

2.000 RULES OF PRACTICE**2.100 Scope and Construction of Rules****2.101 Applicability**

These rules shall apply in all proceedings before the Board.

2.102 Definitions

(A) Board: the Vermont Public Service Board and any hearing examiner appointed by the Board wherever the context admits of such a construction.

(B) Clerk: the clerk of the Board.

(C) Filing (when used as a noun): any petition, application, complaint, motion, exhibit or any other document or thing of any description which is required or permitted to be filed with the Board in connection with a pending case.

2.103 Vermont Rules of Civil Procedure

The Vermont Rules of Civil Procedure, whether specifically adopted herein by reference or whether made applicable by Rule 2.105, below, shall, subject to Rule 2.104, below, apply in the form in which they exist on June 1, 1982 and as they may thereafter from time to time be amended. References in such rules to any judge or to any trial court shall be deemed to be a reference to the Board; references to the clerk of the court shall be deemed to be references to the clerk of the Board; references to trials shall be deemed to be references to hearings; references to complaints shall be deemed to be references to petitions, applications or complaints; and references to actions shall be deemed to be references to proceedings before the Board. Where less than the whole of any rule of the Vermont Rules of Civil Procedures is specifically adopted by reference, the provisions of the remainder thereof shall not apply except by specific order of the Board issued pursuant to Rule 2.107.

2.104 Conflicting Authority

In the event of any conflict between the provisions of any other Rule or General Order of the Board and these rules, the former shall prevail. In the event of any conflict between otherwise applicable provisions of the Vermont Rules of Civil Procedure and any Rule or General Order of the Board, including any provision of these rules, the latter shall prevail.

2.105 Procedures Not Specifically Governed

Procedures not specifically governed herein shall be governed by the Vermont Rules of Civil Procedure, by any applicable Rule or General Order, or by any applicable statute.

2.106 Construction

These rules shall be liberally construed to secure the just and timely determination of all issues presented to the Board.

2.107 Waiver of Rules

In order to prevent unnecessary hardship or delay, in order to prevent injustice, or for other good cause, the Board may waive the application of rule upon such conditions as it may require, unless precluded by the rule, itself, or by statute.

2.108 Severability

In the event that any of these rules is found by a court of competent jurisdiction to be illegal or void, the remainder shall be deemed unaffected and shall continue in full force and effect.

2.109 Repeal of Prior Rules

Rules of practice and any amendments or additions thereto previously adopted by the Board are hereby repealed, except that with respect to any proceeding pending on the effective date hereof, the Board may apply any provision of such prior rules where the failure to do so would work an injustice or substantial inconvenience.

2.200 PROCEDURES GENERALLY APPLICABLE**2.201 Practice Before the Board**

- (A) Notice of appearance. Attorneys shall file a written notice of appearance with respect to any matter in which they are representing a party. Except in the case of a consumer filing a consumer complaint, pro se representatives shall likewise file a notice of appearance. Except as otherwise provided by law, a party whose attorney has failed to comply with this requirement, or a party appearing by a pro se representative who has failed to comply with the requirements of this rule, shall not be entitled to notice or service of any document in connection with such matter, whether such notice or service is required to be made by the Board, by a party or by a person seeking party status. A copy of each notice of appearance shall, on the same day on which it is filed, be served by the party filing the same upon all persons or parties on whose behalf a notice of appearance has been filed. A list of such persons and parties will be provided by the clerk upon request.
- (B) Pro se appearances. For purposes of these rules a person appearing pursuant to the authority of this section shall be known as a pro se representative. In its discretion, the Board may permit persons who are not attorneys to appear before it as follows: a partnership may be represented by a partner, and a corporation, cooperative or association may be represented by an officer thereof or by an employee designated in writing by an officer thereof. Such permission shall be given in all proceedings unless, because of their factual or legal complexity or because of the number of parties, the Board is of the opinion that there is a substantial possibility that the participation of a pro se representative will unnecessarily prolong such proceeding or will result in inadequate exposition of factual or legal matters. Notwithstanding the foregoing, any individual may be a pro se representative in his or her own cause. This rule shall in no respect relieve any person or party from the necessity of compliance with any applicable rule, law, practice, procedure or other requirement. Except as provided in Rule 2.201(D), anyone appearing as a pro se representative shall be under all the obligations of an attorney admitted to practice in this state with respect to the matter in which such person appears.
- (C) Attorneys admitted elsewhere. An attorney admitted to practice and in good standing in any other state or American or common law jurisdiction may appear in particular matters with the permission of the board, provided that such attorney must have co-counsel of record who is admitted to practice in Vermont.
- (D) Withdrawal of appearance. An attorney who has appeared on behalf of a party may withdraw only upon permission of the Board. A person appearing as a pro se representative may withdraw without permission of the Board, provided, that if other counsel has not appeared for such person, such withdrawal shall be deemed to constitute withdrawal of that person as a party.
- (E) Ex parte communications
- (1) Prohibited communications. Unless required for the disposition of ex parte matters authorized by law, upon the filing of a complaint, petition, application or other filing which the Board has treated as the same, no member, employee or agent of the Board may communicate, directly or indirectly, in connection with

