

1 S.25

2 Introduced by Senator Hartwell

3 Referred to Committee on Finance

4 Date: January 15, 2013

5 Subject: Utilities; Department of Public Service; public advocacy

6 Statement of purpose: This bill proposes to ensure adequate representation of
7 Vermont consumers by the Department of Public Service in utility matters
8 before the Public Service Board.

9 An act relating to public advocacy in utility matters

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

11 ~~Sec. 1. 30 V.S.A. § 2 is amended to read:~~

12 § 2. DEPARTMENT OF PUBLIC SERVICE; POWERS

13 (a) ~~The department of public service~~ Department of Public Service shall
14 supervise and direct the execution of all laws relating to public service
15 corporations and firms and individuals engaged in such business, including the:

16 (1) ~~Formation~~ formation, organization, ownership, and acquisition of
17 facilities of public service corporations under chapter 3 of this title;

18 (2) ~~Participation~~ participation in planning for proper utility service as
19 provided in section 202 of this title through the ~~director for regulated utility~~
20 ~~planning~~ Director for Regulated Utility Planning;

- 1 ~~(3) Supervision supervision and evaluation under chapters 5 and 77 of~~
2 ~~this title of the quality of service of public utility companies;~~
- 3 (4) ~~Interconnection~~ interconnection and interchange of facilities of
4 electric companies under sections 210, 213, and 214 of this title;
- 5 (5) ~~Representation~~ representation of the ~~state~~ State in the negotiations
6 and proceedings for the procurement of electric energy from any source
7 outside of this ~~state~~ State and from any generation facility inside the ~~state~~ State
8 under sections 211 and 212 of this title;
- 9 (6) ~~Review~~ review of proposed changes in rate schedules and petition to
10 the ~~public service board~~ Public Service Board, and representation of the
11 interests of the consuming public in proceedings to change rate schedules of
12 public service companies under chapter 5 of this title;
- 13 (7) ~~Siting~~ siting of electric generation and transmission facilities under
14 section 248 of this title;
- 15 (8) ~~Consolidations~~ consolidations and mergers of public service
16 corporations under chapter 7 of this title;
- 17 (9) ~~Supervision~~ supervision and regulation of cable television systems
18 under chapter 13 of this title;
- 19 (10) ~~Supervision~~ supervision and regulation of telegraph and telephone
20 ~~companies under chapters 71, 73, and 75 of this title;~~

1 ~~(11) Supervision supervision and regulation of the organization and~~
2 operation of municipal plants under chapter 79 of this title;

3 ~~(12) Supervision supervision and regulation of the organization and~~
4 operation of electric cooperatives under chapter 81 of this title.

5 (b) In cases requiring hearings by the ~~board~~ Board, the ~~department~~
6 Department, through the ~~director for public advocacy~~ Director for Public
7 Advocacy shall represent the interests of the people of the ~~state~~ State, unless
8 otherwise specified by law. In any hearing, the ~~board~~ Board may, if it
9 determines that the public interest would be served, request the ~~attorney~~
10 Attorney General or a member of the Vermont ~~bar~~ Bar to represent the
11 public or the ~~state~~ State.

12 (c) The ~~department~~ Department may bring proceedings on its own motion
13 before the ~~public service board~~ Public Service Board, with respect to any
14 matter within the jurisdiction of the ~~public service board~~ Board, and may
15 initiate rule-making proceedings before ~~that board~~ the Board. The ~~public~~
16 ~~service board~~ Public Service Board, with respect to any matter within its
17 jurisdiction, may issue orders on its own motion and may initiate rule-making
18 proceedings.

19 (d) In any proceeding where the ~~decommissioning fund~~ Decommissioning
20 Fund for the Vermont Yankee nuclear facility is involved, the ~~department~~
21 ~~Department shall represent the consuming public in a manner that~~

1 ~~acknowledges that the general public interest requires that the consuming~~
2 ~~public, rather than either the state's State's future consumers who never obtain~~
3 ~~benefits from the facility or the state's State's taxpayers, ought to provide for~~
4 ~~all costs of decommissioning. The department Department shall seek to have~~
5 ~~the decommissioning fund Decommissioning Fund be based on all reasonably~~
6 ~~expected costs.~~

7 (e) In performing its duties under this section, the Department shall ensure
8 adequate representation of the interests of those consumers whose interests
9 would otherwise be inadequately represented in matters before the Board,
10 including residential, low-income, and small business consumers. When the
11 interests of sectors within the consuming public differ, the Department shall
12 give priority to representing the interests of residential, low-income, and small
13 business consumers.

