H.56

Introduced by Representatives Klein of East Montpelier and Cheney of Norwich

Referred to Committee on

Date:

Subject: Energy; public service; taxation; air quality; renewable electricity generation; energy efficiency; heating oil; sulfur content

Statement of purpose: This bill proposes to enact various statutes and session law relating to energy and the use of renewable electricity generation to meet Vermont's needs and support its economy, including:

(1) Revising and expanding the goal of the Sustainably Priced Energy Enterprise Development (SPEED) program to assure, by January 1, 2022, that the amount of in-state qualifying renewable energy plants equals one-third of the state's highest annual energy usage on or before January 1, 2022, or of 6,000 GWH, whichever is greater.

(2) Integrating aspects of a renewable portfolio standard into the SPEED program, including requirements that the public service board allocate the amount of the SPEED goal among the various eligible renewable technologies and that, by January 1, 2022, the supply portfolios of Vermont retail electricity providers comply on a pro rata basis with the 2022 SPEED goal and the

board's allocations. The bill proposes penalties for a provider's noncompliance.

(3) Requiring the public service board to issue an additional standard offer within the SPEED program for in-state renewable energy plants of 2.2 MW or less that constitute qualifying small power production facilities under federal law. This standard offer would be offered each year through 2021, with each annual increment being the amount of capacity calculated by the department of public service to increase retail electricity rates by no more than one percent annually. The board would allocate this standard offer among the eligible renewable technologies, and this allocation would be included in the allocation of the overall SPEED goal. The participating plants would count toward that goal. The board would set the price of this standard offer based on the avoided cost that a retail electricity provider would otherwise pay for a plant using the same technology.

(4) Making the new standard offer available as of January 1, 2012. Prior to that date, the public service board would complete the necessary proceedings, including determining the avoided costs and technology allocations.

(5) Restoring the clean energy development fund to the supervision of the department of public service, with a management structure similar to the structure put in place when the fund was originally established.

(6) Funding future investments by the clean energy development fund through a grid parity support charge of $1.50 per month on the bill of each retail electric customer.

(7) Adopting an additional program to be known as Renewable Energy Investment Vermont (REI-Vermont) for new renewable energy plants in the state of greater than 2.2 MW to be owned and operated by the state's retail electric utilities, of no more than 20 MW to be owned and operated by the state of Vermont, or of no more than 2.2 MW to be owned and operated by a Vermont municipality. These plants would be for the purpose of providing electricity to Vermonters. The commissioner of public service would administer the program, consulting with the clean energy development board.

(8) Including in the REI-Vermont program measures to avoid or reduce the need for placing long-term costs related to the plants in rates and to limit the long-term costs of the plants in rates to operations and maintenance.

(9) Funding the REI-Vermont program through a customer optional charge on electric bills that would be used up front to pay the capital costs of new renewable energy plants. The bill proposes a default renewable investment contribution charge that a customer may elect to adjust up or down, including adjusting the charge to zero.

(10) Revising the net metering statute. The bill would raise the capacity limit for farm and group net metering systems to 500 kilowatts, remove an

existing limit to the cumulative capacity of net metering systems on an electric company's distribution grid, require payment by an electric company to a customer at the time a customer's accumulated credits revert to the company, and require electric companies to offer additional credits or other incentives, including monetary payments, to net metering customers using solar systems.

(11) Requiring the state of Vermont to make its facilities and lands available to the state's retail electric providers for installation of renewable energy plants, except for lands that are subject to a covenant or other binding legal restriction that clearly contradicts such installation.

(12) Mandating that the state's energy efficiency utilities propose and implement programs that are designed to encourage customers to modify their approach to the manner in which they use energy, including how they size equipment, the timing of when equipment is used, and the employment of services that analyze a customer's use and waste of energy.

(13) Moving the home weatherization assistance program from the office of economic opportunity to the entity appointed to deliver electric energy efficiency and heating and process fuel efficiency programs.

(14) Requiring that heating oil sold in this state contain less sulfur than it currently does. These requirements would take effect when substantially similar or more stringent requirements are adopted in surrounding states or on July 1, 2012, whichever is later. The requirements would be enforceable by

the secretary of agriculture, food and markets in the same manner as weights and measures.

(15) Waiving, for five years starting in 2012, the fuel excise tax on biodiesel fuel produced in Vermont.

(16) Exempting, from the sales and use tax, sales of equipment used in the production of electrical energy from biomass.

(17) Allowing taxpayers who would have been eligible to take existing business solar energy tax credits, but for a $9.4 million cap on those credits imposed in 2010, to take those credits in equal annual amounts over a five-year period beginning in 2011. The bill proposes that the general fund, rather than the clean energy development fund, support the taking of these credits.

An act relating to the Vermont Energy Act of 2011

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

Sec. 1. DESIGNATION OF ACT

This act shall be referred to as the Vermont Energy Act of 2011.

* * * Revisions to SPEED Program and Standard Offer * * *

Sec. 2. 30 V.S.A. § 8002 is amended to read:

§ 8002. DEFINITIONS

* * *

~~(4) "New renewable energy" means renewable energy produced by a~~ generating resource coming into service after December 31, 2004. ~~This~~ With respect to a system of generating resources that includes renewable energy, the percentage of the system that constitutes new renewable energy shall be determined through dividing the plant capacity of the system's generating resources coming into service after December 31, 2004 that produce renewable energy by the total plant capacity of the system. "New renewable energy" also may include the additional energy from an existing renewable facility retrofitted with advanced technologies or otherwise operated, modified, or expanded to increase the kwh output of the facility in excess of an historical baseline established by calculating the average output of that facility for the 10-year period that ended December 31, 2004. If the production of new renewable energy through changes in operations, modification, or expansion involves combustion of the resource, the system also must result in an incrementally higher level of energy conversion efficiency or significantly reduced emissions. For the purposes of this chapter, renewable energy refers to either "existing renewable energy" or "new renewable energy."

* * *

(10) "Board" means the public service board under section 3 of this title, except when used as part of the phrase "clean energy development board" or when the context clearly refers to the latter board.

* * *

(16) "Department" means the department of public service under section 1 of this title, unless the context clearly indicates otherwise.

(17) "Avoided cost" means the incremental cost to retail electricity providers of electric energy or capacity or both, which, but for the purchase from a plant, such providers would obtain from a source using the same generation technology as the plant. With respect to a plant or that portion of a plant proposed by the state of Vermont proposed for support by the fund created under section 8012 of this title, such incremental cost shall include operations and maintenance only.

(18) "GWH" means gigawatt hour or hours.

(19) "kW" means kilowatt or kilowatts (AC).

(20) "kWh" means kW hour or hours.

(21) "MW" means megawatt or megawatts (AC).

(22) "MWH" means MW hour or hours.

(23) "Vermont composite electric utility system" means the combined generation, transmission, and distribution resources along with the combined retail load requirements of the Vermont retail electricity providers.

~~Sec. 3. 30 V.S.A. § 8005 is amended to read:~~

§ 8005. SUSTAINABLY PRICED ENERGY ENTERPRISE DEVELOPMENT (SPEED) PROGRAM

(a) In order to achieve the goals of section 8001 of this title, there is created the Sustainably Priced Energy Enterprise Development (SPEED) program. The SPEED program shall have two categories of projects: qualifying SPEED resources and nonqualifying SPEED resources.

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

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

(2) ~~No later than September 30, 2009, put into effect, on behalf of all Vermont retail electricity providers,~~ Issue standard offers for qualifying SPEED resources with a plant capacity of 2.2 MW or less.

(A) These standard offers shall consist of at least three types:

~~(i) The standard offer required by No. 45 of the Acts of 2009 to be~~ available until the cumulative plant capacity of all such resources commissioned in the state that have accepted ~~a~~ that standard offer ~~under this subdivision (2)~~ equals or exceeds 50 MW, with the price, term, and other provisions of that offer set and the costs of that offer allocated in accordance with the provisions of this section as they existed as of January 1, 2011; ~~provided, however, that a~~

(ii) The standard offer required by subdivision (2)(F) of this subsection; and

(iii) A standard offer in accordance with this subdivision.