any issue of fact, with any party or any interested person, or, in connection with any issue of law, with any party or any employee, agent or representative of any party, except with the consent of all parties or upon notice and opportunity for all parties to participate.

- (2) Participation in decision. Unless required for disposition of ex parte matters authorized by law, any member, employee or agent of the Board who has, in connection with a pending, contested case, except with the consent of all parties or upon notice and opportunity for all parties to participate, communicated in connection with any issue of fact with any party or interested person or, in connection with any issue of law, with any party or any employee, agent or representative of any party, shall not participate or advise in the decision, recommended decision or Board review except as a witness or as counsel in public proceedings.
- (3) Improper communications by parties. Any person or party who, directly or through an employee, agent or representative, communicates or attempts to communicate with any member, employee or agent of the Board on any subject so as to cause, or with the intent to cause, the disqualification of such member, employee or agent from participating in any manner in any proceeding, may be disqualified from subsequent participation in the proceeding, may be dismissed as a party to the proceeding, may be held in contempt of the Board and/or may be deemed to have waived any objection to the subsequent decision by the Board with respect to any matter which is the subject of such communication.
- (4) Exception Notwithstanding any provision of subparagraph (1) or (2), above, members, employees and agents of the Board may communicate with other members, employees or agents, provided that none of the latter has engaged in communications prohibited by (A) above.

2.202 Initiation of Proceedings

Except for cases initiated by the Board, a proceeding is initiated by filing a complaint, petition or other application with the Clerk at the Board's office during normal business hours. If the named defendant or respondent is a utility, service of process shall be completed by the Clerk who shall send a copy of the filing which initiates the proceeding to such utility by certified mail, return receipt requested. If the named defendant, respondent, or other person or entity entitled to notice is not a utility, then the party initiating the proceeding shall procure a summons from the Clerk and shall cause the summons, together with the filing which initiates the proceeding, to be served on such defendant to respondent in the manner provided by the Vermont Rules of Civil Procedure within thirty days after such filing.

2.203 Signing of Petitions, Motions and Other Pleadings

Every petition, motion or other pleading shall be signed by at least one attorney or pro se representative of record in his individual name, whose address and telephone number shall be stated. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or pro se representative constitutes a certificate by him that the best of such subscriber's knowledge, information and belief there are good grounds to support it; and that it is not interposed for delay.

