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**State of Vermont
Public Utility Commission**

September 25, 2023

Charlene Dindo
Legislative Council
115 State Street
Montpelier, VT 05602

SENT ELECTRONICALLY

**RE: Vermont Public Utility Commission Emergency Rule 2.500 COVID-19
Emergency Procedures Rule**

Dear Ms. Dindo:

The Vermont Public Utility Commission (“Commission”) submits this letter in support of its revised emergency rule, entitled Vermont Public Utility Commission Emergency Rule 2.500 COVID-19 Emergency Procedures Rule.

As we explained to the Legislative Committee on Administrative Rules last April, we believe that Emergency Rule 2.500 continues to meet the criteria for emergency rulemaking, pursuant to 3 V.S.A. § 844(a). Section 844(a) provides that an agency may adopt an emergency rule when it “believes that there exists an imminent peril to public health, safety, or welfare.” We have explained in our filing paperwork that the Commission has adopted the procedural provisions contained in this emergency rule since the onset of the COVID-19 pandemic to minimize or eliminate in-person contact.¹ The changes implemented in Rule 2.500 reduce or eliminate in-person contact in the following ways:

- Subsection 2.505 converts the requirement that mailings be certified to first class mail, so applicants need not go into a United States Post Office.
- Subsection 2.506 allows adjoining landowner identification to be performed using online resources provided by Vermont towns rather than in-person in town offices across the state.
- Subsection 2.510 provides for digital and mail correspondence for project document review rather than in-person document viewing arrangements so that adjoining property owners do not have to meet at town or regional planning offices to inspect project materials.

¹ See, e.g., Rule 23-E03, Emergency Filing – Coversheet ¶ 8.

Further, Subsection 2.509 recognizes that applicants have encountered supply-chain issues that impact the timing of constructing renewable energy projects, and thus recognizes the Commission's ability to respond to these COVID-related market factors by issuing blanket orders providing additional time to bring projects into operation. Denying such an extension of time could risk a project's economic viability, which implicates the economic wellbeing meaning of "welfare" under the statute.²

In the last few years, the Commission initiated three separate rulemakings that contain portions of Rule 2.500. These rulemakings memorialize the emergency procedures adopted in 2020 that have been supported by those who regularly appear before us. Discontinuity in our procedures makes practice in front of the Commission unpredictable and difficult, especially for *pro se* litigants. Maintaining stability in our procedures is consistent with the intent of Act 174 of 2016, which created a working group to make recommendations to promote increased ease of citizen participation in Commission proceedings. Maintaining this emergency rule until all three rules become permanent is necessary to maintain that continuity for only a short time longer.

On January 18, 2023, the Commission's updated Rule 2.000 (Rules of Practice) went into effect. The repealed portions of the current version of Rule 2.500 reflect the implementation of Rule 2.000. Over half of the provisions of Rule 2.500 were eliminated as a result of permanent Rule 2.000 taking effect.

Commission Rules 5.100 (Regulations Pertaining to Construction and Operation of Net-Metering Systems) and 5.400 (Requirements for Petitions to Construct Electric and Gas Facilities Pursuant to 30 V.S.A. § 248) are also needed to fully retire the emergency rule.³ As anticipated at our last appearance at LCAR, both of these rules have entered the formal rulemaking process with filings with ICAR on May 5, 2023 (Rule 5.400), and May 18, 2023 (Rule 5.100), and filings with the Secretary of State on June 22, 2023 (Rule 5.400), and June 23, 2023 (Rule 5.100). Public hearings have been held on the initial proposed rules and the deadlines for filing public comments on the initial proposed rules have now passed (August 15, 2023, for Rule 5.400 and August 17, 2023, for Rule 5.100). The Commission anticipates filing both final proposed rules with LCAR in October.⁴

As such, we are seeking one final Rule 2.500 extension to provide time for the permanent rules to be adopted. Rule 2.500 will be withdrawn with the adoption of these permanent rules.

Thank you for your consideration of this additional information in conjunction with our rule filing. Please let me know if you have any questions or concerns.

² Welfare is defined as "well-being in any respect; prosperity." BLACK'S LAW DICTIONARY (11th ed. 2019). Public welfare also includes this economic component. BLACK'S LAW DICTIONARY (11th ed. 2019) (defining "public welfare" as "A society's well-being in matters of health, safety, order, morality, economics, and politics.").

³ Subsections 2.505, 2.506(A), and 2.509 of Rule 2.500 would be rendered obsolete with the implementation of permanent Rule 5.100. Subsections 2.506(B) and 2.510 would be rendered obsolete with the implementation of permanent Rule 5.400.

⁴ Further information about Rule 5.100 can be found in the Commission's electronic filing system, ePUC, under Case No. 19-0855-RULE. Further information about Rule 5.400 can be found in ePUC under Case No. 21-0861-RULE.

Sincerely,

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Steph Hoffman
Interim General Counsel