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Judith Whitney
Clerk
Vermont Public Utility Commission
112 State St.
Montpelier, VT 05602

Re: Docket No. 20-0789-INV – COVID 19 Procedures

Dear Judy:

I hope that you, the entire staff and the Commission are all well. I write with a suggestion about emergency procedures generally.

Section 5 of the Supreme Court's Emergency Order, A.O. 49, adopts valuable amendments to V.R.C.P. 43.1. Rule 43.1 was adopted last year. It authorizes and regulates video and audio proceedings. The Emergency Order relaxes the time constraints in new V.R.C.P. 43.1 in order to respond to the COVID-19 emergency.

In reviewing these provisions of A.O. 49, it occurred to me to check the Commission's rules on the subject. Commission Rule 2.216 governs evidence. It adopts 3 V.S.A. § 810 and V.R.C.P. 43. V.R.C.P. 43 requires in-court testimony – unless otherwise provided by V.R.C.P. 43.1. Commission Rule 2.216, however, has not been amended to adopt V.R.C.P. 43.1. Rules 2.103, 2.104 and 2.105 generally adopt the Vermont Rules of Civil Procedure unless a Commission Rule specifically governs. These Rules may well incorporate V.R.C.P. 43.1 and § 5 of A.O. 49, but this is not clear, particularly in light of the mention of V.R.C.P. 43 but not V.R.C.P. 43.1.

Therefore, I write to suggest that the Commission issue an emergency rule specifically adopting both V.R.C.P. 43.1 and § 5 of A.O. 49.

Sincerely,

Jim

James A. Dumont, Esq.