

Vermont Statutes Regarding Energy Efficiency and the Energy Efficiency Utility

(Prior to Act 61 Modifications)

30 V.S.A. § 202a. State energy policy

§ 202a. State energy policy

It is the general policy of the state of Vermont:

(1) To assure, to the greatest extent practicable, that Vermont can meet its energy service needs in a manner that is adequate, reliable, secure and sustainable; that assures affordability and encourages the state's economic vitality, the efficient use of energy resources and cost effective demand side management; and that is environmentally sound.

(2) To identify and evaluate on an ongoing basis, resources that will meet Vermont's energy service needs in accordance with the principles of least cost integrated planning; including efficiency, conservation and load management alternatives, wise use of renewable resources and environmentally sound energy supply.

30 V.S.A. § 218c. Least cost integrated planning

§ 218c. Least cost integrated planning

(a)(1) A "least cost integrated plan" for a regulated electric or gas utility is a plan for meeting the public's need for energy services, after safety concerns are addressed, at the lowest present value life cycle cost, including environmental and economic costs, through a strategy combining investments and expenditures on energy supply, transmission and distribution capacity, transmission and distribution efficiency, and comprehensive energy efficiency programs.

(2) "Comprehensive energy efficiency programs" shall mean a coordinated set of investments or program expenditures made by a regulated electric or gas utility or other entity as approved by the board pursuant to subsection 209(d) of this title to meet the public's need for energy services through efficiency, conservation or load management in all customer classes and areas of opportunity which is designed to acquire the full amount of cost effective savings from such investments or programs.

(b) Each regulated electric or gas company shall prepare and implement a least cost integrated plan for the provision of energy services to its Vermont customers. Proposed plans shall be submitted to the department of public service and the public service board. The board, after notice and opportunity for hearing, may approve a company's least cost integrated plan if it determines that the company's plan complies with the requirements of subdivision (a)(1) of this section.

30 V.S.A. § 209. Jurisdiction; general scope

§ 209. JURISDICTION; GENERAL SCOPE

(d)(1) The public service department, any entity appointed by the board under subdivision (2) of this subsection, all gas and electric utility companies, and the board upon its own motion, are encouraged to propose, develop, solicit and monitor energy efficiency and conservation programs and measures. Such programs and measures, and their implementation, may be approved by the board if it determines they will be beneficial to the ratepayers of the companies after such notice and hearings as the board may require by order or by rule.

(2) In place of utility-specific programs developed pursuant to section 218c of this title, the board may, after notice and opportunity for hearing, provide for the development, implementation, and monitoring of gas and electric energy efficiency and conservation programs and measures, including programs and measures delivered in multiple service territories, by one or more entities appointed by the board for these purposes. The board may specify that the implementation of these programs and measures satisfies a utility's corresponding obligations, in whole or in part, under section 218c of this title and under any prior orders of the board.

(3) In addition to its existing authority, the board may establish by order or rule a volumetric charge to customers for the support of energy efficiency programs that meet the requirements of section 218c of this title. The charge shall be known as the energy efficiency charge, shall be shown separately on each customer's bill, and shall be paid to a fund administrator appointed by the board. When such a charge is shown, notice as to how to obtain information about energy efficiency programs approved under this section shall be provided in a manner directed by the board. This notice shall include, at a minimum, a toll free telephone number, and to the extent feasible shall be on the customer's bill and near the energy efficiency charge. Balances in the fund shall be ratepayer funds, shall be used to support the activities authorized in this subdivision, and shall be carried forward and remain in the fund at the end of each fiscal year. These monies shall not be available to meet the general obligations of the state. Interest earned shall remain in the fund. The board will annually provide the legislature with a report detailing the revenues collected and the expenditures made for energy efficiency programs under this section.

(4) The charge established by the board pursuant to subdivision (3) of this subsection shall not exceed the amount needed to provide \$17,500,000.00 to support all energy efficiency programs for Vermonters authorized by the board by rule or order pursuant to subdivision (2) of this subsection in any fiscal year. No more than \$17,500,000.00 of financial support for energy efficiency programs for Vermonters shall be authorized by the board by rule or order pursuant to subdivision (2) of this subsection in any fiscal year.