(I) The board shall make a standard offer available to a plant that:

(aa) Complies with the plant capacity limit of 2.2 MW;

(bb) Constitutes a qualifying small power production facility under 16 U.S.C. 796(17)(C) and 18 C.F.R. part 292;

(cc) Is a qualifying SPEED resource;

(dd) Will be commissioned after the effective date of this act;

(ee) Is not a net metering system under section 219a of this title; and

~~(ff) Has not executed a standard offer contract under a~~ different subdivision of this subsection.

(II) The price for a standard offer under this subdivision (2)(A)(iii) shall be the avoided cost of the Vermont composite electric utility system. With respect to a given plant proposed for a standard offer, the board shall adjust this avoided cost to reflect benefits provided by the plant's location or technology such as relief of a transmission supply constraint or availability at times of peak demand. In setting this avoided cost, the board may consider adjusting that cost to account for an incentive such as a grant or tax credit that is available to a plant using the same generation technology as long as the incentive is not rationed. The only provisions of board rule 4.100 (small power production and cogeneration) that shall apply are rules 4.109 (exemption from utility regulation) and 4.110 (reporting requirements).

(III) To demonstrate that a plant constitutes a qualifying small power production facility under 16 U.S.C. 796(17)(C) and 18 C.F.R. part 292, the board shall not impose requirements that are more stringent than the regulations of the Federal Energy Regulatory Commission under 18 C.F.R. §§ 292.203(d)(1) (no certification required for qualifying facilities of one megawatt or less) and 292.207(a) (self-certification for plants greater than one megawatt).

~~(IV) The board shall make this standard offer available in~~ annual increments through calendar year 2021. Each annual increment shall be the amount of capacity calculated by the department of public service to increase retail electricity rates by no more than one percent annually, calculated on a statewide basis. Capacity within an annual increment shall be reallocated to other eligible plants if a plant that accepts a standard offer is not commissioned within a reasonable period as determined by the board, and the amount of any such reallocation may be added to an annual increment determined in accordance with this subdivision.

(V) Using a planning horizon of the ten-year period ending on December 31, 2021, the board shall allocate the standard offer described in this subdivision (iii) among the different types of eligible technologies by fuel source in a manner that will assist the achievement by that date of the goal and requirements of subdivision (d)(2) of this section. In making these allocations, the board shall begin with the presumption that each fuel source should have an equal allocation. As long as the board allocates at least five percent to each fuel source, the board may adjust this presumed equal allocation based on its consideration of all pertinent factors, including environmental benefits, peak demand benefits, job creation within the state, and the cost of technology. For a given fuel source, the board may establish allocations for plants of differing plant capacities. The board shall allocate each annual increment among those

~~technologies in the manner the board deems most likely to support~~ achievement of the goal and requirements of subdivision (d)(2) of this section.

(B) A plant owned and operated by a Vermont retail electricity provider shall count toward ~~this 50-MW ceiling~~ one, and only one, of the standard offers described in subdivisions (2)(A)(i) and (iii) of this subsection if the plant has a plant capacity of 2.2 MW or less and is commissioned on or after September 30, 2009, and the plant is not otherwise counted toward the goal and requirements of subsection (d) of this section.

(C) The term of a standard offer required by this subdivision (2) shall be 10 to 20 years, except that the term of a standard offer for a plant using solar power shall be 10 to 25 years. ~~The price paid to a plant owner under a standard offer required by this subdivision shall include an amount for each kilowatt-hour (kWh) generated that shall be set as follows:~~

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

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

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

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

~~(iv) For a plant using hydropower, wind power with a plant capacity greater than 15 kW, or biomass power that is not subject to subdivision (2)(A)(i) of this subsection, a price equal, at the time of the plant's commissioning, to the average residential rate per kWh charged by all of the state's retail electricity providers weighted in accordance with each such provider's share of the state's electric load.~~

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

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

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

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

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

~~(II) The board shall include a rate of return on equity not less than the highest rate of return on equity received by a Vermont investor-owned retail electric service provider under its board-approved rates as of the date a standard offer goes into effect.~~

~~(III) The board shall include such adjustment to the generic costs and rate of return on equity determined under subdivisions (2)(B)(i)(I) and (II) of this subsection as the board determines to be necessary to ensure that the price provides sufficient incentive for the rapid development and commissioning of plants and does not exceed the amount needed to provide such an incentive.~~

~~(ii) No later than September 15, 2009, the board shall open and complete a noncontested case docket to accomplish each of the following tasks:~~

~~(I) Determine whether there is a substantial likelihood that one or more of the prices stated in subdivision (2)(A) of this subsection do not constitute a reasonable approximation of the price that would be paid applying the criteria of subdivision (2)(B)(i).~~

~~(II) If the board determines that one or more of the prices stated in subdivision (2)(A) of this subsection do not constitute such an~~

~~approximation, set interim prices that constitute a reasonable approximation of the price that would be paid applying the criteria of subdivision (2)(B)(i). Once the board sets such an interim price, that interim price shall be used in subsequent standard offers until the board sets prices under subdivision (2)(B)(iii) of this subsection.~~

~~(iii) Regardless of its determination under subdivision (2)(B)(ii) of this subsection, the board shall proceed to set, no later than January 15, 2010, the price to be paid to a plant owner under a standard offer applying the criteria of subdivision (2)(B)(i) of this subsection.~~

~~(C)~~(D) On or before January 15, ~~2012~~ 2014 and on or before every second January 15 after that date, the board shall review the prices set under ~~subdivision (2)(B)~~ subdivisions (2)(A)(i) and (iii) of this subsection and determine whether such prices ~~are providing sufficient incentive for the rapid development and commissioning of plants~~ continue to conform to the applicable pricing requirements of this subsection. In the event the board determines that such a price ~~is inadequate or excessive~~ does not so conform, the board shall reestablish the price, in accordance with the applicable pricing requirements ~~of subdivision (2)(B)(i)~~ of this subsection, for effect on a prospective basis commencing two months after the price has been reestablished.

~~(D)~~(E) ~~Once the board determines, under subdivision (2)(B) or (C)~~ (2)(D) of this subsection, the ~~generic cost and rate of return elements for~~ standard offer price for a category of renewable energy, the price paid to a plant owner under a subsequently executed standard offer contract shall comply with that determination.

(E) A plant owner who has executed a contract for a standard offer under this section prior to a determination by the board under subdivision ~~(2)(B) or (C)~~ (2)(D) of this subsection shall continue to receive the price agreed on in that contract.

(F) Notwithstanding any other provision of this section, on and after June 8, 2010, a standard offer shall be available for a qualifying existing plant.

(i) For the purpose of this subdivision, "qualifying existing plant" means a plant that meets all of the following:

(I) The plant was commissioned on or before September 30, 2009.

(II) The plant generates electricity using methane derived from an agricultural operation and has a plant capacity of 2.2 MW or less.

(III) On or before September 30, 2009, the plant owner had a contract with a Vermont retail electricity provider to supply energy or attributes, including tradeable renewable energy credits from the plant, in

~~connection with a renewable energy pricing program approved under section~~ 8003 of this title.

(ii) Plant capacity of a plant accepting a standard offer pursuant to this subdivision (2)(F) shall not be counted toward the 50-MW amount or any increment of the annual standard offer under ~~this subsection (b)~~ subdivisions (2)(A)(i) and (iii) of this subsection.

(iii) Award of a standard offer under this subdivision (2)(F) shall be on condition that the plant owner and the retail electricity provider agree to modify any existing contract between them described under subdivision (i)(III) of this subdivision (2)(F) so that the contract no longer requires energy from the plant to be provided to the retail electricity provider. Those provisions of such a contract that concern tradeable renewable energy credits associated with the plant may remain in force.

