

Report to the Vermont Legislature:

Increasing Ease of Citizen Participation
in Public Utility Commission Proceedings

Progress report submitted to the Senate Committee on Finance,
the Senate Committee on Natural Resources and Energy,
and the House Committee on Energy and Technology

December 14, 2017

Table of Contents

Introduction.....	2
Steps Taken to Improve Ease of Participation in PUC Hearings.....	3
Steps Taken to Improve Ease of Participation in Different Areas of the State.....	6
Steps Taken to Improve Instructional Documents for Citizens.....	7
Steps Taken to Improve Citizens’ Access to Written Information.....	8
Steps Taken to Help Citizens Navigate PUC Processes.....	10
Conclusion and Recommendation.....	13

Introduction

This report summarizes the steps taken to make it easier for citizens to participate in the processes of the Vermont Public Utility Commission. It comes in response to Act 53 of 2017, which required a report to the Vermont Legislature by December 15, 2017, on progress made in implementing the recommendations of the “Access to Public Service Board Working Group,” which had been created by Act 174 of 2016¹ to review the quality of citizen participation in Public Service Board² proceedings.

Pursuant to Act 174, the Working Group was constituted of five members – Senator Virginia Lyons, Representative Tony Klein, Superior Court Judge Robert Mello, Department of Public Service Commissioner Christopher Recchia, and Public Service Board Member Margaret Cheney. The Working Group held nine biweekly meetings and one evening hearing, all of which included public input. The final recommendations were presented to the Legislature in a December 15, 2016, report to the legislative committees of jurisdiction.³

¹ See 2017 Acts and Resolves No. 53, Sec. 15.

² In accordance with Act 53, the Public Service Board’s name was changed to the Public Utility Commission on July 1, 2017, as one of the recommendations of the Working Group to address public confusion about the difference between the Public Service Board and the Public Service Department. Hereinafter, this document refers to the Board as the PUC or the Commission.

³ See 2016 Acts and Resolves No. 174, Sec. 15(b).

The eight pages of recommendations addressed a wide range of citizen interactions with the now re-named Public Utility Commission (“Commission,” or “PUC”), from attendance at Commission hearings to citizen access to documents and other written information. They suggested ways to make it easier for citizens to participate in different locations in Vermont, to improve the layperson’s understanding of Commission processes, and to make it easier to participate in all such processes.

Some of the recommendations required statutory change, which was achieved through Act 53. Most of the recommendations reflected and supported changes that the PUC had already initiated, in a natural evolution as Commission membership and administrative staff changed, the number of cases affecting individual Vermonters had grown, and the Commission heard public criticism of their experiences. Another important change came with the creation of “ePUC,” the Commission’s online filing and document management system, which has been in process for several years and finally came online in 2017.

This report summarizes progress made to date in improving the experience that citizens have with the PUC – both in understanding the issues and the process in play, and in achieving greater dexterity navigating a quasi-judicial process that touches the lives of all Vermonters, whether through a utility rate case or in the siting of a project in their community. Most changes described here have been successfully implemented; others are still in process.

Finally, accountability is built into this annual progress report, which analyzes whether the steps taken in response to the Act 174 Working Group recommendations have had their intended effect or whether further recommendations are in order.

I. Steps Taken to Improve Ease of Participation by Citizens in PUC Hearings

These steps are intended to make it easier for citizens to participate in all types of PUC hearings. They also change the way the PUC provides notice of prehearing conferences and public hearings so that citizens are better informed of upcoming events.

- 1) Prehearing conferences: To engage the public at the beginning of the process, notice of any prehearing conference is now being sent to adjoining landowners, who previously received notice only of the later public hearing. Along with the notice, an explanation is provided so non-lawyers can understand what a prehearing conference

is and who can participate. In addition, notice of prehearing conferences is posted on the Commission's website.

