

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 20-2369-RULE

Proposed revisions to Vermont Public Utility Commission Rule 2	
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Order entered: 08/27/2020

ORDER OPENING RULEMAKING

I. INTRODUCTION

In today's Order, the Vermont Public Utility Commission initiates a proceeding to review Commission Rule 2. The Commission proposes making changes to Rule 2.100 (scope and construction of rules), Rule 2.200 (procedures generally applicable), Rule 2.300 (consumer complaints), and Rule 2.400 (proceedings other than consumer complaints). The Commission seeks comments from stakeholders on all of the proposed changes, as well as any other suggestions regarding changes to our rules of procedure.

II. BACKGROUND

Rule 2 includes procedures that apply to all Commission proceedings. Although the Commission has at times made minor changes to Rule 2 in recent years, it has been decades 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. We propose a number of changes toward that end, as well as changes to improve the readability and accessibility of Rule 2. For these and many other reasons, significant revisions to our rules of procedure are now needed.

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 2. 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 largest proposed change to Rule 2 is the incorporation of our *Standards and Procedures Applicable to Electronic Filings Using ePUC*. It would be easier for parties and participants to have all filing requirements located in one place. For this reason, the Commission proposes revising Rule 2 to incorporate the filing requirements that currently appear in the *Standards and Procedures Applicable to Electronic Filings Using ePUC*.

The Commission also proposes requiring that all public filings be done in ePUC, unless a particular exception applies (for instance, when someone does not have high-speed internet in their home or office). Since the Commission began using ePUC several years ago, ePUC has received very positive feedback from parties, participants, and members of the public. Electronic filing allows anyone to make and receive filings from any computer with an internet connection. This benefits all stakeholders, Commission staff, and the public, which has greater ease of access to all filings. This was an enormous benefit from the start, and it has been all the more important as the Commission and many others have switched to remote operations due to the COVID-19 pandemic. Nearly all filings are now made in ePUC, and the Commission proposes requiring the use of ePUC for all public filings, unless an exception applies.

The Commission also proposes changes to our rule on notices of appearance. These changes include codifying the current practice of allowing system installers to file net-metering registrations or applications without making a formal notice of appearance, so long as they provide certain required information. Other proposed changes would ensure that those who practice before the Commission are familiar with all of the applicable Commission rules and will keep the Commission informed of any changes in representation. For instance, under the current rule regarding the withdrawal of appearance, any person who has appeared on behalf of a party must file a motion and have that motion granted by the Commission before they can withdraw. The Commission proposes to revise the rule to allow for substitutions of appearance when, for instance, representation will continue through an attorney from the same organization or law firm.

The Commission also proposes changes to our rules on *ex parte* communications to clarify that non-substantive communications regarding procedural, scheduling, technological, or administrative matters are allowed. No changes are proposed to the prohibition in our current

rule (and in the Vermont Administrative Procedure Act) for substantive communications and other prohibited conduct, although we do propose minor edits to improve readability.

The Commission also proposes changes to the procedures for enforcement proceedings to allow for more clarity and efficiency of the process. The Commission proposes recommending that when a person seeks to have the Commission initiate an enforcement proceeding, that person should provide a statement of whether the matter has been brought to the Department of Public Service for evaluation of an administrative citation under 30 V.S.A. § 30(h) and, if not, an explanation of why it was not brought to the Department's attention, as well as references to applicable statutes, rules, or Commission orders that are alleged to have been violated. This information would help the Commission determine whether to initiate an enforcement proceeding, refer the matter to the Department, or decline to take further action.

The Commission also proposes several changes to the form of filings. One of the most significant proposed changes is a page limit on all motions, briefs, responses, and replies. Under the proposed changes, although parties and participants could always seek permission to make longer filings (for instance, in particularly complex cases), the default rule would be that all motions and briefs must be no more than 25 pages in length (excluding exhibits), all responses to motions and briefs must be no more than 15 pages in length (excluding exhibits), and all reply filings must be no more than 10 pages in length (excluding exhibits). This will help the Commission review cases more efficiently and better understand the arguments set forth by the parties. The imposition of page limits is consistent with federal court practice in Vermont and the practice of the Vermont Supreme Court. The Commission seeks input from stakeholders on whether to impose page limitations and, if so, whether the suggested page limits are appropriate and whether any exceptions should be written into the rule.