14 Sec. 2. EFFECTIVE DATE

15 ~~This act shall take effect on passage.~~

~~Sec. 1. 30 V.S.A. § 2 is amended to read:~~

~~§ 2. DEPARTMENT OF PUBLIC SERVICE; POWERS~~

~~(a) The department of public service Department of Public Service shall supervise and direct the execution of all laws relating to public service corporations and firms and individuals engaged in such business, including the:~~

~~(1) Formation formation, organization, ownership, and acquisition of facilities of public service corporations under chapter 3 of this title;~~

~~(2) Participation participation in planning for proper utility service as provided in section 202 of this title through the director for regulated utility planning Director for Regulated Utility Planning;~~

~~(3) Supervision supervision and evaluation under chapters 5 and 77 of this title of the quality of service of public utility companies;~~

~~(4) Interconnection interconnection and interchange of facilities of electric companies under sections 210, 213, and 214 of this title;~~

~~(5) Representation representation of the ~~state~~ State in the negotiations and proceedings for the procurement of electric energy from any source outside of this ~~state~~ State and from any generation facility inside the ~~state~~ State under sections 211 and 212 of this title;~~

~~(6) Review review of proposed changes in rate schedules and petition to the ~~public service board~~ Public Service Board, and representation of the interests of the consuming public in proceedings to change rate schedules of public service companies under chapter 5 of this title;~~

~~(7) Siting siting of electric generation and transmission facilities under section 248 of this title;~~

~~(8) Consolidations consolidations and mergers of public service corporations under chapter 7 of this title;~~

~~(9) Supervision supervision and regulation of cable television systems under chapter 13 of this title;~~

~~(10) Supervision supervision and regulation of telegraph and telephone companies under chapters 71, 73, and 75 of this title;~~

~~(11) Supervision supervision and regulation of the organization and operation of municipal plants under chapter 79 of this title;~~

~~(12) Supervision supervision and regulation of the organization and operation of electric cooperatives under chapter 81 of this title.~~

~~(b) In cases requiring hearings by the ~~board~~ Board, the ~~department~~ Department, through the ~~director for public advocacy~~ Director for Public Advocacy shall represent the interests of the people of the ~~state~~ State, unless otherwise specified by law. In any hearing, the ~~board~~ Board may, if it determines that the public interest would be served, request the ~~attorney general~~ Attorney General or a member of the Vermont ~~bar~~ Bar to represent the public or the ~~state~~ State.~~

~~(c) The ~~department~~ Department may bring proceedings on its own motion before the ~~public service board~~ Public Service Board, with respect to any matter within the jurisdiction of the ~~public service board~~ Board, and may initiate rule-making proceedings before ~~that board~~ the Board. The ~~public service board~~ Public Service Board, with respect to any matter within its jurisdiction, may issue orders on its own motion and may initiate rule-making proceedings.~~

~~(d) In any proceeding where the decommissioning fund Decommissioning Fund for the Vermont Yankee nuclear facility is involved, the ~~department~~ Department shall represent the consuming public in a manner that acknowledges that the general public interest requires that the consuming public, rather than either the ~~state's~~ State's future consumers who never obtain benefits from the facility or the ~~state's~~ State's taxpayers, ought to provide for all costs of decommissioning. The ~~department~~ Department shall seek to have the ~~decommissioning fund~~ Decommissioning Fund be based on all reasonably expected costs.~~

~~(e) In performing its duties under this section, the Department shall affirmatively represent the interests of ratepayer classes who are not independently represented parties in proceedings before the Board, including residential, low-income, and small business consumers.~~

