

STATE OF VERMONT  
PUBLIC UTILITY COMMISSION

Case No. 21-0861-RULE

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| Proposed revisions to Vermont Public Utility<br>Commission Rule 5.400 |  |
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Order entered: 02/09/2021

**ORDER OPENING RULEMAKING**

**I. INTRODUCTION**

In today's Order, the Vermont Public Utility Commission initiates a proceeding to review Commission Rule 5.400. The Commission seeks comments from stakeholders on all of the proposed changes, as well as any other suggestions regarding changes to Rule 5.400.

**II. BACKGROUND**

Rule 5.400 establishes the requirements and procedures for filing petitions or applications for proposed projects that require review and approval under 30 V.S.A. § 248. Although the Commission has a few times made minor changes to Rule 5.400 in recent years, it has been many years since the Commission reviewed the rule in its entirety. Commission practices have changed significantly in those years. 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. We propose 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.

Some of the most important proposed changes are discussed in more detail below.

**III. DISCUSSION**

Attached to this Order is a draft of potential changes to Rule 5.400. This draft is meant solely as an initial proposal of potential changes. The Commission has not yet determined that these proposed changes should be made. Rather, the Commission seeks feedback from a broad array of stakeholders on all of these potential changes, as well as any other changes we should consider.

The Rule has been reorganized to follow more closely the timeline of a Section 248 case. Therefore it starts by detailing the 45-day advance notice prefiling requirements by identifying the persons and entities entitled to receive the advance notice, the required methods of service, and the contents of the notice. Section 5.402(B) requires service of the advance notice on specified individuals or entities using certified mail. Due to the COVID-19 pandemic, a similar requirement has been temporarily waived for net-metering projects pursuant to Commission Rule 2.504. The Commission expects to apply a similar waiver to this requirement in the event a revised Rule 5.400 takes effect before the pandemic ends.

The list of entities entitled to receive the notice has been expanded to include more potentially interested persons and entities and is consistent with the advance notice requirements found in Rule 5.100. Additionally, the required contents of advance notices have been updated to reflect changes to Section 248 and for increased consistency with the requirements of Rule 5.100. Similar to Rule 5.100, the proposed changes also include a 180-day window in which a petition must be filed or an advance notice will be deemed withdrawn.

The proposed amendments then proceed to detail the required contents of a Section 248 petition. The proposed rule retains the requirement that a petitioner include prefiled testimony and exhibits that address all the applicable criteria of Section 248 and includes a more detailed list of other required materials for a petition to be considered complete. The goal of this increased detail is to provide petitioners better guidance and clarity when they are preparing their petitions, thereby decreasing the possibility of incomplete petitions and their associated delays. The additional requirements for wind facility petitions are retained with clarifications added.

Proposed Rule 5.403(B) sets forth a list of the information required to be included in a petition under Section 248. That list was derived in part from the requirements for net-metering applications in Rule 5.100. As a result, some of the required information may not be applicable to or appropriate for non-generation projects that are subject to Section 248. Therefore, the Commission specifically seeks input on how the proposed list of required information might be amended to address potential concerns related to non-generation projects.

The proposed changes then set out the process for the Commission's initial review of Section 248 petitions, and assuming a petition is found to be administratively complete, detail the requirements for service and notice of the petition filing.

With respect to service and notice of the petition, proposed Rule 5.406(B) retains the requirement that a petitioner provide notice of locations where project plans and petitions can be viewed, including at least the offices of the petitioner, the municipal and regional planning commissions, and the Commission. The Commission expects that a waiver of this provision would be applied in the event an amended Rule 5.400 takes effect before the end of the COVID-19 pandemic. However, the Commission specifically seeks comments on whether this provision should be retained post-COVID-19, and if not, what method of access to a petition and its supporting documents should be provided in its place.

The proposed changes also clarify those persons and entities that may obtain party status in a Section 248 proceeding by filing a notice of intervention without the need for a motion addressing the requirements of Rule 2.209. These changes are also largely consistent with the provisions of Rule 5.100.