- 2) Public hearings: The Commission has started holding at least one public hearing in cases with significant public interest even if such a hearing is not statutorily required, at times and places convenient to the public and relevant to the project. For all public hearings, the Commission publishes notice of the hearing in local newspapers and in radio public service announcements where applicable, asks local newspapers to include the public hearing in "calendars of events," and sends information about the public hearing to PEG access cable TV stations.
 - A major change in the nature of public hearings is that they are now preceded by an hour-long "informational session" hosted by the Department of Public Service ("Department"), in which the petitioner/developer can explain the proposed project to the public and answer questions. This has greatly improved the ability of the public to make substantive and informed comments, as previously many members of the public would arrive at a Commission hearing with little or no information about the nature of the project in question.
 - Comments made at a public hearing are now summarized on the PUC's website after the hearing. In its final order, the Commission also addresses public comments in a separate section of the order so it is clear to citizens what issues were raised in public comments and how the Commission considered them in its decision.
- 3) Evidentiary hearings: The PUC's new net-metering rules make it easier for a citizen to request a hearing. In addition, at evidentiary hearings the Commission asks the parties questions about concerns that were raised at the public hearing.
- 4) Handouts for the public: The Commission is developing handouts for the public that explain how to participate in proceedings and what the different procedural steps in a case entail. These include:
 - A new, simplified "Citizens' Guide to the Public Utility Commission and Its Proceedings." This replaces the "Citizens' Guide to 248 Processes" and includes clear guidance on filing requirements and an explanation of the

difference between the PUC and the Department. This document will be posted on the PUC's website, and petitioners will be required to provide the document to the service list with the first notice to potential parties.

- Instructions on how to intervene in a case. Petitioners will be required to attach these instructions to the notices of filings that they send to adjoining landowners. They explain how to become a formal intervenor and what happens after you become one. A handout with these instructions will also be provided at public hearings.
- A guide to evidentiary hearings. Due to their formal nature, these court-like proceedings can be intimidating for first-time participants. The new guide is intended to explain what happens at an evidentiary hearing, including language used, the nature of sworn testimony, and filing requirements. An important step in this regard is the PUC's new practice of calling these evidence-based hearings "*evidentiary* hearings" instead of the confusing term "technical hearings." This guide will also be posted on the PUC's website.
- For non-lawyers participating in an evidentiary hearing, the PUC's website now includes formatting requirements for prefiled testimony (with examples).
- On its website, the Commission is in the process of posting information regarding the mechanics of how hearings work, including guidance for *pro se* intervenors (e.g., how to "redirect"). This will include short videos of re-enacted "scenes" in a hearing, in order to familiarize potential participants with the vocabulary and typical actions in a proceeding.
- The Clerk's name and contact information is now included on the bottom of every page of the PUC's website for any questions a member of the public may have.
- Information about parking, including handicapped parking for hearings held in the Susan M. Hudson Hearing Room at 112 State Street, Montpelier, is now included in hearing notices and is posted on the PUC's website.

II. Steps Taken to Improve Ease of Participation in Different Areas of the State

These steps are intended to make it easier for citizens who live far from Montpelier to participate in PUC hearings regarding projects proposed to be constructed in their communities or regarding utility rate cases affecting ratepayers spread throughout Vermont. This has become especially challenging since the state's defunding of Vermont Interactive Television ("VIT"), which previously allowed citizens to attend public hearings in simultaneous, interactive broadcasts statewide.

- 1) In collaboration with the Department, the Commission is pursuing potential audio and video upgrades to the Susan M. Hudson Hearing Room. A priority of the renovations is an interactive component to whatever technology is adopted. To date, the Department has engaged Poycom, Cisco, and Google to develop a needs assessment and has scheduled vendor demonstrations and testing. This effort is ongoing, but minimum criteria have been identified:
 - The ability for citizens to view hearings over the Internet and possibly interact with the Commission if it is a public hearing;
 - The ability for a witness or an attorney to participate in an evidentiary hearing or workshop from a remote location;
 - A display screen for the hearing room with the ability to accommodate four views at a time (split screen); and
 - A high-quality audio system in the hearing room.
- 2) The Commission is identifying opportunities to hold more evidentiary hearings in the area where a project is proposed.
- 3) The Commission is holding more site visits in response to public comments.
- 4) The Commission has initiated a series of informal discussions with people who are affected by its decisions. The conversations are held in the Commission's offices. Invitations will be issued to representatives of different sectors of the Vermont community, including large and small businesses, local and regional government bodies, environmental advocates, utilities, renewable energy developers, and other citizen groups.

