

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 21-0861-RULE

Proposed revisions to Vermont Public Utility Commission Rule 5.400	
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Order entered: 11/22/2022

ORDER RESPONDING TO PARTICIPANT COMMENTS

I. INTRODUCTION

In today's Order, the Vermont Public Utility Commission ("Commission") responds to comments received during the final stages of the informal rulemaking process and notifies the participants that it will begin the formal rulemaking process by filing a draft proposed rule with the Vermont Interagency Committee on Administrative Rules and the Vermont Secretary of State. Attached to this order are clean and redline documents incorporating changes made to the most recent draft proposed rule that was circulated by the hearing officer in this proceeding on June 16, 2022.

II. BACKGROUND

On February 9, 2021, the Commission issued an order opening a rulemaking to begin a review of Commission Rule 5.400, the Commission rule that establishes the requirements and procedures for filing petitions or applications for proposed projects that require review and approval under 30 V.S.A. § 248. As the Commission noted in its February 9, 2021, order, it has been many years since the Commission reviewed Rule 5.400 in significant detail. During those years, Commission practices have changed significantly. The biggest change has been our move to electronic filing and case management through ePUC. Also, consistent with Act 174 of 2016, the Commission constantly seeks to facilitate public participation in all of our proceedings. Lastly, the number of cases filed under Rule 5.400 has increased dramatically in recent years. As a result, the Commission proposed a number of amendments to respond to these changes, as well as changes to clarify the requirements of Rule 5.400 so that petitions are both complete and more consistent at the time they are filed.

During the course of this proceeding, the Commission circulated several proposed drafts of amendments to Rule 5.400, conducted two workshops, and solicited five rounds of written comments.¹ Persons and entities participating in this process included:

- the Vermont Department of Public Service;
- the Vermont Agency of Natural Resources;
- the Vermont Natural Resources Board;
- the Vermont Agency of Agriculture, Food and Markets;
- Green Mountain Power Corporation;
- All Earth Renewables, Inc.;
- Downs Rachlin Martin PLLC;
- Cindy Hill, Esq.;
- Green Lantern Capital LLC;
- Sheehey Furlong & Behm;
- Stackpole & French Law Offices;
- Vermont Public Power Supply Authority;
- Vermont Electric Power Company, Inc.;
- Vermont Transco LLC;
- Dunkiel Saunders Elliott Raubvogel & Hand, PLLC;
- Vermont Electric Cooperative, Inc.;
- Vermont Gas Systems, Inc.;
- Conservation Law Foundation;
- Renewable Energy Vermont; and
- Encore Renewable Energy.

The draft amendments to Rule 5.400 attached to this order represent the Commission's consideration of all comments made in this proceeding, including the comments made at the most recent workshop, held on October 3, 2022, and any written comments filed since that time.² After consideration of one more round of written comments in response to the current draft, the

¹ Several sets of written comments were filed outside of the formal comment solicitations. The Commission received and reviewed all of these comments as well.

² The redline version that is attached to this order reflects the changes made to the draft that was circulated by the hearing officer on June 16, 2022.

Commission intends to begin the formal rulemaking process by filing a draft proposed rule with the Interagency Committee on Administrative Rules and the Secretary of State shortly after considering the final round of written comments. The Commission will conduct the formal rulemaking using ePUC and will do so using the same case number that has been used in this informal process (Case No. 21-0861-RULE). Therefore, any person or entity that is a participant in Case No. 21-0861-RULE will continue to receive notices of all documents issued by the Commission or filed by participants in the case.

III. DISCUSSION

The Commission thanks all of the participants for their thoughtful comments and insights throughout the informal portion of this rule amendment process. Below, we discuss several of the remaining issues that participants raised in the latest comments received, both in writing and at the October 3, 2022, workshop.³

A. 5.402(A)(b) Identification of Adjoining Landowners

The Commission has further expanded the information sources that petitioners may use to develop their lists of adjoining landowners. The list of permissible sources now includes not only municipal grand lists, but also the Vermont Center for Geographic Information database, municipality-specific databases, the Vermont Department of Taxes grand lists, or electronic versions of grand lists maintained by municipalities in which a proposed project will be located. When a petitioner uses an online data source, it must verify with the relevant municipality that the database provides accurate and current information regarding parcel ownership within that municipality. The petitioner is required to document that it verified the accuracy of the data source by including a signed attestation to that effect.⁴

B. 5.403(A)(6) and (7) Property Boundaries Versus Project Boundaries

The Commission has made further edits to these sections to clarify that site plans must show project boundaries rather than property boundaries. The intent is to avoid requiring

³ Several smaller changes are also shown in the attached draft amendments that are not specifically discussed in this order. Therefore, in addition to reading this order, participants should carefully review both the redline and clean versions of the attached documents.

