

Commission Rule 2

**Updates Taking Effect
January 18, 2023**



Agenda



- General Overview
- Changes to Rule 2.100 (Scope and Construction of Rules)
- Changes to Rule 2.200 (Procedures Generally Applicable)
- Changes to Rule 2.300 (Consumer Complaints)
- Changes to Rule 2.400 (Matters Other than Consumer Complaints)
- Q & A

Important Disclaimers

The Vermont Public Utility Commission does not provide legal advice to persons that may appear before us. This presentation is not legal advice. The contents of this presentation are intended for general information purposes *only*. Do not consider anything in this presentation as a substitute for obtaining legal advice from a qualified attorney, and do not act or refrain from acting based on the information contained in this presentation.

In short: Don't quote this presentation. Commission Rule 2 speaks for itself, and any interpretation of Rule 2 can only occur by Commission order. This presentation does not expand, contract, or provide any formal interpretation of Rule 2.

Also, Rule 2 will change because it will be updated periodically.

Finally, this presentation is *not intended to be comprehensive!* The updated version of Rule 2 is nearly 70 pages long. This presentation is merely a big-picture overview.

General Overview



Process

- Most of Rule 2 had not been updated in decades—in the meanwhile:
 - Act 174 called for changes to facilitate public participation
 - ePUC created an online case management system
 - the COVID-19 pandemic led to significant operational changes (like remote hearings)
- We opened a proceeding in August 2020 with proposed changes to Rule 2
- Received multiple rounds of comments and held multiple workshops
- Significantly redrafted proposed Rule 2 to incorporate VRCP
- Received and addressed more comments throughout informal and formal rulemaking
- THANK YOU to all of the many participants in this process, as well as Commission Staff who worked on updating Rule 2

Rule 2.100

Two Major Changes

- **Vermont Rules of Civil Procedure *no longer apply* (relevant portions directly incorporated into Rule 2 instead)**
- All filings **must** be in ePUC
 - Some exceptions (e.g., public comments, consumer complaints, and confidential filings)

Other Minor Changes

- New definitions, including “final order”
- Clarifies how to seek waiver of a rule:
 - By motion for ongoing proceedings
 - By petition when no open proceeding
 - Need a concise explanation of the basis for the waiver

Vermont Rules of Civil Procedure Do Not Apply

- No longer incorporated by reference
- Rather, all relevant rules have been placed directly into Rule 2
 - E.g., a Motion to Alter or Amend an Order (a “Motion for Reconsideration”) used to reference VRCP 59, but is now under the new Commission Rule 2.221
- Not all rules incorporated—rather, just the relevant ones
- Cosmetic changes (e.g., “Court” replaced by “Commission”) and some substantive changes as well
- Caselaw (from the Commission and the courts) interpreting related provisions of the VRCP is relevant precedent in interpreting these rules
- Parties can request waivers in particular proceedings so that the VRCP apply

Many Significant Changes

- Clarifies when and how representation by non-attorneys can occur
- Allows substitutions of appearance (no need to file a motion to withdraw)
- Allows “non-substantive *ex parte* communications with the clerk or other administrative employees regarding procedural, scheduling, technological, or administrative matters”
- Page limits on most filings
- Motions must state whether other parties consent to the relief requested
- Standard for intervention is relaxed to mirror standard for court proceedings
- Standard deadline for objecting to testimony changed to 14 days before hearing
- Many more—the following slides merely highlight a *subset* of changes

Rule 2.200

2.201

- Net-metering system installer representatives
- *Pro se* and non-attorney representatives
- Out-of-state attorneys
- Substitutions of appearance
- *Ex parte* communications

2.202

- All filings must be in ePUC, with limited exceptions
- New waiver form
- Preferred format of filings seeking to initiate enforcement proceedings

2.203

- Electronic signatures okay
- Signature is a certification of the factual and legal basis of the filing

2.204

- Requirements for filings, service, COS
- 25-page limit (except for proposed orders, findings, pre- and post-hearing briefs), 15-page limit for responses, 10-page limit for replies

2.205

- Proposed changes to pole-attachment terms or tariffs have special notice requirements

Rule 2.200

2.206

- Expedited motions must be clearly marked
- Motions must state whether other parties consent to requested relief

2.207

- Computing time: 4:30 deadline, and a day is a day
- Motions to extend deadlines must be filed at least 3 days before the deadline

2.208

- Commission can reject deficient filings

2.209

- Intervention standard now modeled after civil court (VRCP 24), eliminating exclusive-means requirement
- Motions to intervene must be timely

2.210

- Joinder: when starting a case, all necessary parties should be included

Rule 2.200

2.211

- Ability to consolidate hearings

2.212

- Commission can order mediation (on its own, or at the request of a party)

2.213

- Requirements for prefiled testimony
- In lieu of notarization, can include a declaration, but must use EXACT words in 2.213

