearing or altering or amending an order.

(B) Relief from order.

- (1) Clerical mistakes. Clerical mistakes in judgments, orders, or other parts of the record, and errors arising from oversight or omission may be corrected by the Commission at any time on its own initiative or on the motion of any party and after such notice, if any, as the Commission orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the Supreme Court, and thereafter while the appeal is pending may be so corrected with leave of the Supreme Court.
- (2) Mistakes, inadvertence, excusable neglect, newly discovered evidence, fraud, etc. On motion and on such terms as are just, the Commission may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (i) mistake, inadvertence, surprise, or excusable neglect; (ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new hearing under subsection (A) of this rule; (iii) fraud, misrepresentation, or other misconduct of an adverse party; (iv) the judgment is void; (v) the judgment has been satisfied, released, or discharged, or a previous judgment on which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (vi) any other reason justifying relief from the operation of the judgment. The motion shall be filed within a reasonable time, and for reasons (i), (ii), and (iii) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subsection does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of the Commission to entertain an independent action to relieve a party from a judgment, order, or proceeding. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

- (C) Harmless error. No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the Commission

or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the Commission inconsistent with substantial justice. The Commission at every stage of the proceeding must disregard any error or defect in the proceeding that does not affect the substantial rights of the parties.

2.222 Proposed Findings of Fact

- (A) In any case the Commission may require each party to file proposed findings of fact. ~~Such proposed findings shall conform to the requirements for finding for the Superior Court.~~ Each proposed finding ~~shall~~must deal concisely with a single fact or with a group of facts so interrelated that they cannot reasonably be treated separately. ~~Proposed findings shall be consecutively numbered and shall be in logical sequence. Where the party claims to have established more than one ultimate fact, proposed findings shall be arranged into separate groups, appropriately identified as to subject matter. Each proposed finding shall contain a citation or citations to the specific part or parts of the record containing the evidence upon which the proposed finding is based.~~
- (B) Proposed findings must be consecutively numbered and must be in logical sequence.
- (C) Where the party claims to have established more than one ultimate fact, proposed findings must be arranged into separate groups, appropriately identified as to subject matter.
- (D) Each proposed finding must contain a citation or citations to the specific part or parts of the record (including page number and line number, where available) containing the evidence supporting the proposed finding.

2.223 Briefs

- (A) Briefs ~~shall~~must address each issue of law ~~which~~that a party desires the Commission to consider.
- (B) Whenever a brief addresses more than one issue, it ~~shall~~must be ~~suitably~~ divided into sections ~~which~~that separately address each issue. ~~Such a brief shall~~
- (C) Briefs longer than 10 pages must contain, immediately ~~following~~after the cover page, a ~~detailed~~ table of contents.

2.224 Sanctions

- (A) An attorney or *pro se* ~~or other~~ representative who fails, after having been requested by the Commission to do so, to ~~submit proposed findings or briefs, comply with these rules or who manifestly fails to conform to the requirements respecting findings or briefs as~~

~~specified in Rules 2.222 and 2.223, any Commission order~~ may be suspended from further participation in the proceeding or, for such period of time as the Commission finds to be just, from participation in other proceedings.

- (B) ~~In addition, or in the alternative, if proposed findings of facts fail to comply with respect to any fact as to which a party has manifestly failed to conform to the requirements of Rule 2.220, such 222, that~~ party may be deemed to have withdrawn its offers and claims of proof and to have waived its right to a finding by the Commission regarding ~~such that~~ fact; ~~and with respect to any issue of law as to which a party has manifestly failed to conform to the requirements of Rule 2.223, such that~~ party may be deemed to have waived any claims of law ~~with respect to such on that issue, and the claims of opposing parties with respect thereto may be deemed to be the law of the case.~~
- (C) ~~If, after notice and a reasonable opportunity to respond, the Commission determines that subsection (A) or (B) has been violated, or that there has been a violation of Rule 2.203(C), the Commission may, subject to the conditions stated below, impose an appropriate sanction on the attorneys, law firms, or parties that have violated or are responsible for the violation.~~
- (1) ~~A motion for sanctions under this rule shall be made separately from other motions or requests, shall describe the specific conduct alleged to violate this rule or Rule 2.203(C), and shall explain all efforts made toward having the alleged violator voluntarily withdraw or correct the challenged filing, claim, defense, contention, allegation, or denial. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.~~
- (2) ~~On its own initiative, the Commission may enter an order describing the specific conduct that appears to violate this rule or Rule 2.203(C) and directing an attorney, law firm, or party to show cause why it has not caused a violation.~~
- (3) ~~When imposing sanctions, the Commission shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed. A sanction shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. The sanction may consist of, or include, directives of a nonmonetary nature or an order to pay a penalty.~~

2.225 Proposed Schedules

- (A) ~~The parties must make all reasonable efforts to reach agreement on, and jointly file, a proposed schedule as early as possible and no later than three days before a scheduling conference. If the parties cannot agree on all scheduling matters, they should make separate filings that indicate what scheduling matters all parties have agreed to and what matters are in dispute.~~

(B) In cases without a statutory deadline for Commission action, a proposed schedule may provide the parties with time to negotiate before establishing a formal litigation schedule. In that situation, a proposed schedule could be as simple as:

- Deadline for motions to intervene;
- Deadline for responses to motions to intervene;
- Deadline for replies to responses to motions to intervene; and
- Deadline for parties to file a settlement agreement or a proposed litigation schedule.

(C) Although the parties are free to agree to alternate terms to propose to the Commission, proposed litigation schedules should generally include the following items:

- Date for public hearing (if any);
- Date for site visit (if any);
- Deadline for motions to intervene;
- Deadline for responses to motions to intervene;
- Deadline for replies to responses to motions to intervene;
- Deadlines for filing prefiled testimony;
- Schedule for discovery on each set of prefiled testimony, including last date for filing requests and due date for responses;
- Deadline for objections to prefiled testimony;
- Evidentiary hearing;
- Deadline for filing post-hearing briefs; and
- Deadline for filing post-hearing reply briefs.

(D) Where appropriate, the proposed schedule may include other items, such as deadlines for motions to dismiss and summary judgment motions. When practicable, parties should include specific calendar dates in proposed schedules rather than dates based on the timing of a previous filing.

2.226 Confidential Information Protocol

(A) General rule.

- (1) All documents filed with the Commission are presumed to be public.
- (2) The marking of a document as “confidential” does not render that document confidential.
- (3) To assert confidentiality of a document, the filing must include one or both of the following:
 - (a) a cover letter identifying the date and case number of the specific Commission order, statute, court order, or other State or federal agency decision that recognizes the confidentiality of the document, or

(b) a motion for confidential treatment.

(B) Process for filing information that a party asserts to be confidential.

(1) All assertedly confidential documents must bear a stamp on every page marking the document as “Confidential.”

(2) Until the Commission issues procedures for filing confidential information in ePUC, any confidential information must be filed by email with the clerk or filed in paper and must have the word “Confidential” as the first word of the subject line. In contested cases, the content of this email or paper cover letter must be simultaneously served on all other parties, with the attached assertedly confidential documents also simultaneously served on those parties that have signed the confidentiality agreement. For non-paper parties who have signed the relevant protective agreement, service may be done by cc’ing those parties on the email to the clerk.

(3) Whenever a party files an assertedly confidential document, that party must simultaneously file a public, non-confidential version of the document in ePUC, unless the party asserts that the entirety of the document is confidential (in which case a document making that allegation must be filed in ePUC). The public, non-confidential version of the document must contain the asserted legal basis for each redaction, in a manner that allows the reader to know which redaction is based on which asserted legal basis for confidentiality.

(C) Form of motions for confidential treatment.

(1) A motion for confidential treatment must set forth the basis for confidentiality, including any relevant citations to exemptions from public disclosure under the Vermont Public Records Act.

(2) The motion must be accompanied by a document-specific (or information-specific) averment of the basis for keeping confidential any document (or information) that the party wishes to keep under seal.

(3) The averment must list a specific expiration date for keeping the information under seal (usually no more than three years) and must explain in detail why the information must be kept confidential for that length of time.

(4) The motion must also address each of the following questions:

(a) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information that should be protected?

- (b) Does the matter sought to be protected contain Critical Energy Infrastructure Information (CEII), as that term is defined by the Federal Energy Regulatory Commission?
- (c) Does the matter sought to be protected contain information related to a utility's cybersecurity program?
- (d) Would disclosure of the information cause a cognizable harm sufficient to warrant confidential treatment?
- (e) Has the party seeking protection shown "good cause" for invoking the Commission's protection?

2.227 Procedural Changes During State of Emergency

If the Governor of the State of Vermont declares a state of emergency, the Commission may issue orders temporarily altering any procedural requirements of Commission rules.

2.228 Recusal

- (A) A motion for recusal of a Commissioner or hearing officer shall be made as soon as practicable after the cause or ground becomes known.
- (B) Motions for recusal shall be accompanied by an affidavit, a declaration, or a certificate of a party's attorney, stating the reason for it and when such reason was first known.
- (C) The Commissioner or hearing officer whose recusal is sought shall either recuse themselves or, without ruling on the motion, refer the motion to the other Commissioners (or to all of the Commissioners when it concerns a hearing officer).
- (D) A Commissioner or hearing officer who may be recused for any reason other than personal bias or prejudice may disclose on the record the basis of their potential recusal and may advise the parties and their lawyers that they may consider, out of the presence of the Commissioner or hearing officer, whether to move for recusal. If, seven days after disclosure, no party has moved for recusal, the Commissioner or hearing officer may participate in the proceeding.

2.229 Recording of Proceedings

- (A) The Commission may record any of its own proceedings.
- (B) Any member of the press or public may record any Commission hearing, oral argument, or other public proceeding, under the following conditions:
 - (1) Anyone recording a proceeding (by video or audio) must disclose this at the beginning of the proceeding.