2.204 Pleadings and Other Filings; Service, Filing, Form and Amendment

- (A) Service, when required. In addition to any other requirement imposed by law, every filing shall, on the same day on which it is filed, be served by the party filing the same upon every other party who has filed a notice of appearance, unless the Board for good cause otherwise directs.
- (B) Service, how made. Whenever under these rules service is required to be made on a party, it shall be made upon the attorney or pro se representative whose appearance has been filed on behalf of such party. In all cases, service may be made by mailing a copy of the filing, first class postage prepaid, to the person whose notice of appearance is on file; but service may also be made by personal delivery or by any other means authorized by the person entitled to service.
- (C) Filing, manner and significance. Filing shall be accomplished by delivery to the clerk at the office of the Board or by delivery to the Board during the course of a hearing. Regardless of the method of delivery employed, filing occurs only upon receipt by the clerk or the Board, as the case may be. Such filing shall constitute a representation by the attorney or pro se representative signing the same that a copy thereof has been or will be served on the same day on which it is filed upon every other party on whose behalf a notice of appearance has been filed.
- (D) Number of copies. Except as provided herein, or as otherwise ordered by the Board, all materials required to be filed shall require an original and six copies of each document. The exceptions to this rule are as follows:
Rule 2.205 (Statement Regarding Persons Entitled to Notice) -Original plus one copy.
Rule 2.214 (Discovery Responses) -One copy only.
Rule 2.302 (Consumer Complaints) -Original only.
Rule 2.401 (Tariffs) -Original plus nine copies.
Rule 2.403 (Petition for Declaratory Ruling) -Original plus five copies.
Rule 2.404 (Petition for Adoption of Rules) -Original plus five copies.
- (E) Form of Filings Generally. Except as provided in Rule 2.204(F), all filings shall be typewritten on paper 8 1/2" x 11" in size. All filings shall be endorsed in the upper right hand corner with the name and docket number of the case, the page numbering of the filing and the date upon which it was prepared. Page numbering shall show both the number of the particular page and the total number of pages comprising the filing. Filings shall be headed by a descriptive title. The Board or the clerk may refuse to accept for filing or, after filing, may at any time reject any filing which fails to conform to the requirements of this rule, provided, that if no substantial prejudice will occur to any other party, the filing party shall be afforded a reasonable opportunity to cure the defect, and such cure, if made, shall be deemed to relate to the original date of filing.
- (F) Special rules for certain exhibits. Exhibits need not comply with the typewriting or size requirement of Rule 2.204(E) when their purpose or content makes it impracticable to do so, but in all cases where it is not manifestly impracticable to do so, exhibits shall be so designed that they can be folded to a size 8 1/2" x 11". The identity and page number of any exhibit which measures, or which is folded to

measure 8 1/2" x 11", shall appear in the upper right hand corner when the exhibit is positioned with the 8 1/2" side as its top and bottom. The identification and page number shall be set out horizontally when the exhibit is positioned in the manner described in the preceding sentence. The Board or the clerk may refuse to accept for filing, or after filing, may at any time reject any exhibit which fails to conform to the requirements of this rule, provided, that if no substantial prejudice will occur to any other party, the filing party shall be offered a reasonable opportunity to cure the defect, and such cure, if made, shall be deemed to relate to the original date of filing.

(G) Amendments

(1) In general. Proposed amendments to any filing may be made at any time. If unobjected to by any party within ten days of filing or at the commencement of any hearing in which the amended matter is at issue, whichever is earlier, such amendments shall be deemed effective, except that the Board may at any time dismiss any proposed amendments which it finds to have the effect of unreasonably delaying any proceeding or unreasonably adversely affecting the rights of any party. Where objection is made, amendments shall not be allowed unless the Board finds (a) that they will not unreasonably delay any proceeding or unreasonably adversely affect the rights of any party and (b) that the requirements of subsection (2), if applicable, are satisfied. The Board may condition the acceptance of any amendment as justice may require. An amendment which is allowed over objection shall be deemed effective as of the date it is approved, unless for good cause, the Board orders that it shall be effective as of a different date. Proposed amendments shall be clearly identified as such and shall clearly indicate the changes they effect. In the event an amendment makes a substantial change in a filing, the Board may order such additional notice to other parties and the public as justice may require.

(2) Rate Filings. No party may amend, supplement or alter an existing filing or substantially revise the proof in support of such filing in order to increase, decrease or substantiate a pending rate request unless, upon hearing, it is demonstrated that such a change in filing or proof is necessary for the purpose of providing adequate and efficient service or for the purpose of avoiding the implementation of rates which exceed a level which is just and reasonable. A change in a filing or in the proof in support thereof shall be deemed to be necessary for the purpose of providing adequate service if the costs or other circumstances reflected therein occurred or were imposed or were incurred prior to such change and/or if such costs or circumstances will be operative or in effect during all of the period within which the rates to be based thereon will be in effect; provided, that the Board may disallow any such change if the costs or other circumstances reflected therein were known to or, by the exercise of reasonable diligence could have been known to, the party filing the same substantially prior to such filing.

(H) Custody. Once it has been filed, any filing shall remain in the custody of the Board until other lawful disposition shall have been made at the conclusion of the case or otherwise.