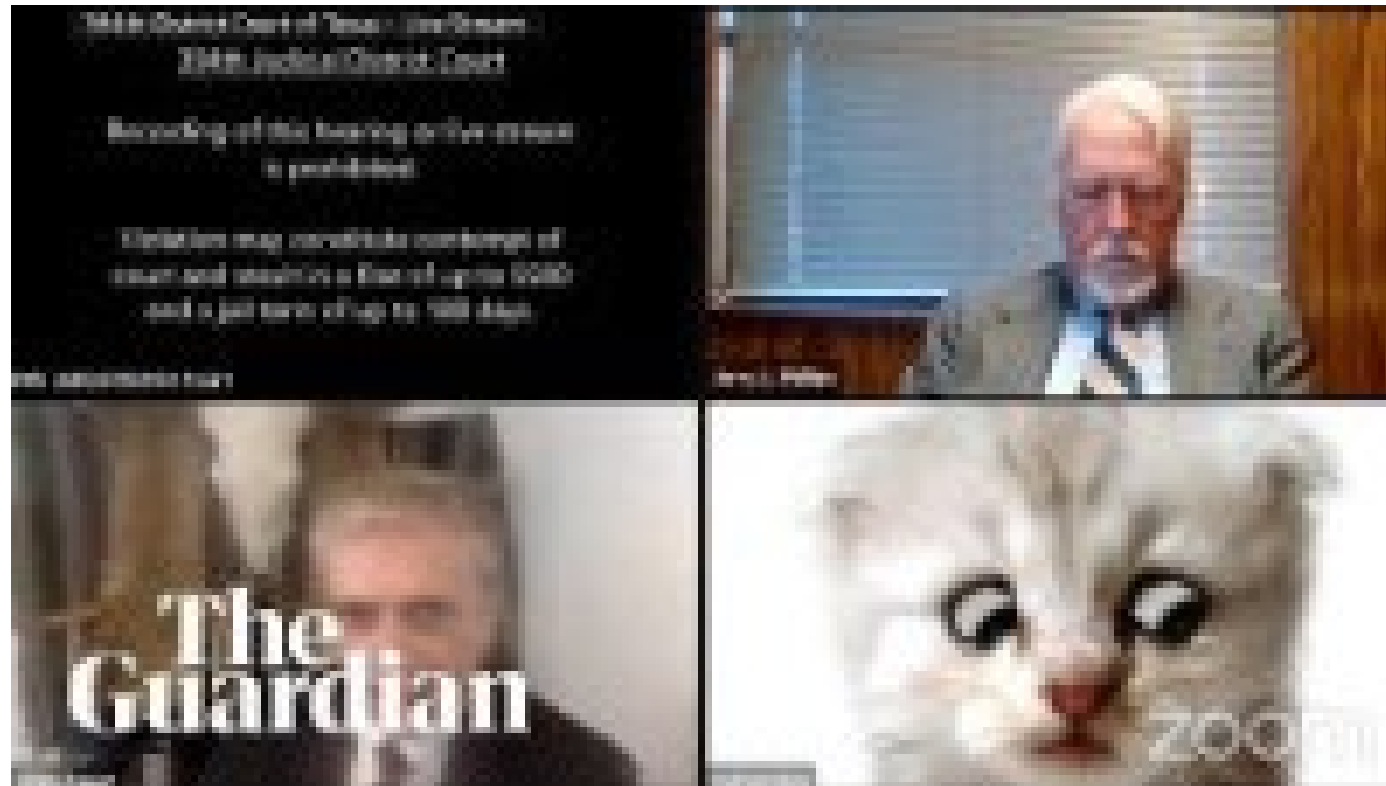
2.214

- Discovery must follow 2.230
- Discovery requests must be filed in ePUC
- If requested, responses must be filed with Commission

2.215

- Incorporates updated *ex parte* rules for Commission witnesses (only non-substantive procedural, scheduling, administrative talks allowed)

2.216 and Remote Proceedings



Rule 2.200

2.216

- Commission can order remote hearings
- In general, objections to prefiled testimony due 14 days before hearing
- Closing of the record defined

2.217

- During evidentiary hearing, objections must be raised immediately

2.218

- Subpoena requirements
- In general, parties cannot subpoena non-testifying members of public (e.g., those who file public comments)

2.219

- Summary judgment
- Oppositions due 30 days later, replies 14 days after that
- Bad-faith declarations can lead to paying costs of other side's response

2.220

- Withdrawing petitions
- Withdrawal of net-metering registrations automatic if registrant fails to respond to utility's objection

Rule 2.200

2.221

- Motions to reconsider, motions for relief from judgment, and harmless error (formerly VRCP 59, 60, and 61)

2.222

- Requirements for proposed findings of fact

2.223

- Requirements for briefs
- Briefs longer than 10 pages must have a table of contents

2.224

- Sanctions can include directives of a nonmonetary nature or an order to pay a penalty

2.225

- Parties must work together to try to jointly file proposed schedule ASAP, and no later than 3 days before scheduling conference
- List of items to include

Rule 2.200

2.226

- Confidential documents must include (1) a cover letter citing ruling on confidentiality or (2) a motion
- Email to Clerk with clear marking as "Confidential"
- Must also file public version

2.227

- During a declared state of emergency, Commission may issue orders temporarily altering procedural requirements

2.228

- Motions to recuse a Commissioner or hearing officer must be made ASAP
- Sometimes there may be a disclosure of potential basis for recusal, then 7 days to file a recusal motion

2.229

- Recording of proceedings generally allowed, but must be disclosed at beginning of proceeding, not interfere with proceeding, and not capture private discussions

2.230

- Specific discovery procedures with details and requirements for each step of discovery
- Depositions limited to 7 hours
- Provisions for discovery sanctions

Consumer Complaints

- Minor language changes
- Complaints are often referred to the Department of Public Service
 - But if it is not referred to the Department, then the Commission provides notice to the subject of the complaint and any affected utility

Proceedings Other than Consumer Complaints

- Specific requirements for injunctions and temporary restraining orders
- Much longer list of forms that must be used for certain filings (e.g., a notice of intervention)
- New section (Rule 2.408) on Commission's authority to take emergency action when the Governor has proclaimed a state of emergency
 - By petition or motion, or on the Commission's own initiative
 - Specific requirements for these types of proceedings

Next Steps

- New Standards & Procedures to reflect the new Rule 2
- New Order on the filing of Annual Reports by utilities
- New forms on website (and some forms removed)

Questions?



Thank you!