- (2) Recordings shall not interfere in any way with the proceeding.
- (3) Recordings shall not capture private discussions between and among:
 - (a) Commissioners and Commission staff at the bench, or
 - (b) attorneys and their clients.
- (4) The Commission may permit, prohibit, terminate, limit, or postpone the recording or transmitting of all or any part of a proceeding, and the use of any device, in the hearing room or public meeting room and areas immediately adjacent to it on the Commission's own initiative or on the request of a party or witness in the proceeding. Upon notice to the parties, to the person requesting the order, to any person or entity designated by the media to be notified on behalf of all potentially interested members of the media, and to any person who has filed a request to be heard on this particular motion, the Commission must hold a prompt hearing on the motion. In acting under this provision, the Commission will favor allowing the recording of all public proceedings and will only restrict such recording if the entity recording the proceeding has violated subsection (B)(1), (2), or (3) of this rule, or if the Commission concludes that one or more of the following factors weighs strongly and overwhelmingly in favor of restricting the right to record:
 - (a) the impact of recording or transmitting on the rights of the parties to a fair hearing;
 - (b) whether the private nature of testimony outweighs its public value;
 - (c) the likelihood that physical, emotional, economic, or proprietary injury may be caused to a witness, a party, or other person or entity;
 - (d) the age, mental condition, and medical condition of the party or witness; and
 - (e) any other good cause.

2.230 Specific Discovery Procedures

- (A) Discovery scope and limits.
 - (1) Scope in general. Unless otherwise limited by Commission order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's legal arguments and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

(2) Limitations on frequency and extent.

(a) Specific limitations on electronically stored information. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the Commission may nonetheless order discovery from such sources if the requesting party shows good cause. The Commission may specify conditions for the discovery.

(b) Orders limiting frequency or extent of discovery. On motion or on its own, the Commission must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(iii) the proposed discovery is outside the scope permitted by this rule.

(3) Insurance agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person conducting an insurance business may be liable to satisfy the requirements of any Commission order. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(4) Hearing preparation: materials. Subject to other provisions of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under this rule and prepared in anticipation of litigation or for a hearing by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only after a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Commission shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation. A party may obtain without the required showing

a statement concerning the action or its subject matter previously made by that party.

(5) Trial preparation: experts.

(a) Identification and deposition of an expert who may testify.

(i) A party may through interrogatories require any other party:

(I) to identify each person the other party may use at a hearing to present expert testimony under Vermont Rules of Evidence 702, 703, or 705, whether or not the witness may also testify from personal knowledge as to any fact at issue in the case;

(II) to state the subject matter and the substance of the facts and opinions as to which the expert is expected to testify; and

(III) to provide a summary of the grounds for each opinion.

(ii) A party may depose any person who has been identified in an answer to an interrogatory as an expert whose opinions may be presented at a hearing.

(iii) A party may obtain by request for production or subpoena any final report of the opinions to be expressed by an expert who has been identified in an answer to an interrogatory as an expert whose opinions may be presented at a hearing, as well as the basis and reasons for the opinions and any exhibits that will be used to summarize or support them.

(iv) Any questions a party asks of another party's expert witness—whether through interrogatories, depositions, or requests for production—must be related to the expert witness's testimony.

(b) Hearing-preparation protection for draft disclosures and certain reports. Subsection (A)(4) of this rule protects drafts of any disclosure of an expert identified by a party and drafts of any report prepared by such an expert, regardless of the form in which the draft is recorded.

(c) Hearing-preparation protection for communications between a party's attorney and certain expert witnesses. Subsection (A)(4) of this rule protects communications between the party's attorney and any party-identified expert whose opinions may be presented at trial, regardless of

the form of the communications, except to the extent that the communications:

(i) relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the party's attorney provided and that the expert witness relied on in forming the opinions to be expressed.

(d) Expert employed only for hearing preparation. A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for a hearing and who is not expected to be called as a witness at a hearing, only after a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(e) Payment. Unless a party alleges, and the Commission finds, that another party has abused the discovery process (e.g., seeking discovery for no purpose other than delay), each party shall be responsible for any fees incurred by its experts in responding to discovery or attending depositions.

(6) Claims of privilege or protection of hearing-preparation materials.

(a) Information withheld. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as hearing-preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(b) Information produced. If information is produced in discovery that is subject to a claim of privilege or of protection as hearing-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the Commission under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must

take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

- (B) Protective orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the Commission may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place or the allocation of expenses for the discovery or disclosure; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the Commission; (6) that a deposition after being sealed be opened only by order of the Commission; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; and (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Commission. If the motion for a protective order is denied in whole or in part, the Commission may, on such terms and conditions as are just, order that any party or person provide or permit discovery, and may award expenses incurred in relation to the motion.
- (C) Sequence and timing of discovery. Unless the Commission upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence. The fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.
- (D) Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under a duty to supplement or correct the response to include information later acquired with respect to the following matters if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing:
- (1) any question directly addressed to
 - (a) the identity and location of persons having knowledge of discoverable matters; and
 - (b) the identity of each person expected to be called as an expert witness at a hearing, the subject matter on which the person is expected to testify, and the substance of the person's testimony;

- (2) any other previous response to an interrogatory, request for production, or request for admission; and
 - (3) any matter by order of the Commission, agreement of the parties, or at any time before a hearing through new requests for supplementation of previous responses.
- (E) Discovery conference.
 - (1) At any time, upon motion or on its own initiative, the Commission may direct the parties to appear before it for a conference on the subject of discovery. The Commission may do so upon motion by the attorney for any party if the motion includes:
 - (a) a statement of the issues as they then appear;
 - (b) a proposed plan and schedule of discovery, including any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced;
 - (c) any limitations proposed to be placed on discovery;
 - (d) any other proposed orders with respect to discovery; and
 - (e) a statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion.
 - (2) Each party and each party's attorney is under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be filed not later than 14 days after service of the motion.
 - (3) Following the discovery conference, the Commission may enter an order tentatively identifying the issues for discovery purposes, including any issues about preserving discoverable information, any issues about discovery of electronically stored information including the form or forms in which it should be produced, and any issues about claims of privilege or protection as hearing-preparation materials; establishing a plan and schedule for discovery; setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.
 - (4) The Commission may combine the discovery conference with a status conference.

(F) Signing of discovery requests, responses, and objections.

(1) Every request for discovery or response or objection to discovery made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose email and postal address shall be included. A party who is not represented by an attorney shall sign the request, response, or objection and state the party's email and postal address. The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is: (i) consistent with these rules and warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; (ii) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (iii) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(2) If without substantial justification a certification is made in violation of the rule, the Commission, upon motion or on its own initiative, shall impose on the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

(G) Objections and motions related to discovery procedure.

(1) Counsel and opposing counsel have the obligation to make good-faith efforts among themselves to resolve or reduce all differences related to discovery procedures and to avoid filing unnecessary motions.

(2) No motions related to discovery shall be filed unless counsel making the motion has conferred with opposing counsel or has attempted to confer about the discovery issues between them in detail in a good-faith effort to eliminate or reduce the area of controversy, and to arrive at a mutually satisfactory resolution. If the consultations of counsel do not fully resolve the discovery issues, counsel making a discovery motion shall file with the Commission, as part of their motion papers, an affidavit, a declaration, or a certificate of a party's attorney subject to the obligations of Vermont Rules of Civil Procedure Rule 11 certifying that they have conferred or attempted to confer with counsel for the opposing party in an

effort in good faith to resolve by agreement the issues raised by the motion without the intervention of the Commission, and have been unable to reach an agreement. If some of the issues raised by the motion have been resolved by agreement, the affidavit or declaration shall specify the issues so resolved and the issues remaining unresolved and the reasons for that. The affidavit or declaration shall set forth the date or dates of the consultation with opposing counsel, and the names of the participants.

- (3) Except when the motion is based solely on the failures described in subsection (P)(4) of this rule (“Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection”), memoranda with respect to any discovery motion shall contain a concise statement of the nature of the case and a specific listing of each of the items of discovery sought or opposed, and immediately following each specification shall set forth the reason why the item should be allowed or disallowed.
- (H) Pending appeal. If an appeal has been taken from a Commission order or before the taking of an appeal if the time for that has not expired, any party seeking to take discovery must file a motion seeking the Commission’s permission and must state the need for such discovery.
- (I) Persons before whom depositions may be taken.
- (1) Within the State of Vermont. Within the state, depositions shall be taken before a justice of the peace or notary public or a person appointed by the Commission.
- (2) Elsewhere. In another state or country, depositions shall be taken before someone who is authorized to administer oaths by the laws of the place where the examination is held or of the laws of the United States, or before a person appointed by a court.
- (3) Administering oaths. A person appointed by the Commission or a court as provided in paragraphs (1) and (2) of this subsection has power to administer oaths and take testimony.
- (4) Written stipulations. Unless the Commission orders otherwise, the parties may by written stipulation:
- (a) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and
- (b) modify the procedures provided by these rules for other methods of discovery.

(J) Depositions upon oral examination.

- (1) Length of deposition. Unless the Commission allows otherwise, each oral deposition is limited to no more than seven hours.
- (2) When depositions may be taken and who may be deposed. After a case is filed, any party may take the testimony of any person (including a party) who is offering evidence, by deposition upon oral examination. The attendance of witnesses may be compelled by subpoena, but a subpoena is not necessary for compelling the attendance of a party offering evidence or a testifying witness sponsored by a party. Commission approval (or the written consent of the person to be deposed) is required for the deposition of anyone (including a party) who is not testifying or offering evidence.
- (3) Notice of examination: general requirements; special notice; method of recording; production of documents and things; deposition of organization; deposition by telephone.