2.205 Notice to other Persons or Parties

- (A) Statement regarding persons entitled to notice. At the commencement of any proceeding, the party initiating the same shall file a statement identifying by name and address each person, party or other entity to whom or to which the Board or the Clerk is required to give notice of such proceeding.
- (B) Orders of notice. The Board may require any party who seeks the granting or denial of any form of relief to file a proposed order of notice.
- (C) Expenses. The expense of furnishing notice shall be borne by the party on whose behalf or for whose benefit such notice is given.

2.206 Motions

Motions not made during the hearing shall be in writing and, if they raise a substantial issue of law, shall be accompanied by a brief or memorandum of law. Motions made during a hearing may be required to be put in writing and supported by a brief or memorandum of law within such period as the Board may direct. The Board may decline to consider a motion not made within a reasonable time after the issue first arises with respect to the moving party.

2.207 Time

The provisions of the Vermont Rules of Civil Procedure, Rule 6 (a) and 6 (b) (Time - Computation and Enlargement) shall apply in proceedings before the Board.

2.208 Defective Filings

Substantially defective or insufficient filings may be rejected by the Board, provided, that if it will not unreasonably delay any proceeding nor unreasonably adversely affect the rights of any party, the Board shall allow a reasonable opportunity to a party to cure any defect or insufficiency. A filing which is found to be defective or insufficient shall not be deemed to have been cured until the date on which the last document is filed which removes the defect or makes the filing complete. A filing is substantially insufficient if, inter alia, it fails to include all material information required by statute or rule.

2.209 Intervention

- (A) Intervention as of right. Upon timely application, a person shall be permitted to intervene in any proceeding (1) when a statute confers an unconditional right to intervene; (2) when a statute confers a conditional right to intervene and the condition or conditions are satisfied; or (3) when the applicant demonstrates a substantial interest which may be adversely affected by the outcome of the proceeding, where the proceeding affords the exclusive means by which the applicant can protect that interest and where the applicant's interest is not adequately represented by existing parties.
- (B) Permissive intervention. Upon timely application, a person may, in the discretion of the Board, be permitted to intervene in any proceeding when the applicant demonstrates a substantial interest which may be affected by the outcome of the proceeding. In exercising its discretion in this paragraph, the Board shall consider (1) whether the applicant's interest will be adequately protected by other parties; (2) whether alternative means exist by which the applicant's interest can be protected; and (3) whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.

- (C) Conditions. Where a party has been granted intervention, the Board may restrict such party's participation to only those issues in which the party has demonstrated an interest, may require such party to join with other parties with respect to appearance by counsel, presentation of evidence or other matters, or may otherwise limit such party's participation, all as the interests of justice and economy of adjudication require.
- (D) Procedure. An application to intervene shall be by motion made in accordance with these rules. The motion shall be made within a reasonable time after the right to intervene first accrues and shall specifically state the manner in which the condition of this rule are satisfied.

2.210 Joinder

The provisions of the Vermont Rules of Civil Procedure, Rules 19 (Joinder of Persons Needed for Just Adjudication); 20 (Permissive Joinder of Parties); and 21 (Misjoinder and Nonjoinder of Parties) shall apply in proceedings before the Board.

2.211 Consolidation of Hearings; Separate Hearings

The provisions of the Vermont Rules of Civil Procedure, Rule 42 (Consolidation; Separate Trials) shall apply in proceedings before the Board.

2.212 Prehearing Conferences

In any proceeding, the Board may, and in any rate case, the Board shall direct the parties to appear before it for a conference to consider the following matters:

- (A) the simplification of the issues;
- (B) the necessity or desirability of amendments to any filing;
- (C) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (D) the limitation of the number of expert witnesses;
- (E) such other matters may aid in the disposition of the case.

The Board shall make an order which recites the action taken at the conference, including any agreements made by the parties. When entered, such order controls the subsequent course of the proceeding unless later modified.