~~Sec. 2. DEPARTMENT OF PUBLIC SERVICE; REPORT ON CONSUMER REPRESENTATION~~

~~On or before July 1, 2014, the Commissioner shall submit a report to the General Assembly which includes an analysis of how the Department, in performing its duties under 30 V.S.A. § 2, determines the interests of the consuming public and of the State and ensures adequate representation of the interests of those consumers whose interests might not otherwise be adequately represented in matters before the Board, including residential, low income, and small business consumers. The report shall include a description of how the Department assesses whether the interests of different ratepayer classes – such as residential, low income, and small business – are in conflict and, if so, how such conflicts are resolved. In addition, the Commissioner shall evaluate how representation of the interests of residential, low income, and small business consumers has occurred in past proceedings and describe ways in which the Department might more effectively represent those interests in future proceedings. The report also shall describe improvements in the Department's processes related to the integration of the roles and responsibilities of the Director for Public Advocacy and the Director for Consumer Protection and Education, particularly with respect to representation of the consuming public and the interests of the State. In conducting this analysis, the Commissioner shall consult with residential and small business ratepayers, advocacy groups for low income, residential, and small business ratepayers, and any other person or entity as determined by the Commissioner.~~

~~Sec. 3. EFFECTIVE DATE~~

~~This act shall take effect on passage~~

** * * Department of Public Service Advocacy * * **

Sec. 1. 30 V.S.A. § 2(f) is added to read:

(f) In performing its duties under this section, the Department shall give heightened consideration to the interests of ratepayer classes who are not independently represented parties in proceedings before the Board, including residential, low-income, and small business consumers, as well as other consumers whose interests might otherwise not be adequately represented but for the Department's advocacy.

Sec. 2. DEPARTMENT OF PUBLIC SERVICE; REPORT ON CONSUMER REPRESENTATION

On or before July 1, 2014, the Commissioner shall submit a report to the General Assembly which includes an analysis of how the Department, in performing its duties under 30 V.S.A. § 2, determines the interests of the consuming public and of the State and ensures adequate representation of the interests of those consumers whose interests might not otherwise be adequately represented in matters before the Board, including residential, low-income, and small business consumers. The report shall include a description of how the Department assesses whether the interests of different ratepayer classes – such as residential, low-income, and small business – are in conflict and, if so, how such conflicts are resolved. In addition, the Commissioner shall evaluate how representation of the interests of residential, low-income, and small business consumers has occurred in past proceedings and describe ways in which the Department might more effectively represent those interests in future proceedings. The report also shall describe improvements in the Department's processes related to the integration of the roles and responsibilities of the Director for Public Advocacy and the Director for Consumer Affairs and Public Information, particularly with respect to representation of the consuming public and the interests of the State. In conducting this analysis, the Commissioner shall consult with residential and small business ratepayers, advocacy groups for low-income, residential, and small business ratepayers, and any other person or entity as determined by the Commissioner.

** * * Electronic Filings and Case Management * * **

Sec. 3. 30 V.S.A. § 11(a) is amended to read:

(a) The forms, pleadings, and rules of practice and procedure before the ~~board~~ Board shall be prescribed by it. The ~~board~~ Board shall promulgate and adopt rules which include, among other things, provisions that:

(1) A utility whose rates are suspended under the provisions of section 226 of this title shall, within 30 days from the date of the suspension order, file with the ~~board~~ ~~10 copies of~~ Board all exhibits it intends to use in the hearing

thereon together with the names of witnesses it intends to produce in its direct case and a short statement of the purposes of the testimony of each witness. Except in the discretion of the ~~board~~ 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.

* * *

Sec. 4. 30 V.S.A. § 11a is added to read:

§ 11a. ELECTRONIC FILING AND ISSUANCE

(a) As used in this section:

(1) “Confidential document” means a document containing information for which confidentiality has been asserted and that has been filed with the Board and parties in a proceeding subject to a protective order duly issued by the Board.

(2) “Document” means information inscribed on a tangible medium or stored in an electronic or other medium and retrievable in perceivable form.

(3) “Electronic filing” means the transmission of documents to the Board by electronic means.

(4) “Electronic filing system” means a board-designated system that provides for the electronic filing of documents with the Board and for the electronic issuance of documents by the Board. If the system provides for the filing or issuance of confidential documents, it shall be capable of maintaining the confidentiality of confidential documents and of limiting access to confidential documents to individuals explicitly authorized to access such confidential documents.