The proposed changes also update the Rule's provisions for site visits and public hearings, with the changes proposed to the provisions on public hearings being aimed at consistency with recent changes to Section 248 on that topic.

The proposed changes also clarify the process for proposing amendments to projects that are still under review and for seeking amendments to projects that have already been approved. These changes largely clarify the process for and the persons or entities entitled to receive notice of proposed amendments to projects.

The discussion above is intended to highlight the larger substantive changes that are being considered for Rule 5.400. There are many proposed changes throughout the Rule that are under consideration. Therefore, readers should review all the proposed changes in detail independently of the contents of this Order.

#### **IV. REQUEST FOR COMMENTS**

The Commission requests that stakeholders provide comments by March 8, 2021, addressing the attached draft changes to Rule 5.400 and the issues discussed in today's Order. The Commission also invites stakeholders to bring to the Commission's attention any other issues with Rule 5.400 that should be addressed through the rulemaking process. The

Commission will then likely set a date for commenters to file replies to the comments filed on March 8.

#### V. FURTHER PROCESS

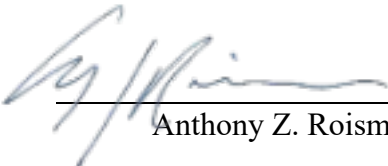
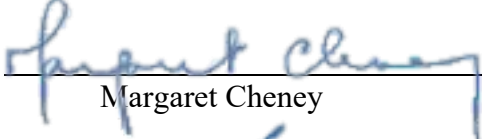
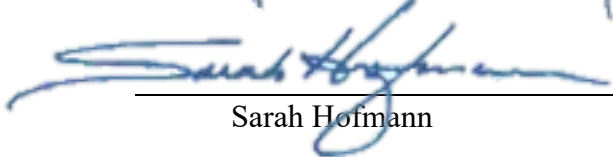
If possible, the Commission intends to conduct a series of workshops and seek additional comments so that it can develop a well-informed proposal before beginning the formal rulemaking process required by the Administrative Procedure Act. However, because of the current need to conduct workshops remotely by video conference, this may not prove possible depending on the number of persons and entities that are interested in participating in this process. It is possible that the number of participants will be too large to effectively conduct the anticipated workshops by video conference. Therefore, the Commission will assess whether it is possible to move forward with the workshop process at the time it receives comments in response to this Order. A future Order will establish whether and how it will be possible to proceed to the workshop phase of this proceeding, and if not, what steps should be taken next.

This rulemaking is being processed in the Commission's online document management system, known as ePUC, which can be accessed at <https://epuc.vermont.gov>. Documents related to this rulemaking will be available in Case No. 21-0861-RULE.

The Commission will establish a service list for this proceeding, which is not a contested case. Anyone interested in participating should contact the Clerk of the Commission at [puc.clerk@vermont.gov](mailto:puc.clerk@vermont.gov). After contacting the Clerk and becoming a participant in this proceeding, comments should be filed in this case in ePUC using the "Add Briefs, Comments, or Discovery" action. Comments should not be filed using the "Public Comment" option.

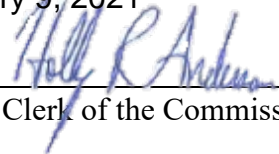
**SO ORDERED.**

Dated at Montpelier, Vermont, this 9th day of February, 2021.

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| <br>_____ )  | ) PUBLIC UTILITY |
| Anthony Z. Roisman )  |                  |
| ) _____ )   | ) COMMISSION     |
| <br>_____ ) |                  |
| Margaret Cheney )   |                  |
| ) _____ )   | ) OF VERMONT     |
| <br>_____ ) |                  |
| Sarah Hofmann )   |                  |

OFFICE OF THE CLERK

Filed: February 9, 2021

Attest:   
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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](mailto:puc.clerk@vermont.gov))*

PUC Case No. 21-0861-RULE - SERVICE LIST

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E-Mail Service List for Public Utility Commission Matters