2.213 Prefiled Testimony

- (A) Direct case. Within such time as may be directed by the Board, each party shall file the direct testimony and exhibits of each witness it proposes to call in support of its direct case.
- (B) Rebuttal case. In its discretion, the Board may direct any party to file the testimony and exhibits of each witness it proposes to call in rebuttal of the case of any other party.
- (C) Form of prefiled testimony. Prefiled testimony shall be in question and answer

form. Its form and content shall be such as would entitle the same oral testimony to be admitted in proceedings before the Board. Such testimony shall be typed and double spaced. Line numbers shall be placed in the left hand margin of each page. The prefiled testimony of each witness shall be preceded by a brief statement, set forth on a separate page, containing a narrative summary of the testimony and exhibits referred to in such testimony. The narrative shall not be admitted as evidence.

2.214 Discovery

- (A) In general. The provisions of Vermont Rules of Civil Procedure, Rules 26 (General Provisions Governing Discovery), 27 (Discovery Before Action Or Pending Appeal), 28 (Persons Before Whom Depositions May Be Taken), 29 (Stipulations Regarding Discovery Procedure), 30 (Depositions Upon Oral Examination), 31 (Depositions Upon Written Questions), 32 (Use of Depositions In Court proceedings), 33 (Interrogatories To Parties), 34 (Production of Documents And Things And Entry Upon Land For Inspection And Other Purposes), 36 (Request For Admission) and 37 (Failure To Make Discovery; Sanctions) shall apply in proceedings before the Board. The availability of these procedures shall not limit the availability of any other means of discovery provided by statute or otherwise.
- (B) Discovery by the Board. The procedures enumerated in 2.214(A) may be used by the Board or its members, agents or employees, but the availability of such procedures shall in no way limit the authority of the Board, its members, agents or employees, including but not limited to the authority to inquire into and examine any matter within the jurisdiction of the Board, to examine books, accounts and papers of any person or entity subject to the Board's jurisdiction or to enter and examine the property of any person or entity subject to the Board's jurisdiction.

2.215 Conduct of Hearings

- (A) Board witnesses. In its discretion, the Board may call witnesses to testify as to any matter in issue in any proceeding. Except as required to establish the subject matter and scheduling of the testimony to be offered, the Board shall not communicate with such witnesses unless it is done in open hearing or upon notice and opportunity for all parties to participate.
- (B) Examination of witnesses by Board and staff. Any member of the Board, and any member of its staff, may examine witnesses who testify in any proceeding.
- (C) Rulings by hearing examiners. When a matter has been assigned to a hearing examiner, such examiner may make rulings of law on procedural matters, on the admission or exclusion of evidence, and on any other matters necessary to conclude proceedings before the examiner. After the hearing examiner has issued and served a proposal for decision, a party may bring such rulings to the Board for review by requesting, pursuant to 3 V.S.A. § 811, the opportunity to file exceptions and to present briefs and oral argument.

2.216 Evidence

- (A) General rule. Evidentiary matters are governed by 30 V.S.A. § 810. In addition, except as to matters covered by the succeeding paragraphs of this rule, the provisions of the Vermont Rules of Civil Procedure, Rules 43 (Evidence), 44 (Proof of Official

Record) and 44.1 (Determination of Foreign Law) shall apply in proceedings before the Board.

- (B) Use of exhibits. Where evidence to be presented consists of tabulations or figures so numerous as to make oral presentation impracticable, it shall be presented in exhibit form. Such exhibits shall be summarized and explained in testimony.
- (C) Procedure with respect to prefiled testimony and exhibits. Prefiled testimony, if admitted into evidence, shall be included in the transcript. Objections to the admissibility of prefiled testimony or exhibits shall be filed in writing not more than thirty days after such evidence has been prefiled or five days before the date on which such evidence is to be offered, whichever is earlier.
- (D) Views and inspections. Upon notice to the parties, the Board may, either upon its own motion or upon the request of a party, view or inspect any property which is the subject of or is related to the subject of any proceeding. A view or inspection may be made before, during or after the hearing.

2.217 Objections and Exceptions

The provisions of the Vermont Rules of Civil Procedure, Rule 46 (Exceptions Unnecessary) shall apply in proceedings before the Board.

2.218 Subpoenas

The provisions of the Vermont Rules of Civil Procedure, Rule 45 (Subpoena) shall apply in proceedings before the Board.

2.219 Summary Judgment

The provisions of the Vermont Rules of Civil Procedure, Rule 56 (Summary Judgment) shall apply in proceedings before the Board.

