

2.400 MATTERS OTHER THAN CONSUMER COMPLAINTS**2.401 Tariff Filings**

- (A) General. Tariff filings, including amendments to existing tariffs, shall be accompanied by a concise, narrative description of their nature and effect, stated in terminology which is comprehensible to the general public.
- (B) Amendments. Except where substantially the whole of a separately identified section of a tariff is affected, an amendment to an existing tariff shall be accompanied by a separate explanatory version which shows deleted material in brackets and broken underline and new material in solid underline.
- (C) New services. Where a tariff filing covers a new service, or a modification of an existing service, estimates of revenues and costs attributable to such service for each of the three years succeeding the introduction of the new or modified service.³ Schedules containing the information called for by this provision shall be accompanied by a statement of the name of the person or persons responsible for their preparation, together with a description of any underlying documentation, which documentation shall be available through discovery immediately after the filing.

2.402 Rate Proceedings

- (A) Justification for change in rates. In order to enable the Commission to determine whether new rates proposed by any utility should be further investigated or suspended, all rate filings shall contain complete and substantial justification for the proposed change, including the following: (1) detailed calculation of cost of service; (2) detailed calculation of cost of capital; (3) rate base calculation; (4) the effect of the filing on annual operating revenues; (5) projected construction expenditures by category for each of the following two years; (6) for electric utilities, a detailed statement of purchased power and production costs (with fuel costs separately stated) by source for the 12 months prior to the filing and a similar statement of projected purchased power and production costs by source for the 12 months succeeding the filing; such costs for both periods shall be shown net of sales to other utilities or, in the alternative, revenues from such sales shall be separately stated.
- (B) Changes from previous order. Where a request for a change in rates proposes or utilizes any change in the ratemaking methodology or principles approved or utilized by the Commission in the most recent rate order affecting the same utility, such change shall be clearly identified, and a statement of the reasons for such change shall be given.
- (C) Exhibits and other information. A utility whose rates are suspended shall, within thirty days from the date of the suspension order, file ten copies of all exhibits it intends to use in the hearing thereon, together with the names of witnesses it intends to call in its direct case, and a short statement of the purposes of the testimony of each witness. In the case of a municipality or cooperative which has filed a notice of

3. Editor's note: The end of this sentence should apparently read: "Where a tariff . . . of the new or modified service shall be included with the filing."

change in rates, if the Commission gives notice that it intends to investigate such change, then the municipality cooperative shall file similar exhibits, names of witnesses and a statement of the purpose of their testimony within thirty days of the giving of such notice. Except in the discretion of the Commission, a utility shall not be permitted to introduce into evidence in its direct case exhibits which are not filed in accordance with this rule. This provision shall not be deemed to constitute a limitation on the Commission's authority to require the prefilng of direct testimony in any case at such time as the Commission may prescribe.

2.403 Petitions for Declaratory Rulings

Pursuant to 3 V.S.A. § 808, an interested person may petition the Commission for a declaratory ruling as to the applicability of any statutory provision or of any rule or order of the Commission. The petition shall identify the statute, rule or order involved, shall include a proposed order of notice and shall be accompanied by a brief which conforms to the requirements of Rule 2.223.

2.404 Petitions for Adoption of Rules

Pursuant to 3 V.S.A. § 806, an interested person may petition the Commission requesting the promulgation, amendment or repeal of a rule. The petition shall describe the action requested, shall state the reasons for the request and shall include a proposed order of notice.

2.405 Request for Tariff Investigation

Any interested person or entity may request that the Commission initiate an investigation pursuant to 30 V.S.A. § 227 into the justness and reasonableness of a utility's tariffs. Whether or not to undertake such an investigation shall be within the Commission's discretion.