(iv) The price and term of a standard offer contract under this subdivision (2)(F) shall be the same, as of the date such a contract is executed, as the price and term otherwise in effect under this subsection (b) for a plant that uses methane derived from an agricultural operation.

* * *

(5) Require all Vermont retail electricity providers to purchase ~~through~~ from the SPEED ~~program~~ facilitator, in accordance with subdivision (g)(2) of this section, the power generated by the plants that accept the standard offer

~~required to be issued under subdivision (2) of this subsection. For the purpose~~ of this sale to the retail electricity providers, the board and the SPEED facilitator constitute instrumentalities of the state.

* * *

(7) Create a mechanism by which a retail electricity provider may establish that it has a sufficient amount of renewable energy, or resources that would otherwise qualify under the provisions of subsection (d) of this section, in its portfolio so that equity requires that the retail electricity provider be relieved, in whole or in part, from requirements established under this subsection that would require a retail electricity provider to purchase SPEED power, provided that this mechanism shall not apply to the requirement to purchase power under subdivision (5) of this subsection. However, a retail electricity provider that establishes that it receives at least ~~25 percent~~ one-third of its energy from qualifying SPEED resources that were in operation on or before September 30, 2009, shall be exempt and wholly relieved from the requirements of subdivisions (b)(5) (requirement to purchase standard offer power) and (g)(2) (allocation of standard offer electricity and costs) of this section.

* * *

(d)(1) The public service board shall meet on or before January 1, ~~2012~~ 2022 and open a proceeding to determine the total amount of qualifying

~~SPEED resources that have been supplied to Vermont retail electricity~~ providers or have been issued a certificate of public good. If the board finds that the amount of qualifying SPEED resources coming into service or having been issued a certificate of public good after January 1, 2005 and before ~~July~~ January 1, ~~2012~~ 2022 equals or exceeds ~~total statewide growth in electric retail sales during that time, and in addition, at least five percent of the 2005 total statewide electric retail sales is provided by qualified SPEED resources or would be provided by qualified SPEED resources that have been issued a certificate of public good, or if it finds that the amount of qualifying SPEED resources equals or exceeds 10 percent of total statewide electric retail sales for calendar year 2005~~ the goal and requirements stated in subdivision (2) of this subsection, the portfolio standards established under this chapter shall not be in force. The board shall make its determination by January 1, ~~2013~~ 2023. If the board finds that the goal ~~established has~~ and requirements of subdivision (2) of this subsection have not been met, one year after the board's determination the portfolio standards established under subsection 8004(b) of this title shall take effect. In making its determination under this subdivision, the board shall include all qualifying SPEED resources that have executed a standard offer agreement under subsections (b) and (g) of this section and come into service or received a certificate of public good or have executed such an agreement on

~~or after January 1, 2020 and complied with the associated milestone~~ requirements of the board.

(2) A state goal is to assure that ~~20 percent of total statewide electric retail sales before July 1, 2017 shall be generated,~~ by January 1, 2022, the total amount of qualifying SPEED resources in the state is no less than the amount of one-third of the state's highest annual energy usage on or before January 1, 2022, or of 6,000 GWH, whichever is greater.

(A) No later than January 1, 2012, the board shall allocate this amount among the technologies eligible to be qualifying SPEED resources and publish this allocation. This allocation shall include and be consistent with the allocation made by the board under subdivision (b)(2)(A)(iii)(V) of this section (annual standard offer).

(B) No later than January 1, 2022:

(i) Each Vermont retail electricity provider shall have and continue to have in its supply portfolio an amount of qualifying SPEED resources equal to its share of one-third of the state's highest annual energy usage on or before January 1, 2022, or of 6,000 GWH, whichever is greater. The provider's share shall be determined based on its pro rata percentage of total Vermont retail kWh sales for the most recent calendar year.

(ii) Within the supply portfolio of a retail electricity provider, the allocation among eligible technologies of the amount of qualifying SPEED

~~resources calculated in accordance with subdivision (2)(B)(i) of this subsection~~ shall correspond to the board's allocation pursuant to subdivision (2)(A) of this subsection.

(C) Each retail electricity provider shall make annual incremental progress toward the amount described in subdivision (2)(B)(i) of this subsection. In addition, each provider's portfolio shall include at least one-third of this amount by December 31, 2016 and two-thirds of this amount by December 31, 2019. Compliance with the requirements of this subdivision (C) may be demonstrated through qualifying SPEED resources that have been commissioned, have applied for or received a certificate of public good under section 248 of this title, or have executed a standard offer agreement under subsections (b) and (g) of this section and have met the milestone requirements of the board associated with such an agreement.

(D) If a retail electricity provider fails to comply with subdivision (B) or (C) of this subsection:

(i) The provider's return on equity, if it receives such a return, shall be reduced by 200 basis points until the provider's portfolio is brought into compliance;

(ii) The board may impose penalties on the provider under section 30 of this title; and

~~(iii) The board may impose penalties under section 30 of this title~~ on a director, trustee, commissioner, or officer of the provider who was in a position to influence the achievement of such compliance and failed to exercise all objectively available means to cause the provider to achieve such compliance.

(E) The public service board shall report to the house and senate committees on natural resources and energy and to the joint energy committee by ~~December 31, 2011~~ January 15, 2014 and every second January 15 afterward through 2020 with regard to the ~~state's~~ progress of the state and each retail electric utility provider in meeting ~~this~~ the goal and requirements of this subsection. ~~In addition, the board shall report to the house and senate committees on natural resources and energy and to the joint energy committee by December 31, 2013 with regard to the state's progress in meeting this goal and, if necessary,~~ Each such report shall include any appropriate recommendations for measures that will make attaining the goal and requirements more likely.

(3) For the purposes of the determination to be made under this subsection, electricity produced at all facilities owned by or under long-term contract to Vermont retail electricity providers~~, whether it is generated inside or outside Vermont, that is new renewable energy~~ that constitute qualifying

~~SPEED resources shall be counted in the calculations under subdivisions (1)~~ and (2) of this subsection.

(e) ~~By no later than September 1, 2006, the public service~~ The board shall provide, by order or rule, the regulations and procedures that are necessary to allow the public service board and the department of public service to implement, and to supervise further the implementation and maintenance of the SPEED program. These rules shall assure that decisions with respect to certificate of public good applications for SPEED resources shall be made in a timely manner.

* * *

(g) With respect to executed contracts for standard offers under this section:

* * *

(2) The SPEED facilitator shall ~~distribute~~ sell the electricity purchased ~~and any associated costs~~ to the Vermont retail electricity providers at the same price paid to the plant owners and shall allocate such costs to the providers based on their pro rata share of total Vermont retail kWh sales for the previous calendar year, and the Vermont retail electricity providers shall accept and pay the SPEED facilitator for those costs. ~~For the purpose of this subdivision, a Vermont retail electricity provider shall receive a credit toward its share of those costs for any plant with a plant capacity of 2.2 MW or less that it owns or~~

~~operates and that is commissioned on or after September 30, 2009. The amount of such credit shall be the amount that the plant owner otherwise would be eligible to receive, if the owner were not a retail electricity provider, under a standard offer in effect at the time of commissioning. The amount of any such credit shall be redistributed to the Vermont retail electricity providers on a basis such that all providers pay for a proportionate volume of plant capacity up to the 50 MW ceiling for standard offer contracts stated in subdivision (b)(2) of this section.~~

* * *

(m) The state and its instrumentalities shall not be liable to a plant owner or retail electricity provider with respect to any matter related to SPEED, including costs associated with a standard offer contract under this section or any damages arising from breach of such a contract, the flow of power between a plant and the electric grid, or the interconnection of a plant to that grid.

