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APPENDIX 2 - SUMMARY OF SELECTED STATE STATUTES RELATED TO ENERGY PLANNING EFFORTS

There are numerous Vermont statutes that direct energy planning activities through the actions of the Department of Public Service (DPS), Public Service Board (PSB), Agency of Natural Resources (ANR), Agency of Transportation (AOT), Department of Public Safety, General Services Department, State Buildings, and other state agencies, regional and municipal bodies, and energy and telecommunications service providers.

The first section of this appendix is a brief summary of the major state statutes related to energy use and long term energy planning for the state's electric and natural gas companies.

In addition, Vermont has statutes that direct current and future energy decisions through the land use planning process that is carried out at the municipal, regional, and statewide levels. Section II summarizes Vermont statutes that affect energy planning through land use planning.

The final section of this chapter lists Vermont statutes related to telecommunications planning. The state's telecommunications facilities and services are a critical factor in accessing energy options and preparing long term plans because they can have a significant impact on energy use, specifically transportation energy use.

I. ENERGY, ELECTRICITY, AND NATURAL GAS

- 30 V.S.A. §108 **Issue of bonds or other securities.** Vermont utilities and municipalities that own or operate gas or electric utilities are to petition the PSB prior to issuing any stocks, bonds, securities, or other forms of indebtedness, and obtain from the PSB a finding that the proposed action will be consistent with the general good of the state. A few exceptions are listed, including borrowing as necessary to restore service immediately after a disaster.
- 30 V.S.A. §202 **Electrical energy planning.** The DPS is to prepare the *Vermont Electric Plan*, covering a 20 year period, which will serve as the basis for the state's electric energy policy. This plan is developed using the principals of least cost integrated planning. It is to cover an overview and projections about statewide growth and development related to the need for electrical energy, an assessment of energy resources that are available in the state including efficiency improvements, and projections of expected demand for electricity. Goals such as public health and safety, environmental quality, energy efficiency, and others are to be taken into consideration. At least every 5 years the DPS is to review and revise the *Vermont Electric Plan*, as necessary, seeking public participation and conducting public hearings on a final draft before each new edition is adopted.
- 30 V.S.A. §202(f) **Electrical energy planning.** A utility seeking PSB authority to make investments to finance, site, or construct a generation or transmission facility or to purchase electricity is to notify the DPS, which will in turn determine whether the proposed action is consistent with the *Vermont Electric Plan*. After the DPS prepares its determination, the PSB considers that determination in deciding whether to permit the proposed action. If the DPS concludes that the proposed action is inconsistent with the plan, the PSB may nevertheless authorize it if it finds that there is good cause to do so.
- 30 V.S.A. §202a **State energy policy.** The state is to assure that, to the greatest extent practicable, 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. In addition, the state must 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 an environmentally sound energy supply.

30 V.S.A. §202b **State comprehensive energy plan.** The DPS, in conjunction with other state agencies designated by the governor - typically the Agencies of Transportation and Natural Resources - is to produce the *Vermont Comprehensive Energy Plan* and update it at least every 5 years. This plan is to implement the state energy policy (30 V.S.A. §202a) and include comprehensive analysis and projections for the use, cost, supply, and environmental effects of all forms of energy resources used in Vermont, with recommendations for state implementation actions, regulation, legislation, and other public and private actions. The DPS is to seek public input for updating the plan's recommendations by publicizing and holding public hearings throughout the state before adopting the final version of this plan.

30 V.S.A. §203 **Jurisdiction of certain public utilities.** The PSB and the DPS are given jurisdiction over companies engaged in the manufacture, transmission, distribution, or sale of gas or electricity; companies, other than municipalities, engaged in the collection, sale, and distribution of water; companies, other than a municipality, which have direct or indirect discharge permits issued by the Agency of Natural Resources and engage in the collection or disposal of wastewater or domestic sewage, if the company serves 750 or more households or dwelling units; companies engaged in the construction and maintenance of dams and storage reservoirs; and companies offering telecommunications services to the public on a common carrier basis.

30 V.S.A. §211 **Electric energy from inside or outside the state.** The DPS is the designated agent of the state of Vermont, with powers to represent the state in negotiations for the procurement of electric energy from sources outside the state. With approval from the PSB and the governor, DPS is authorized to contract for the purchase of such power and its resale within the state, on a non-profit basis to cooperative, municipal, and privately owned electric distribution or transmission companies.

30 V.S.A. §218 **Jurisdiction over charges and rates.** If the PSB finds, after holding a public hearing, that rates, tolls, charges, or schedules are unjust, unreasonable, insufficient, or unjustly discriminatory, the PSB can order new rates, tolls, charges or schedules and can make changes in its regulations and a utility's practices related to its services. In addition, the DPS shall propose, and the PSB shall encourage utilities to implement energy efficiency and load management measures that are cost-effective on a life cycle cost basis.