- 5) The Commission has expanded opportunities for parties to participate by telephone in prehearing conferences, status meetings, and workshops.
- 6) Non-confidential transcripts of hearings and workshops are available to the public online through ePUC so people can easily read the transcript of a proceeding that they were not able to attend.
- 7) ePUC now enables citizens to make electronic filings with the PUC instantly rather than by mail or messenger service, which eases delivery, ensures timely filing before a deadline, and reduces the cost and difficulty of such filings.
- 8) In response to recommendations of the Act 174 Working Group, Act 53 of 2017 changed 30 V.S.A. Section 248 to mirror the language in Sections 248a(e)(2) and (o) with respect to:
 - Requiring petitioners to attend a public meeting with the municipal legislative body or the planning commission, if asked by one of those entities, within the advance notice period before filing a petition for a certificate of public good (“CPG”) with the Commission; and
 - Requiring the Department to attend the public meeting upon request of the municipality, and to consider the comments made and information obtained at the public meeting in making recommendations to the Commission on the petition.

III. Steps Taken to Improve Instructional Documents for Citizens

The Commission has created and improved handouts and documents for citizens that are written in “plain English” to explain PUC procedures and how to participate. (See Section I (4), above, for a more complete list.)

- 1) Templates for filings: Citizens can now fill in templates, or forms, created by the Commission to make it easier for the public to take the steps necessary to formally intervene in a case. Forms are available on Commission’s website and in ePUC.
- 2) The Commission heard criticisms of its previous “Citizens’ Guide to Section 248 Processes” and is replacing it with a simpler “Citizens’ Guide to the Public Utility Commission and its Proceedings,” which summarizes all types of PUC proceedings (not

just Section 248), provides guidance on filing requirements, and explains the difference between the PUC and the Department.

- 3) The PUC website has been redesigned to include “plain English” explanations of terminology, access points, and ways to participate in PUC proceedings; descriptions of processes used in different types of cases; formatting requirements for prefiled testimony (with examples); and a glossary of common terms.
- 4) The revised net-metering rule includes a section for anyone who wants to review an application, with a step-by-step description of the review process.
- 5) The Commission is in the process of revising its Procedural Rules to make it easier for *pro se* participants to prepare and submit prefiled testimony; these changes will make the PUC’s requirements more consistent with the better-known, less stringent rules of the Administrative Procedures Act. In addition, anyone creating an ePUC account can now see a hyper-link to the Commission’s rules.

IV. Steps Taken to Improve Citizens’ Access to Written Information

Easy access to documents is key to the ability of a member of the public to participate in PUC proceedings. This includes information about specific cases as well as guidance documents. Central to the PUC’s efforts in this regard is the successful implementation of ePUC, a years-long effort that went “live” in 2017.⁴ Among many benefits, it provides citizens with a free, searchable database of Commission orders and documents, allowing people to do research from home. As citizens obtain PUC orders, parties’ filings, and other case information independently and at their convenience, they will no longer experience the delays of waiting for a call to be

⁴ Phase 1 of ePUC went live on January 17, 2017, and included the following types of cases: all infrastructure siting cases except for net-metering cases, advance notices (required for certain siting cases), petitions, investigations initiated by the Board, public comments unrelated to a specific proceeding, consumer complaints, accounting orders; proposed disconnect notice forms, Commission Rule 5.202 notices, special contracts; energy savings accounts, and miscellaneous administrative matters.

Phase 2 of ePUC went live on July 3, 2017, and included all net-metering cases.

Phase 3 of ePUC went live on November 15, 2017, and included reports, rulemaking cases, four types of telecommunications application forms, and cable television applications for a certificate of public good.

returned or emails to be answered, and they may not need Commission staff to help them understand, have access to, and navigate PUC proceedings.

Specifically, this new system:

- 1) Provides citizens with easy access to all public documents and information in cases being processed in ePUC, including case status, schedule, information on parties, and elements of the case;
- 2) Enables citizens to search a database of past Commission orders (including orders in cases not being processed in ePUC) to familiarize themselves with Commission precedent;
- 3) Enables citizens and parties to make electronic filings with the Commission instantly rather than by mail or messenger service to ensure that filings arrive by the deadline;
- 4) Includes required fields to ensure that filers have provided all necessary information;
- 5) Reduces the need for people to send other parties paper copies of their filings; and
- 6) Allows citizens who are interested in a case to “subscribe” to receive email notifications any time a filing is made or the Commission issues a document in the case. Simply by submitting public comments via ePUC, citizens will receive a response advising them how to subscribe to the case and thereby get notices of all filings in that case.