(n) On or before January 15, ~~2011~~ 2014 and every second January 15 afterward, the board shall report to the house and senate committees on natural resources and energy concerning the status of the standard offer program under this section. In its report, the board at a minimum shall:

(1) Assess the progress made toward attaining the ~~cumulative statewide capacity ceiling stated~~ full subscription and commissioning of the 50-MW

~~amount and the annual standard offer described~~ in ~~subdivision~~ subdivisions (b)(2)(A)(i) and (iii) of this section.

(2) If ~~that cumulative statewide capacity ceiling has~~ the 50-MW amount or the cumulative annual increments to date of the annual standard offer have not been ~~met~~ fully subscribed or fully commissioned, identify the barriers to attaining ~~that ceiling~~ full subscription and commissioning and detail the board's recommendations for overcoming such barriers.

(3) If ~~that cumulative statewide capacity has been met or is likely to be met~~ the 50-MW amount or the cumulative annual increments to date of the annual standard offer have been or, within a year of the date of the board's report, are likely to be fully subscribed and fully commissioned, recommend whether the standard offer program under this section should continue and, if so, whether there should be any modifications to the program.

Sec. 4. COMMENCEMENT OF NEW STANDARD OFFER; BOARD ALLOCATION PROCEEDINGS; RPS/SPEED STUDY REPEAL

(a) The standard offer required by 30 V.S.A. § 8005(b)(2)(A)(iii) shall be available commencing January 1, 2012.

(b)(1) The public service board, by December 15, 2011, shall open and complete proceedings to make those decisions and take those actions necessary to achieve, by January 1, 2012:

~~(A) Commencement of the standard offer described in subsection (a)~~ of this section, including determining avoided costs and technology allocations; and

~~(B)~~ Publication of the SPEED goal allocation described in 30 V.S.A. § 8005(d)(2)(A).

(2) The board may combine these proceedings.

(c) The board shall not conduct the proceedings described in subsection (b) of this section as contested cases under the Vermont Administrative Procedure Act, 3 V.S.A. chapter 25. With respect to each proceeding, the board shall conduct one or more technical workshops and offer an opportunity for submission of written comments prior to issuing an order. The board shall provide public notice at least 14 days in advance of the initial workshop and 30 days in advance of the comment deadline. Such notice shall include at least a press release to the state's radio, television, and newspaper media and direct notice to the department of public service, the agency of natural resources, the SPEED facilitator, each transmission utility doing business in Vermont, each Vermont retail electricity provider, all persons and entities that participated in or were parties to board dockets no. 7523 and 7533, and nongovernmental organizations that often appear in board policy proceedings such as business, consumer, and environmental advocates. The board may retain personnel and

~~allocate costs of this proceeding in accordance with the procedures of~~ 30 V.S.A. §§ 20 and 21.

(d) Sec. 13a(b) (board study and report on potential revisions to SPEED program or adoption of a renewable portfolio standard) of No. 159 of the Acts of the 2009 Adj. Sess. (2010) is repealed.

* * * Clean Energy Development Fund;
Grid Parity Support Charge * * *

Sec. 5. 10 V.S.A § 6523 is amended to read:

§ 6523. VERMONT CLEAN ENERGY DEVELOPMENT FUND

(a) Creation of fund.

(1) There is established the Vermont clean energy development fund to consist of each of the following:

(A) The proceeds due the state under the terms of the memorandum of understanding between the department of public service and Entergy Nuclear VY and Entergy Nuclear Operations, Inc. that was entered under public service board docket 6812; together with the proceeds due the state under the terms of any subsequent memoranda of understanding entered before July 1, 2005 between the department of public service and Entergy Nuclear VY and Entergy Nuclear Operations, Inc.

(B) The proceeds of the grid parity support charge established under section 6525 of this title.

~~(C) Any other monies that may be appropriated to or deposited into~~ the fund.

* * *

(d) Expenditures authorized.

* * *

(2) If during a particular year, the ~~clean energy development board~~ commissioner of public service determines that there is a lack of high value projects eligible for funding, as identified in the five-year plan, or as otherwise identified, the ~~clean energy development board may~~ commissioner shall consult with the ~~public service~~ clean energy development board, and shall consider transferring funds to the energy efficiency fund established under the provisions of 30 V.S.A. § 209(d). Such a transfer may take place only in response to an opportunity for a particularly cost-effective investment in energy efficiency, and only as a temporary supplement to funds collected under that subsection, not as replacement funding.

(3) ~~A sum equal to the cost of the business solar energy income tax credits authorized in 32 V.S.A. § 5822(d) and 5930z(a) shall be transferred annually from the clean energy development fund to the general fund.~~

(e) Management of fund.

(1) ~~There is created the clean energy development board, which shall consist of the following nine directors:~~

~~(A) Three at-large directors appointed by the speaker of the house;~~

~~(B) Three at-large directors appointed by the president pro tempore of the senate.~~

~~(C) Two at-large directors appointed by the governor.~~

~~(D) The state treasurer, ex officio.~~ This fund shall be administered by the department of public service to facilitate the development and implementation of clean energy resources. The department is authorized to expend moneys from the clean energy development fund in accordance with this section. The commissioner of the department shall make all decisions necessary to implement this section and administer the fund except those decisions committed to the clean energy development board under this subsection.

(2) ~~During fiscal years after FY 2006, up to five percent of amounts appropriated to the public service department from the fund may be used for administrative costs related to the clean energy development fund and after FY 2007, another five percent of amounts appropriated to the public service department from the fund not to exceed $300,000.00 in any fiscal year shall be transferred to the secretary of the agency of agriculture, food and markets for agricultural and farm-based energy project development activities.~~ The department shall assure an open public process in the administration of the fund for the purposes established in this subchapter.

~~(3) A quorum of the clean energy development board shall consist of five directors. The directors of the board shall select a chair and vice chair.~~ There is created the clean energy development fund advisory committee, which shall consist of the commissioner of public service or designee, and the chairs of the house and senate committees on natural resources and energy or their designees.

~~(4) In making appointments of at-large directors to the clean energy development board, the appointing authorities shall give consideration to citizens of the state with knowledge of relevant technology, regulatory law, infrastructure, finance, and environmental permitting. A director shall recuse himself or herself from all matters and decisions pertaining to a company or corporation of which the director is an employee, officer, partner, proprietor, or board member. The at-large directors of the board shall serve terms of four years beginning July 1 of the year of appointment. However, one at-large director appointed by the speaker and one at-large director appointed by the president pro tempore shall serve an initial term of two years. Any vacancy occurring among the at-large directors shall be filled by the respective appointing authority and shall be filled for the balance of the unexpired term. A director may be reappointed.~~ There is created the clean energy development board, which shall consist of seven persons appointed for four-year terms by the clean energy development fund advisory committee. The advisory

~~committee shall appoint a new member to fill a vacancy occurring in the board~~ during the term of a member for the balance of the member's term.

(5) ~~Except for those directors of the clean energy development board otherwise regularly employed by the state, the compensation of the directors shall be the same as that provided by subsection 1010(a) of Title 32. All directors of the clean energy development board, including those directors otherwise regularly employed by the state, shall receive their actual and necessary expenses when away from home or office upon their official duties.~~ The clean energy development board shall have decision-making and approval authority with respect to the plans, budget, and program designs described in subdivisions (8)(B)–(D) of this subsection. Prior to the award of specific grants and investments, the commissioner of public service shall consult the clean energy development board which shall provide its recommendation. The clean energy development board shall function in an advisory capacity to the commissioner on all other aspects of this section's implementation.

(6) At least every three years, the ~~clean energy development board~~ department shall commission a detailed financial audit by an independent third party of the fund and the activities of the fund manager, which shall make available to the auditor its books, records, and any other information reasonably requested by the ~~board or the~~ auditor for the purpose of the audit.