 - (a) A party desiring to take the deposition of any person upon oral examination shall give notice in writing to every other party to the action at least 14 days before the time of taking the deposition, unless the Commission orders otherwise. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If the written notice seeks materials to be produced, the materials sought shall be attached to or included in the notice. For any party or any witness sponsored by a party, written notice served on all parties (or their counsel for any party that is represented by counsel) is sufficient, and no subpoena is necessary. For any other witness, if a subpoena is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.
 - (b) If a party shows that when the party was served with notice under this subsection (J)(3) the party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition, the deposition may not be used against the party.
 - (c) A deposition shall be recorded stenographically unless the notice of taking states that it is to be recorded by sound or sound-and-visual means. The party taking the deposition shall bear the cost of recording. Any party may arrange for a transcription to be made from the recording of a

deposition taken by stenographic or non-stenographic means. If a deposition is to be recorded by non-stenograph means, the notice of taking shall specify: the method of recording; the equipment to be used; the name, address, and employer of the operator of the equipment; and the identity of the person who will administer the oath. The oath may be administered by an attorney for one of the parties who is also a notary. Upon motion of a party or on its own initiative, the Commission may impose such additional conditions as are necessary to ensure that testimony to be recorded by non-stenographic means will be accurate and trustworthy and to protect the interests of parties and witnesses.

- (d) Any party or witness may at their own expense concurrently record a deposition by a method other than that being used by the party taking the deposition. All parties present and the witness shall be advised that the concurrent recording is being made. A person making a concurrent recording shall permit the parties and the witness to review the recording and shall furnish a duplicate to the witness or any party on request and tender of the actual cost of the duplicate.
- (e) Unless otherwise agreed by the parties, a deposition shall be conducted before someone who is appointed or designated under this rule and shall begin with a statement on the record by that person that includes: (i) the person's name and business address; (ii) the date, time, and place of the deposition; (iii) the name of the deponent; (iv) the administration of the oath or affirmation to the deponent; and (v) an identification of all persons present. If the deposition is recorded by non-stenographic means, the person recording the deposition shall repeat items (i) through (iii) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the person recording the deposition shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and any exhibits, or concerning other pertinent matters. Any objections, any changes by the witness, the witness's signature identifying the deposition as the witness's own or the statement of the person recording the deposition that is required if the witness does not sign, and the certification of the person recording the deposition shall be set forth in writing to accompany a deposition recorded by non-stenographic means.
- (f) The notice to a party deponent may be accompanied by a request that the party at the taking of the deposition produce and permit inspection and

copying of designated books, papers, documents, or tangible things that constitute or contain matters within the scope of discovery. The party deponent may, within seven days after service of the notice, serve on the party taking the deposition written objection to inspection or copying of any or all of the designated materials. If objection is made, the party taking the deposition shall not be entitled to inspect the materials except pursuant to an order of the Commission. The party taking the deposition may move at any time for an order with respect to any objection to the request or any part of it, or any failure to produce or permit inspection as requested.

(g) In a party's notice, that party may name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This paragraph does not preclude taking a deposition by any other procedure authorized in these rules.

(h) The parties may stipulate in writing or the Commission may (upon motion) order that a deposition be taken by telephone or other remote electronic means. For the purposes of this rule, a deposition taken by such means is taken at the place where the deponent is to answer questions.

(4) Examination and cross-examination; record of examination; oath; objections.

(a) Examination and cross-examination of witnesses may proceed as permitted at a hearing under the provisions of the Vermont Rules of Evidence. The person recording the deposition, or someone acting under their direction and in their presence, shall put the witness on oath and shall record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means allowed by this rule. If requested by one of the parties, the testimony shall be transcribed.

(b) All objections made at the time of the examination to the qualifications of the person taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the person recording the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions

in a sealed envelope on the party taking the deposition, and the party taking the deposition shall transmit them to the person recording the deposition, who shall give them to the witness and record the answers verbatim.

(5) Objections; motion to terminate or limit examination.

- (a) Any objection to evidence during a deposition shall be stated concisely and in a nonargumentative and nonsuggestive manner. A party may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the Commission, or to present a motion under paragraph (c) below.
- (b) If the Commission finds that conduct has impeded or delayed the examination and has prevented a fair examination of the deponent, the Commission may extend the time for taking the deposition and may impose on the persons responsible an appropriate sanction.
- (c) At any time during a deposition, on motion of a party or of the deponent and after a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the Commission may order the person recording the examination to stop taking the deposition, or may limit the scope and manner of taking the deposition. If the order terminates the examination, it shall be resumed thereafter only by order of the Commission. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

(6) Submission to witness; changes; signing. When the non-stenographic recording of a deposition is available, or the testimony in a stenographic deposition is fully transcribed, the deposition shall be submitted to the witness for review unless such review is waived by the witness and the parties. Any changes in form or substance that the witness desires to make shall be submitted in writing to the person who recorded the deposition with a statement signed by the witness of the reasons for making such changes within 30 days after submission of the deposition to the witness. The person who recorded the deposition shall indicate in the certificate prescribed by subsection (J)(7) whether any changes were submitted and, if so, shall append the changes and the statement of reasons. The deposition, or a written statement that a non-stenographic deposition is the witness's own, shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill, cannot be found, or refuses to sign. If the deposition or statement is not signed by the witness within 30 days of its submission to the witness, the person who recorded the deposition shall sign it

and state on the record the fact of the waiver or of the witness's illness, absence, or refusal to sign, together with the reason, if any, given for that refusal; and the deposition may then be used as fully as though signed unless the Commission orders otherwise for good cause shown.

(7) Certification and filing by person who recorded the deposition; exhibits; copies; notice of filing.

- (a) The person who recorded the deposition shall certify that the witness was duly sworn in and that the deposition is a true record of the testimony given by the witness. This certificate shall be in writing and accompany the record of the deposition. Unless otherwise ordered by the Commission, the person who recorded the deposition shall securely seal the deposition in an envelope or package endorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall promptly file it with the Commission or send it to the attorney who arranged for the transcript or recording (or to the Commission if it cannot be sent to a designated attorney), who shall store it under conditions that protect it against loss, destruction, tampering, or deterioration.
- (b) Upon the request of a party, documents and things produced for inspection during the examination of a witness shall be marked for identification and annexed to the deposition, and may be inspected and copied by any party, except that if the person producing the materials wishes to retain them the person may (i) offer copies to be marked for identification and annexed to the deposition and to serve as originals, if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (ii) offer the originals to be marked for identification after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the Commission, pending final disposition of the case.
- (c) Unless otherwise ordered by the Commission or agreed by the parties, the person recording the deposition shall retain stenographic notes of any deposition taken stenographically or a copy of the recording of any deposition taken by any other method. After payment of reasonable charges, the person who recorded the deposition shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

- (K) Deposition upon written questions. If a party wishes to take a deposition upon written questions, that party must file a motion with the Commission requesting permission to do so.
- (L) Use of depositions.
- (1) Evidentiary use. At the hearing or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition (if admissible under the rules of evidence applied as though the witness were then present and testifying) may be used against any party who was present or represented at the taking of the deposition or who had due notice of it, in accordance with any of the following provisions:
- (a) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness or for any other purpose permitted by the Vermont Rules of Evidence.
- (b) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under subsection (J)(3)(g) of this rule to testify on behalf of a public or private corporation, partnership, association, or governmental agency that is a party may be used by an adverse party for any purpose.
- (c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Commission finds that the witness (i) is exempted by ruling of the Commission on the ground of privilege from testifying concerning the subject matter of the deposition; or (ii) persists in refusing to testify concerning the subject matter of the deposition despite an order of the Commission to do so; or (iii) testifies to a lack of memory of the subject matter of the deposition; or (iv) is unable to be present at the hearing because of death or then-existing physical or mental illness or infirmity; or (v) is absent from the hearing and the proponent of the deposition has been unable to procure the witness's attendance by process or other reasonable means. A deponent is not unavailable as a witness if the exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing the witness from attending or testifying.
- (d) If only part of a deposition is offered in evidence by a party, an adverse party may require the offeror to introduce any other part that should, in fairness, be considered with the part introduced, and any party may introduce any other parts.

- (e) Substitution of parties does not affect the right to use depositions previously taken. A deposition previously taken may also be used as permitted by the Vermont Rules of Evidence.
- (2) Objections to admissibility. An objection may be made at a hearing to receiving in evidence any deposition or part of it for any reason that would require the exclusion of the evidence if the witness were present and testifying.
- (3) Form of presentation. Except as otherwise directed by the Commission, a party offering deposition testimony pursuant to this rule may offer it in stenographic or non-stenographic form, but, if in non-stenographic form, the party shall also provide the Commission with a transcript of the portions so offered.
- (4) Effect of errors and irregularities in depositions.
- (a) As to notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served on the party giving the notice.
- (b) As to disqualification of person recording the deposition. Objection to taking a deposition because of disqualification of the person before whom it will be taken is waived unless made before the deposition begins or as soon afterward as the disqualification becomes known or could be discovered with reasonable diligence.
- (c) As to taking of deposition.
- (i) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one that might have been obviated or removed if presented at that time.
- (ii) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind that might be obviated, removed, or cured if promptly presented, are waived unless timely objection to them is made at the taking of the deposition.
- (iii) Objections to the form of written questions are waived unless served in writing on the party propounding them within the time allowed for serving the succeeding cross or other questions and within seven days after service of the last questions authorized.

(d) As to completion and return of deposition. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the person recording the deposition are waived unless a motion to suppress the deposition or some part of it is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(M) Interrogatories.

- (1) Number. At the request of a party or on its own initiative, the Commission may restrict the number of written interrogatories, including all subparts, that a party may serve on any other party per round of discovery.
- (2) Availability; procedures for use. Any party may serve on any other party that is offering evidence written interrogatories to be answered by the party served or—if the party served is a public or private corporation, a partnership, an association, or governmental agency—to be answered by an officer or agent of that organization, who shall furnish such information as is available to the party. After the case begins, interrogatories may, without leave of the Commission, be served on any party that is offering evidence. Commission approval (or the written consent of the person being asked to answer interrogatories) is required to serve interrogatories on anyone (including a party) who is not testifying or offering evidence.
- (3) Answering interrogatories. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The interrogatory being answered, or objected to, shall be reproduced before the answer or objection. The answers are to be signed by the person making them, and the objections signed by the attorney (or *pro se* party if unrepresented) making them. The party on whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories. The Commission may allow a shorter or longer time. The party submitting the interrogatories may move for an order with respect to any objection to or other failure to answer an interrogatory.
- (4) Scope; use at trial. Interrogatories may relate to any matters that can be inquired into under the rules of discovery, and the answers may be used to the extent permitted by the rules of evidence. An otherwise proper interrogatory is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but

the Commission may order that such an interrogatory need not be answered until after designated discovery has been completed, until after a status conference, or until another later time.