2.406 Injunctions

(A) Definitions

- (1) **Temporary restraining order**: an injunctive remedy which is issued either ex parte or under circumstances where the respondent has not been afforded an adequate opportunity to present its defense at a hearing held upon such notice as is otherwise required by law.
 - (2) **Preliminary injunction**: an injunctive remedy issued after a hearing held upon legal notice but where the proceedings have not allowed the parties adequate opportunity to avail themselves of all procedures provided for by these rules and by all other provisions of law. A preliminary injunction cannot remain in effect beyond the conclusion of the proceeding in which it is issued.
 - (3) **Permanent injunction**: an injunctive remedy issued as final relief after a hearing held upon legal notice and where the proceedings have allowed the parties adequate opportunity to avail themselves of all procedures provided for by these rules and by all other provision of law.
- (B) **Particular requirements for temporary restraining orders; examination of witnesses by the Commission**. A petition for a temporary restraining order must be verified or must be accompanied by affidavits attesting to all of its factual allegations. The Commission may require any facts alleged in the affidavits or verified petition to be presented in oral testimony and may examine any witness testifying to such facts as

to any matter which is relevant to the subject matter of the proceeding. The petitioner shall deliver a copy of the petition to the respondent before filing or, if such delivery would require delay which might cause irreparable harm, as soon thereafter as possible. If actual delivery to the respondent has not been made prior to filing, the petitioner shall notify the respondent or its attorney by telephone or by other means at the earliest possible time thereafter. A temporary restraining order may be issued only where it clearly appears from specific facts shown by the affidavits or the verified petition, and by testimony if required by the Commission, that substantial immediate and irreparable injury, loss or damage, or danger to health or safety, will result to the petitioner before a hearing can be held upon proper notice.

- (C) Further proceedings after issuance of a temporary restraining order. A petition for a temporary restraining order, whether or not it is so designated, shall also constitute a petition for a preliminary injunction and/or a permanent injunction. Unless precluded by the existing scheduling of other matters, or unless the respondent does not object to longer scheduling, a hearing upon such preliminary or permanent injunction shall be held within forty-five days and a decision rendered within sixty days. Wherever possible, the Commission shall attempt to make a final disposition of the matter, but if the proceedings do not allow the parties adequate opportunity to avail themselves of all procedures provided for by these rules and by all other provisions of law, then only a preliminary injunction may be issued. If a temporary restraining order has previously been issued, it shall continue in force until a decision is rendered on the preliminary injunction or the permanent injunction, as the case may be, unless it is dissolved by its terms or by further order of the Commission.
- (D) Particular requirement for preliminary injunctions; further proceedings after issuance. An application for a preliminary injunction, unless made in consequence of an application for a temporary restraining order as provided above, shall be made by motion in connection with a petition for a permanent injunction. No preliminary injunction may issue unless the petitioner establishes that the irreparable injury which will be caused to it if a preliminary injunction is denied, discounted by the probability that the respondent will prevail in the proceedings on the permanent injunction, will be greater than any injury which the granting of the preliminary injunction will cause to the respondent. If a preliminary injunction is issued, the Commission shall schedule such further proceedings as may be required for the permanent injunction; and the preliminary injunction shall continue in force until a decision is rendered on such permanent injunction unless it is dissolved by its own terms or by further order of the Commission. Unless the Commission otherwise orders, the record made in connection with the preliminary injunction shall also constitute part of the record in the proceedings on the permanent injunction.
- (E) Other matters
- (1) Conditions. The Commission shall condition the issuance of a temporary restraining order or a preliminary injunction with such terms as justice and equity may require, including the giving of adequate security in favor of the respondent.
 - (2) Severance. In its discretion, the Commission may order the severance of

- proceedings on a request for injunctive relief from proceedings for other relief.
- (3) Motion to dissolve. a motion to dissolve a temporary restraining order or preliminary injunction may be made at any time. The motion shall state why the further proceedings scheduled on the matter are insufficient to protect the rights and interests of the moving party.
 - (4) Hearing examiners. Unless the Commission determines that it will expedite the resolution of the matter or will otherwise further the ends of justice, no application for a temporary restraining order will be heard by a hearing examiner.
 - (5) Form of injunctions. A temporary restraining order, preliminary injunction or permanent injunction shall state the date and hour of its issuance and shall be accompanied by findings of fact upon all of the issues specified or referred to in this rule.

2.407 Forms for Certain Purposes

The following forms, which are available on request, must be used for submissions to the Commission: annual reports, gross revenue tax reports, property valuation reports, accident reports, interruption of electric service reports, disconnection of service reports and cable TV applications.