(e) The board shall:

(1) Ensure that all retail consumers, regardless of retail electricity or gas provider, will have an opportunity to participate in and benefit from a comprehensive set of cost-effective energy efficiency programs and initiatives designed to overcome barriers to participation.

(2) Require that continued or improved efficiencies be made in the production, delivery, and use of energy efficiency services.

(3) Build on the energy efficiency expertise and capabilities that have developed or may develop in the state.

(4) Promote program initiatives and market strategies that address the needs of persons or businesses facing the most significant barriers to participation.

(5) Promote coordinated program delivery, including coordination with low income weatherization programs, other efficiency programs, and utility programs.

(6) Consider innovative approaches to delivering energy efficiency, including strategies to encourage third party financing and customer contributions to the cost of efficiency measures.

(7) Provide a reasonably stable multiyear budget and planning cycle and promote program improvement, program stability, and maturation of programs and delivery resources.

(8) Approve programs, measures, and delivery mechanisms that reasonably reflect current and projected market conditions, technological options, and environmental benefits.

(9) Provide for delivery of these programs as rapidly as possible, taking into consideration the need for these services, and cost-effective delivery mechanisms.

(10) Provide for the independent evaluation of programs delivered under subsection (d) of this section.

(11) Require that any entity approved by the board under subsection (d) of this section deliver board-approved programs in an effective, efficient, timely, and competent manner and meet standards that are consistent with those in section 218c of this title, the board's orders in public service board docket 5270, and any relevant board orders in subsequent energy efficiency proceedings.

(12) Require verification, on or before January 1, 2003, and every three years thereafter, by an independent auditor of the reported energy and capacity savings and cost-effectiveness of programs delivered by any entity appointed by the board to deliver energy efficiency programs under subdivision (d)(2) of this section.

(13) Ensure that any energy efficiency program approved by the board shall be reasonable and cost-effective.

§ 248. New gas and electric purchases, investments, and facilities; certificate of public good

§ 248. New gas and electric purchases, investments, and facilities; certificate of public good

(a)(1) No company, as defined in section 201 of this title, may:

(A) in any way purchase electric capacity or energy from outside the state, for a period exceeding five years, that represents more than one percent of its historic peak demand, or

(B) invest in an electric generation or transmission facility located outside this state unless the public service board first finds that the same will promote the general good of the state and issues a certificate to that effect.

(2) Except for the replacement of existing facilities with equivalent facilities in the usual course of business, and except for electric generation facilities that are operated solely for on-site electricity consumption by the owner of those facilities:

(A) no company, as defined in section 201 of this title, and no person, as defined in 10 V.S.A. § 6001(14), may begin site preparation for or construction of an electric generation facility or electric transmission facility within the state which is designed for immediate or eventual operation at any voltage, and

(B) no such company may exercise the right of eminent domain in connection with site preparation for or construction of any such transmission or generation facility, unless the public service board first finds that the same will promote the general good of the state and issues a certificate to that effect.

(3) No company, as defined in section 201 of this title, and no person, as defined in 10 V.S.A. § 6001(14), may in any way begin site preparation for or commence construction of any natural gas facility, except for the replacement of existing facilities with equivalent facilities in the usual course of business, unless the public service board first finds that the same will promote the general good of the state and issues a certificate to that effect pursuant to this section.

(A) For the purposes of this section, the term "natural gas facility" shall mean any natural gas transmission line, storage facility, manufactured-gas facility, or other structure incident to any of the above. For purposes of this section, a "natural gas transmission line" shall include any feeder main or any pipeline facility constructed to deliver natural gas in Vermont directly from a natural gas pipeline facility that has been certified pursuant to the Natural Gas Act, 15 U.S.C. § 717a et seq.

(B) For the purposes of this section, the term "company" shall not include a "natural gas company" (including a "person which will be a natural gas company upon completion of any proposed construction or extension of facilities"), within the meaning of the Natural Gas Act, 15 U.S.C. § 717a, et seq., provided however, that the term "company" shall include any "natural gas company" to the extent it proposes to construct in Vermont a natural gas facility that is not solely subject to federal jurisdiction under the Natural Gas Act.

(C) The public service board shall have the authority to, and may in its discretion, conduct a proceeding, as set forth in subsection (h) of this section, with respect to a natural gas facility proposed to be constructed in Vermont by a "natural gas company," for the purpose of developing an opinion in connection with federal certification or other federal approval proceedings.