30 V.S.A. §218b **Farm customers; energy efficiency.** Electric utilities must develop, implement, and deliver comprehensive energy efficiency programs for dairy farm customers.

30 V.S.A. §218c **Least cost integrated planning.** 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. Utilities must prepare and implement such plans and submit them to the DPS and the PSB.

30 V.S.A. §231 **Certificate of public good; abandonment of service; hearing.** A person or company planning to own or operate a business over which the PSB has jurisdiction is to first petition the Board to determine whether this business will promote the general good of the state. The DPS is to review the petition and make a recommendation to the PSB. If the PSB finds the operation of this business will promote the general good of the state, it will issue the person or company a certificate of public good, specifying the business and territory to be served. Also, for good cause, after a hearing, the

PSB can amend or revoke any certificate it has awarded, and the person or company no longer has authority to conduct any business subject to the jurisdiction of the Board, whether or not regulation has been reduced or suspended under 30 V.S.A. §§226a or 227a.

Conversely, a company subject to general supervision by the PSB may not abandon, curtail, or impair any part of its service without approval of the PSB, and after notice and hearing, a finding by the Board that the abandonment or curtailment is consistent with the public interest.

30 V.S.A. §248 **New gas and electric purchases, investments, and facilities; certificate of public good.** The Board must find that the proposed action will promote the general good of the state and the Board must issue a certificate of public good before any company owning or conducting public service business may:

- purchase electric capacity or energy from outside the state, for a period exceeding five years, that represents more than 1% of its historic peak demand; or
- invest in an electric generation or transmission facility outside the state; or
- begin site preparation or construction or exercise the right of eminent domain for purposes related to construction of an electric generation or transmission facility or natural gas facilities or transmission lines.

In addition to the PSB and the DPS, the petitioner shall also file the application with the Attorney General, and for facilities within the state, with the Department of Health, Agency of Natural Resources, Historic Preservation Division, Scenery Preservation Council, State Planning Office, Agency of Transportation, Department of Agriculture, Food and Markets, and the chairperson 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.

Before the Board issues a certification of public good, it must 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 consideration given to the recommendations of the Municipal and Regional Planning Commissions, the municipal legislative bodies, and land conservation measures contained in the plan of any affected municipality;
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;
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 consideration to the Act 250 criteria (10 V.S.A. §6086);
6. with respect to purchases, investments, or construction, is consistent with the principles for resource selection expressed in the company's approved least cost integrated plan (IRP);
7. for electric service and facilities, is in compliance with the *Vermont Electric Plan* or the Board has found good cause to permit the proposed action;
8. is not located on or affecting any segment of the state's waters that have been designated as outstanding resource waters, or in the case of electric and gas transmission facilities, do not have an undue adverse effect on the outstanding resource waters;
9. with respect to a waste to energy facility, is included in and consistent with the state's solid waste management plan; and

10. can be served economically by existing or planned transmission facilities without undue adverse effect on Vermont utilities or customers.

30 V.S.A. §248(k)(1) (**Amendment to 30 V.S.A. §248**). The PSB can waive, for a specific limited time, the prohibitions on site preparation or construction of an electric transmission facility contained in §248, pending full review. (This amendment permitted an early start on the PV 20 transmission line across Lake Champlain that was damaged by ice in the winter of 1994.)

10 V.S.A. §1086 **Determination of public good; certificates (for hydroelectric dam proposals)**. The PSB is to review proposals for hydroelectric dam projects to determine if they serve the public good. "Public good" means the greatest benefit of the people of the state, including, among others, considerations of effects on agriculture, scenic and recreational values, fish and wildlife, forests, water flow and quality, and public uses.

ACT NO. 20 (H.43 Passed in the 1997 Session) Residential Building Energy Standards

This act adopts residential building energy standards (RBES) that apply, in certain instances specified in more detail in the act, to the new construction of residential buildings and the construction of residential additions that create 500 square feet, or more, of new floor space. The standards do not apply to certain highly efficient buildings or additions, certain manufactured housing, hunting camps, multi-family housing more than three stories in height, buildings that are neither heated or cooled, or residential construction with respect to which all of the following apply:

1. owner has the power to direct construction;
2. owner uses the residential construction as a dwelling;
3. owner directs installation of materials that do not comply with the code; and
4. owner discloses in writing to a prospective buyer, before entering into a binding purchase and sale contract, the nature and extent of noncompliance with the code, and files the disclosure in the land records and with the Dept. of Public Service.