- (5) Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records, including electronically stored information, of the party on whom the interrogatory has been served or from an examination, audit, or inspection of such business records, including a compilation, abstract, or summary of them, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(N) Production of documents and things and entry on land.

- (1) Scope. Any party may serve on any other party that is offering evidence a request (a) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect, copy, test, or sample any designated documents or electronically stored information (including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by the respondent into reasonably usable form) or to inspect and copy, test, or sample any designated tangible things that constitute or contain matters within the scope of discovery and are in the possession, custody, or control of the party on whom the request is served; or (b) to permit entry on designated land or other property in the possession or control of the party on whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of discovery.

(2) Procedure.

- (a) The request may, without leave of the Commission, be served on any party that is offering evidence in the proceeding. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the

form or forms in which electronically stored information is to be produced.

(b) The party on whom a request is served shall provide a written response within 30 days after the service of the request. The Commission may allow a shorter or longer time. For each item or category, the response must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons. The responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection, provided that, on a showing by the requesting party of a reasonable need, the Commission may order inspection. An objection must state whether any responsive materials are being withheld and the basis of that objection. If objection is made to part of an item or category, the objection must specify the part and permit inspection of the rest. Each specific request shall be reproduced before the response. If objection is made to the requested form or forms for producing electronically stored information—or if no form was specified in the request—the responding party must state the form or forms it intends to use. The party submitting the request may move for an order under this rule with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

(c) Unless the parties otherwise agree, or the Commission otherwise orders:

- (i) a party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request;
- (ii) if a request does not specify the form or forms for producing electronically stored information, a responding party must produce the information in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable; and
- (iii) a party need not produce the same electronically stored information in more than one form.

(O) Requests for admission.

(1) Request for admission. A party may serve on any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of discovery set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served

with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of the Commission, be served on any party after the case begins.

- (2) Form of requests and answers. Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the Commission may allow, the party to whom the request is directed serves on the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. The request being addressed shall be reproduced before the objection or answer. If objection is made, the reasons for it shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for a hearing may not, on that ground alone, object to the request; the party may deny the matter or set forth reasons why the party cannot admit or deny it.
- (3) Motions and objections to requests. The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the Commission determines that an objection is justified, the Commission shall order that an answer be served. If the Commission determines that an answer does not comply with the requirements of this rule, the Commission may order either that the matter is admitted or that an amended answer be served. The Commission may, in lieu of these orders, determine that final disposition of the request be made at a discovery or status conference or at a designated time before a hearing.
- (4) Effect of admission. Any matter admitted under this rule is conclusively established unless the Commission on motion or its own initiative permits withdrawal or amendment of the admission. The Commission may permit withdrawal or amendment when the presentation of the merits of the action will be subverted and the party who obtained the admission fails to satisfy the Commission that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an

admission by the party for any other purpose, nor may the admission be used against the party in any other proceeding.

(P) Failure to make discovery; sanctions.

- (1) Motion for order compelling discovery. A party, after reasonable notice to other parties and other affected persons, may apply for an order compelling discovery. If a deponent fails to answer a question or a party fails to answer an interrogatory or allow inspection, or if an answer is evasive or incomplete, the discovering party may move for an order compelling an answer or production or inspection. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.
- (2) Failure to comply with order. If a deponent or party fails to comply with a Commission order related to discovery, the deponent or party, and any attorney advising the deponent or party, or both, may be subject to sanctions, which may include any of the following:
 - (a) an order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the case in accordance with the arguments of the party obtaining the order;
 - (b) an order prohibiting that party from introducing designated matters in evidence;
 - (c) an order striking out part or all of the filings, including prefiled testimony and other evidence, or staying further proceedings until the order is obeyed, or dismissing the proceeding or any part of it;
 - (d) an order treating as a contempt the failure to obey any orders; and
 - (e) an order requiring the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses caused by the failure, unless the Commission finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.
- (3) Failure to supplement; refusal to admit. A party that without substantial justification fails to supplement responses as required is not, unless such failure is harmless, permitted to use as evidence at a hearing, or on a motion, any witness or information not so disclosed.
- (4) Failure of party to attend at own deposition or serve answers to interrogatories or respond to request for inspection. If a party or an officer, director, or managing agent of a party or a person designated under these rules to testify on behalf of a party fails to appear before the person who is to take a properly served deposition, fails to object or comply with a properly served request for production, fails to serve answers or objections to properly served interrogatories, or fails to serve a

written response to a properly served request for production or inspection, the Commission may make such orders in regard to the failure as are just. The failure to act as described in this subsection may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by these rules.

- (5) Failure to participate in the framing of a discovery plan. If a party or a party's attorney fails to participate in good faith in the framing of a discovery plan by agreement, the Commission may, after opportunity for hearing, require such party or attorney to pay to any other party the reasonable expenses caused by the failure.
- (6) Failure to preserve electronically stored or other evidence. If electronically stored or other evidence that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the Commission, upon finding prejudice to another party from loss of the evidence, may order measures no greater than necessary to cure the prejudice.

(Q) Discovery by the Commission.

- (1) The procedures listed in this rule may be used by the Commission, and the Commission may do so without any limitation on the number or form of requests that may be made by the Commission.
- (2) The availability of such procedures does not in any way limit the authority of the Commission, including the authority to inquire into and examine any proceeding within the jurisdiction of the Commission, to examine books, accounts, and papers of any person or entity subject to the Commission's jurisdiction, or to enter and examine the property of any person or entity subject to the Commission's jurisdiction.

(R) Discovery requests and responses.

- (1) Discovery requests served on parties or participants in a Commission proceeding must be filed with the Commission in ePUC.
- (2) Unless otherwise directed by the Commission, discovery responses need not be filed with the Commission, but parties and participants must file a certificate of service evidencing service of discovery responses on those parties or participants who are entitled to receive service of the responses.
- (3) If the Commission directs that discovery responses be filed with the Commission, the narrative responses must be filed in ePUC. Attachments must be filed in an electronic format outside of ePUC such as on a CD.

2.300 Consumer Complaints

2.301 Definition

A consumer complaint is a complaint filed by any person (whether an individual, corporation, association, partnership, or other entity) receiving service or entitled to receive service from a utility regulated by the Commission seeking a refund of charges ~~and~~ or an order requiring a utility to comply in a reasonable manner with any applicable tariff, statute, rule, or order of the Commission.

2.302 Form and Content

A consumer complaint ~~shall~~must set forth in writing a short and plain statement of facts showing that the complainant is entitled to relief. The statement ~~shall~~must be signed by the consumer. ~~Notwithstanding Despite~~ the foregoing, the Commission may in its discretion treat any written communication to it concerning a ~~matter~~proceeding within its jurisdiction to be a claim for relief.

2.303 Acknowledgment and Distribution of Complaints

The Commission ~~shall~~will acknowledge receipt of all written complaints ~~and shall~~. ~~If the Commission does not refer the complaint to the Department of Public Service, the Commission will send a copy thereof to the of the complaint to the subject of the complaint and any affected utility.~~

2.304 Referral to the Department of Public Service

In its discretion, the Commission may refer any consumer complaint to the Department of Public Service and request the Department to attempt to resolve the dispute. If the consumer complaint is not ~~thus~~ referred, if the Department ~~of Public Service~~ refuses to accept the referral, or if the Department is unable to resolve the matter, then the Commission ~~may open an investigation, order a response from the utility, and set the complaint for a hearing if it find,~~ (assuming, ~~that~~ the allegations ~~of in~~ the complaint ~~are to be~~ true, ~~that~~) there ~~is a probability of are~~ reasonable grounds to believe there has been a violation of tariffs, statutes, rules, or other orders of the Commission, ~~shall set the complaint for a hearing.~~ If, assuming that the allegations of the complaint are true, there ~~is are~~ no ~~probability of such~~ reasonable grounds to believe there has been a violation, ~~it shall the Commission must~~ dismiss the consumer complaint.

2.306-305 Hearings on Consumer Complaints

In setting a case for hearing, the Commission ~~shall assign a docket number must set the earliest date possible~~ and ~~shall~~ specifically set forth the issues to be resolved, ~~which. Those~~ issues, unless the requirements of justice dictate otherwise, ~~shall must~~ be the only issues ~~controverted addressed~~ at the hearing. If issues in addition to those so specified are to be heard, the parties ~~shall must~~ be afforded a reasonable time to prepare and respond. ~~The hearing shall be assigned by the clerk for the earliest practicable date.~~

2.306 Representation by Persons Not Admitted to Practice

~~Notwithstanding~~Despite the provisions of Rule 2.201, the Commission may in its discretion permit consumers to be represented in consumer complaint proceedings by persons who are not admitted to the practice of law, provided that such representatives ~~shall~~ demonstrate a sufficient familiarity with these rules and with all applicable substantive and procedural provisions of law ~~applicable to such proceedings.~~ Except for the requirement of admission to practice, such representatives ~~shall~~must comply with all rules, laws, practices, procedures, and other requirements applicable to proceedings before the Commission.

