

Public Utility Commission

2.200 PROCEDURES GENERALLY APPLICABLE**2.201 Practice Before the Commission**

- (A) Notice of appearance. Attorneys shall file a written notice of appearance with respect to any matter in which they are representing a party. Except in the case of a consumer filing a consumer complaint, pro se representatives shall likewise file a notice of appearance. Except as otherwise provided by law, a party whose attorney has failed to comply with this requirement, or a party appearing by a pro se representative who has failed to comply with the requirements of this rule, shall not be entitled to notice or service of any document in connection with such matter, whether such notice or service is required to be made by the Commission, by a party or by a person seeking party status. A copy of each notice of appearance shall, on the same day on which it is filed, be served by the party filing the same upon all persons or parties on whose behalf a notice of appearance has been filed. A list of such persons and parties will be provided by the clerk upon request.
- (B) Pro se appearances. For purposes of these rules a person appearing pursuant to the authority of this section shall be known as a pro se representative. In its discretion, the Commission may permit persons who are not attorneys to appear before it as follows: a partnership may be represented by a partner, and a corporation, cooperative or association may be represented by an officer thereof or by an employee designated in writing by an officer thereof. Such permission shall be given in all proceedings unless, because of their factual or legal complexity or because of the number of parties, the Commission is of the opinion that there is a substantial possibility that the participation of a pro se representative will unnecessarily prolong such proceeding or will result in inadequate exposition of factual or legal matters. Notwithstanding the foregoing, any individual may be a pro se representative in his or her own cause. This rule shall in no respect relieve any person or party from the necessity of compliance with any applicable rule, law, practice, procedure or other requirement. Except as provided in Rule 2.201(D), anyone appearing as a pro se representative shall be under all the obligations of an attorney admitted to practice in this state with respect to the matter in which such person appears.
- (C) Attorneys admitted elsewhere. An attorney admitted to practice and in good standing in any other state or American or common law jurisdiction may appear in particular matters with the permission of the Commission, provided that such attorney must have co-counsel of record who is admitted to practice in Vermont.
- (D) Withdrawal of appearance. An attorney who has appeared on behalf of a party may withdraw only upon permission of the Commission. A person appearing as a pro se representative may withdraw without permission of the Commission, provided, that if other counsel has not appeared for such person, such withdrawal shall be deemed to constitute withdrawal of that person as a party.
- (E) Ex parte communications.
- (1) Prohibited communications. Unless required for the disposition of ex parte matters authorized by law, upon the filing in a contested case of a complaint, petition, application or other filing which the Commission has treated as the same, no member, employee, or agent of the Commission may communicate, directly or indirectly, in connection with any issue of fact, with any party or any person, or, in connection with any issue of law, with any party or any employee, agent, or representative of any party, except with the consent of all parties or upon notice and opportunity for all parties to participate
 - (2) Where circumstances require, in a contested case, ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits are authorized, provided:
 - (a) the member, employee, or agent of the Commission reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

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(b) the member, employee, or agent of the Commission makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

- (3) Participation in decision. Unless required for disposition of ex parte matters authorized by law, any member, employee or agent of the Commission who has, in connection with a pending, contested case, except with the consent of all parties or upon notice and opportunity for all parties to participate, communicated in connection with any issue of fact with any party or interested person or, in connection with any issue of law, with any party or any employee, agent or representative of any party, shall not participate or advise in the decision, recommended decision or Commission review except as a witness or as counsel in public proceedings.
- (4) Improper communications by parties. Any person or party who, directly or through an employee, agent or representative, communicates or attempts to communicate with any member, employee or agent of the Commission on any subject so as to cause, or with the intent to cause, the disqualification of such member, employee or agent from participating in any manner in any proceeding, may be disqualified from subsequent participation in the proceeding, may be dismissed as a party to the proceeding, may be held in contempt of the Commission and/or may be deemed to have waived any objection to the subsequent decision by the Commission with respect to any matter which is the subject of such communication.
- (5) Exception Notwithstanding any provision of subparagraph (1) or (3), above, members, employees, and agents of the Commission may communicate with other members, employees, or agents, provided that none of the latter has engaged in communications prohibited by (1) above.
- (6) An employee or agent of the Commission may, with the consent of the parties, confer separately with a party or their representative in an effort to mediate or settle matters pending before the Commission. Pursuant to (1), above, such employee or agent of the Commission may not participate in rendering a decision in such matters.