2.220 Harmless Error

The provisions of the Vermont Rules of Civil Procedure, Rule 61 (Harmless Error) shall apply in proceedings before the Board.

2.221 Relief from Order

The provisions of the Vermont Rules of Civil Procedure, Rule 60 (Relief From Judgment Or Order) shall apply in proceedings before the Board.

2.222 Proposed Findings of Fact

In any case the Board may require each party to file proposed findings of fact. Such proposed findings shall conform to the requirements for finding for the Superior Court. Each proposed finding shall deal concisely with a single fact or with a group of facts so interrelated that they cannot reasonably be treated separately. Proposed findings shall be consecutively numbered and shall be logical sequence.¹ Where the party claims to have established more than one ultimate fact, proposed findings shall be arranged into separate groups, appropriately identified as to subject matter. Each proposed finding shall contain a citation or citations to the specific part or parts of the record containing the evidence upon which the proposed finding is

1. Editor's Note: This sentence should apparently read: ". . . and shall be in logical sequence."

based.

2.223 Briefs

Briefs shall address each issue of law which a party desires the Board to consider. Whenever a brief addresses more than one issue, it shall be suitably divided into sections which separately address each issue. Such a brief shall contain, immediately following the cover page, a detailed table of contents.

2.224 Sanctions

An attorney or pro se representative who fails, after having been requested by the Board to do so, to submit proposed findings or briefs, or who manifestly fails to conform to the requirements respecting findings or briefs as specified in Rules 2.222 and 2.223, may be suspended from further participation in the proceeding or, for such period of time as the Board finds to be just, from participation in other proceedings. In addition, or in the alternative, with respect to any fact as to which a party has manifestly failed to conform to the requirements of Rule 2.220, such party may be deemed to have withdrawn its offers and claims of proof and to have waived its right to a finding by the Board regarding such fact; and with respect to any issue of law as to which a party has manifestly failed to conform to the requirements of Rule 2.223, such party may be deemed to have waived any claims of law with respect to such issue, and the claims of opposing parties with respect thereto may be deemed to be the law of the case.

2.300 CONSUMER COMPLAINTS

2.301 Definition

A consumer complaint is a complaint filed by any person (whether an individual, corporation, association, partnership or other entity) receiving service or entitled to receive service from a utility regulated by the Board seeking a refund of charges and/or an order requiring a utility to comply in a reasonable manner with any applicable tariff, statute, rule or order of the Board.

2.302 Form and Content

A consumer complaint shall set forth in writing a short and plain statement of facts showing that the complainant is entitled to relief. The statement shall be signed by the consumer. Notwithstanding the foregoing, the Board may in its discretion treat any written communication to it concerning a matter within its jurisdiction to be a claim for relief.

2.303 Acknowledgment and Distribution of Complaints

The Board shall acknowledge receipt of all written complaints and shall send a copy thereof to the affected utility.

2.304 Referral to the Department of Public Service

In its discretion, the Board may refer any complaint to the Department of Public Service and request the Department to attempt to resolve the dispute. If the complaint is not thus referred, if the Department of Public Service refuses to accept the referral, or if the Department is unable to resolve the matter, then the Board, if it find, assuming, that the allegations of the complaint are true, that there is a probability of a violation of tariffs, statutes, rules or other orders of the Board, shall set the complaint for a hearing.² If, assuming that the allegations of the complaint are true, there is no probability of such a violation, it shall dismiss the complaint.

2.306 Hearings on Consumer Complaints

In setting a case for hearing, the Board shall assign a docket number and shall specifically set forth the issues to be resolved, which issues, unless the requirements of justice dictate otherwise, shall be the only issues controverted at the hearing. If issues in addition to those so specified are to be heard, the parties shall be afforded a reasonable time to prepare and respond. The hearing shall be assigned by the clerk for the earliest practicable date.

2.306 Representation by Persons Not Admitted to Practice

Notwithstanding the provisions of Rule 2.201, the Board may in its discretion permit consumers to be represented in consumer complaint proceedings by persons who are not admitted to the practice of law, provided that such representatives shall demonstrate a sufficient familiarity with these rules and with all substantive and procedural provisions of law applicable to such proceedings. Except for the requirement of admission to practice, such representatives shall comply with all rules, laws, practices, procedures and other requirements applicable to proceedings before the Board.