2.400 Matters Proceedings Other Than Consumer Complaints**2.401 Tariff Filings**

- (A) General. Tariff filings, including amendments to existing tariffs, ~~shall~~must be accompanied by a concise, narrative description of their nature and effect, stated in terminology ~~which~~that is comprehensible to the general public.
- (B) Amendments. Except where substantially the whole of a separately identified section of a tariff is affected, an amendment to an existing tariff ~~shall~~must be accompanied by a ~~separate explanatory~~redline version ~~which shows deleted material in brackets and broken underline and new material in solid underlines~~showing all changes.
- (C) New services. Where a tariff filing covers a new service, or a modification of an existing service, estimates of revenues and costs attributable to such service for each of the three years succeeding the introduction of the new or modified service, ~~must be included with the filing.~~ Schedules containing the information called for by this provision ~~shall~~must be accompanied by a statement of the name of the person or persons responsible for their preparation, together with a description of any underlying documentation, ~~which.~~ The underlying documentation ~~shall~~must be available through discovery immediately after the filing.

2.402 Rate Proceedings

- (A) Justification for change in rates. ~~In order to~~ To enable the Commission to determine whether new rates proposed by any utility should be further investigated or suspended, all rate filings ~~shall~~must contain complete and substantial justification for the proposed change, including the following:
- (1) detailed calculation of cost of service;
 - (2) detailed calculation of cost of capital;
 - (3) rate base calculation;
 - (4) the effect of the filing on annual operating revenues;
 - (5) projected construction expenditures by category for each of the following two years;
 - (A) (6) for electric utilities, a detailed statement of purchased power and production costs (with fuel costs separately stated) by source for the 12 months ~~prior~~leading up to the filing and a similar statement of projected purchased power

and production costs by source for the 12 months succeeding the filing; ~~such~~. Such costs for both periods ~~shall~~must be shown net of sales to other utilities or, in the alternative, revenues from such sales ~~shall~~must be separately stated.

- (B) Changes from previous order. Where a request for a change in rates proposes or utilizes any change in the ratemaking methodology or principles approved or utilized by the Commission in the most recent rate order affecting the same utility, such change ~~shall~~must be clearly identified, and a statement of the reasons for such change ~~shall~~must be given.
- (C) Exhibits and other information. ~~A utility whose rates are suspended shall, within thirty days from the date of the suspension order, file ten copies of all exhibits it intends to use in the hearing thereon, together with the names of witnesses it intends to call in its direct case, and a short statement of the purposes of the testimony of each witness.~~ In the case of a municipality or cooperative ~~which that~~ has filed a notice of change in rates, if the Commission gives notice that it intends to investigate such change, then the municipality ~~or~~ cooperative ~~shall~~must file ~~similar~~ exhibits, names of witnesses, and a statement of the purpose of their testimony within ~~thirty~~30 days of the giving of such notice. Except in the discretion of the Commission, a utility ~~shall may~~ not ~~be permitted to~~ introduce into evidence in its direct case exhibits ~~which are that do~~ not ~~filed in accordance comply~~ with this rule. This provision shall not be deemed to constitute a limitation on the ~~Commission's~~Commission's authority to require the prefiling of direct testimony in any case at such time as the Commission ~~may may~~ prescribe.

2.403 Petitions for Declaratory Rulings

Pursuant to 3 V.S.A. § 808, an interested person may petition the Commission for a declaratory ruling as to the applicability of any statutory provision or of any rule or order of the Commission. The petition ~~shall~~must identify the statute, rule, or order involved, ~~shall~~must include a proposed order of notice, and ~~shall~~must be accompanied by a brief ~~which that~~ conforms to the requirements of Rule 2.223. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate.

2.404 Petitions for Adoption of Rules

Pursuant to 3 V.S.A. § 806, an interested person may petition the Commission requesting the promulgation, amendment, or repeal of a rule. The petition ~~shall~~must describe the action requested, ~~shall~~must state the reasons for the request, and ~~shall~~must include a proposed order of notice.

2.405 Request for Tariff Investigation

Any interested person or entity may request that the Commission initiate an investigation pursuant to 30 V.S.A. § 227 into the justness and reasonableness of a ~~utility's~~utility's tariffs.

Whether ~~or not~~ to undertake such an investigation ~~shall be~~is within the ~~Commission's~~Commission's discretion.

2.406 Injunctions

(A) Definitions.

- (1) Temporary restraining order: an injunctive remedy ~~which~~that is issued either *ex parte* or under circumstances where the respondent has not been afforded an adequate opportunity to present its defense at a hearing held upon such notice as is otherwise required by law.
- (2) Preliminary injunction: an injunctive remedy issued after a hearing held upon legal notice but where the proceedings have not allowed the parties adequate opportunity to avail themselves of all procedures provided for by these rules and by all other provisions of law. A preliminary injunction cannot remain in effect beyond the conclusion of the proceeding in which it is issued.
- (3) Permanent injunction: an injunctive remedy issued as final relief after a hearing held upon legal notice and where the proceedings have allowed the parties adequate opportunity to avail themselves of all procedures provided for by these rules and by all other ~~provision~~provisions of law.

(B) Particular requirements for temporary restraining orders; examination of witnesses by the Commission.

- (1) A petition for a temporary restraining order must be ~~verified or must be~~ accompanied by affidavits or declarations attesting to all of its factual ~~legations.~~ allegations.
- (2) The Commission may require any facts alleged in the affidavits, declarations, or verified petition to be presented in oral testimony and may examine any witness testifying to such facts as to any matter ~~which~~that is relevant to the subject matter of the proceeding.
- ~~(B)~~ (3) The petitioner ~~shall~~must deliver a copy of the petition to the respondent before filing or, if such delivery would require delay ~~which~~that might cause irreparable harm, as soon ~~thereafter~~ as possible. If actual delivery to the respondent has not been made ~~prior to~~before filing, the petitioner ~~shall~~must notify the respondent or its attorney by telephone or by other means at the earliest possible time ~~thereafter. A temporary restraining order may be issued only where it clearly appears from specific facts shown by the affidavits or the verified petition, and by testimony if required by the Commission, that substantial immediate and irreparable injury, loss or damage, or danger to health or safety, will result to the petitioner before a hearing can be held upon proper notice.~~

- (4) A temporary restraining order may be issued only where it clearly appears from specific facts shown by the affidavits, declarations, or verified petition, and by testimony if required by the Commission, that substantial, immediate, and irreparable injury, loss or damage, or danger to health or safety will result before a hearing can be held upon proper notice.
- (C) Further proceedings after issuance of a temporary restraining order.
- (1) A petition for a temporary restraining order, whether ~~or not~~ it is so designated, shall also ~~constitute~~ constitutes a petition for a preliminary injunction and ~~or~~ a permanent injunction. Unless precluded by the existing scheduling of other matters, or unless the respondent does not object to longer scheduling, a hearing upon such
- (2) A hearing on a preliminary or permanent injunction shall must be held within forty-five days and as soon as practicable, unless the parties agree to a decision rendered within sixty days. later date.
- (3) Wherever possible, the Commission shall must attempt to make a final disposition of the ~~matter~~ proceeding, but if the proceedings do not allow the parties adequate opportunity to avail themselves of all procedures provided for by these rules and by all other provisions of law, then only a preliminary injunction may be issued.
- (C) (4) If a temporary restraining order has previously been issued, it shall continue in force until a decision is rendered on the preliminary injunction or the permanent injunction, as the case may be, unless it is dissolved by its terms or by further order of the Commission.
- (D) Particular ~~requirement~~ requirements for preliminary injunctions; further proceedings after issuance.
- (1) An application for a preliminary injunction, unless made in consequence of an application for a temporary restraining order as provided above, shall must be made by motion in connection with a petition for a permanent injunction.
- (2) No preliminary injunction may issue unless the petitioner establishes that the irreparable injury ~~which that~~ will be caused to ~~it~~ the petitioner if a preliminary injunction is denied, ~~(discounted by the probability that the respondent will prevail in the proceedings on the permanent injunction,)~~ will be greater than any injury ~~which that~~ the granting of the preliminary injunction will cause to the respondent.

- (3) If a preliminary injunction is issued, the Commission ~~shall~~must schedule such further proceedings as may be required for the permanent injunction; and the preliminary injunction shall continue in force until a decision is rendered on ~~such a~~ permanent injunction unless it is dissolved by its own terms or by further order of the Commission.
- ~~(D)~~ (4) Unless the Commission otherwise orders, the record made in connection with the temporary restraining order and the preliminary injunction shall also constitute part of the record in the proceedings on the permanent injunction.
- (E) Other matters.
- (1) Conditions. The Commission ~~shall~~must condition the issuance of a temporary restraining order or a preliminary injunction with such terms as justice and equity may require, including the giving of adequate security in favor of the respondent.
- (2) ~~Severence.~~Severance. In its discretion, the Commission may order the ~~severence~~severance of proceedings on a request for injunctive relief from proceedings for other relief.
- (3) Motion to dissolve. ~~a~~ A motion to dissolve a temporary restraining order or preliminary injunction may be made at any time. The motion ~~shall~~must state why the further proceedings scheduled on the matter are insufficient to protect the rights and interests of the moving party.
- (4) Hearing ~~examiners-officers.~~ Unless the Commission determines that it will expedite the resolution of the ~~matter~~proceeding or will otherwise further the ends of justice, no application for a temporary restraining order will be heard by a hearing ~~examiner~~officer.
- (5) Form of injunctions. A temporary restraining order, preliminary injunction, or permanent injunction ~~shall~~must state the date and hour of its issuance and ~~shall~~must be accompanied by findings of fact ~~upon~~on all of the issues specified or referred to in this rule.

2.407 Forms for Certain Purposes

The following forms, which are available on request and many of which are available on the Commission's website, must be used for submissions to the Commission: ~~annual reports, gross revenue tax reports, property valuation reports, accident reports, when applicable:~~

- notice of intervention
- motion to intervene
- certificate of public good municipal notice

- net-metering hearing request
- net-metering certificate of public good transfer
- net-metering certificate of public good transfer for net-metering systems sold separately from sale of land
- net-metering certificate of public good holder certification
- checklist for applications for net-metering systems greater than 50 kW that are not located on a roof and are not a hydroelectric facility
- net-metering registration
- net-metering application
- Department of Public Service and Public Utility Commission application fee
- Agency of Natural Resources application fee
- telecommunications certificate of public good registration
- mergers and acquisitions notification
- billing aggregators registration
- cellular provider registration
- interruption of electric service reports;
- disconnection of service reports ~~and~~
- cable TV applications.