2.202 Initiation of Proceedings

Except for cases initiated by the Commission, a proceeding is initiated by filing a complaint, petition or other application with the Clerk at the Commission's office during normal business hours. If the named defendant or respondent is a utility, service of process shall be completed by the Clerk who shall send a copy of the filing which initiates the proceeding to such utility by certified mail, return receipt requested. If the named defendant, respondent, or other person or entity entitled to notice is not a utility, then the party initiating the proceeding shall procure a summons from the Clerk and shall cause the summons, together with the filing which initiates the proceeding, to be served on such defendant to respondent in the manner provided by the Vermont Rules of Civil Procedure within thirty days after such filing.

2.203 Signing of Petitions, Motions and Other Pleadings

Every petition, motion or other pleading shall be signed by at least one attorney or pro se representative of record in his individual name, whose address and telephone number shall be stated. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or pro se representative constitutes a certificate by him that the best of such subscriber's knowledge, information and belief there are good grounds to support it; and that it is not interposed for delay.

2.204 Pleadings and Other Filings; Service, Filing, Form and Amendment

- (A) Service, when required. In addition to any other requirement imposed by law, every filing shall, on the same day on which it is filed, be served by the party filing the same upon every other party who has filed a notice of appearance, unless the Commission for good cause otherwise directs.

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- (B) Service, how made. Whenever under these rules service is required to be made on a party, it shall be made upon the attorney or pro se representative whose appearance has been filed on behalf of such party. In all cases, service may be made by mailing a copy of the filing, first class postage prepaid, to the person whose notice of appearance is on file; but service may also be made by personal delivery or by any other means authorized by the person entitled to service.
- (C) Filing, manner and significance. Filing shall be accomplished by delivery to the clerk at the office of the Commission or by delivery to the Commission during the course of a hearing. Regardless of the method of delivery employed, filing occurs only upon receipt by the clerk or the Commission, as the case may be. Such filing shall constitute a representation by the attorney or pro se representative signing the same that a copy thereof has been or will be served on the same day on which it is filed upon every other party on whose behalf a notice of appearance has been filed.
- (D) Number of copies. Except as provided herein, or as otherwise ordered by the Commission, all materials required to be filed shall require an original and six copies of each document. The exceptions to this rule are as follows:
- Rule 2.205 (Statement Regarding Persons Entitled to Notice) - Original plus one copy.
 - Rule 2.214 (Discovery Responses) - One copy only.
 - Rule 2.302 (Consumer Complaints) - Original only.
 - Rule 2.401 (Tariffs) - Original plus nine copies.
 - Rule 2.403 (Petition for Declaratory Ruling) - Original plus five copies.
 - Rule 2.404 (Petition for Adoption of Rules) - Original plus five copies.
- (E) Form of Filings Generally. Except as provided in Rule 2.204(F), all filings shall be typewritten on paper 8 1/2" x 11" in size. All filings shall be endorsed in the upper right-hand corner with the name and docket number of the case, the page numbering of the filing and the date upon which it was prepared. Page numbering shall show both the number of the particular page and the total number of pages comprising the filing. Filings shall be headed by a descriptive title. The Commission or the clerk may refuse to accept for filing or, after filing, may at any time reject any filing which fails to conform to the requirements of this rule, provided, that if no substantial prejudice will occur to any other party, the filing party shall be afforded a reasonable opportunity to cure the defect, and such cure, if made, shall be deemed to relate to the original date of filing.
- (F) Special rules for certain exhibits. Exhibits need not comply with the typewriting or size requirement of Rule 2.204(E) when their purpose or content makes it impracticable to do so, but in all cases where it is not manifestly impracticable to do so, exhibits shall be so designed that they can be folded to a size 8 1/2" x 11". The identity and page number of any exhibit which measures, or which is folded to measure 8 1/2" x 11", shall appear in the upper right-hand corner when the exhibit is positioned with the 8 1/2" side as its top and bottom. The identification and page number shall be set out horizontally when the exhibit is positioned in the manner described in the preceding sentence. The Commission or the clerk may refuse to accept for filing, or after filing, may at any time reject any exhibit which fails to conform to the requirements of this rule, provided, that if no substantial prejudice will occur to any other party, the filing party shall be offered a reasonable opportunity to cure the defect, and such cure, if made, shall be deemed to relate to the original date of filing.
- (G) Amendments.
- (1) In general. Proposed amendments to any filing may be made at any time. If unobjected to by any party within ten days of filing or at the commencement of any hearing in which the amended matter is at issue, whichever is earlier, such amendments shall be deemed effective, except that the Commission may at any time dismiss any proposed amendments which it finds to have the effect of unreasonably delaying any proceeding or unreasonably adversely affecting the rights of any party. Where objection is made, amendments shall not be allowed unless the