⁴ Notarization is not required.

petitioners to conduct surveys of larger parcels of land when that information is not relevant to a decision under Section 248. Together, these sections still require: (1) a map that shows enough of the property adjacent to the project to show nearby features and uses, and (2) where specific setbacks apply, a site plan that shows the distance between the project and the resource from which it must be set back (e.g., the nearest property boundary or road).

C. 5.404 Petitions for Linear Projects

The proposed amendments to this section have been rewritten generally in response to comments made both in writing and at the October 3, 2022, workshop.

D. 5.407(B) Service and Notice of Petition

This section has been revised to make clear that a petitioner may rely on the list of adjoining landowners that it developed for use in sending out advance submissions under Rule 5.402 provided the petition is filed within 180 days of service of the advance submission. If the petition is filed after 180 days of service of the advance submission, the petitioner must update its list of adjoining landowners using the methods authorized in Rule 5.402(A)(b).

E. 5.409 Intervention

The language of this section has been amended to: (1) reflect that certain persons and entities have a statutory right to intervene without limitation in Section 248 proceedings, and (2) add the requirement that, for intervenors identified in this section that do not have an independent statutory right to notice intervention, those intervenors must include a list of specific issues on which the intervenor is seeking to participate and an explanation of how the intervenor's interests will be affected by a decision on the petition. The addition of this requirement will enable the Commission to better exercise its authority under Commission Rule 2.209(C) to condition intervention where appropriate.

The Commission has received and considered several comments over the course of this proceeding expressing concern over the consequences of unlimited intervention by parties without concrete interests in a particular proceeding. The Commission believes that the current revisions strike an appropriate balance by simplifying the intervention process for persons and entities that are very likely to have interests that would be affected by the outcome of a

proceeding, while also providing the Commission with the information it needs to properly administer cases using its discretion under Rule 2.209(C).

The Commission has also received comments questioning the Commission's authority to allow intervention by notice for persons and entities that are not expressly granted that right under Section 248. We disagree with those commenters who assert that the Commission is without that authority. The Vermont Supreme Court has made clear that Article III standing is "not the relevant standard" in deciding interventions in Section 248 cases. Rather, intervention in Section 248 cases is governed by the Commission's rules, which it must apply "in pursuit of its mandate under 30 V.S.A. § 248 to ensure that the purchase and construction of new gas and electric facilities serve the general good of the State." In so doing, the Commission is "engaged in a legislative, policy-making process" that requires it to use its "informed judgment." In performing this task, the Commission therefore has the "flexibility to decide whose presence as a party would productively inform its policy-making."⁵ The Commission believes that Section 5.409 is a reasonable exercise of the Commission's authority as described by the Vermont Supreme Court, and is consistent with the Commission's statutory mandate to gather evidence that will inform its judgment on whether proposed projects serve the general good of Vermont.

F. 5.413 Amendments to Section 248 Projects

This section of the rule has been revised to: (1) recognize and account for the fact that some larger, segmented projects may be commissioned in phases; (2) distinguish between project changes that can fairly be considered modifications and those that are more properly considered new changes and their related fee impacts; (3) clarify the fee applicable to changes for approved but not-yet-commissioned projects; and (4) clarify the requirements for technical changes to CPGs for both commissioned and non-commissioned projects.

IV. COMMENTS AND CONCLUSION

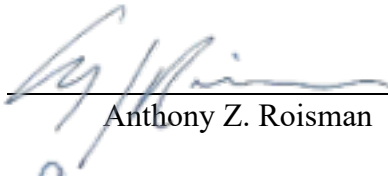
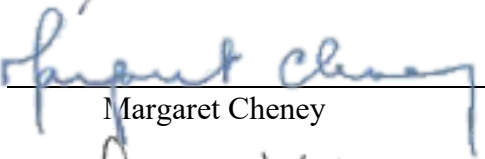
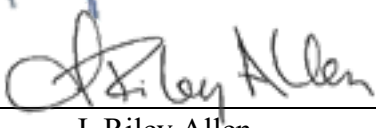
Participants are requested to file comments on the attached revised draft rule no later than close of business on December 16, 2022. The Commission will review and consider any comments received by that date as it prepares its proposed rule for filing with the Interagency

⁵ *In re Petition of Green Mountain Power Corp.*, 2018 VT 97, ¶ 23.

Committee on Administrative Rules and the Secretary of State. Further comments and participation in the amendment of Rule 5.400 will then follow the formal rulemaking procedures described in the Vermont Administrative Procedure Act. As noted above, the Commission will process the rulemaking in ePUC and will retain the same case number (21-0861-RULE).

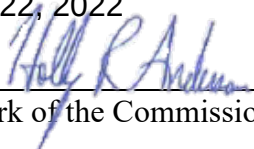
SO ORDERED.

Dated at Montpelier, Vermont, this 22nd day of November, 2022.

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

OFFICE OF THE CLERK

Filed: November 22, 2022

Attest: 
Clerk of the Commission

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

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