



August 15, 2023

Holly R. Anderson
Clerk of the Commission
112 State Street
Montpelier, VT 05620-2701

Re: Case No. 21-0861-RULE Proposed revisions to Vermont Public Utility
Commission Rule 5.400

Dear Ms. Anderson,

Vermonters for a Clean Environment (“VCE”) hereby provides comments on proposed revisions to PUC Rule 5.400.

VCE has not participated in this Rule update and therefore do not find it appropriate to suggest any new changes to the work that has been done to date. However we will note that it is disappointing to see that the Rule update did not take the opportunity to require high quality photographic simulations of projects.

VCE’s comments follow reviewing the proposed changes, and reading the comments by REV, VELCO and VEC provided to the PUC at the August 8 public hearing.

1. The most important and necessary change to Rule 5.400 is the Advance Notice requirement for notification to adjoiners. This aligns with the net-metering rule and Section 248a requirements and has been a problem with lack of notice to adjoiners until Petitions are filed. Thank you.

2. VCE supports the automatic right to intervene that the Rule update provides to adjoiners. VEC objects to this change as they find the Motion to Intervene requirement valuable to understand adjoiners’ issues. VELCO objects, claiming it will add more time and expense to the process.

VCE sees real value in enabling adjoiner participation in Petitions on all substantive criteria. The Motion to Intervene process itself is cumbersome and adds time to the process, often unfairly disadvantaging adjoiners who have to wait for responses and responding to responses, without a seat at the table at scheduling conferences where first round discovery often starts before the PUC has ruled on Motions to Intervene.

The PUC process allows for automatic parties to intervene and participate, or not. After municipalities were given the right to intervene, it is common for towns to file a Notice of Intervention and monitor, but not participate. Participation at the scheduling hearing, in discovery, and filing pre-filed testimony will provide all parties with the information needed to understand the issues of concern to adjoiners who receive automatic party status under this Rule update.

VEC complains that adjainers often do not respond to outreach and VEC does not understand adjainers issues that could be addressed does not seem to be sufficient reason to deprive adjainers of the opportunity to fully participate in the case. *Pro se* participation comes with obligations, and once an adjainer has intervened either by hiring an attorney or self-representing, all parties are expected to interact with each other outside of the PUC process for a variety of reasons.

The opportunity to bring expert witness testimony to the PUC on issues that are currently restricted to the realm of state agencies is one that can enhance the information on which the PUC bases its decision. Whether it is with a town or a state agency, Petitioners often make deals outside of the public process that have more to do with money or mitigation and deprive the PUC of the opportunity to hear testimony that would be beneficial to consider in the evaluation of the public good.

3. Commenters at the Public Hearing objected to the inclusion of the Natural Resources Board (NRB) as a party. One commenter claimed it is hard to identify parcels with Act 250 permits. With the on-line database sortable by town, VCE has found it to be relatively easy to identify Act 250 permits on parcels subject to PUC jurisdiction. Sometimes documents are not posted but the case numbers make it easy to then get the files from the District Commission. Though the NRB seems to rarely participate in PUC cases, VCE sees no harm, and potentially a benefit especially if the NRB is reconfigured to make it more effective, in requiring it to be a party to Section 248 cases.

While we understand developers and utilities' desire to limit public participation and the evidence available to the PUC, the public interest is best served by opening the door wider to bring the best available information into the record on which the decision is based. VCE appreciates and supports the update to Rule 5.400.

Sincerely,

Annette Smith
Executive Director