~~(7) In performing its duties, the clean energy development board may~~ utilize the legal and technical resources of the department of public service ~~or, alternatively, may utilize reasonable amounts from the clean energy development fund to retain qualified private legal and technical service providers~~. The department of public service shall provide the clean energy development board ~~and its fund manager~~ with administrative services.

(8) The ~~clean energy development board~~ department shall perform each of the following:

(A) By January 15 of each year, commencing in 2010, provide to the house and senate committees on natural resources and energy, the senate committee on finance, and the house committee on commerce and economic development a report detailing the revenues collected and the expenditures made under this subchapter.

(B) Develop, and submit to the clean energy development board for review and approval, a five-year strategic plan and an annual program plan, both of which shall be developed with input from a public stakeholder process and shall be consistent with state energy planning principles.

(C) Develop, and submit to the clean energy development board for review and approval, an annual operating budget.

(D) Develop, and submit to the clean energy development board for review and approval, proposed program designs to facilitate clean energy

~~market and project development (including use of financial assistance,~~ investments, competitive solicitations, technical assistance, and other incentive programs and strategies).

(9) At least ~~quarterly~~ semiannually, the clean energy development board and the commissioner jointly shall hold a public meeting to review and discuss the status of the fund, fund projects, the performance of the fund manager, any reports, information, or inquiries submitted by the fund manager or the public, and any additional matters ~~the clean energy development board deems~~ they deem necessary to fulfill ~~its~~ their obligations under this section.

~~(10) The clean energy development board shall administer and is authorized to expend monies from the clean energy development fund in accordance with this section.~~

(f) Clean energy development fund manager. The clean energy development fund shall have a fund manager who shall be ~~a state~~ an employee ~~retained and supervised by the board and housed within and assigned for administrative purposes to~~ of the department of public service.

(g) Bonds. The commissioner of public service, in consultation with the clean energy development board, may explore use of the fund to establish one or more loan-loss reserve funds to back issuance of bonds by the state treasurer otherwise authorized by law, including clean renewable energy bonds, that support the purposes of the fund.

~~(h) ARRA funds. All American Recovery and Reinvestment Act (ARRA)~~ funds described in section 6524 of this title shall be disbursed, administered, and accounted for in a manner that ensures rapid deployment of the funds and is consistent with all applicable requirements of ARRA, including requirements for administration of funds received and for timeliness, energy savings, matching, transparency, and accountability. These funds shall be expended for the following categories listed in this subsection, provided that no single project directly or indirectly receives a grant in more than one of these categories. ~~The~~ After consultation with the clean energy development board, the commissioner of public service shall have discretion to use non-ARRA moneys within the fund to support all or a portion of these categories and shall direct any ARRA moneys for which non-ARRA moneys have been substituted to the support of other eligible projects, programs, or activities under ARRA and this section.

* * *

(4) $2 million for a public-serving institution efficiency and renewable energy program that may include grants and loans and create a revolving loan fund. For the purpose of this subsection, "public-serving institution" means government buildings and nonprofit public and private universities, colleges, and hospitals. In this program, awards shall be made through a competitive bid process. ~~On or before January 15, 2011, the clean energy development board~~

~~shall report to the general assembly on the status of this program, including each award made and, for each such award, the expected energy savings or generation and the actual energy savings or generation achieved.~~

* * *

(8) Concerning the funds authorized for use in subdivisions (4)-(7) of this subsection:

(A) To the extent permissible under ARRA, up to five percent may be spent for administration of the funds received.

(B) In the event that the ~~clean energy development board~~ commissioner of public service determines that a recipient of such funds has insufficient eligible projects, programs, or activities to fully utilize the authorized funds, then after consultation with the clean energy development board, the commissioner shall have discretion to reallocate the balance to other eligible projects, programs, or activities under this section.

(9) The ~~clean energy development board~~ commissioner of public service is authorized, to the extent allowable under ARRA, to utilize up to 10 percent of ARRA funds received for the purpose of administration. The ~~board~~ commissioner shall allocate a portion of the amount utilized for administration to retain permanent, temporary, or limited service positions or contractors and the remaining portion to the oversight of specific projects receiving ARRA funding ~~through the board~~ pursuant to section 6524 of this title.

~~(i) Rules. The department and the clean energy development board each~~ may adopt rules pursuant to 3 V.S.A. chapter 25 to carry out its functions under this section~~. The board~~ and shall consult with ~~the commissioner of public service~~ each other either before or during the rulemaking process.

~~(j) Governor disapproval. The governor shall have the authority within 30 days of approval or adoption to disapprove a project, program, or other activity approved by the clean energy development board if the source of the funds is ARRA; and any rules adopted under subsection (i) of this section. The governor may at any time waive his or her authority to disapprove any project, program, or other activity or rule under this subsection.~~

Sec. 6. CLEAN ENERGY DEVELOPMENT BOARD; TRANSITION; TERM EXPIRATION; NEW APPOINTMENTS

(a) The terms of all members of the clean energy development board appointed prior to the effective date of this section shall expire on December 31, 2011.

(b) No later than October 1, 2011, the clean energy development fund advisory committee created by Sec. 5 of this act shall appoint the members of the clean energy development board created by Sec. 5 of this act. The terms of the members so appointed shall commence on January 1, 2012. The advisory committee may appoint members of the clean energy development board as it existed prior to this effective date of this section.

~~Sec. 7. 10 V.S.A. § 6524 is amended to read:~~

§ 6524. ARRA ENERGY MONEYS

The expenditure of each of the following shall be subject to the direction and approval of the commissioner of public service, after consultation with the clean energy development board established under subdivision ~~6523(e)(1)~~ 6523(e)(4) of this title, and shall be made in accordance with subdivisions 6523(d)(1)(expenditures authorized), ~~(e)(3)(quorum), (e)(4)(appointments; recusal), (e)(5)(compensation), (e)(7)(assistance, administrative support),~~ and (e)(8)(A)(reporting) and subsections 6523(f)(fund manager), (h)(ARRA funds), and (i)(rules)~~, and (j)(governor disapproval)~~ of this title and applicable federal law and regulations:

(1) The amount of $21,999,000.00 in funds received by the state under the appropriation contained in the American Recovery and Reinvestment Act (ARRA) of 2009, Pub.L. No. 111-5, to the state energy program authorized under 42 U.S.C. § 6321 et seq.

(2) The amount of $9,593,500.00 received by the state under ARRA from the United States Department of Energy through the energy efficiency and conservation block grant program.

~~Sec. 8. 10 V.S.A. § 6525 is added to read:~~

§ 6525. GRID PARITY SUPPORT CHARGE

Each Vermont retail electricity provider shall assess on each customer's monthly electric bill a grid parity support charge of $1.50. At the end of each monthly billing cycle, a Vermont retail electricity provider shall transmit to the clean energy development fund the total amount of the grid parity support charge assessed to the provider's customers during the immediately preceding monthly billing cycle. With respect to a customer's nonpayment of a grid parity support charge, the board and a retail electricity provider shall apply the same rules as are applied to a customer's nonpayment of the energy efficiency charge under subdivision 209(d)(3) of this title.

Sec. 9. RECODIFICATION; REDESIGNATION

(a) 10 V.S.A. §§ 6523, 6524, and 6525 are recodified respectively as 30 V.S.A. §§ 8015, 8016, and 8017. The office of legislative council shall revise accordingly any references to these statutes contained in the Vermont Statutes Annotated. Any references in session law to these statutes as previously codified shall be deemed to refer to the statutes as recodified by this act.

(b) Within 30 V.S.A. chapter 89 (renewable energy programs):

(1) §§ 8001–8014 shall be within subchapter 1 and designated to read:

~~Subchapter 1. General Provisions~~

(2) §§ 8015–8017 shall be within subchapter 2 and designated to read:

Subchapter 2. Clean Energy Development Fund

Sec. 10. STATUTORY REVISION

In all provisions of 30 V.S.A. chapter 89 except 30 V.S.A. § 8002(10), (16), and (18)–(20), the office of legislative council shall substitute "board" for "public service board," "department" for "department of public service," "kW" for "kilowatt" or "kilowatts (AC)," "kWh" for "kilowatt hours," and "MW" for "megawatt" or "megawatts."

