

1 S.33

2 Introduced by Senator Hartwell

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; public service; hydroelectric
6 projects; electric utilities; SPEED; standard offer

7 Statement of purpose: This bill proposes to require the agency of natural
8 resources (ANR) to establish a general permit program for hydroelectric power
9 projects. ANR would also be required to implement the general permit
10 program for hydroelectric power projects through implementation of a pilot
11 program. In addition, the bill would require ANR, upon the request of a
12 hydroelectric project developer, to issue a federal Clean Water Act § 401
13 certification prior to the developer's filing an application with the Federal
14 Energy Regulatory Commission. The bill would also amend the rate required
15 to be paid under the SPEED standard offer program to hydroelectric projects.

16 An act relating to the development and permitting of hydroelectric projects

17 It is hereby enacted by the General Assembly of the State of Vermont:

18 Sec. 1. 10 V.S.A. § 1007 is added to read:

19 § 1007. GENERAL PERMITTING OF HYDROELECTRIC PROJECTS

20 (a) Findings. The general assembly finds and declares:

1 (1) The generation of renewable power within Vermont is critical to the
2 economic development, energy independence, and financial security of the
3 state.

4 (2) The generation of hydroelectric power is a legitimate use of the
5 waters of the state, and it is the policy of Vermont to allow beneficial and
6 environmentally sound hydroelectric generation development, consistent with
7 applicable federal and state law.

8 (3) Section 401 of the federal Clean Water Act (CWA), 33 U.S.C.
9 § 1341, requires any applicant for a federal permit for an activity that may
10 involve a discharge to navigable waters to obtain certification from the state
11 that the permitted activity does not violate the state's water quality standards.

12 (4) As set forth in section 1004 of this title, the secretary of natural
13 resources is the agent that the U.S. Environmental Protection Agency
14 delegated to conduct CWA § 401 certifications in the state of Vermont.

15 (5) The secretary of natural resources has implemented a simplified
16 process with defined standards for the issuance of a CWA § 401 certification
17 for projects that require a federal permit due to impacts on wetlands.

18 (6) Other states have issued CWA § 401 certifications in a timely
19 manner for general permits.

20 (7) The natural resources board, as part of the stakeholder hydroelectric
21 interested parties process (SHIP) required by No. 92 of the Acts of the 2007

1 Adj. Sess. (2008), recommended that the Vermont conservation flow standards
2 be applied to allow for a default conservation flow standard for certain new
3 hydroelectric power projects in the state.

4 (8) To further the policy of Vermont to allow beneficial and
5 environmentally sound hydroelectric generation development and to
6 implement the recommendations of the natural resources board to establish a
7 default conservation flow standard for certain hydroelectric power projects in
8 the state, the agency of natural resources shall be required to issue and
9 implement a general permit for hydroelectric facilities and shall issue a CWA
10 § 401 certification for the general permit.

11 (b) Definitions. As used in this section:

12 (1) "Conduit" means any tunnel, canal, pipeline, aqueduct, flume, ditch,
13 or similar constructed water conveyance that is operated for the distribution of
14 water for agricultural, municipal, or industrial consumption and not primarily
15 for the generation of electricity.

16 (2) "Hydroelectric project" means a run of river facility, site, or conduit
17 planned or operated for the generation of water-powered electricity that has a
18 generation capacity of no more than five megawatts and does not create a new
19 impoundment.

1 (3) “Impoundment” means “riverine impoundment” as defined in the
2 Vermont water quality standards adopted pursuant to chapter 47 and
3 subdivision 6025(d)(3) of this title.