2.408 Emergency Commission Action

(A) When the Governor has proclaimed a state of emergency pursuant to 20 V.S.A. § 9, a person or entity may request that the Commission, or the Commission may on its own, take emergency action to prevent imminent financial injury, loss, damage, or hardship to ratepayers or a regulated entity, provided such injury, loss, damage, or hardship is related to the state of emergency. This rule governs requests that the Commission take emergency action, unless a more specific procedure is prescribed by another rule or statute.

(B) Particular requirements for emergency requests.

(1) Emergency action can be requested by filing a petition pursuant to this rule and

Rule 2.202. In an ongoing proceeding, emergency action can be requested by filing a motion pursuant to this rule and Rule 2.206.

- (2) The title of the filing requesting emergency action must include “Request for Emergency Commission Action Pursuant to Commission Rule 2.408.”
- (3) A petition or motion for emergency action must be accompanied by affidavits or declarations attesting to all of its factual allegations.
- (4) The Commission may require any facts alleged in the affidavits or declarations to be presented in oral testimony and may examine any witness testifying to such facts as to any matter that is relevant to the subject matter of the request.
- (5) Unless the Commission otherwise orders, the record made in connection with the request for emergency action shall also constitute part of the record in any further proceedings relevant to the subject matter of the request.

(C) Procedure.

- (1) Emergency action may be ordered either *ex parte*, without comments from other parties, or under circumstances where other parties have not been afforded an opportunity to present evidence at a hearing held upon such notice as is otherwise required by law.
- (2) The Commission will only take emergency action where it clearly appears from specific facts shown by the affidavits or declarations, and by testimony if required by the Commission, that substantial immediate and irreparable financial injury, loss, damage, or hardship will result to ratepayers or a regulated entity before a proceeding concludes or a hearing can be held upon proper notice.

(D) Duration. A Commission decision to take emergency action shall continue in force until the term designated in the order taking emergency action expires, unless it is dissolved by further order of the Commission.

(E) Requests for extension or termination. The requesting party may file a motion to extend the emergency action. A motion to extend the emergency action must conform to the requirements of an initial filing for emergency action as described above in subsection (B). The requesting party may file a motion to end the emergency action at an earlier date.

(F) Opportunity for objections and further proceedings. If emergency action is taken, the Commission will schedule such further proceedings as may be required or requested by other parties. The emergency action shall continue in force as described above in

subsection (D).

(G) Other matters.

- (1) Conditions. The Commission may condition emergency action with such terms as justice and equity may require.
- (2) Hearing officers. Unless the Commission determines that it will expedite the resolution of the proceeding or will otherwise further the ends of justice, requests for emergency action will be heard directly by the Commissioners.
- (3) Form of emergency action. An order authorizing emergency action must be accompanied by findings of fact on all of the issues specified or referred to in this rule, including that (a) the imminent injury, loss, damage, or hardship is related to the state of emergency; and (b) the emergency action is necessary to prevent imminent financial injury, loss, damage, or hardship to ratepayers or a regulated entity.



INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

Meeting Date/Location: April 11, 2022, virtually via Microsoft Teams

Members Present: Chair Douglas Farnham, Brendan Atwood, Diane Bothfeld, Jared Adler, Jennifer Mojo, John Kessler, Diane Sherman, Michael Obuchowski and Donna Russo-Savage

Members Absent: None

Minutes By: Melissa Mazza-Paquette

- 2:02 p.m. meeting called to order, welcome and introductions of new ICAR members: Jared Adler, Department of Labor; and Donna Russo-Savage, Agency of Education
- Review and approval of minutes from the [March 29, 2022](#) meeting
- No additions/deletions to agenda. Agenda approved as drafted.
- The following emergency rules were supported by ICAR Chair Farnham:
 - 'Transitional Housing Program Emergency Rules', Agency of Human Services, Department for Children and Families, on 03/31/22
 - The purpose of the Transitional Housing Program is to offer more stability to households experiencing homelessness. The Transitional Housing Program will provide financial assistance to eligible households for up to 18 months in the form of direct monthly payments to motel and hotel owners who have executed an Occupancy Agreement with an eligible household. Eligible households include households experiencing homelessness category one or two as defined by the Department of Housing and Urban Development (HUD) with income at or below 80% of the Area Median Income (AMI) in the town in which the household is seeking housing. Recipients of Transitional Housing Program assistance must participate in Coordinated Entry - the system to refer and connect households to housing assistance – to find long term housing. The Transitional Housing Program will be funded by the federal Emergency Rental Assistance Program (ERAP) and will conform to all federal law and guidance governing ERAP.
 - 'Access to Health Care Services Related to COVID-19', Department of Financial Regulation, on 04/01/22
 - The emergency rule requires health insurers to provide continuing coverage of COVID-19 diagnosis, testing (including rapid antigen testing), and treatment without member cost-sharing.

- o 'Reportable and Communicable Diseases Emergency Rule', Agency of Human Services, Department of Health, on 04/01/22
 - This rulemaking does the following:
 - 1) Adds COVID-19 and multisystem inflammatory syndrome in children to the list of reportable diseases;
 - 2) Adds SARS-CoV-2 to the list of reportable laboratory findings and requires that all results be reported including positive, negative, and indeterminate.
 - 3) Adds race and ethnicity data as required reporting content;
 - 4) Adds the definition of electronic reporting to clarify approved methods of reporting and establishes a basis to share data between the Department and Vermont Information Technology Leaders (VITL);
 - 5) Adds standardization procedures for administrative specimen collection;
 - 6) Clarifies the timeframe for reporting laboratory findings to the Department;
 - 7) Removes certain animal diseases from the list of reportable diseases;
 - 8) Reorganizes sections for clarity.
- Formal rulemaking is already underway, which will include the proposed changes to this emergency rule.
- 'PUC Emergency Rule 2.500 COVID-19 Emergency Procedures', Public Utility Commission, on April 7, 2022
- No public comments made.
- Presentation of Proposed Rules on pages 3-4 to follow.
 1. Rules and Regulations: Visitor Conduct and Fees and Charges for State Park Services and Commercial Activities on Department Lands, Agency of Natural Resources, page 3
 2. Rule 2.000 Rules of Practice, Public Utility Commission, page 4
- Next scheduled meeting is May 9, 2022 at 2:00 p.m.
- 3:20 p.m. meeting adjourned.

Proposed Rule: Rules and Regulations: Visitor Conduct and Fees and Charges for State Park Services and Commercial Activities on Department Lands, Agency of Natural Resources
Presented By: Nate Mckeen and Rochelle Skinner

Motion made to accept the rule by Diane Bothfeld, seconded by Mike Obuchowski, and passed unanimously except for Jen Mojo who abstained, with the following recommendations:

1. Proposed Rule Coversheet, #12: Clarify “are centered” language.
2. Proposed Rule Coversheet, #14: Include information to attend virtually.
3. Proposed Rule Coversheet, #16: Add ‘boat slips’, ‘moorings’ and ‘Stone Hut’.
4. Adopting Page, #4: Complete.
5. Economic Impact Analysis: Include a simple table of comparison data to neighboring states, and how much money it’ll generate both in and out of state. Include a link in the rule filing to the analysis on your website.
6. Public Input Maximization Plan: Clarify the timing of distribution of information through the channels listed and public hearing.
7. Annotated Text, page 9, #2(b): Include language of what will happen if it's not paid in one lump sum (i.e., it's subject to regular fees).
8. Not mentioned during the meeting but subsequently communicated to presenters:
 - a. Economic Impact, #8: If appropriate, change ‘state’s’(singular) in the last sentence on page two pertaining to “neighboring state’s park fees” to states’ (multiple).
 - b. Economic Impact, #8: Clarify the following sentence where italicized: “The alternative to increasing state park camping prices is *to rely on more General Fund* for the additional \$1.5 million per year to support the operation and maintenance of Vermont's 55 state parks.” Perhaps to read something like “rely more on the General Fund for the additional \$1.5M” or “rely on more General Fund monies for the additional \$1.5M”.
 - c. Public Input Maximization Plan, #3: The parenthetical “825,000 unique users” is missing the closing parenthetical.
 - d. Check for consistency throughout the filing, such as the following examples:
 - i. Sometimes when an answer is a single sentence it ends in a period and sometimes it doesn’t.
 - ii. The Economic Impact form refers both to the ‘General Fund’ in #8 and the ‘general fund’ in #9.

Proposed Rule: Rule 2.000 Rules of Practice, Public Utility Commission

Presented By: John Cotter

Motion made to accept the rule by Brendan Atwood, seconded by Diane Bothfeld, and passed unanimously except for Mike Obuchowski who left the meeting early therefore did not vote, with the following recommendations:

1. Proposed Rule Coversheet, #16: Change 'Commission' to spell out 'Public Utility Commission'.
2. Proposed Rule Coversheet #8: In (3) and (4) provide a succinct summary of how the rules are changing to facilitate participation and include what the procedural changes around COVID-19 were focused on.
3. Include ways that the rule was changed to increase the likelihood of public participation in the hearings themselves.
4. Proposed Rule, page 24, #2.216: Consider clarifying language to include virtual participation.
5. If appropriate, clarify that the rule follows the Supreme Court and how that impacts your proceedings and how you're interpreting that.
6. If appropriate, clarify that if a change is implemented by an order, is that change then integrated into the text, so others don't have to look at the text and then look at a series of orders as well.
7. Proposed Rule, #2.104: If appropriate, switch language order of 'Commission order' and 'Commission rule'.



**State of Vermont
Public Utility Commission**

RULE 2.000 RULES OF PROCEDURE RULEMAKING

Responsiveness Summary

August 24, 2022

I. Introduction

During the public comment period for Vermont Public Utility Commission Rule 2.000 (Rules of Procedure), the Commission received written comments and oral comments at a public hearing from Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC (“Comcast”). The Commission also received oral comments at a public hearing from Vermonters for a Clean Environment.