* * * Renewable Energy Investment Vermont * * *

Sec. 11. 30 V.S.A. chapter 89, subchapter 3 is added to read:

Subchapter 3. Renewable Energy Investment Vermont

§ 8021. RENEWABLE ENERGY INVESTMENT VERMONT PROGRAM; ESTABLISHMENT; PURPOSE

The renewable energy investment Vermont program is established. The purposes of this program are to:

(1) Build renewable energy plants in Vermont at lower long-term cost by avoiding or substantially reducing financing costs.

(2) Build renewable energy plants that will provide electric energy to Vermont consumers for the life of the plant.

~~(3) Facilitate utility or public ownership of renewable energy plants and~~ combined heat and power projects to benefit ratepayers and economic development in the state.

(4) Support, over the long term, stability in electric energy prices for Vermont consumers.

(5) Lower long-term rate impacts by reducing the inclusion of fuel costs in rates.

§ 8022. DEFINITIONS

In this subchapter:

(1) "Capital costs" means costs necessary to install a renewable energy plant and bring the plant to the point of commissioning, excluding feasibility studies and permitting costs. The term "capital costs" includes the cost of land acquisition, construction costs, and the cost of plant components. The term "capital costs" excludes financing, carrying, operation, and maintenance costs.

(2) "CEDB" means the clean energy development board established under section 8015 of this title.

(3) "Commissioner" means the commissioner of public service or designee. The commissioner shall have authority to administer and expend moneys from the fund in accordance with this subchapter.

(4) "Fund" means the REI-Vermont fund created under this subchapter, except when used as part of the phrase "clean energy development fund."

~~(5) "REI Vermont" or "program" means the renewable energy~~ investment Vermont program established under this subchapter.

(6) "Renewable energy" is as defined in subdivision 8002(2) of this title and includes a plant that sequentially produces both electric power and thermal energy (combined heat and power) from a resource that meets the definition in subdivision 8002(2).

§ 8023. RENEWABLE ENERGY INVESTMENT VERMONT FUND; CREATION

The renewable energy investment Vermont fund is created. Balances in the fund shall be held for the benefit of ratepayers, shall be expended solely for the purposes set forth in this subchapter, and shall not be used for the general obligations of government. All balances in the fund at the end of any fiscal year shall be carried forward and remain part of the fund. Interest earned by the fund shall be deposited in the fund. This fund is established in the state treasury pursuant to subchapter 5 of chapter 7 of Title 32.

§ 8024. RENEWABLE INVESTMENT CONTRIBUTION; CUSTOMER ELECTION TO REVISE OR DECLINE

A renewable investment contribution charge to the customers of each Vermont retail electricity provider is established. Each of the following shall apply to this contribution charge:

(1) The charge shall be shown separately on each customer's bill.

~~(2) The default rate of the contribution charge shall be $0.03 per each~~ kWh of electrical energy consumed by the customer. This charge shall be assessed unless the customer instructs otherwise pursuant to subdivision (3) of this section.

(3) At any time, a customer may instruct the retail electricity provider to revise the rate of the charge to the customer, which the provider shall implement for the next monthly billing cycle following the instruction. The rates for the charge available to a customer shall range from zero through $0.05 per kWh in one-cent increments. A customer may elect not to be charged the renewable investment contribution charge.

(4) During the monthly billing cycle that commences in November 2011 and every 12th monthly billing cycle afterward, each retail electricity provider shall send with its bills to customers an information sheet that the commissioner, after consultation with the CEDB, shall develop and provide. The information sheet shall summarize the purpose of the REI-Vermont program and the benefits of participation. The sheet also shall inform the customer of the default rate and the options available under subdivisions (2) and (3) of this section and state that the customer may exercise these options by contacting the customer's retail electricity provider at the telephone number or mailing address on the provider's bill. The first time such a sheet is sent to

~~customers, the sheet shall provide notice of the inception of the REI-Vermont program.~~

(5) A customer shall not be eligible to participate in the REI-Vermont program and shall not be assessed a charge under this section if the customer is a low income electric utility customer as defined in subsection 218(e) of this title who is receiving reduced rates to assure affordability as provided under subsection 218(e).

(6) At the end of each monthly billing cycle, a Vermont retail electricity provider shall transmit to the commissioner the total amount of the renewable investment contribution charge assessed to the provider's customers during the immediately preceding monthly billing cycle. With respect to a customer's nonpayment of a charge properly assessed in accordance with this subsection, the board and a retail electricity provider shall apply the same rules as are applied to a customer's nonpayment of the energy efficiency charge under subdivision 209(d)(3) of this title.

§ 8025. RENEWABLE CONTRIBUTION CHARGE MONEYS; PLACEMENT INTO FUND

All moneys raised through the renewable investment contribution charge shall be placed into the REI-Vermont fund.

§ 8026. USE OF MONEYS FROM THE REI-VERMONT FUND

Moneys from the fund shall be used exclusively as stated in this section.

~~(1) Moneys from the fund shall be used for the capital costs of~~ developing and constructing:

(A) Renewable energy plants in Vermont with greater than 2.2 MW plant capacity to be owned and operated by a Vermont retail electricity provider.

(B) Renewable energy plants with a plant capacity of less than 20 MW by the state of Vermont that will constitute qualifying small power production facilities under 16 U.S.C. 796(17)(C) and 18 C.F.R. part 292, provided such plants are not net metering systems under section 219a of this title and do not execute a standard offer contract under section 8005 of this title. The secretary of administration shall have authority to own and operate or contract for the operation of a plant by the state of Vermont, the capital costs of which are funded under this chapter, and may delegate such authority to any agency of the state other than the board and the department. The use of any funds by a state agency for such a plant other than those received under this subchapter shall require separate authority.

(C) Renewable energy plants with a plant capacity of not more than 2.2 MW by a municipality within the state of Vermont that will constitute qualifying small power production facilities under 16 U.S.C. 796(17)(C) and 18 C.F.R. part 292, provided such plants do not execute a standard offer contract under section 8005 of this title.

~~(2) Funds expended pursuant to subdivision (1) of this section may only~~ be used for a renewable energy plant for which an application for a certificate of public good under section 248 of this title is or will be filed on or after January 1, 2012, provided that the plant was not in service prior to that date or, if the plant was in service prior to that date, the application under section 248 of this title proposes or will propose a modernization of the plant and either an increase in its plant capacity or an increase in anticipated energy production.

(3) Up to five percent annually of the moneys deposited into the fund may be used by the commissioner to administer the REI-Vermont program, including contracting with the SPEED facilitator and for any other necessary assistance and expertise, and purchasing any necessary insurance.

§ 8027. PLANT SELECTION

The following shall apply to the identification and selection of plants to be supported by the fund under section 8026 of this title:

(1) In consultation with the CEDB, the commissioner shall assess proposed plants based on criteria that include cost-effectiveness, acquisition costs, diversification of renewable energy technologies, potential environmental and land use impacts, avoidance of transmission costs, and other relevant factors.

(2) Supported plants shall not result in the placement in a retail electricity provider's rates of financing or carrying costs except as may be

~~approved by the public service board under applicable utility ratemaking law~~ with respect to:

(A) Those capital costs of a plant not supported by the fund.

(B) Operations and maintenance costs of a plant after commissioning.

(3) The commissioner shall consult with the agency of natural resources and the department of public service when reviewing a plant proposed for funding and consider the comments of that agency and department.

(4) The commissioner periodically shall issue requests for proposals from Vermont retail electricity providers, the state of Vermont, and Vermont municipalities for plants to be supported by the fund. A Vermont retail electricity provider or an agency or municipality of the state of Vermont may apply for funding from the account regardless of whether such a request has been issued. The commissioner shall determine the information and documents to be submitted with a proposal or an application under this subdivision.