4 (c) Adoption of hydroelectric general permit. On or before January 1,
5 2012, the secretary of natural resources shall adopt by rule a general permit for
6 the operation of the following categories of hydroelectric projects:

7 (1) Hydroelectric projects where data provided by an applicant provide
8 reasonable assurance that the hydroelectric project will comply with the
9 Vermont water quality standards;

10 (2) Hydroelectric projects utilizing conduits;

11 (3) Hydroelectric projects without a bypass reach or a de minimis
12 bypass reach, as defined by the secretary of natural resources;

13 (4) Hydroelectric projects that were previously certified under CWA
14 § 401 and that are operating in compliance with such certification as
15 demonstrated by existing administrative, monitoring, reporting, or enforcement
16 data; and

17 (5) Other categories of hydroelectric projects that the secretary
18 concludes are suitable for coverage under a general permit.

1 (d) Hydroelectric general permit; content. The general permit required by
2 subsection (c) of this section shall:

3 (1) Set a Vermont-specific default conservation flow standard for
4 hydroelectric projects that is sufficient to protect aquatic habitat and that shall
5 serve as a substitute for site-specific flow studies.

6 (2) Include terms and conditions necessary to ensure that a hydroelectric
7 project seeking coverage under the permit complies with the Vermont water
8 quality standards.

9 (3) Satisfy the requirements for a stream alteration permit under section
10 1021 of this title, including the terms and conditions for the issuance of a
11 stream alteration permit.

12 (4) Include reasonable time frames for agency review of and response to
13 an application for coverage under a general permit.

14 (5) Include provisions consistent with the requirements of subsection
15 7503(b) of this title that require public notice of the fact that a hydroelectric
16 project has sought coverage under a general permit issued under this section.

17 (e) CWA certification. A hydroelectric project that ANR approves for
18 coverage under the general permit required by subsection (c) of this section
19 shall be deemed to comply with the Vermont water quality standards. Upon
20 the request of a hydroelectric project approved for coverage under the general
21 permit required by subsection (d) of this section, the secretary shall issue a

1 CWA § 401 certification of a Federal Energy Regulatory Commission license
2 or exemption for the hydroelectric project under the Federal Power Act.

3 (f) Duration of general permit. A general permit adopted pursuant to this
4 section shall have a term of no more than ten years. Prior to the expiration of
5 the general permit, the secretary shall review the terms and conditions of the
6 general permit and may issue subsequent general permits with the same or
7 different conditions as necessary to carry out the purposes of this subchapter.

8 (g) Development of draft general permit. The secretary of natural
9 resources shall convene a public stakeholder process of interested parties to
10 develop the draft rule of the general permit required under subsection (c) of
11 this section.

12 Sec. 2. 10 V.S.A. § 1008 is added to read:

13 § 1008. CERTIFICATIONS FOR HYDROELECTRIC POWER PROJECTS

14 Upon request of a developer of a hydroelectric project, as that term is
15 defined in section 1007 of this title, the secretary of natural resources shall
16 issue a certification required by the federal Clean Water Act (CWA), 33 U.S.C.
17 § 1341, to the developer prior to the developer's submission to the Federal
18 Energy Regulatory Commission of an application for a license or exemption
19 for a hydroelectric project under the Federal Power Act.

1 Sec. 3. HYDROELECTRIC POWER PILOT PROGRAM

2 (a) On or before July 1, 2012, the secretary of natural resources shall
3 initiate a pilot program for the permitting of hydroelectric projects under the
4 general permit issued according to the requirements of 10 V.S.A. § 1007. In
5 implementing the pilot program, the secretary shall objectively assess the
6 necessity for or appropriateness of the technical, scientific, or procedural
7 requirements for the permitting of the hydroelectric sites participating in the
8 pilot program.

9 (b) The pilot program may include up to five hydroelectric projects and
10 shall include the following hydroelectric projects:

11 (1) the Vermont Tissue site on the Walloomsac River in the town of
12 Bennington; and

13 (2) the Basin Farm Renewable Energy project on the Saxtons River in
14 Westminster.

15 (c) The definitions set forth in 10 V.S.A. § 1007 shall apply to this section.