(4)(A) With respect to a facility located in the state, the public service board shall hold a nontechnical public hearing on each petition for such finding and certificate in at least one county in which any portion of the construction of the facility is proposed to be located.

(B) The public service board shall hold technical hearings at locations which it selects.

(C) At the time of filing its application with the board, copies shall be given by the petitioner to the attorney general and the department of public service, and, with respect to facilities within the state, the department of health, agency of natural resources, historic preservation division, scenery preservation council, state planning office, agency of transportation, the agency of agriculture, food and markets and to the chairperson or director of the municipal and regional planning commissions and the municipal legislative body for each town and city in which the proposed facility will be located.

(D) Notice of the public hearing shall be published in a newspaper of general circulation in the county or counties in which the proposed facility will be located two weeks successively, the last publication to be at least 12 days before the day appointed for the hearing.

(E) The agency of natural resources shall appear as a party in any proceedings held under this subsection, shall provide evidence and recommendations concerning any findings to be made under subdivision (b)(5) of this section, and may provide evidence and recommendations concerning any other matters to be determined by the board in such a proceeding.

(b) Before the public service board issues a certificate of public good as required under subsection (a) of this section, it shall find that the purchase, investment or construction:

(1) with respect to an in-state facility, will not unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality. However, with respect to a natural gas transmission line subject to board review, the line shall be in conformance with any applicable provisions concerning such lines contained in the duly adopted regional plan; and, in addition, upon application of any party, the board shall condition any certificate of public good for a natural gas transmission line issued under this section so as to prohibit service connections that would not be in conformance with the adopted municipal plan in any municipality in which the line is located;

(2) is required to meet the need for present and future demand for service which could not otherwise be provided in a more cost effective manner through energy conservation programs and measures and energy-efficiency and load management measures, including but not limited to those developed pursuant to the provisions of sections 209(d), 218c, and 218(b) of this title;

(3) will not adversely affect system stability and reliability;

(4) will result in an economic benefit to the state and its residents;

(5) with respect to an in-state facility, will not have an undue adverse effect on esthetics, historic sites, air and water purity, the natural environment and the public health and safety, with due consideration having been given to the criteria specified in 10 V.S.A. § 1424a(d) and § 6086(a)(1) through (8) and (9)(K);

(6) with respect to purchases, investments, or construction by a company, is consistent with the principles for resource selection expressed in that company's approved least cost integrated plan;

(7) except as to a natural gas facility that is not part of or incidental to an electric generating facility, is in compliance with the electric energy plan approved by the department under section 202 of this title, or that there exists good cause to permit the proposed action;

(8) does not involve a facility affecting or located on any segment of the waters of the state that has been designated as outstanding resource waters by the water resources board, except that with respect to a natural gas or electric transmission facility, the facility does not have an undue adverse effect on those outstanding resource waters;

(9) with respect to a waste to energy facility, is included in a solid waste management plan adopted pursuant to 24 V.S.A. § 2202a, which is consistent with the state solid waste management plan; and

(10) except as to a natural gas facility that is not part of or incidental to an electric generating facility, can be served economically by existing or planned transmission facilities without undue adverse effect on Vermont utilities or customers.

(c) In the case of a municipal plant or department formed under local charter or chapter 79 of this title or a cooperative formed under chapter 81 of this title, any proposed investment, construction or contract which is subject to this section shall be approved by a majority of the voters of a municipality or the members of a cooperative voting upon the question at a duly warned annual or special meeting to be held for that purpose. The municipal department or cooperative shall provide to the voters or members, as the case may be, written assessment of the risks and benefits of the proposed investment, construction or contract which were identified by the public service board in the certificate issued under this section. The municipal department or cooperative also may provide to the voters an assessment of any other risks and benefits.

(d) Nothing in this section shall be construed to prohibit a company from executing a letter of intent or entering into a contract before the issuance of a certificate of public good under this section, provided that the company's obligations under that letter of intent or contract are made subject to compliance with the requirements of this section.