(5) “Electronic issuance” means:

(A) the transmission by electronic means of a document that the Board has issued, including an order, proposal for decision, or notice; or

(B) the transmission of a message from the Board by electronic means informing the recipients that the Board has issued a document, including an order, proposal for decision, or notice, and that it is available for viewing and retrieval from an electronic filing system.

(6) “Electronic means” means any Board-authorized method of electronic transmission of a document.

(b) The Board by order, rule, procedure, or practice may:

(1) provide for electronic issuance of any notice, order, proposal for decision, or other process issued by the Board, notwithstanding any other service requirements set forth in this title or in 10 V.S.A. chapter 43;

(2) require electronic filing of documents with the Board;

(3) for any filing or submittal to the Board for which the filing or submitting entity is required to provide notice or a copy to another State agency under this title or under 10 V.S.A. chapter 43, waive such requirement if the State agency will receive notice of and access to the filing or submittal through an electronic filing system; and

(4) for any filing, order, proposal for decision, notice, or other process required to be served or delivered by first-class mail or personal delivery under this title or under 10 V.S.A. chapter 43, waive such requirement to the extent the required recipients will receive the filing, order, proposal of decision, notice, or other process by electronic means or will receive notice of and access to the filing, order, proposal of decision, notice, or other process through an electronic filing system.

(c) Any order, rule, procedure, or practice issued under subsection (b) of this section shall include exceptions to accommodate parties and other participants who are unable to file or receive documents by electronic means.

(d) Subsection (b) of this section shall not apply to the requirements for service of citations and notices in writing as set forth in sections 111(b), 111a(i), and 2804 of this title.

** * * Participation in Federal Proceedings * * **

Sec. 5. 30 V.S.A. § 2(b) is amended to read:

(b) In cases requiring hearings by the ~~board~~ Board, the ~~department~~ Department, through the ~~director for public advocacy~~ Director for Public Advocacy, shall represent the interests of the people of the ~~state~~ State, unless otherwise specified by law. In any hearing, the ~~board~~ Board may, if it determines that the public interest would be served, request the ~~attorney general~~ Attorney General or a member of the Vermont ~~bar~~ Bar to represent the public or the ~~state~~ State. In addition, the Department may intervene, appear, and participate in Federal Energy Regulatory Commission proceedings, Federal Communications Commission proceedings, or other federal administrative proceedings on behalf of the Vermont public.

** * * Coordination of Energy Planning * * **

Sec. 6. 30 V.S.A. § 202 is amended to read:

§ 202. ELECTRICAL ENERGY PLANNING

(a) The ~~department of public service~~ Department of Public Service, through the ~~director for regulated utility planning~~ Director for Regulated Utility Planning, shall constitute the responsible utility planning agency of the ~~state~~ State for the purpose of obtaining for all consumers in the ~~state~~ State proper utility service at minimum cost under efficient and economical management consistent with other public policy of the ~~state~~ State. The ~~director~~ Director shall be responsible for the provision of plans for meeting emerging trends related to electrical energy demand, supply, safety, and conservation.

(b) The ~~department~~ Department, through the ~~director~~ Director, shall prepare an electrical energy plan for the ~~state~~ State. The ~~plan~~ Plan shall be for a 20-year period and shall serve as a basis for ~~state~~ State electrical energy policy. The ~~electric energy plan~~ Electric Energy Plan shall be based on the principles of “least cost integrated planning” set out in and developed under section 218c of this title. The ~~plan~~ Plan shall include at a minimum:

(1) an overview, looking 20 years ahead, of statewide growth and development as they relate to future requirements for electrical energy, including patterns of urban expansion, statewide and service area economic growth, shifts in transportation modes, modifications in housing types, and design, conservation, and other trends and factors which, as determined by the ~~director~~ Director, will significantly affect ~~state~~ State electrical energy policy and programs;