(5) At the time of an award, the commissioner shall provide for reallocation of the award and return of any funds transferred in the event that the plant for which the award is made is not commissioned within a reasonable period as determined by the commissioner.

~~§ 8028. OWNERSHIP AND ALLOCATION OF ELECTRICITY~~

PRODUCTS

(a) Plants of retail electricity provider.

(1) If moneys from the fund are used to support 100 percent of the capital costs of a renewable energy plant by a Vermont retail electricity provider, then the Vermont retail electricity providers shall receive and have ownership of 100 percent of the electricity and other products of the plant over its life, including electrical energy, capacity, and tradeable renewable energy credits. If moneys from the fund are used to support less than 100 percent of the capital costs of a renewable energy plant by a retail electricity provider, then the percentage of the plant's electricity products received and owned by the Vermont retail electricity providers for the life of the plant shall be equal at least to the percentage of the plant's capital costs supported by the fund through the provider or providers.

(2) Electricity products described in subdivision (1) of this subsection shall be allocated by the SPEED facilitator among the retail electricity providers as follows:

(A) 25 percent shall be allocated to the retail electricity provider or providers that own and operate the plant.

~~(B) 75 percent shall be aggregated by the SPEED facilitator and~~ allocated among all Vermont retail electricity providers based on their pro rata share of total Vermont kWh sales for the previous calendar year.

(b) Plants by the state of Vermont.

(1) If moneys from the fund are used to support 100 percent of the capital costs of a renewable energy plant by the state of Vermont, then the state of Vermont shall receive and have ownership on behalf of the ratepayers of the state of 100 percent of the electricity and other products of the plant over its life, including electrical energy, capacity, and tradeable renewable energy credits. If moneys from the fund are used to support less than 100 percent of the capital costs of a renewable energy plant by the state of Vermont, then the percentage of the plant's electricity products received and owned by the state of Vermont on behalf of the state's ratepayers for the life of the plant shall be equal at least to the percentage of the plant's capital costs supported by the fund through the state of Vermont.

(2) Electrical energy and capacity products described in subdivision (1) of this subsection and the costs of those products shall be aggregated by the SPEED facilitator and allocated among all Vermont retail electricity providers based on their pro rata share of total Vermont kWh sales for the previous calendar year. The price of such products shall be the avoided cost of the Vermont composite electric utility system as determined by the board. The

~~only provisions of board rule 4.100 (small power production and cogeneration)~~ that shall apply are rules 4.109 (exemption from utility regulation) and 4.110 (reporting requirements). The SPEED facilitator shall transfer payments received under this subdivision to the secretary of administration or the delegated agency under subdivision 8026(1)(B) of this title to support the costs of plant operation and maintenance.

(3) Electricity products described in subdivision (1) of this subsection other than electrical energy and capacity shall be assets of the fund. From time to time, the commissioner shall direct the sale of these products, all proceeds of which shall be deposited into the fund. The report and audit required under section 8030 of this title shall account for these products and their sale and deposit into the fund.

(c) Plants by a municipality. If moneys from the fund are used to support a plant by a municipality:

(1) 25 percent of the electrical energy generated by the plant shall be treated in accordance with the provisions of subsection 219a(e) (billing and crediting of net metering systems) of this title or, if the municipality has multiple meters, with the provisions of subsection 219a(f) (group net metering system billing and crediting) of this title. This subdivision (1) shall apply to the plant regardless of any limits on plant capacity contained in section 219a of this title.

~~(2) Capacity products and 75 percent of the electrical energy generated~~ by the plant shall be allocated to the Vermont retail electricity providers in the same manner as under subdivision (b)(2) of this section, except that the SPEED facilitator shall transfer payments received to the municipality to support the costs of plant operation and maintenance.

(3) Electricity products of the plant other than electrical energy and capacity shall be treated in the same manner as under subdivision (b)(3) of this section.

(c) Dispute resolution. The board shall have jurisdiction to resolve any disputes regarding ownership and allocations under this section.

(d) The requirements of this section concerning ownership and allocation of a plant's electricity products shall continue to apply to the plant regardless of any sale or transfer or change in ownership of the plant.

§ 8029. ELECTRICITY PROVIDERS; RATE RECOVERY; RETENTION OF RENEWABLE ENERGY CREDITS

(a) A retail electricity provider shall not recover in rates the capital costs of or a rate of return on a plant funded under this section or, if less than 100 percent of a plant is funded under this section, that portion of the plant funded under this section, determined by the percentage of capital costs.

(b) Tradeable renewable energy credits. Tradeable renewable energy credits owned by a Vermont retail electricity provider pursuant to this

~~subchapter shall be retained by the provider for use in the event that the~~ renewable portfolio standard under section 8004 of this title or other renewable portfolio standard mandated by the federal government or state of Vermont comes into effect.

§ 8030. REPORTING; AUDIT

(a) By February 1 of each year, commencing in 2013, the commissioner shall provide to the house and senate committees on natural resources and energy, the senate committee on finance, and the house committee on commerce and economic development a report that includes each of the following for the reporting period: a complete operating and financial statement covering its activities related to the account; the account's revenues and expenditures; an identification of each plant funded by the account, including the energy generation type, plant capacity, location, and ownership; a summary of requests for proposals issued, responses, and dispositions; and a summary of applications for funding from the REI-Vermont program received independently of a request for proposals and the disposition of those applications.

(b) The commissioner shall keep an accurate account of all activities and receipts and expenditures under this section. The commissioner shall cause an audit of the fund and the books related to the fund to be made at least once in each year by a certified public accountant, and the audit's cost shall be

~~considered an administrative expense of the fund and a copy shall be filed with~~ the state treasurer. The auditor of accounts of the state and his or her authorized representatives may at any time examine the fund and related books, including its receipts, disbursements, contracts, funds, investments, and any other matters relating to its financial statements.

§ 8031. LIMITATION OF LIABILITY

(a) With respect to a plant supported by the fund, the construction, operation, and maintenance of such a plant, and any actions or omissions associated with the plant, the commissioner, the CEDB, and the fund shall have no liability, except that the fund shall be responsible to a plant owner to provide funds awarded by the commissioner to the plant owner in accordance with the terms and conditions of that award and in no event in excess of the amount of funds awarded for the plant.

(b) The state shall not be liable with respect to any matter related to this section or a plant supported by the fund, except that, with respect to a plant owned and operated by the state:

(1) The state shall purchase insurance of the same type and with the same limits that a prudent private owner of an electric generation plant would purchase; and

(2) The state's liability for an incident or occurrence shall not exceed the limits stated in such insurance policy.

~~§ 8032. TRIENNIAL REPORT~~

By February 1, 2015, and every third February 1 afterward, the department shall:

(1) Review the REI-Vermont program and associated activities to determine if either or both of the following circumstances have occurred:

(A) More than one-third of the moneys collected to date for the fund have not been awarded.

(B) More than one-third of the plants for which moneys from the fund have been awarded have not filed petitions for approval under section 248 of this title.

(2) Report in writing the results of this review. Each of the following shall apply to this report:

(A) The report shall be submitted to the CEDB, the public service board, and the house and senate committees on natural resources and energy.

(B) In the event that one or both of the circumstances described in subdivision (1) of this section have occurred, the report shall include the department's recommended statutory, administrative, or other proposals to promote the prompt use of moneys from the fund to achieve commissioned new renewable energy plants in Vermont to deliver stably priced electric energy to Vermonters, including whether moneys from the fund should be made available to persons or entities that are not Vermont retail electricity

~~providers or the state of Vermont to install such plants for the purpose of~~ serving Vermont electric consumers.

