

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 24-1921-INV

Public Utility Commission's order providing guidance for Commission Rule 5.904(B)(8) filings to release excess funds after decommissioning is complete	
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Order entered: 11/26/2024

ORDER ESTABLISHING GUIDANCE FOR RULE 5.904(B)(8) FILINGS

The Commission has opened this case to provide guidance to certificate of public good (“CPG”) holders with decommissioning obligations. Commission Rule 5.900 provides the decommissioning requirements for facilities constructed and operated pursuant to 30 V.S.A. § 248.¹ Rule 5.904(B)(8) requires CPG holders of non-utility-owned facilities with greater than 500 kW plant capacity to do the following:

Release of excess funds upon completion of decommissioning activities. Upon completion of all decommissioning and site restoration activities, a CPG holder shall request a determination from the Commission that the CPG holder’s decommissioning obligations have been satisfied. Upon the Commission’s determination that the decommissioning obligations have been satisfied, the Commission will terminate the facility’s letter of credit.

The Rule does not define the completion of all decommissioning and site-restoration activities, explain how such a request is made with the Commission, or outline what must be filed in support of the request.

On June 21, 2024, the Commission issued draft guidance on Rule 5.904(B)(8) filings. Comments on the guidance were due on July 12, 2024.

On July 12, 2024, the Vermont Department of Public Service (“Department”) filed comments on the guidance. The Department recommended that the guidance be updated to include a 30-day comment period when a Rule 5.904(B)(8) petition is filed. Further, the Department suggested expanding the list of documentation to demonstrate that decommissioning and site restoration are complete.

¹ 30 V.S.A. § 248(a)(5) requires that the Commission adopt rules regarding standard conditions on decommissioning to be included in certificates of public good for in-state facilities. Rule 5.900 was promulgated pursuant to this statutory directive.

The Commission did not receive any other comments.

Below, we have amended the guidance to include additional details regarding sending notice of the petition and providing a 30-day comment period as recommended by the Department. We have also incorporated the suggested documentation examples requested by the Department.

The below guidance is final unless amended by the Commission. This guidance will be posted to the Commission's webpage regarding letters of credit, which can be found here: <https://puc.vermont.gov/electric/letter-of-credit>.

Final Guidance

A CPG holder that has completed all decommissioning and site-restoration activities required by its final order and CPG must file a petition in the Commission's electronic filing system, ePUC. The Rule 5.904(B)(8) petition should be filed as a new case in ePUC.

Contents of the Rule 5.904(B)(8) Petition Case

- The petition must set out the request the CPG holder is making of the Commission, including the type of financial security filed with the Commission and what the issuing financial institution requires to terminate the financial security.
 - The CPG holder must file the financial institution's required documentation, if any, to facilitate termination of the facility's letter of credit or other financial security. This must be filed in the initial filing along with the petition.
 - Otherwise, the CPG holder must state in the petition that an order from the Commission is sufficient to terminate the facility's letter of credit.
- In an affidavit or prefiled testimony, the CPG holder must:
 - Outline each CPG condition, order paragraph, or final-order requirement pertaining to decommissioning and site-restoration activities and explain how the CPG holder has met each requirement;

- Include a statement that the facility has been removed and the site has been restored to its condition before the facility was installed to the greatest extent practicable; and
- Demonstrate that the dismantled facility equipment has been disposed of or recycled offsite, explaining the soil restoration and seeding methods used, and detailing any other applicable decommissioning and restoration methods employed or plans.
- The CPG holder must submit as an exhibit the final approved decommissioning plan.
- The CPG holder should include any supportive documentation (*e.g.*, photographs) as exhibits sponsored by a witness.
- If the final order or CPG contains decommissioning requirements generated from another state agency's review (*e.g.*, the Vermont Agency of Natural Resources, the Vermont Division for Historic Preservation, or the Vermont Agency of Agriculture Food & Markets), then the CPG holder must obtain signoff from that agency demonstrating that the requirements have been met. Documentation of agency signoff must be obtained before filing the petition and must be filed as an exhibit sponsored by a witness.

Completeness Review & Notice

When a Rule 5.904(B)(8) petition is filed, the Commission will review the petition for administrative completeness. If the Commission determines that the petition is not complete, the Commission will notify the CPG holder that its petition is considered incomplete with a description of the incomplete or missing items. The Commission will not take any further action on an incomplete petition unless and until the CPG holder files the missing information and the Commission determines that the petition is administratively complete. A determination that a petition is administratively complete is not a legal determination regarding the sufficiency of the information included in the petition to satisfy the Rule 5.904(B)(8) requirements.

Upon receipt of a notice of complete petition, the CPG holder must, within two business days, provide notice of the petition to all parties to the underlying CPG case² as well as the

² The CPG holder is required to send notice of the petition to the address associated with the party in ePUC.

municipal legislative body and planning commission, and adjoining landowners.³ Notice to state agencies (the Vermont Agency of Natural Resources, the Vermont Division for Historic Preservation, or the Vermont Agency of Agriculture Food & Markets), the interconnecting electric utility, and regional planning commissions will occur through ePUC. The CPG holder must provide notice outside ePUC to any affected municipal legislative body and planning commission and other parties to the underlying CPG case. To accomplish service outside ePUC, the CPG holder must send the notice by first-class mail or its equivalent. With permission from the intended recipient, the CPG holder may provide notice via email.

When providing notice of the petition outside ePUC, the CPG holder must provide the case number, as well as information about how the recipient of the notice may participate in the case. CPG holders must also state on the first page of the notice the deadline for comments using this language: “The period for filing comments, motions to intervene, and requests for a hearing will end on [INSERT DATE].”


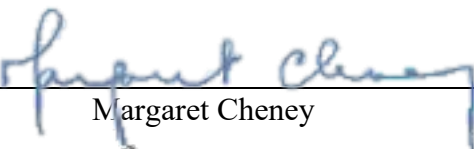
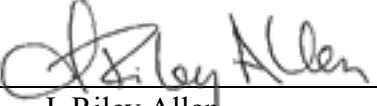
The CPG holder must file a certification that it has complied with these notice requirements.

Comment Deadline

All comments concerning a Rule 5.904(B)(8) petition must be filed with the Commission, with a copy sent to the CPG holder unless the comment is filed in ePUC, within 30 days from the deadline for the CPG holder to provide notice of the petition.


³ The petitioner will be required to submit a list of adjoining landowners and certify that the list was compiled consistent with Commission Rule 5.402(A)(b).

Dated at Montpelier, Vermont, this 26th day of November, 2024.

 _____)) PUBLIC UTILITY
Edward McNamara)	
 _____)) COMMISSION
Margaret Cheney)	
 _____)) OF VERMONT
J. Riley Allen)	

OFFICE OF THE CLERK

Filed: November 26, 2024

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)

PUC Case No. 24-1921-INV - SERVICE LIST

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Other notifications outside ePUC:

Large PUC email list