16 (d) On or before January 15, 2013, the secretary of natural resources shall
17 report to the house and senate committees on natural resources and energy and
18 the house committee on fish, wildlife and water resources regarding
19 implementation of the hydroelectric power pilot program required by this
20 section. The report shall include:

21 (1) a copy of the general permit adopted under 10 V.S.A. § 1007;

1 (1) The following provisions of this title:

2 * * *

3 (C) chapter 41 (regulation of stream flow and operation of
4 hydroelectric projects).

5 * * *

6 Sec. 6. 30 V.S.A. § 8005(b) is amended to read:

7 (b) The SPEED program shall be established, by rule, order, or contract, by
8 the public service board by January 1, 2007. As part of the SPEED program,
9 the public service board may, and in the case of subdivisions (1), (2), and (5)
10 of this subsection shall:

11 (1) Name one or more entities to become engaged in the purchase and
12 resale of electricity generated within the state by means of qualifying SPEED
13 resources or nonqualifying SPEED resources, and shall implement the standard
14 offer required by subdivision (2) of this subsection through this entity or
15 entities. An entity appointed under this subdivision shall be known as a
16 SPEED facilitator.

17 (2) No later than September 30, 2009, put into effect, on behalf of all
18 Vermont retail electricity providers, standard offers for qualifying SPEED
19 resources with a plant capacity of 2.2 MW or less. These standard offers shall
20 be available until the cumulative plant capacity of all such resources
21 commissioned in the state that have accepted a standard offer under this

1 subdivision (2) equals or exceeds 50 MW; provided, however, that a plant
2 owned and operated by a Vermont retail electricity provider shall count toward
3 this 50-MW ceiling if the plant has a plant capacity of 2.2 MW or less and is
4 commissioned on or after September 30, 2009. The term of a standard offer
5 required by this subdivision (2) shall be 10 to 20 years, except that the term of
6 a standard offer for a plant using solar power shall be 10 to 25 years. The price
7 paid to a plant owner under a standard offer required by this subdivision shall
8 include an amount for each kilowatt-hour (kWh) generated that shall be set as
9 follows:

10 (A) Until the board determines the price to be paid to a plant owner
11 in accordance with subdivision (2)(B) of this subsection, the price shall be:

12 (i) For a plant using methane derived from a landfill or an
13 agricultural operation, \$0.12 per kWh.

14 (ii) For a plant using wind power that has a plant capacity of 15
15 kW or less, \$0.20 per kWh.

16 (iii) For a plant using solar power, \$0.30 per kWh.

17 (iv) For ~~a plant using hydropower~~, wind power with a plant
18 capacity greater than 15 kW, or biomass power that is not subject to
19 subdivision (2)(A)(i) of this subsection, a price equal, at the time of the plant's
20 commissioning, to the average residential rate per kWh charged by all of the

1 state's retail electricity providers weighted in accordance with each such
2 provider's share of the state's electric load.

3 (v) Notwithstanding subdivision (2)(B) of this subsection, for a
4 plant using hydropower, \$0.15 per kWh.

5 (B) In accordance with the provisions of this subdivision, the board
6 by order shall set the price to be paid to a plant owner under a standard offer,
7 including the owner of a plant described in subdivisions (2)(A)(i)-(iv) of this
8 subsection.

9 (i) The board shall use the following criteria in setting a price
10 under this subdivision:

11 (I) The board shall determine a generic cost, based on an
12 economic analysis, for each category of generation technology that constitutes
13 renewable energy. In conducting such an economic analysis, the board shall:

14 (aa) Include a generic assumption that reflects reasonably
15 available tax credits and other incentives provided by federal and state
16 governments and other sources applicable to the category of generation
17 technology. For the purpose of this subdivision (2)(B), the term "tax credits
18 and other incentives" excludes tradeable renewable energy credits.

19 (bb) Consider different generic costs for subcategories of
20 different plant capacities within each category of generation technology.