To help people learn to use ePUC, Commission staff conducted multiple rounds of in-person and online training sessions covering how to use ePUC to file new cases, how to file in an existing case, and how to search for information in ePUC. Because additional citizens may interact with the Commission at any time, information on how to use ePUC is posted on the Commission’s website, including recordings of the online training sessions and other videos. In addition, the Commission has created a dedicated email account that is monitored by multiple staff to respond promptly to questions about using ePUC, and Commission staff answer questions from citizens over the phone. The Commission has also encouraged citizens and other users to suggest improvements to ePUC, and many of their suggestions have been implemented.

As of the date of this report:

- More than 1,600 cases have been or are being processed in ePUC; more than 1,200 of these are net-metering registrations.

- More than 95% of parties in cases other than net-metering registrations have chosen to participate electronically (that is, they use ePUC to make filings and to receive notice of other filings by parties and documents issued by the Commission).
- Since October 1, 2017, more than 90% of net-metering registrants have filed their registration forms electronically.
- More than 10,500 documents filed by parties are included in cases being processed in ePUC.
- More than 1,000 orders and CPGs have been issued in ePUC in 2017.
- Almost 23,000 orders and CPGs issued by the Commission in previous years have been uploaded to ePUC, and the Commission is adding older orders to the system on a daily basis.
- There are almost 1,000 subscribers to cases being processed in ePUC.

Finally, ePUC is enabling members of the public to access information online rather than having to file public information requests with the Commission. For example, in the six months before the first phase of ePUC went live, the Commission received 30 requests for service lists. In the six-month period after ePUC went live, the Commission received only 13 such requests. The number of requests for service lists has continued to decline as more cases are being processed in ePUC – down to only six requests in the past five months.

V. Steps Taken to Help Citizens Navigate PUC Processes

In addition to many of the steps explained above, the following actions involve changes to the Commission's processes, including the ways in which staff members provide procedural guidance to citizens. They are all intended to further public understanding of and comfort with the PUC processes, make it easier for citizens to use those processes, and reach agreement on basic facts and other issues.

- 1) A key change was achieved in Act 53 – changing the name of the Public Service Board to the Public Utility Commission. It had become clear over the years that there was widespread confusion among citizens about the difference between the quasi-judicial

Board (PSB) and the consumer-oriented Department of Public Service (PSD). This confusion made it more difficult for members of the public to understand the PSB's processes and how to participate in them, because they didn't know which roles the two agencies played.

- 2) To help change the contentious nature of many contested-case proceedings, the Act 174 Working Group suggested that Commission staff act more often as mediators – for example, by conducting a status conference part-way through a case to narrow the issues. The Commission is seeking opportunities to do so wherever possible, including moving some contentious issues out of contested-case proceedings to rulemakings, in which the public can participate more easily.
- 3) In seeking opportunities for mediation wherever possible, the Commission engaged law students in the Harvard Negotiation and Mediation Clinical Program (“HNMCP”) to design “alternative dispute resolution,” or “ADR” tools for the PUC’s quasi-judicial proceedings, especially in siting cases.⁵ The team interviewed dozens of stakeholders, considered practices in other states, and provided a preliminary report with initial recommendations, which the Commission is in the process of considering. The recommendations include:
 - Creating an opportunity for dialogue between parties outside of the contested-case process;
 - Implementing a multi-choice ADR menu with approaches appropriate to different kinds of cases, including formal mediation; a less formal conversation with a neutral facilitator; unsupervised party-to-party negotiation (for example, in rate cases); and joint fact-finding inquiries with a less formal discovery process (for example, all parties agreeing on the same basic facts on which the experts will render their opinions);
 - Having petitioners conduct more community outreach prior to filing with the PUC; and

⁵ The full HNMCP Report on the potential of alternative dispute resolution in PUC cases was presented to the PUC on December 5, 2017, and is posted on the PUC’s website at the following link: <http://puc.vermont.gov/document/hnmcp-final-report>