(2) an assessment of all energy resources available to the ~~state~~ State for electrical generation or to supply electrical power, including, among others, fossil fuels, nuclear, hydro-electric, biomass, wind, fuel cells, and solar energy and strategies for minimizing the economic and environmental costs of energy supply, including the production of pollutants, by means of efficiency and emission improvements, fuel shifting, and other appropriate means;

(3) estimates of the projected level of electrical energy demand;

(4) a detailed exposition, including capital requirements and the estimated cost to consumers, of how such demand shall be met based on the assumptions made in subdivision (1) of this subsection and the policies set out in subsection (c) of this section; and

(5) specific strategies for reducing electric rates to the greatest extent possible in Vermont over the most immediate ~~five-year~~ six-year period, for the next succeeding ~~five-year~~ six-year period, and long-term sustainable strategies for achieving and maintaining the lowest possible electric rates over the full

20-year planning horizon consistent with the goal of maintaining a financially stable electric utility industry in Vermont.

(c) In developing the ~~plan~~ Plan, the ~~department~~ Department shall take into account the protection of public health and safety; preservation of environmental quality; the potential for reduction of rates paid by all retail electricity customers; the potential for reduction of electrical demand through conservation, including alternative utility rate structures; use of load management technologies; efficiency of electrical usage; utilization of waste heat from generation; and utility assistance to consumers in energy conservation.

(d) In establishing plans, the ~~director~~ Director shall:

(1) Consult with:

(A) the public;

(B) Vermont municipal utilities;

(C) Vermont cooperative utilities;

(D) Vermont investor-owned utilities;

(E) Vermont electric transmission companies;

(F) environmental and residential consumer advocacy groups active in electricity issues;

(G) industrial customer representatives;

(H) commercial customer representatives;

(I) the ~~public service board~~ Public Service Board;

(J) an entity designated to meet the public's need for energy efficiency services under subdivision 218c(a)(2) of this title;

(K) other interested ~~state~~ State agencies; and

(L) other energy providers.

(2) To the extent necessary, include in the ~~plan~~ Plan surveys to determine needed and desirable plant improvements and extensions and coordination between utility systems, joint construction of facilities by two or more utilities, methods of operations, and any change that will produce better service or reduce costs. To this end, the ~~director~~ Director may require the submission of data by each company subject to supervision, of its anticipated electrical demand, including load fluctuation, supplies, costs, and its plan to meet that demand and such other information as the ~~director~~ Director deems desirable.

(e) ~~The department~~ Department shall conduct public hearings on the final draft and shall consider the evidence presented at such hearings in preparing the final ~~plan~~ Plan. ~~The plan~~ Plan shall be adopted no later than January 1, ~~2004~~ 2016 and readopted in accordance with this section by every sixth January 1 thereafter, and shall be submitted to the ~~general assembly~~ General Assembly each time the plan is adopted or readopted. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the submission to be made under this subsection.

(f) After adoption by the ~~department~~ Department of a final plan, any company seeking ~~board~~ Board authority to make investments, to finance, to site or construct a generation or transmission facility or to purchase electricity or rights to future electricity, shall notify the ~~department~~ Department of the proposed action and request a determination by the ~~department~~ Department whether the proposed action is consistent with the ~~plan~~ Plan. In its determination whether to permit the proposed action, the ~~board~~ Board shall consider the ~~department's~~ Department's determination of its consistency with the ~~plan~~ Plan along with all other factors required by law or relevant to the ~~board's~~ Board's decision on the proposed action. If the proposed action is inconsistent with the ~~plan~~ Plan, the ~~board~~ Board may nevertheless authorize the proposed action if it finds that there is good cause to do so. The ~~department~~ Department shall be a party to any proceeding on the proposed action, except that this section shall not be construed to require a hearing if not otherwise required by law.

(g) ~~The director~~ Director shall annually review that portion of a ~~plan~~ Plan extending over the next ~~five~~ six years. ~~The department~~ Department, through the ~~director~~ Director, shall ~~annually~~ biennially extend the ~~plan~~ Plan by ~~one~~ two additional ~~year~~ years; and from time to time, ~~but in no~~ and in any event less than every ~~five years~~ sixth year, institute proceedings to review a plan and make revisions, where necessary. ~~The five-year~~ six-year review and any interim revisions shall be made according to the procedures established in this section for initial adoption of the plan. The six-year review and any revisions made in connection with that review shall be performed contemporaneously with re adoption of the Comprehensive Energy Plan under section 202b of this title.

