

November 14, 2023

Charlene Dindo, Committee Assistant
Legislative Committee on Administrative Rules
Submitted via email

Re: Public Utility Commission Proposed Rule 5.400

Dear Ms. Dindo and LCAR Committee Members:

Vermont Electric Cooperative (VEC), Stowe Electric Department (SED), Vermont Electric Power Company (VELCO), and Renewable Energy Vermont (REV), herein referred to as “Joint Commenters”, have actively participated in the public process for proposed Rule 5.400. We have continued to raise important policy considerations and most relevant to the LCAR review process, legal questions regarding delegated authority and administrative overreach. It is our position that the rules as proposed should not be approved by LCAR and that the PUC should be directed to re-draft the sections in question.

We direct you to Joslyn Wilschek’s detailed legal analysis for VEC, included in the rules package, that identifies the relevant and important legal considerations. The Joint Commenters believe that the Commission has no authority to alter procedures and substantive rights that the Vermont Legislature specifically addressed in statute.

In addition to these important legal considerations, the proposed rules move us in a direction counter to facilitating needed energy transformation and electrical system infrastructure and resilience improvements. Federal and state policy and investment dollars currently allocated towards these goals will not be optimally utilized if we unnecessarily increase costs for projects that serve broad public needs.

The Legislature appropriately created the Section 248 process to ensure that permitting of electrical system infrastructure took a state-wide perspective, reflecting the reality that this infrastructure cannot effectively and affordably be permitted like zoning cases where individual landowner issues generally play a significant role. In Section 248, the Legislature granted automatic party status to a host of state entities that have specific expertise in this subject matter, and affected towns and regional planning commissions. The Legislature thoughtfully did not grant automatic party status to other entities or adjoining landowners and thereby gave Section 248 petitioners the opportunity and right to object to interventions by this group. The Legislature delegated to the PUC the role of assessing the validity of these intervention requests to ensure that individuals with legitimate interests in the permitting process could have their concerns met, while landowners with unsubstantiated or irrelevant concerns could not obtain party status. With these changes to proposed Rule 5.400, the PUC seeks to override the Legislature’s choice on who gets automatic

party status, and eliminates its assigned role as a gatekeeper, which threatens the efficiency and effectiveness of the process that the Legislature created.

Please see our comprehensive comment letter dated August 15, 2023. The primary concerns that we seek your assistance in addressing:

- 1. Rule 5.402. The Proposed Rule goes beyond legislative delegation by expanding notice requirements, making it practically impossible to obtain waivers of the 45-day notice period.** Current statute (Section 248(f)) requires advance notice to municipalities and planning commissions. The addition of at least eight, possibly many more, entities would make it unlikely waivers could be obtained as they routinely are now. This expansion will add expense and slow important infrastructure and energy transformation projects, including minor but important projects. Not only would it be time intensive to get consent from all adjoining landowners, there is no incentive for those on the expanded notice list to execute a waiver. This will result in increased costs due to project delays. Importantly, the rule deviates from the statute which sets out a clear waiver process that only requires notice to the municipality and the Regional Planning Commission. These proposed rule changes should not be approved. **We recommend that the Commission modify this provision to eliminate all entities that are not identified in Section 248(f) and to have the rule match the language in Section 248(f).**
- 2. Rule 5.407. Expanding the list of entities to be notified of the complete petition.** The proposed rule goes beyond what is specifically identified in statute. Section 248(a)(4)(C) identified the entities and the proposed rule seeks to expand this list. **We recommend that the Commission modify this provision to eliminate all entities that are not identified in Section 248(a)(4)(C) and to have the rule match the language in Section 248(a)(4)(C).**
- 3. Rule 5.409. Intervention by notice.** Section 248(a)(4)(E)-(I) established which entities have the right to obtain automatic party status or party status by notice. Proposed Rule 5.409 proposes to expand the Section 248 automatic party status designations to include an additional list of entities simply by filing a notice. No motion to intervene is required. There is no requirement to have a particularized interest or relevant expertise. Eliminating all intervention thresholds is a sweeping change, beyond legislative authority, that would make obtaining a Section 248 CPG much more difficult, expensive, and time consuming. The current practice, which provides for motions to intervene, gives a Section 248 petitioner the right to object to party status by a proposed intervenor other than those entities identified in Section 248(a)(4)(E)-(I). Practically, objections are usually presented when an entity or individual seeks party status on issues not relevant to the Section 248 criteria and/or when state agencies adequately represent such interests. Proposed Rule 5.409 seeks to remove a Section 248 petitioner's right to object to party status. **We recommend that the Commission modify this provision to eliminate all entities that are not identified in Section 248(a)(4)(E)-(I), and to have the rule match the language in Section 248(a)(4)(E)-(I).**

Regarding the Economic Impact Statement, neither the summary or the full statement account for the increased project costs that will result from longer application processes due to fewer 45-day notice waivers or delays due to new and expanded intervention processes.

The Joint Commenters respectfully request LCAR to have the Commission modify proposed Rule 5.402 (pre-filing advance submissions), Rule 5.407 (notice of petition), and Rule 5.409 (intervention) to be consistent with statute.

Respectfully submitted:

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