Synopses of the comments and responses are provided below.

II. Comments and Responses

A. Comcast

Comment:

In both its written and oral comments, Comcast raised concerns about the lack of notice to entities that (like Comcast) place attachments on utility poles. This notice issue can occur when an owner of utility poles proposes “changes to pole tariffs by pole owning utilities that affect not only pole attachment rates, but also pole access that can have a significant impact on the construction and operation of critically important broadband networks.”¹ While Comcast seems to recognize that its concern is best addressed through an amendment to Commission Rule 3.709(A), which specifically addresses the notice requirements for those types of proceedings, Comcast argues that a “time consuming, expensive amendment to [Commission Rule] 3.709(A) should not be required for attaching entities to receive notice of all tariff filings by pole owning utilities where the issue can be expeditiously resolved in the instant proceeding.”²

¹ Comcast’s July 5, 2022, Comments at 1-2.

² *Id.* at 2 (footnote omitted).

Although Comcast's concern is specific to changes to pole-attachment terms and conditions, Comcast recommends changes to Rule 2 that would provide that "for every type of proceeding," the initiating party would need to provide notice of the proceeding to all "persons and entities with known significant interests that may be affected."³

Finally, Comcast recommends changes to ePUC (the Commission's electronic filing system) to "allow[] a subscriber to elect to receive notice of filings by industry."⁴

Response:

Although the Commission continues to believe, as Comcast seems to recognize, that the preferred way to address Comcast's concern would be through an amendment to Commission Rule 3.709(A), the Commission has nevertheless addressed Comcast's concern through changes to Commission Rules 2.204 and 2.205. In response to Comcast's comments, proposed Commission Rule 2.204(A) now requires service to (among others) all entities entitled to service under Rule 2.205, and Rule 2.205(A) in turn provides as follows:

At the beginning of a proceeding that proposes to make changes to existing pole-attachment terms or tariffs, proposes a new pole-attachment tariff, or seeks approval of a program involving pole-attachment rates, the pole-owning entity must provide notice of the filing to all entities that currently have equipment attached or have applied to attach equipment to one or more poles owned by the pole-owning entity.

These changes ensure that Comcast—and all other known pole-attaching entities, including those that have applied to attach equipment to poles owned by the pole-owning entity—will be provided notice of proposed changes to pole-attachment terms or tariffs.

In light of the above changes, the Commission did not adopt Comcast's broader suggestion to make changes that would require notice to all those who have known significant interests that may be affected by a proceeding. While the Commission agrees with this concept in principle, the Commission is reluctant to adopt a rule requiring such notice for all proceedings. Comcast's proposed language is too broad and vague and would likely lead to unnecessary litigation. When it comes to notice of a particular proceeding, either a Vermont statute or a Commission rule specific to that type of proceeding (or both) usually states which entities are entitled to notice. This simplifies the process for entities seeking Commission approval so that, for instance, a developer of a new solar project knows which entities are entitled to notice. Adding an additional, undefined notice requirement would not be fair to petitioners.

³ *Id.* at 3.

⁴ *Id.*

Finally, regarding Comcast's request to change ePUC to allow a subscriber to receive notice of filings by industry, that request is not related to the proposed changes to Rule 2.000. Further, ePUC's functionality depends on the underlying electronic case-management software that the Commission has licensed. While this software is quite configurable, it currently cannot be configured to allow an entity to subscribe to a particular industry. The Commission always welcomes feedback from stakeholders and members of the public on ePUC, and the Commission has informed the software vendor that there is interest in adding this functionality to ePUC. However, the Commission does not know whether the functionality needed to enable the change requested by Comcast will be added to the software and, regardless, that is not a matter that is relevant to Rule 2.000.

B. Vermonters for a Clean Environment

Comment:

During a public hearing, Vermonters for a Clean Environment noted that proposed Rule 2.201(A)(3) was missing language that appears in Rule 2.201(A)(2) regarding automatic notices of appearance. Vermonters for a Clean Environment requested that the Commission address this oversight.

Response:

The Commission has adopted the request by Vermonters for a Clean Environment to remedy this inconsistency. Proposed Commission Rule 2.201(A)(3) now contains similar language that appears in Rule 2.201(A)(2) regarding automatic notices of appearance.

III. Additional Change

Although not raised by any of the commenters, the Commission made an additional change to proposed Rule 2 in response to a recent update to the Vermont Rules of Civil Procedure. Consistent with the updated Vermont Rules of Civil Procedure, the following two sentences were added to proposed Commission Rule 2.219(B) regarding motions for summary judgment: "The moving party may file a reply memorandum within 14 days after service of the opposition. The Commission may also allow a surreply memorandum."

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DOREEN M. PALMISANO

July 5, 2022

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 Ms. Anderson,

Comcast respectfully provides brief comments on the Public Utility Commission's proposed amendments to Rule 2 filed with the Vermont Secretary of State on May 18, 2022.¹ Comcast also provides a redline reflecting Comcast's suggested amendments to sections of Rule 2 that will serve to assist the Commission in ensuring that all parties with interests at stake in a proceeding receive notice of the initiation of the proceeding, including to approve a tariff amendment.²

One of the Commission's stated goals in this proceeding is to facilitate public participation. Comcast's Reply Comments dated October 8, 2021,³ focused on changes to sections of Rule 2 that impact how interested parties are identified by the initiating party or Commission, are placed on the service list and receive notice that a proceeding that will impact them has been initiated. Simply put, intervention rights cannot be exercised unless there is notice. Comcast very much appreciates the Commission's consideration of our comments on this issue, and its proposal to add language to Rule 2.204(A) to address Comcast's concerns.⁴ As described below, Comcast and other attaching entities on utility poles, have a strong, well-known interest in any changes to pole tariffs by pole owning utilities that affect not only pole attachment

¹ See Memo of Holly R. Anderson, Clerk of the Commission dated May 25, 2022, To: #20-2369-RULE - Proposed revisions to Vermont Public Utility Commission Rule 2.000Re: Filing with the Secretary of State.

² Comcast participated in the public hearing on June 27, 2022, during which Kyle Landis-Marinello, General Counsel, suggested that Comcast provide the Commission with a redline of its suggested changes. Public Hearing Transcript at 11.

³ Comcast participated in the workshops on December 18, 2020, and January 21, 2021, and filed comments on December 4, 2020, and October 8, 2021.

⁴ Order Responding to Participants' Comments at 4.

rates, but also pole access that can have a significant impact on the construction and operation of critically important broadband networks. A time consuming, expensive amendment to 3.709(A) should not be required for attaching entities to receive notice of all tariff filings by pole owning utilities⁵ where the issue can be expeditiously resolved in the instant proceeding.

Currently, unless the Commission directs notice for changes in tariff rates, pole owning utilities can file for and obtain approval for amendments to pole tariffs from the Commission without attaching entities receiving notice of the filing from the pole owner or the Commission.⁶ In short, a tariff proceeding can commence and conclude with the change being approved by the Commission, *before the pole owner provides the attaching entity notice of the approved rate or condition and before providing the 60 days' notice required under Rule 3.709(A)(2)*. Therefore, attachers are unable to challenge the reasonableness of a tariff rate or condition prior to its approval, as they have not been notified of the proceeding. If pole owners are able to provide notice to attachers post tariff proceeding, there is no greater burden providing the notice before action is taken. This simple step will better serve both the need of ensuring that all those potentially impacted have the opportunity to be heard and the Commission's stated goal of facilitating public participation. The letter of the New England Cable and Telecommunications Association's letter to the Commission on April 8, 2021⁷ describes the situation in greater detail (attached).

⁵ Tariffs of Pole-Ownning Utilities cover more than just pole attachment rates; they cover critical terms and conditions of service. In Vermont tariffs are substitutes for negotiated pole attachment agreements, which is why notice of a change in an existing tariff is so important. Just as a contract or a pole attachment agreement (prevalent in states other than Vermont) 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 thereby affording them a reasonable opportunity to assess the proposal, and to intervene and offer comments and recommendations if necessary.

⁶ Section 225(a) of Title 30 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." See Order Opening Investigation and Notice of Prehearing Conference, Vermont Electric Cooperative, Inc., Pole Attachment rate change filing to be effective with bills rendered January 1, 2019, August 8, 2018 at 2. Citing 30 V.S.A. §225(a), the Commission directed VEC to notify attaching entities of a proposed rate change. However, the Commission's order came only after attaching entities petitioned to intervene (having inadvertently learned about the tariff filing). VEC had opposed the interventions stating that "Rule 3.709 requires that notice be provided to attachers 60 days prior to increasing pole attachment rates. Filing the tariff in itself does not increase pole attachment rates, so notice is not required until the Commission has acted to approve the rate increase. Nothing in Rule 3.700 contemplates that attaching entities are entitled to prior notice or opportunity to be heard" (footnote omitted). Comcast submits that under 30 V.S.A. §225(a), the Commission should require service of notice of tariff rate filings on attaching entities – particularly when attaching entities have requested it - but is not confident pole owners are in agreement.

⁷ The NECTA letter is not dated but was sent on April 8, 2021. As indicated by their titles, both dockets involved amendments to pole owner tariffs providing discounts on upfront pole make ready costs to extend broadband to unserved areas. Comcast has strong interest in these types of programs but did not receive notice of the filings and thus had no opportunity to intervene. Case No. 21-0544-TF, Tariff Filing of Green Mountain Power for Approval of a Temporary Unserved Location Broadband Deployment Rider pursuant to 30 V.S.A. §§ 225-227. Green Mountain's response letter dated April 9, 2021, in the docket indicated that a Proposed Telecommunication Provider Customer Notice was sent after the tariff was approved. Green Mountain's response also stated "The notice approach proactively went beyond PUC rule requirements for notice related to pole attachment tariff changes, which only require notice under Rule 3.709 for tariff changes that *increase* attachment rates. Case No. 21-2807-TF, Tariff Filing of Vermont Electric Company for Approval of a Temporary, Unserved Location, Broadband Deployment Rider pursuant to 30 V.S.A. §§ 225-227. Vermont Electric Company's response letter dated April 8, 2021, to NECTA's letter filed in Case No. 21-2807-TF stated "First, as a practical matter, no party was prejudiced by not

Comcast respectfully requests that the Commission amend Rule 2 to include language ensuring, for every type of Commission proceeding, notice of the proceeding will be provided to persons and entities with known, significant interests that may be affected. The Commission should add a new definition for “Order of Notice” in Rule 1.102 and amend Rules 2.205(A) and 2.204(A) to require the initiating party to identify parties with such known interests that will be impacted and file a proposed Order of Notice.