(h) ~~The plans~~ Plans adopted under this section ~~shall be submitted to the energy committees of the general assembly and~~ shall become the electrical energy portion of the ~~state energy plan~~ State Energy Plan.

(i) It shall be a goal of the ~~electrical energy plan~~ Electrical Energy Plan to assure, by 2028, that at least 60 MW of power are generated within the ~~state~~ State by combined heat and power (CHP) facilities powered by renewable fuels ~~or by nonqualifying SPEED resources~~, as defined in section 8002 of this

title. In order to meet this goal, the ~~plan~~ Plan shall include incentives for development and strategies to identify locations in the ~~state~~ State that would be suitable for CHP. The ~~plan~~ Plan shall include strategies to assure the consideration of CHP potential during any process related to the expansion of natural gas services in the ~~state~~ State.

Sec. 7. 30 V.S.A. § 202b is amended to read:

§ 202b. STATE COMPREHENSIVE ENERGY PLAN

(a) The ~~department of public service~~ Department of Public Service, in conjunction with other ~~state~~ State agencies designated by the ~~governor~~ Governor, shall prepare a ~~comprehensive state energy plan~~ State Comprehensive Energy Plan covering at least a 20-year period. The ~~plan~~ Plan shall seek to implement the ~~state~~ State energy policy set forth in section 202a of this title. The ~~plan~~ Plan shall include:

(1) A comprehensive analysis and projections regarding the use, cost, supply, and environmental effects of all forms of energy resources used within Vermont.

(2) Recommendations for ~~state~~ State implementation actions, regulation, legislation, and other public and private action to carry out the comprehensive energy plan.

(b) In developing or updating the ~~plan's~~ Plan's recommendations, the ~~department of public service~~ Department of Public Service shall seek public comment by holding public hearings in at least five different geographic regions of the ~~state~~ State on at least three different dates, and by providing notice through publication once a week and at least seven days apart for two or more successive weeks in a newspaper or newspapers of general circulation in the regions where the hearings will be held, and by delivering notices to all licensed commercial radio and television stations with transmitting facilities within the ~~state~~ State, plus Vermont Public Radio and Vermont Educational Television.

(c) The ~~department~~ Department shall adopt a ~~state energy plan~~ State Energy Plan ~~by no later than~~ on or before January 1, 1994 2016 and shall ~~readopt the Plan by every sixth January 1 thereafter. On adoption or readoption, the Plan shall be submitted to the General Assembly. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to such submission.~~

(1) Upon adoption of the ~~plan~~ Plan, analytical portions of the ~~plan~~ Plan may be updated ~~annually~~ and published biennially.

(2) Every fourth year after the adoption or readoption of a Plan under this section, the Department shall publish the manner in which the Department will engage the public in the process of readopting the Plan under this section.

(3) The publication requirements of subdivisions (1) and (2) of this subsection may be met by inclusion of the subject matter in the Department's biennial report.

(4) The ~~plan's~~ Plan's implementation recommendations shall be updated by the ~~department~~ Department no less frequently than every ~~five~~ six years. These recommendations shall be updated prior to the expiration of ~~five~~ six years if the ~~general assembly~~ General Assembly passes a joint resolution making a request to that effect. If the ~~department~~ Department proposes or the ~~general assembly~~ General Assembly requests the revision of implementation recommendations, the ~~department~~ Department shall hold public hearings on the proposed revisions.

(d) ~~Any distribution~~ Distribution of the ~~plan~~ Plan to members of the ~~general assembly~~ General Assembly shall be in accordance with the provisions of 2 V.S.A. § 20(a)-(c).

Sec. 8. INTENT; RETROACTIVE APPLICATION

In enacting Secs. 6 (20-year Electric Plan) and 7 (Comprehensive Energy Plan), the General Assembly intends to set the readoption of these Plans by the Department of Public Service on a regular six-year cycle.

* * * Effective Date * * *

Sec. 9. EFFECTIVE DATE

This act shall take effect on passage.