

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 19-3884-INV

Order establishing standards and procedures regarding filing for Commission approval of a financing petition pursuant to 30 V.S.A. § 108	
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Order entered: 02/13/2020

**ORDER APPROVING STANDARDS AND PROCEDURES
REGARDING FINANCING PETITIONS AND NOTICES OF EMERGENCY FINANCING**

I. INTRODUCTION

In today’s Order, the Vermont Public Utility Commission (“Commission”) adopts standards and procedures applicable to the Commission’s review of a petition for an order pursuant to 30 V.S.A. § 108 or a corporation’s notice of emergency financing filed pursuant to 30 V.S.A. § 108(a)(1).

II. BACKGROUND

Under Vermont law, a domestic corporation subject to the jurisdiction of the Commission is required under certain circumstances pursuant to 30 V.S.A. § 108 to obtain advance approval from the Commission for any mortgage or pledge of its corporate property, or issuance of any stocks, bonds, notes, or other evidences of indebtedness. Section 108 also requires a municipality to obtain advance approval from the Commission under certain circumstances for the issuance of any bonds or notes, or any pledge of its net revenues, respecting the ownership or operation of a gas or electric utility. In this order, we refer to petitions for such approval by either corporations or municipalities as “financing petitions.”

Under Vermont law, in certain emergency situations, a domestic corporation subject to Commission jurisdiction is required to provide notice to the Commission of its intention to issue evidences of indebtedness. In this order, we refer to such notices as “notices of emergency financing.”

In 2016, the Commission determined that it would be useful to document all of the procedures generally followed by the Commission, the Vermont Department of Public Service

(“DPS”), corporations, and municipalities with respect to the filing and review of financing petitions and notices of emergency financing. Accordingly, the Commission solicited comments on draft standards and procedures regarding financing petitions and notices of emergency financing (“Initial Draft”). The Commission received three comments on the Initial Draft.¹ However, due to the Commission’s resource constraints, those draft procedures were not finalized.

On July 1, 2019, Act 81 of 2019 took effect. This law changed the provisions of 30 V.S.A. § 108 with respect to municipal utilities. Accordingly, the Commission revised the Initial Draft, taking into consideration both the new law and the comments that were provided on the previous version (“Revised Draft”). The Commission then provided notice of the Revised Draft to the DPS and all Vermont electric, gas, and water utilities. This notice also solicited comments on the Revised Draft.

On November 8, 2019, the DPS filed comments supporting the Revised Draft as written. No other comments were filed.

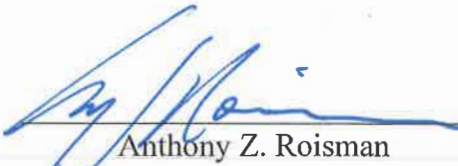
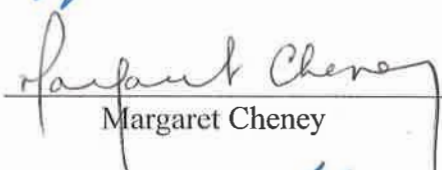

III. DISCUSSION AND CONCLUSION

No comments raising concerns with the Revised Draft were filed with the Commission. We have reviewed those draft standards and procedures and determine that they should be approved without changes. Therefore, we adopt the standards and procedures that are attached to this Order, effective February 13, 2020.

SO ORDERED.

¹ In December 2016, the DPS, the Vermont Electric Cooperative, Inc. (“VEC”), and the Vermont Public Power Supply Authority (“VPPSA”) separately filed comments on the Initial Draft. The DPS and VEC supported the initial draft. VPPSA recommended clarifying which provisions apply only to corporations, which apply only to municipalities, and which apply to both. VPPSA also recommended that the same standards for notices of emergency financing apply to all municipalities, and that we minimize the obligations and filing requirements for municipal utilities during emergency situations.

Dated at Montpelier, Vermont this 13th day of February, 2020.

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Anthony Z. Roisman)	PUBLIC UTILITY
)	
)	COMMISSION
Margaret Cheney)	
)	
)	OF VERMONT
Sarah Hofmann)	

OFFICE OF THE CLERK

Filed: February 13, 2020

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)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Commission within 30 days. Appeal will not stay the effect of this Order, absent further order by this Commission or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Commission within 28 days of the date of this decision and Order.

STANDARDS AND PROCEDURES
REGARDING FINANCING PETITIONS AND NOTICES OF EMERGENCY FINANCING

I. Purpose and Applicability

The purpose of these standards and procedures is to facilitate the Commission’s review of a petition for an order pursuant to 30 V.S.A. § 108 or a Corporation’s notice of emergency financing filed pursuant to 30 V.S.A. § 108(a)(1). These standards and procedures are applicable to: (1) petitions filed by Corporations for Commission approval to mortgage or pledge corporate property, or to issue stocks, bonds, notes, or other evidences of indebtedness; (2) petitions filed by Municipalities for Commission approval to issue bonds or notes or to pledge their net revenues under chapter 53 of Title 24, respecting the ownership or operation of a gas or electric utility; and (3) notices of emergency financing filed by Corporations. The Commission may, upon request of the applicant and for good cause, waive or modify the standards and procedures with respect to a specific petition.