2. Editor's note: This sentence should apparently read: ". . . then the Board, if it finds, assuming[] that the allegations. . . ."

2.400 MATTERS OTHER THAN CONSUMER COMPLAINTS**2.401 Tariff Filings**

- (A) General. Tariff filings, including amendments to existing tariffs, shall be accompanied by a concise, narrative description of their nature and effect, stated in terminology which is comprehensible to the general public.
- (B) Amendments. Except where substantially the whole of a separately identified section of a tariff is affected, an amendment to an existing tariff shall be accompanied by a separate explanatory version which shows deleted material in brackets and broken underline and new material in solid underline.
- (C) New services. Where a tariff filing covers a new service, or a modification of an existing service, estimates of revenues and costs attributable to such service for each of the three years succeeding the introduction of the new or modified service.³ Schedules containing the information called for by this provision shall be accompanied by a statement of the name of the person or persons responsible for their preparation, together with a description of any underlying documentation, which documentation shall be available through discovery immediately after the filing.

2.402 Rate Proceedings

- (A) Justification for change in rates. In order to enable the Board to determine whether new rates proposed by any utility should be further investigated or suspended, all rate filings shall contain complete and substantial justification for the proposed change, including the following: (1) detailed calculation of cost of service; (2) detailed calculation of cost of capital; (3) rate base calculation; (4) the effect of the filing on annual operating revenues; (5) projected construction expenditures by category for each of the following two years; (6) for electric utilities, a detailed statement of purchased power and production costs (with fuel costs separately stated) by source for the 12 months prior to the filing and a similar statement of projected purchased power and production costs by source for the 12 months succeeding the filing; such costs for both periods shall be shown net of sales to other utilities or, in the alternative, revenues from such sales shall be separately stated.
- (B) Changes from previous order. Where a request for a change in rates proposes or utilizes any change in the ratemaking methodology or principles approved or utilized by the Board in the most recent rate order affecting the same utility, such change shall be clearly identified, and a statement of the reasons for such change shall be given.
- (C) Exhibits and other information. A utility whose rates are suspended shall, within thirty days from the date of the suspension order, file ten copies of all exhibits it intends to use in the hearing thereon, together with the names of witnesses it intends to call in its direct case, and a short statement of the purposes of the testimony of each witness. In the case of a municipality or cooperative which has filed a notice of

3. Editor's note: The end of this sentence should apparently read: "Where a tariff . . . of the new or modified service shall be included with the filing."

change in rates, if the Board gives notice that it intends to investigate such change, then the municipality cooperative shall file similar exhibits, names of witnesses and a statement of the purpose of their testimony within thirty days of the giving of such notice. Except in the discretion of the Board, a utility shall not be permitted to introduce into evidence in its direct case exhibits which are not filed in accordance with this rule. This provision shall not be deemed to constitute a limitation on the Board's authority to require the pre-filing of direct testimony in any case at such time as the Board may prescribe.

2.403 Petitions for Declaratory Rulings

Pursuant to 3 V.S.A. § 808, an interested person may petition the Board for a declaratory ruling as to the applicability of any statutory provision or of any rule or order of the Board. The petition shall identify the statute, rule or order involved, shall include a proposed order of notice and shall be accompanied by a brief which conforms to the requirements of Rule 2.223.

2.404 Petitions for Adoption of Rules

Pursuant to 3 V.S.A. § 806, an interested person may petition the Board requesting the promulgation, amendment or repeal of a rule. The petition shall describe the action requested, shall state the reasons for the request and shall include a proposed order of notice.

2.405 Request for Tariff Investigation

Any interested person or entity may request that the Board initiate an investigation pursuant to 30 V.S.A. § 227 into the justness and reasonableness of a utility's tariffs. Whether or not to undertake such an investigation shall be within the Board's discretion.