Specifically, the language in current Rule 2.205(A) should be retained⁸ and the filing of proposed Order of Notice should be required that would be sent to the identified persons or entities (such as those whose joinder would be required under Rule 2.210 or those who would be entitled to intervene as of right under Rule 2.209(A)).⁹ Comcast’s redline of recommended language changes is attached.

Further, with respect to proposed tariff amendments, Pole-Owning Utilities should be required to notify all Attaching Entities of the filings or identify them so that the Commission can place them on the service list.¹⁰

In addition, Comcast recommends changes to ePUC allowing a subscriber to elect to receive notice of filings by industry, including Petitions to initiate new proceedings. This change would afford better public notice of all new proceedings initiated by the PUC. For example, in Connecticut and Maine, a person can subscribe to receive all filings (including filings initiating a proceeding), filings by industry or filings in a specific docket. The Vermont ePUC does not have this functionality. In Vermont, an interested person must first know about the docket *before* they can subscribe to receive filings. Changes to ePUC functionality which would allow

receiving advance notice” and later continued “we reviewed the notice requirements of PUC Rule 3.709... none of those circumstances exist here”. Respectfully, pole owners are not the ones to determine whether attaching entities are prejudiced by lack of notice. For another example of lack of notice of a tariff filing, See Comcast letter dated May 24, 2019 in Case No.19-1169, Green Mountain Power Corporation Tariff Filing to Amend Pole Attachment Tariff to be Effective June 8, 2019 noting lack of notice p. 2.

⁸ Without our added language, the proposed amendment to 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 thus potentially leaving the Commission without critical information.

⁹ Under the proposed amendment to Rule 2.205, the Commission would have the discretion over whether there would be an Order of Notice.

¹⁰ The NECTA letter requested that pole owners provide notice to attaching entities of all pole attachment tariff filings, and Comcast repeats that request here. Pole-Owning Utilities are in the best position to identify and provide notice to all Attaching Entities. The Commission often requires notice to parties with known interests in proceedings and should do the same for pole tariff filings. E.g., Order Opening Proceeding and Request for Comments, November 25, 2019, in Case No. 19-4625-INV, Investigation concerning matters related to Vermont Public Utility Commission Rule 8.313 and the line extension policies and tariffs of cable operators in Vermont (notice of proceeding posted on Commission website and provided to cable operators); Order Opening Investigation and Notice of Hearing, Docket No. 5903, Investigation into Service Quality Standards, Privacy Protections, and other Consumer Safeguards for Retail Telecommunications Service, July 31, 1996 (all companies authorized to provide basic local exchange telephone service shall become parties); Order Initiating a Workshop Process and Notice of Workshop Regarding Service Provider Backup Power Obligations, April 3, 2019, Case No. 19-0705-PET, Request of Vermont Department of Public Service for a workshop regarding service provider backup power obligations (Commission develops broad service list).

any person to request notification any tariff filing (a subcase type) in ePUC would be extremely helpful.¹¹

In conclusion, participation in Commission proceedings will be fostered if parties initiating proceedings must identify other parties that will be impacted.

Please let me know if you or the Commission have any questions. Comcast will attempt to respond quickly.

Very truly yours,


Gerald R. Tarrant

cc: Parties via ePUC only

¹¹ This would include tariff filings that are not docketed or assigned case numbers in ePUC.

2.102 Definitions

[Comcast proposes new definition of Order of Notice].

Order of Notice: A Commission order directing the party initiating a proceeding to provide notice of the proceeding to parties identified by the initiating party or the Commission as having rights or interests that will be affected or determined in the proceeding.

2.204 Pleadings and Other Filings; Service, Filing, Form and Amendment

(A) Service, when required. In addition to any other requirement imposed by law, every filing ~~must shall~~, on the same day on which it is filed, be served by the party filing the same ~~upon on~~ every other party who has filed a notice of appearance, ~~unless the~~ **and on every party that is entitled to notice by state, rule, Commission order or Order of Notice** ~~for good cause otherwise directs~~.

2.205 Notice to other Persons or Parties

(A) Statement regarding persons entitled to notice. At the commencement of any proceeding, the party initiating the same shall file a statement identifying by name and address each person, party or other entity **whose rights or interests may be affected or determined in the** ~~to whom or to which the Commission or the Clerk is required to give notice of such proceeding~~.

(B) Orders of notice. **In proceedings in which the required joinder of parties under Rule 2.210 or in which parties that would be entitled to intervene as of right under Rule 2.209(A) is applicable,** ~~the~~ **the Commission shall require a proposed order of notice and in other proceedings** may require any party who seeks the granting or denial of any form of relief to file a proposed order of notice



New England Cable & Telecommunications Association, Inc.

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Holly Anderson, Clerk of the Commission
Vermont Public Utility Commission
112 State Street
Montpelier, VT 05620-2701

Re: Lack of Notice of Pole related Tariff filing to NECTA members/attachers

Dear Clerk Anderson:

I am writing on behalf of members of the New England Cable and Telecommunications Association ("NECTA"). NECTA is a five-state regional trade association representing substantially all private telecommunications companies in Vermont, Connecticut, Massachusetts, New Hampshire and Rhode Island. In Vermont our member companies include Comcast, and Charter. NECTA members serve 185 Vermont municipalities with broadband, video, voice and home security and automation services. NECTA members provide high-speed broadband to 155,000 homes and businesses and attach to tens of thousands of utility poles across all areas of Vermont. NECTA members consistently invest in the upgrade, enhancement and maintenance of their networks, investing over \$200 million in Vermont in the past 10 years. NECTA members actively participated in the Vermont Department of Public Service's ("DPS") Connectivity Initiative Program and the Line Extension Customer Assistance Program and have responded to DPS Commissioner Tierney's Call to Action to further deploy broadband service to Vermonters. In addition, our members continue to assist Vermonters in connecting to broadband during this difficult time through adoption initiatives such as Comcast's Internet Essentials and Charter Communications' Spectrum Internet Assist. In short, NECTA members have an extensive and well-established record of working to enhance access to high-speed internet as well as broadband connectivity for all Vermonters.

It is for this reason that I write to express our serious concern about the lack of notice provided to NECTA and our members, cable broadband attachers, of tariffs recently filed by two Vermont utilities— Green Mountain Power and Vermont Electric Coop. Furthermore, we expressly request that the Public Utility Commission ("Commission") on a going forward basis direct pole owners to provide affirmative notice to all attachers at the time proposed tariff changes are filed that affect rates, terms and conditions of attachment pursuant to pole tariffs.

In this matter, on March 12, 2021, the Commission approved tariffs by the two pole owners that offer discounts to broadband providers for the costs of utility pole “make-ready” for new facilities to provide service to customers that lack access to broadband service with a speed of at least 4/1 Mbps.¹ These discounts are meant to incentivize broadband operators to reach unserved areas. NECTA members were only made aware of the tariff filings and associated dockets during an unrelated workshop regarding line extensions during which NECTA members were asked by the Hearing Officer if they participated in those dockets. Members learned during the workshop, and upon subsequent review of the docket filings, that the pole owners notified only a subset of broadband providers consisting of various telephone providers and Communications Union Districts (“CUDs”), but the pole owners’ outreach did not include NECTA members. NECTA members were not notified of Commission proceedings on the two tariffs or placed on a service list by the Hearing Officer or the Department as interested parties, despite NECTA members’ active participation in a number of pole related matters in recent years.

These developments are of particular concern because the tariffed discounts are available only to the first provider applying to reach an unserved location². Therefore, the failure by the pole owners, Commission or Department to notify NECTA members about the filing of tariffs, dockets and Orders, while at the same time notifying the CUDs and other broadband providers, puts NECTA members at a clear disadvantage. The lack of notice is surprising, particularly since NECTA members were fully engaged on the amendments to the Commission’s pole attachment rules last year, ongoing broadband expansion and adoption efforts, and the Commission currently has another open rulemaking underway with the goal to increase public participation in its proceedings.

To be clear, NECTA does not object with the policy objectives of the two tariffs and in fact continues to support any concepts that encourage broadband deployment in unserved areas. However, NECTA takes serious issue with what appears to be selective notice of the tariff filings and discounts, resulting in a broadband policy that gives an unfair competitive advantage to some broadband providers over others.

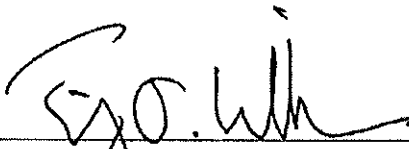
¹ While NECTA members monitor the ePUC activity, in order to monitor a specific docket and sign up to receive all filings, members must first be aware the docket exists.

² It is also questionable how a discount that is available on a first-come basis can be applied retroactively.

On behalf of its members, as stated above, NECTA respectfully requests that the Vermont Public Utilities Commission on a going forward basis direct pole owners to provide affirmative notice to all attachers at the time proposed tariff changes are filed that affect rates, terms and conditions of attachment pursuant to pole tariffs.

On behalf of our members and their customers, I would like to thank you for your continued work on these issues.

Respectfully,

By: _____

Timothy O. Wilkerson, President

New England Cable and Telecommunications Association, Inc.

CC:

Victoria Brown

Geoffrey Hand

Dan Burke