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Commission finds (a) that they will not unreasonably delay any proceeding or unreasonably adversely affect the rights of any party and (b) that the requirements of subsection (2), if applicable, are satisfied. The Commission may condition the acceptance of any amendment as justice may require. An amendment which is allowed over objection shall be deemed effective as of the date it is approved, unless for good cause, the Commission orders that it shall be effective as of a different date. Proposed amendments shall be clearly identified as such and shall clearly indicate the changes they effect. In the event an amendment makes a substantial change in a filing, the Commission may order such additional notice to other parties and the public as justice may require.

(2) **Rate Filings.** No party may amend, supplement or alter an existing filing or substantially revise the proof in support of such filing in order to increase, decrease or substantiate a pending rate request unless, upon hearing, it is demonstrated that such a change in filing or proof is necessary for the purpose of providing adequate and efficient service or for the purpose of avoiding the implementation of rates which exceed a level which is just and reasonable. A change in a filing or in the proof in support thereof shall be deemed to be necessary for the purpose of providing adequate service if the costs or other circumstances reflected therein occurred or were imposed or were incurred prior to such change and/or if such costs or circumstances will be operative or in effect during all of the period within which the rates to be based thereon will be in effect; provided, that the Commission may disallow any such change if the costs or other circumstances reflected therein were known to or, by the exercise of reasonable diligence could have been known to, the party filing the same substantially prior to such filing.

(H) **Custody.** Once it has been filed, any filing shall remain in the custody of the Commission until other lawful disposition shall have been made at the conclusion of the case or otherwise.

2.205 Notice to other Persons or Parties

(A) **Statement regarding persons entitled to notice.** At the commencement of any proceeding, the party initiating the same shall file a statement identifying by name and address each person, party or other entity to whom or to which the Commission or the Clerk is required to give notice of such proceeding.

(B) **Orders of notice.** The Commission may require any party who seeks the granting or denial of any form of relief to file a proposed order of notice.

(C) **Expenses.** The expense of furnishing notice shall be borne by the party on whose behalf or for whose benefit such notice is given.

2.206 Motions

Motions not made during the hearing shall be in writing and, if they raise a substantial issue of law, shall be accompanied by a brief or memorandum of law. Motions made during a hearing may be required to be put in writing and supported by a brief or memorandum of law within such period as the Commission may direct. The Commission may decline to consider a motion not made within a reasonable time after the issue first arises with respect to the moving party.

2.207 Time

The provisions of the Vermont Rules of Civil Procedure, Rule 6 (a) and 6 (b) (Time - Computation and Enlargement) shall apply in proceedings before the Commission.

2.208 Defective Filings

Substantially defective or insufficient filings may be rejected by the Commission, provided, that if it will not unreasonably delay any proceeding nor unreasonably adversely affect the rights of any party, the Commission shall allow a reasonable opportunity to a party to cure any defect or insufficiency. A filing which is found to be defective or insufficient shall not be deemed to have been cured until the date on which the last document is filed

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which removes the defect or makes the filing complete. A filing is substantially insufficient if, inter alia, it fails to include all material information required by statute or rule.