II. Definitions

“Commission” is the Vermont Public Utility Commission.

“Corporation” means a domestic corporation subject to the Commission’s jurisdiction that is not a Municipality (as defined below).

“DPS” is the Vermont Department of Public Service.

“Financing petition” is a petition filed by (1) a Corporation for Commission approval to mortgage or pledge corporate property, or to issue stocks, bonds, notes, or other evidences of indebtedness; or (2) a Municipality for Commission approval to issue bonds or notes or to pledge its net revenues under chapter 53 of Title 24, respecting the ownership or operation of a gas or electric utility.

“Municipality” means a municipality, including a municipal corporation, that owns, operates, or manages a gas or electric utility.

“Notice of emergency financing” is a notice filed with the Commission that a Corporation intends to issue evidences of indebtedness that are payable within one year from the

date of issue, that are necessary as an emergency to restore service immediately after damage by disaster, and that would cause the Corporation's total evidences of indebtedness payable within one year to exceed 20 percent of its total assets.

III. Financing Petitions

A. Filing Requirements

Requests for Commission approval of proposed financings pursuant to 30 V.S.A. § 108 shall be filed with the Commission and the DPS. They shall include, at a minimum, a petition, the Corporation's or Municipality's most recent audited financial statements, and appropriate supporting information including prefiled testimony or an affidavit to enable the Commission and the DPS to review the proposed financing. Such filings shall also include a request to the DPS for a determination under 30 V.S.A. 202(f), unless such a request has already been submitted to the DPS.

If a document in the filing contains information that the Corporation or Municipality alleges is confidential, the filing shall include:

- a public version of the document from which all allegedly confidential information has been redacted;
- an unredacted version of the document to be kept under seal that contains the allegedly confidential information; and
- a motion for confidential treatment of the document accompanied by appropriate supporting averments or affidavits.

B. Schedule for Review

The DPS shall file both its recommendation regarding the proposed financing and its determination pursuant to 30 V.S.A. § 202(f) within 30 calendar days of when the financing petition was filed with the Commission. In its recommendation, the DPS may request a hearing or further process in cases in which the DPS needs further information or evidence before making a recommendation on the merits of the petition. The Commission may request additional information from the Corporation or Municipality at any time while the petition is pending.

C. Issuance of Decision Regarding Financing Petitions

The Commission will seek to issue a final decision regarding a financing petition filed by a Corporation or a Municipality within 60 calendar days of the filing of the petition in any circumstance in which a hearing is not requested and no further information is requested.

A financing petition filed by a Corporation is not approved until the Commission issues an order approving it. Failure to meet the above time frame does not constitute de facto approval.

If a hearing is requested on a financing petition filed by a Municipality, the Commission shall issue a decision on the petition within 90 days of the filing of the petition, unless the Municipality consents to an extension of this time frame. As provided in 30 V.S.A. § 108(c)(2), a financing petition filed by a Municipality is deemed to be consistent with the general good of the State if the Commission does not issue an order on the petition within 90 days of the date on which it was filed with the Commission, unless the Municipality consents to an extension of this time frame.

IV. Notices of Emergency Financing

A. Advance Filing Requirement

Any Corporation intending to issue evidences of indebtedness that are payable within one year from the date of issue, that are necessary as an emergency to restore service immediately after damage by disaster, and that would cause the Corporation's total evidences of indebtedness payable within one year to exceed 20 percent of its total assets shall file a notice of emergency financing with the Commission and the DPS at least 10 calendar days prior to the proposed issuance.

B. Filing Requirements

Notices of emergency financing shall include a petition, the Corporation's most recent audited financial statements, and appropriate supporting information. Such filings shall also include a request to the DPS for a determination under 30 V.S.A. § 202(f), if required, unless such a request has already been submitted to the DPS.

If a document in the filing contains information that the Corporation alleges is confidential, the filing shall include:

- a public version of the document from which all allegedly confidential information has been redacted;
- an unredacted version of the document to be kept under seal that contains the allegedly confidential information; and
- a motion for confidential treatment of the document accompanied by appropriate supporting averments or affidavits.

C. Schedule for Review

The DPS shall file its recommendation regarding the proposed transaction and, if required, its determination pursuant to 30 V.S.A. § 202(f) within 5 calendar days of when the notice of emergency financing was filed with the Commission. In its recommendation, the DPS may request a hearing or further process in cases in which the DPS needs further information or evidence before making a recommendation on the merits of the petition. The Commission may request additional information from the Corporation at any time during the 10-day review period.

D. Issuance of Decision

If the Commission determines that further inquiry into a notice of emergency financing is warranted, within 10 calendar days of the filing of the notice, the Commission will issue an order directing the Corporation not to issue such evidences of indebtedness without the consent of the Commission given after opportunity for hearing. If the Commission does not issue such an order within 10 calendar days from the date the notice of emergency financing was filed with the Commission, then the Corporation may issue such evidences of indebtedness without the consent of the Commission and, upon request, the Commission will so notify the Corporation in writing.