The Commission proposes other changes to motion practice, including a requirement that motions state whether the moving party has sought and received consent for the relief requested from all other parties or participants. This information would be helpful to the Commission and would also encourage parties and participants to reach stipulations on minor procedural matters.

The Commission also proposes changes to facilitate the Commission's resolution of matters that do not go to hearing. These changes also address remote proceedings, such as those that have occurred in recent months due to the COVID-19 pandemic. For instance, under the

current rule, prefiled testimony is not always signed by the author, but is instead attested to at the time of a hearing. The Commission will continue to swear in witnesses during a hearing, when each witness is subject to examination, but the proposed rule would also require a signature and attestation by the author on all prefiled testimony to support its accuracy and admissibility.

Another significant proposed change is to the rule on intervention in Commission proceedings. The Commission proposes adopting the standard for intervention in Vermont Rule of Civil Procedure 24.

The Commission also proposes changes to the rules regarding discovery, including a 7-hour time limitation on oral depositions and a limitation of 25 written interrogatories, including all subparts, per round of discovery. The proposed limitations on written interrogatories would not apply to tariff proceedings. These discovery limitations are modeled after rules that apply in federal court proceedings in Vermont. A benefit of discovery limitations is that they prevent one party from overwhelming another party with lengthy depositions and voluminous written interrogatories. These limitations are particularly important when one or more of the parties is pro se.

The Commission also proposes changes to the deadlines for objecting to the admissibility of prefiled testimony. The Commission often hears from parties—particularly pro se parties, but attorneys as well—that the current rule imposes too early a deadline for objecting to prefiled testimony. The proposed changes would set a single deadline (usually 14 days before a hearing) for objecting to all prefiled testimony.

The Commission's draft rule also includes a new provision on proposed schedules and scheduling conferences. It would provide guidance to parties and participants on what deadlines must be in proposed schedules, as well as what other deadlines might be included.

The Commission also proposes a new rule provision on the protocol for filing confidential information, as well as a new rule provision allowing alterations to procedural requirements during declared states of emergency.

Regarding consumer complaints (Rule 2.300) and other proceedings (Rule 2.400), the Commission recommends minor changes to clarify the current procedures for handling these matters. Finally, the Commission proposes a new rule provision to address emergency actions during a declared state of emergency.

IV. REQUEST FOR COMMENTS

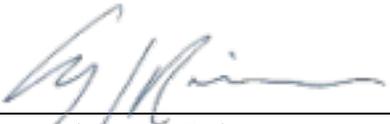
The Commission requests that stakeholders provide comments by October 2, 2020, addressing the attached draft changes to Rule 2 and the issues discussed in today's Order. The Commission also invites stakeholders to bring to the Commission's attention any other issues with Rule 2 that should be addressed through the rulemaking process. In addition to comments on the substantive issues described in this Order or that stakeholders wish to raise, the Commission is interested in receiving comments by October 2, 2020, on what the process for this rulemaking should entail (e.g., how many rounds of comments and workshops are appropriate).

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. 20-2369-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. After contacting the Clerk and becoming a participant in this proceeding, comments should be filed in ePUC using the "Add Briefs, Comments, or Discovery" action. Comments should not be filed using the "Public Comment" option.

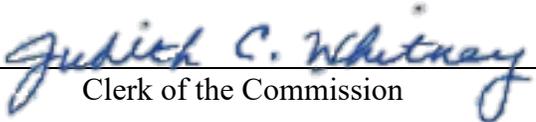
SO ORDERED.

Dated at Montpelier, Vermont, this 27th day of August, 2020.

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

OFFICE OF THE CLERK

Filed: August 27, 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)