2.406 Injunctions

(A) Definitions

- (1) **Temporary restraining order**: an injunctive remedy which is issued either ex parte or under circumstances where the respondent has not been afforded an adequate opportunity to present its defense at a hearing held upon such notice as is otherwise required by law.
 - (2) **Preliminary injunction**: an injunctive remedy issued after a hearing held upon legal notice but where the proceedings have not allowed the parties adequate opportunity to avail themselves of all procedures provided for by these rules and by all other provisions of law. A preliminary injunction cannot remain in effect beyond the conclusion of the proceeding in which it is issued.
 - (3) **Permanent injunction**: an injunctive remedy issued as final relief after a hearing held upon legal notice and where the proceedings have allowed the parties adequate opportunity to avail themselves of all procedures provided for by these rules and by all other provision of law.
- (B) **Particular requirements for temporary restraining orders; examination of witnesses by the Board**. A petition for a temporary restraining order must be verified or must be accompanied by affidavits attesting to all of its factual allegations. The Board may require any facts alleged in the affidavits or verified petition to be presented in oral testimony and may examine any witness testifying to such facts as to any matter which is relevant to the subject matter of the proceeding. The petitioner shall deliver

a copy of the petition to the respondent before filing or, if such delivery would require delay which might cause irreparable harm, as soon thereafter as possible. If actual delivery to the respondent has not been made prior to filing, the petitioner shall notify the respondent or its attorney by telephone or by other means at the earliest possible time thereafter. A temporary restraining order may be issued only where it clearly appears from specific facts shown by the affidavits or the verified petition, and by testimony if required by the Board, that substantial immediate and irreparable injury, loss or damage, or danger to health or safety, will result to the petitioner before a hearing can be held upon proper notice.

- (C) Further proceedings after issuance of a temporary restraining order. A petition for a temporary restraining order, whether or not it is so designated, shall also constitute a petition for a preliminary injunction and/or a permanent injunction. Unless precluded by the existing scheduling of other matters, or unless the respondent does not object to longer scheduling, a hearing upon such preliminary or permanent injunction shall be held within forty-five days and a decision rendered within sixty days. Wherever possible, the Board shall attempt to make a final disposition of the matter, but if the proceedings do not allow the parties adequate opportunity to avail themselves of all procedures provided for by these rules and by all other provisions of law, then only a preliminary injunction may be issued. If a temporary restraining order has previously been issued, it shall continue in force until a decision is rendered on the preliminary injunction or the permanent injunction, as the case may be, unless it is dissolved by its terms or by further order of the Board.
- (D) Particular requirement for preliminary injunctions; further proceedings after issuance. An application for a preliminary injunction, unless made in consequence of an application for a temporary restraining order as provided above, shall be made by motion in connection with a petition for a permanent injunction. No preliminary injunction may issue unless the petitioner establishes that the irreparable injury which will be caused to it if a preliminary injunction is denied, discounted by the probability that the respondent will prevail in the proceedings on the permanent injunction, will be greater than any injury which the granting of the preliminary injunction will cause to the respondent. If a preliminary injunction is issued, the Board shall schedule such further proceedings as may be required for the permanent injunction; and the preliminary injunction shall continue in force until a decision is rendered on such permanent injunction unless it is dissolved by its own terms or by further order of the Board. Unless the Board otherwise orders, the record made in connection with the preliminary injunction shall also constitute part of the record in the proceedings on the permanent injunction.
- (E) Other matters
- (1) Conditions. The Board shall condition the issuance of a temporary restraining order or a preliminary injunction with such terms as justice and equity may require, including the giving of adequate security in favor of the respondent.
 - (2) Severance. In its discretion, the Board may order the severance of proceedings on a request for injunctive relief from proceedings for other relief.
 - (3) Motion to dissolve. a motion to dissolve a temporary restraining order or preliminary injunction may be made at any time. The motion shall state why the further proceedings scheduled on the matter are insufficient to protect the rights

- and interests of the moving party.
- (4) Hearing examiners. Unless the Board determines that it will expedite the resolution of the matter or will otherwise further the ends of justice, no application for a temporary restraining order will be heard by a hearing examiner.
 - (5) Form of injunctions. A temporary restraining order, preliminary injunction or permanent injunction shall state the date and hour of its issuance and shall be accompanied by findings of fact upon all of the issues specified or referred to in this rule.

2.407 Forms for Certain Purposes

The following forms, which are available on request, must be used for submissions to the Board: annual reports, gross revenue tax reports, property valuation reports, accident reports, interruption of electric service reports, disconnection of service reports and cable TV applications.