2.209 Intervention

- (A) Intervention as of right. Upon timely application, a person shall be permitted to intervene in any proceeding (1) when a statute confers an unconditional right to intervene; (2) when a statute confers a conditional right to intervene and the condition or conditions are satisfied; or (3) when the applicant demonstrates a substantial interest which may be adversely affected by the outcome of the proceeding, where the proceeding affords the exclusive means by which the applicant can protect that interest and where the applicant's interest is not adequately represented by existing parties.
- (B) Permissive intervention. Upon timely application, a person may, in the discretion of the Commission, be permitted to intervene in any proceeding when the applicant demonstrates a substantial interest which may be affected by the outcome of the proceeding. In exercising its discretion in this paragraph, the Commission shall consider (1) whether the applicant's interest will be adequately protected by other parties; (2) whether alternative means exist by which the applicant's interest can be protected; and (3) whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.
- (C) Conditions. Where a party has been granted intervention, the Commission may restrict such party's participation to only those issues in which the party has demonstrated an interest, may require such party to join with other parties with respect to appearance by counsel, presentation of evidence or other matters, or may otherwise limit such party's participation, all as the interests of justice and economy of adjudication require.
- (D) Procedure. An application to intervene shall be by motion made in accordance with these rules. The motion shall be made within a reasonable time after the right to intervene first accrues and shall specifically state the manner in which the conditions of this rule are satisfied.

2.210 Joinder

The provisions of the Vermont Rules of Civil Procedure, Rules 19 (Joinder of Persons Needed for Just Adjudication); 20 (Permissive Joinder of Parties); and 21 (Misjoinder and Nonjoinder of Parties) shall apply in proceedings before the Commission.

2.211 Consolidation of Hearings; Separate Hearings

The provisions of the Vermont Rules of Civil Procedure, Rule 42 (Consolidation; Separate Trials) shall apply in proceedings before the Commission.

2.212 Prehearing Conferences

In any proceeding, the Commission may, and in any rate case, the Commission shall direct the parties to appear before it for a conference to consider the following matters:

- (A) the simplification of the issues;
- (B) the necessity or desirability of amendments to any filing;
- (C) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (D) the limitation of the number of expert witnesses;
- (E) such other matters may aid in the disposition of the case.

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The Commission shall make an order which recites the action taken at the conference, including any agreements made by the parties. When entered, such order controls the subsequent course of the proceeding unless later modified.

2.213 Prefiled Testimony

- (A) Direct case. Within such time as may be directed by the Commission, each party shall file the direct testimony and exhibits of each witness it proposes to call in support of its direct case.
- (B) Rebuttal case. In its discretion, the Commission may direct any party to file the testimony and exhibits of each witness it proposes to call in rebuttal of the case of any other party.
- (C) Form of prefiled testimony. The preferred form for prefiled testimony is question/ answer form. However, such testimony may be filed in narrative form, provided that it is typewritten and conforms with the requirements for spacing and line numbering set forth below and the requirements set forth in Rule 2.204(E). Testimony filed in narrative format shall include headers to identify subject matter categories. All testimony shall be typed and double spaced. Line numbers shall be placed in the left-hand margin of each page. The prefiled testimony of each witness shall be preceded by a brief statement, set forth on a separate page, containing a summary of the testimony and exhibits referred to in such testimony. The summary shall not be admitted as evidence.

2.214 Discovery

- (A) In general. The provisions of Vermont Rules of Civil Procedure, Rules 26 (General Provisions Governing Discovery), 27 (Discovery Before Action Or Pending Appeal), 28 (Persons Before Whom Depositions May Be Taken), 29 (Stipulations Regarding Discovery Procedure), 30 (Depositions Upon Oral Examination), 31 (Depositions Upon Written Questions), 32 (Use of Depositions In Court proceedings), 33 (Interrogatories To Parties), 34 (Production of Documents And Things And Entry Upon Land For Inspection And Other Purposes), 36 (Request For Admission) and 37 (Failure To Make Discovery; Sanctions) shall apply in proceedings before the Commission. The availability of these procedures shall not limit the availability of any other means of discovery provided by statute or otherwise.
- (B) Discovery by the Commission. The procedures enumerated in 2.214(A) may be used by the Commission or its members, agents or employees, but the availability of such procedures shall in no way limit the authority of the Commission, its members, agents or employees, including but not limited to the authority to inquire into and examine any matter within the jurisdiction of the Commission, to examine books, accounts and papers of any person or entity subject to the Commission's jurisdiction or to enter and examine the property of any person or entity subject to the Commission's jurisdiction.