(e) Before a certificate of public good is issued for the construction of a nuclear fission plant within the state the public service board shall obtain the approval of the general assembly and the assembly's determination that the construction of the proposed facility will promote the general welfare. The public service board shall advise the general assembly of any petition submitted under this section for the construction of a nuclear fission plant within this state, by written notice delivered to the speaker of the house of representatives and to the president of the senate. The department of public service shall submit recommendations relating to the proposed plant, and shall make available to the general assembly all relevant material. The requirements of this subsection shall be in addition to the findings set forth in subsection (b) of this section.

(f) However, plans for the construction of such a facility within the state must be submitted by the petitioner to the municipal and regional planning commissions no less than 45 days prior to application for a certificate of public good under this section, unless the municipal and regional planning commissions shall waive such requirement. Such municipal or regional planning commission may hold a public hearing on the proposed plans. Such commissions shall make recommendations, if any, to the public service board and to the petitioner at least 7 days prior to filing of the petition with the public service board.

(g) However, notwithstanding the above, plans involving the relocation of an existing transmission line within the state must be submitted to the municipal and regional planning commissions no less than 21 days prior to application for a certificate of public good under this section.

(h) The position of the state of Vermont in federal certification or other approval proceedings for natural gas facilities shall be developed in accordance with this subsection.

(1) A natural gas facility requiring federal approval shall apply to the public service board for an opinion under this section (on or before the date on which the facility applies for such federal approval in the case of a facility that has not applied for federal approval before January 16, 1988). Any opinion issued under this subsection shall be developed based upon the criteria established in subsection (b) of this section.

(2) If the board conducts proceedings under this subsection, the department shall give due consideration to the board's opinion as to facilities of a natural gas company, and that opinion shall guide the position taken before federal agencies by the state of Vermont, acting through the department of public service under section 215 of this title.

(3) If the board conducts proceedings under this subsection, it may consolidate them, solely for purposes of creating a common record, with any related proceedings conducted under subdivision (a)(3) of this section.

(i)(1) No company, as defined in sections 201 and 203 of this title:

(A) may invest in a gas-production facility located outside this state, or

(B) may execute a contract for the purchase of gas from outside the state, for resale to firm-tariff customers, that

(i) is for a period exceeding five years, or

(ii) represents more than ten percent of that company's peak demand for resale to firm-tariff customers, without approval by the board, after giving notice of such investment, or filing a copy of that contract, with the board and the department at least 30 days prior to the proposed effective date of that contract or investment.

(2) The department and the board shall consider within 30 days whether to investigate the proposed investment or contract.

(3) The board, upon its own motion, or upon the recommendation of the department, may determine to initiate an investigation. If the board does not initiate an investigation within such 30 day period, the contract or investment shall be deemed to be approved. If the board determines to initiate an investigation, it shall give notice of that decision to the company proposing the investment or contract, the department, and such other persons as the board determines are appropriate. The board shall conclude its investigation within 120 days of issuance of its notice of investigation, or within such shorter period as it deems appropriate. If the board fails to issue a decision within that 120 day period, the contract or investment shall be deemed to be approved. The board may hold informal, public or technical hearings on the proposed investment or contract.

(4) Nothing in this subsection shall prohibit a company from negotiating or adjusting periodically the price of other terms of supply through a supplement to such a contract, provided that the supplement falls within the terms specified in such a contract, as approved. The board's authority to investigate such adjustments under other authorities of this title shall not be impaired. Such a company shall file with the department and the board a copy of any such supplement to the contract or other documentation that states any terms that have been renegotiated or adjusted by the company at least 30 days prior to the effective date of the renegotiated or adjusted price or other terms.

(5) Nothing in this subsection shall be construed to prohibit a gas company from executing a development contract, a contract for design and engineering, a contract to seek regulatory approvals for a gas-production facility, or a letter of intent for such purchase of gas that makes the company's obligations under that letter of intent subject to the requirements of this subsection, prior to the filing with the board and department of such notice or proposed contract or pending any investigation under this subsection.

(j)(1) The board may, subject to such conditions as it may otherwise lawfully impose, issue a certificate of public good in accordance with the provisions of this subsection and without the notice and hearings otherwise required by this chapter if the board finds that:

- (A) approval is sought for construction of facilities described in subdivision (a)(2) or (3) of this section;
- (B) such facilities will be of limited size and scope;
- (C) the petition does not raise a significant issue with respect to the substantive criteria of this section; and
- (D) the public interest is satisfied by the procedures authorized by this subsection.