- Agreeing on basic principles for any ADR system, such as ease and flexibility, cost-effectiveness in terms of both time and money, and the ability of all parties to have a “seat at the table.”
- 4) The Commission will continue to take ad hoc, informal steps to help the public where necessary – for example, conducting workshops to provide procedural information to *pro se* intervenors in cases with large numbers of such intervenors.
 - 5) In response to the recommendations of the Working Group, Act 53 changed 30 V.S.A. Section 248 to mirror language in Section 248a(o) to authorize a municipal legislative body or planning commission to request the Department to retain experts to provide information essential to a full consideration of a petition for a CPG and to allocate the expenses incurred in retaining these experts to the petitioner (although hiring such experts would not obligate the Department to agree with the position of the municipality).
 - 6) Some administrative procedures have been changed to allow more time for comments, make it clear when comments are due, and create a more logical deadline for comments.

For example:

- Act 53 changed Section 248(f) so that towns and regional planning commissions are no longer required to file comments on projects seven days before petitions are even filed with the Commission. Instead, comments can now be submitted to the Commission within 21 days *after* a petition is determined to be administratively complete.
- 30 V.S.A. Sections 246(c)(1), 248(a)(4)(C), 248(j)(2)(A), and 248a(k) were changed to require copies of petitions and applications to be filed with specified entities within two business days of the Commission’s determination that the petition or application is administratively complete (instead of at the same time it is filed with the Commission) so that recipients know that a petition or application is ready for review when they receive it and any deadline for filing comments is clear.
- The Commission has modified its standards and procedures governing Section 246 applications (temporary siting of meteorological stations) to make the comment period the same length as that for other types of siting projects.

- 7) The new net-metering rule sets forth the complaint process regarding compliance with CPGs. In addition, through Act 53, responsibility is now clearly assigned to the Department for investigating citizens' complaints about alleged violations of CPGs, with an opportunity for the Commission to review any penalties recommended by the Department.
- 8) Finally, understanding that a citizen's comfort level with the PUC is as simple as his or her experience walking through the front door, the Commission is modifying the layout of its reception area to be friendlier to the public. Currently, a grouping of front-office desks, with no clear designation of the "receptionist," is potentially disorienting. The new layout will include a designated receptionist desk (with a staff person assigned to welcome the public in addition to her other duties) and a desk for the public with computer and printer access.

VI. Conclusion and Recommendation

The many different and substantive steps taken by the Commission in response to the Act 174 Working Group recommendations have demonstrably improved the ease with which citizens engage in Public Utility Commission proceedings. Many of these steps were taken on the PUC's own initiative, as it became clear that many members of the public were confused or frustrated by their experience with the then-Public Service Board. Some of this difficulty can be attributed to the quasi-judicial nature of formal processes, which many of the steps in this report have attempted to address. However, much of the problem can also be attributed to dramatic changes over the years in the way the public engages with PUC issues – from the widely spaced utility rate cases that were the norm 20 years ago, to increasing statewide policy directives and exponential growth in the siting and construction of physical facilities all over Vermont. In the past 15 years, infrastructure cases – from cell towers to solar projects – increased from 10% to 60% of the PUC's work load, and net-metering applications grew from 20 in 2001 to 2,278 in FY 2016 alone.

This growth has also affected the speed with which the PUC has been able to dispatch the cases that come before it, as hearing officers' work load has increased. If timely disposition of cases is a factor that influences the public's – and developers' – perception of ease of

participation in PUC proceedings, then this issue remains a challenging one. The Commission recently created a prioritization system by subject matter – for example, statutorily required program design and implementation, utility rate cases, rulemakings, and siting applications – but staff resources are stretched thin and some cases will continue to take longer to resolve than they should. Nonetheless, as evidenced by this report, the Commission continues to seek ways to streamline its processes and make it easier for people to participate.

As part of this report, the Act 174 Working Group asked the Commission to include an assessment of whether a “public assistance officer” position should be created to answer procedural questions from all parties and to facilitate informal discussions about scheduling and other matters, and if so, whether it should be located at the PUC or at the Department. The Commission believes that in conjunction with the improvements enumerated in this report, a fully functioning ePUC should obviate the need for additional personnel to help citizens understand, have access to, and navigate PUC proceedings. The Commission will continue to monitor its success in this regard.

Finally, the Commission will continue to monitor the above-described actions both to make sure they have their intended effect and to consider whether further recommendations are in order.