2.215 Conduct of Hearings

- (A) Commission witnesses. In its discretion, the Commission may call witnesses to testify as to any matter in issue in any proceeding. Except as required to establish the subject matter and scheduling of the testimony to be offered, the Commission shall not communicate with such witnesses unless it is done in open hearing or upon notice and opportunity for all parties to participate.
- (B) Examination of witnesses by Commission and staff. Any member of the Commission, and any member of its staff, may examine witnesses who testify in any proceeding.
- (C) Rulings by hearing examiners. When a matter has been assigned to a hearing examiner, such examiner may make rulings of law on procedural matters, on the admission or exclusion of evidence, and on any other matters necessary to conclude proceedings before the examiner. After the hearing examiner has issued and served a proposal for decision, a party may bring such rulings to the Commission for review by

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requesting, pursuant to 3 V.S.A. § 811, the opportunity to file exceptions and to present briefs and oral argument.

2.216 Evidence

- (A) General rule. Evidentiary matters are governed by 30 V.S.A. § 810. In addition, except as to matters covered by the succeeding paragraphs of this rule, the provisions of the Vermont Rules of Civil Procedure, Rules 43 (Evidence), 44 (Proof of Official Record) and 44.1 (Determination of Foreign Law) shall apply in proceedings before the Commission.
- (B) Use of exhibits. Where evidence to be presented consists of tabulations or figures so numerous as to make oral presentation impracticable, it shall be presented in exhibit form. Such exhibits shall be summarized and explained in testimony.
- (C) Procedure with respect to prefiled testimony and exhibits. Prefiled testimony, if admitted into evidence, shall be included in the transcript. Objections to the admissibility of prefiled testimony or exhibits shall be filed in writing not more than thirty days after such evidence has been prefiled or five days before the date on which such evidence is to be offered, whichever is earlier.
- (D) Views and inspections. Upon notice to the parties, the Commission may, either upon its own motion or upon the request of a party, view or inspect any property which is the subject of or is related to the subject of any proceeding. A view or inspection may be made before, during or after the hearing.

2.217 Objections and Exceptions

The provisions of the Vermont Rules of Civil Procedure, Rule 46 (Exceptions Unnecessary) shall apply in proceedings before the Commission.

2.218 Subpoenas

The provisions of the Vermont Rules of Civil Procedure, Rule 45 (Subpoena) shall apply in proceedings before the Commission.

2.219 Summary Judgment

The provisions of the Vermont Rules of Civil Procedure, Rule 56 (Summary Judgment) shall apply in proceedings before the Commission.

2.220 Harmless Error

The provisions of the Vermont Rules of Civil Procedure, Rule 61 (Harmless Error) shall apply in proceedings before the Commission.

2.221 Relief from Order

The provisions of the Vermont Rules of Civil Procedure, Rule 60 (Relief From Judgment Or Order) shall apply in proceedings before the Commission.

2.222 Proposed Findings of Fact

In any case the Commission may require each party to file proposed findings of fact. Such proposed findings shall conform to the requirements for finding for the Superior Court. Each proposed finding shall deal concisely with a single fact or with a group of facts so interrelated that they cannot reasonably be treated separately. Proposed findings shall be consecutively numbered and shall be in logical sequence. Where the party claims to have established more than one ultimate fact, proposed findings shall be arranged into separate groups, appropriately identified as to subject matter. Each proposed finding shall contain a citation or citations to the specific part or parts of the record containing the evidence upon which the proposed finding is based.

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2.223 Briefs

Briefs shall address each issue of law which a party desires the Commission to consider. Whenever a brief addresses more than one issue, it shall be suitably divided into sections which separately address each issue. Such a brief shall contain, immediately following the cover page, a detailed table of contents.

2.224 Sanctions

An attorney or pro se representative who fails, after having been requested by the Commission to do so, to submit proposed findings or briefs, or who manifestly fails to conform to the requirements respecting findings or briefs as specified in Rules 2.222 and 2.223, may be suspended from further participation in the proceeding or, for such period of time as the Commission finds to be just, from participation in other proceedings. In addition, or in the alternative, with respect to any fact as to which a party has manifestly failed to conform to the requirements of Rule 2.220, such party may be deemed to have withdrawn its offers and claims of proof and to have waived its right to a finding by the Commission regarding such fact; and with respect to any issue of law as to which a party has manifestly failed to conform to the requirements of Rule 2.223, such party may be deemed to have waived any claims of law with respect to such issue, and the claims of opposing parties with respect thereto may be deemed to be the law of the case.