(2) Any party seeking to proceed under the procedures authorized by this subsection shall file a proposed certificate of public good and proposed findings of fact with its petition. The board shall give written notice of the proposed certificate to the parties specified in subdivision (a)(4)(C) of this section, to any public interest organization that has in writing requested notice of applications to proceed under this subsection and to any other person found by the board to have a substantial interest in the matter. Such notice shall be published on two occasions at least one week apart. Such notice shall request comment within 21 days of the last publication on the question of whether the petition raises a significant issue with respect to the substantive criteria of this section. If the board finds that the petition raises a significant issue with respect to the substantive criteria of this section, the board shall hear evidence on any such issue.

(k)(1) Notwithstanding any other provisions of this section, the board may waive, for a specified and limited time, the prohibitions contained in this section upon site preparation for or construction of an electric transmission facility or a generation facility necessary to assure the stability or reliability of the electric system or a natural gas facility, pending full review under this section.

(2) A person seeking a waiver under this subsection shall file a petition with the board and shall provide copies to the department of public service and the agency of natural resources. Upon receiving the petition, the board shall conduct an expedited preliminary hearing, upon such notice to the governmental bodies listed in subdivision (a)(4)(C) of this section as the board may require.

(3) An order granting a waiver may include terms, conditions and safeguards, including the posting of a bond or other security, as the board deems proper, considering the scope and duration of the requested waiver.

(4) A waiver shall be granted only upon a showing that:

- (A) good cause exists because an emergency situation has occurred;
- (B) the waiver is necessary to provide adequate and efficient service or to preserve the property of the public service company devoted to public use;
- (C) measures will be taken, as the board deems appropriate, to minimize significant adverse impacts under the criteria specified in subdivisions (b)(5) and (8) of this section; and

(D) taking into account any terms, conditions and safeguards that the board may require, the waiver will promote the general good of the state.

(5) Upon the expiration of a waiver, if a certificate of public good has not been issued under this section, the board shall require the removal, relocation or alteration of the facilities subject to the waiver, as it finds will best promote the general good of the state.

(1) Notwithstanding other provisions of this section, and without limiting any existing authority of the governor, and pursuant to subdivisions 9(10) and (11) of Title 20, when the governor has proclaimed a state of emergency pursuant to section 9 of Title 20, the governor, in consultation with the chair of the public service board and the commissioner of the department of public service or their designees may waive the prohibitions contained in this section upon site preparation for or construction of an electric transmission facility or a generation facility necessary to assure the stability or reliability of the electric system or a natural gas facility. Waivers issued under this subsection shall be subject to such conditions as are required by the governor, and shall be valid for the duration of the declared emergency plus 180 days, or such lesser overall term as determined by the governor. Upon the expiration of a waiver under this subsection, if a certificate of public good has not been issued under this section, the board shall require the removal, relocation, or alteration of the facilities, subject to the waiver, as the board finds will best promote the general good of the state. (Added 1969, No. 69, § 1, eff. April 18, 1969; amended 1969, No. 207 (Adj. Sess.), § 12, eff. March 24, 1970; 1971, No. 208 (Adj. Sess.), eff. March 31, 1972; 1975, No. 23; 1977, No. 11, §§ 1, 2; 1979, No. 204 (Adj. Sess.), § 31, eff. Feb. 1, 1981; 1981, No. 111 (Adj. Sess.); 1983, No. 45; 1985, No. 48, § 1; 1987, No. 65, § 1, eff. May 28, 1987; No. 67, § 14; 1987, No. 273 (Adj. Sess.) § 1, eff. June 21, 1988; 1989, No. 256 (Adj. Sess.), § 10(a), eff. Jan. 1, 1991; 1991, No. 99, §§ 3, 4; 1991, No. 259 (Adj. Sess.), §§ 6, 7; 1993, No. 21, § 10, eff. May 12, 1993; 1993, No. 159 (Adj. Sess.), § 1a, eff. May 19, 1994; 2003, No. 42, § 2, eff. May 27, 2003; 2003, No. 82 (Adj. Sess.), §§ 2, 3.)