The construction of a residential addition does not create a requirement that the entire building comply. In situations where the standards do apply, a certification of compliance with RBES must be affixed at a specified location inside the building, a certification of compliance must be recorded and indexed in the town land records, and a copy of the certification must be provided to the DPS.

The RBES incorporate by reference the energy standards contained in the Model Energy Code prepared by the Council of American Building Officials, and contains certain revisions established by the legislature in the act itself. The act requires the standards to be updated on January 1, 1999, and every three years thereafter, by administrative rule adopted by the Commissioner of Labor and Industry, who is to receive expert advice from the DPS, and from an advisory committee that is composed of persons with spe and experience and that is convened at least a year prior to adoption of a required revision.

The advisory committee shall also provide advice with respect to the coordination of the RBES amendments with existing and proposed demand side management programs offered by utilities. The act requires that in the first cycle of revision, the commissioner shall establish standards for ventilation and shall consider certain specific requirements with respect to exhaust-only ventilation systems and with respect to replacement air for wood and pellet stoves and fireplaces.

Revisions are required to be consistent with state energy policy and with duly adopted state housing policy, are required to be evaluated for their technical applicability and reliability, and are to be cost effective and affordable from the consumer's perspective. Revisions may amend any part of the RBES, whether adopted specifically by the legislature, or by reference. A home energy rating from a

Vermont-accredited home energy rating organization, indicating energy performance that is equivalent to the RBES shall be an acceptable means of demonstrating compliance.

The act requires the DPS to develop criteria that may be used in lieu of computer software, calculations and trade off worksheets, or systems analysis, in order to comply with the code. The act provides that code compliance shall be given certain presumptive weight in Act 250, on energy conservation matters other than the use of electric resistance space heating; and it creates a process by which the DPS shall provide accreditation to home energy rating organizations and information to the public about accredited organizations.

The act makes certain amendments to the current model energy code, adding sections relating to fireplaces, domestic hot water systems, exhaust dampers for fans, and compliance software. The act adopts a general example package and an additional example package that applies only tires that updated example packages be included in the rules as they are updated.

Effective Date: July 1, 1997. Before July 1, 1998, the act applies only to residential construction that is subject to the jurisdiction of Act 250.

II. LAND USE PLANNING

10 V.S.A. §6086(a) **Issuance of permit; conditions and criteria (A section of the Land Use and Development Act (Act 250))**. The Environmental Board or District Commissions are to review applications for state land use and development permits under ten major review criteria. The DPS participates in the Act 250 review process as a statutory party under subdivisions 9(F) and 9(J).

- (F) **Energy conservation.** A permit will be granted when it has been demonstrated by the applicant that, in addition to all other applicable criteria, the planning and design of the subdivision or development reflect the principles of energy conservation and incorporate the best available technology for efficient use or recovery of energy.
- (J) **Public utility services.** A permit will be granted for a development or subdivision whenever it is demonstrated that, in addition to all other applicable criteria, necessary supportive governmental and public utility facilities and services are available or will be available when the development is completed under a duly adopted capital program or plan, an excessive or uneconomic demand will not be placed on such facilities and services, and the provision of such facilities and services has been planned on the basis of a projection of reasonable population increase and economic growth.

24 V.S.A. §§4302 and 4305 **(Sections of the Municipal and Regional Planning and Development Act (Act 200))**. The state is to encourage appropriate development of land, with goals related to settlement patterns, the economy, education, transportation, housing, public facilities, natural resources, historic and aesthetic resources, agricultural industries, recreational opportunities, and energy efficiency, and other criteria. State agencies, Regional Planning Commissions, and municipalities are to prepare plans that focus on these goals.

III. TELECOMMUNICATIONS PLANNING

30 V.S.A. §202c **State telecommunications; policy and planning.** In order to protect basic local exchange telephone service to Vermont residents, the state is permitted to contract with providers of such services, at reasonable cost and superior quality. The state may also provide the benefits of advances in telecommunications technology to Vermont residents either through a contract or by supporting competition through the reduction or suspension of regulatory requirements over any telecommunications service in which a competitive market exists; and by strengthening the state's role in telecommunications planning.

30 V.S.A. §202d **Telecommunications planning.** The DPS is to produce the *Vermont Telecommunications Plan* to serve as the basis for state telecommunications policy, and periodically update it. This plan is to provide an overview of statewide growth and development as related to telecommunications services, assess what services are needed now and over the planning period, assess the current state system, and evaluate alternative proposals for upgrading the system. Policies and goals in 30 V.S.A. §202c are to be taken into consideration along with the need for basic service at affordable rates, improved competition among providers, the needs of the state as user of telecommunications services, and future development of the state. Public hearings are to be held in establishing the plan and to gather public input on the final draft.