* * * Net Metering * * *

Sec. 12. 30 V.S.A. § 219a is amended to read:

§ 219a. SELF-GENERATION AND NET METERING

(a) As used in this section:

* * *

(3) "Net metering system" means a facility for generation of electricity that:

(A) is of no more than 250 ~~kilowatts (AC)~~ kW capacity or, in the case of a group net metering system, no more than 500 kW capacity;

(B) operates in parallel with facilities of the electric distribution system;

(C) is intended primarily to offset part or all of the customer's own electricity requirements;

(D) is located on the customer's premises; and

(E)(i) employs a renewable energy source as defined in subdivision 8002(2) of this title; or

(ii) is a qualified micro-combined heat and power system of 20 ~~kilowatts~~ kW or fewer that meets the definition of combined heat and power in

~~10 V.S.A. § 6523(b) and may use any fuel source that meets air quality~~ standards.

(4) "Farm system" means a facility of no more than ~~250 kilowatts (AC)~~ 500 kW output capacity, except as provided in subdivision (k)(5) of this section, that generates electric energy on a farm operated by a person principally engaged in the business of farming, as that term is defined in Regulation 1.175-3 of the Internal Revenue Code of 1986, from the anaerobic digestion of agricultural products, byproducts, or wastes, or other renewable sources as defined in subdivision (3)(E) of this subsection, intended to offset the meters designated under subdivision (g)(1)(A) of this section on the farm or has entered into a contract as specified in subsection (k) of this section.

(5) "Facility" means a structure or piece of equipment and associated machinery and fixtures that generates electricity. A group of structures or pieces of equipment shall be considered one facility if they use the same fuel source and infrastructure and are located in close proximity to each other. Common ownership shall be relevant but not sufficient to determine that such a group constitutes a facility.

(6) "kW" means kilowatt or kilowatts (AC).

(7) "kWh" means kW hour or hours.

(8) "MW" means megawatt or megawatts (AC).

* * *

~~(c) Consistent with the other provisions of this title, electric energy~~ measurement for net metering systems using a single nondemand meter that are not farm systems shall be calculated in the following manner:

* * *

(3) If electricity generated by the customer exceeds the electricity supplied by the electric company:

(A) The customer shall be billed for the appropriate charges for that month, in accordance with subsection (b) of this section;

(B) The customer shall be credited for the excess ~~kilowatt-hours~~ kWh generated during the billing period, with this kilowatt-hour credit appearing on the bill for the following billing period; and

(C) Any accumulated ~~kilowatt-hour~~ kWh credits ~~shall be~~ not used within 12 months~~, or~~ shall revert to the electric company, ~~without any~~ with compensation to the customer at the highest rate paid during that 12-month period by the electric company for power generated by technology using the same fuel source. The determination of that rate shall exclude power purchased pursuant to a standard offer under section 8005 of this title and shall include all other prices paid and the monetary value to a customer of all kWh credits applied to bills by the electric company for power generated by the same technology. The monetary value of a kWh credit under this subdivision (3)(C) shall be the value that the credit represents when applied to

~~a charge on a customer's bill for electricity supplied by the electric company~~. Power reverting to the electric company under this subdivision (3) shall be considered SPEED resources under section 8005 of this title.

* * *

(f) Consistent with the other provisions of this title, electric energy measurement for net metering farm or group net metering systems shall be calculated in the following manner:

* * *

(3) If electricity generated by the farm or group net metering system exceeds the electricity supplied by the electric company:

(A) The farm or group net metering system shall be billed for the appropriate charges for each meter for that month, in accordance with subsection (b) of this section.

(B) Excess ~~kilowatt-hours~~ kWh generated during the billing period shall be added to the accumulated balance with this ~~kilowatt-hour~~ kWh credit appearing on the bill for the following billing period.

(C) Any accumulated kilowatt-hour credits shall be ~~used within 12 months or shall revert to the electric company without any compensation to the farm or group net metering system. Power reverting to the electric company under this subdivision (3) shall be considered SPEED resources under section~~

~~8005 of this title~~ subject to and treated in the same manner as under subdivision (e)(3)(C) of this section.

* * *

(h)(1) An electric company:

(A) Shall make net metering available to any customer using a net metering system, group net metering system, or farm system ~~on a first-come, first-served basis until the cumulative output capacity of net metering systems equals 2.0 percent of the distribution company's peak demand during 1996; or the peak demand during the most recent full calendar year, whichever is greater. The board may raise the 2.0 percent cap. In determining whether to raise the cap, the board shall consider the following:~~

~~(i) the costs and benefits of net metering systems already connected to the system; and~~

~~(ii) the potential costs and benefits of exceeding the cap, including potential short and long-term impacts on rates, distribution system costs and benefits, reliability and diversification costs and benefits~~;

* * *

(E) May require a customer to comply with generation, interconnection, safety, and reliability requirements, as determined by the public service board by rule or order, and may charge reasonable fees for interconnection, establishment, special metering, meter reading, accounting,

~~account correcting, and account maintenance of net metering arrangements of~~ greater than 15 ~~kilowatt (AC)~~ kW capacity;

* * *

(J) In its retail tariff, may, and in the case of net metering systems using solar energy shall offer credits or other incentives, including monetary payments, to net metering customers that are in addition to the benefits provided to such customers under subsections (e) and (f) of this section. Any such additional credit or incentive may be carried over on the customer's bill from year to year. With respect to a net metering system that constitutes new renewable energy under subdivision 8002(4) of this title, the increment of net annual energy production supplied by the customer to the company through a net metering system that is supported by such additional credit or incentive shall count toward the goals and requirements of subsection 8005(d) of this title. Such increment shall be determined by applying, to the system's net annual energy production supplied to the company, the value of the additional credit or incentive divided by the sum of the value of that additional credit or incentive and the value of the kWh credit provided under subsection (e) or (f) of this section.

(2) All such requirements or credits or other incentives shall be pursuant to and governed by a tariff approved by the board and any applicable board

~~rule, which tariffs and rules shall be designed in a manner reasonably likely to~~ facilitate net metering, including deployment of solar generation.

* * *

(k) Notwithstanding the provisions of subsections (f) and (g) of this section, an electric company may contract to purchase all or a portion of the output products from a farm or group net metering system, provided:

(1) the farm or group net metering system obtains a certificate of public good under the terms of subsections (c) and (d) of this section;

(2) any contracted power shall be subject to the limitations set forth in subdivision (h)(1) of this section;

(3) any contract shall be subject to interconnection and metering requirements in subdivisions (h)(1)(C)~~,~~ and (i)(2) and (3) of this section;

(4) any contract may permit all or a portion of the tradeable renewable energy credits for which the farm system is eligible to be transferred to the electric company;

(5) the output capacity of a system may exceed ~~250 kilowatts~~ 500 kW, provided:

(A) the contract assigns the amount of power to be net metered; and

(B) the net metered amount does not exceed ~~250 kilowatts~~ 500 kW~~;~~ ~~and~~

~~(C) only the amount assigned to net metering is assessed to the cap provided in subdivision (h)(1)(A) of this section~~.

* * *

(m) A facility for the generation of electricity to be consumed primarily by the military department established under 3 V.S.A. § 212 and 20 V.S.A. § 361(a) or the National Guard as defined in 32 U.S.C. § 101(3), and installed on property of the military department or National Guard located in Vermont, shall be considered a net metering system for purposes of this section if it has a capacity of 2.2 MW ~~(AC)~~ or less and meets the provisions of subdivisions (a)(3)(B) through (E) of this section. Such a facility shall not be subject to and shall not count toward the capacity limits of ~~subdivisions~~ subdivision (a)(3)(A) (no more than ~~250~~ 500 kW) ~~and (h)(1)(A) (two percent of peak demand)~~ of this section.

* * * Renewable Energy; State Facilities and Lands * * *

Sec. 13. 3 V.S.A. § 2291c is added to read:

§ 2291c. STATE FACILITIES AND LANDS; AVAILABILITY; RENEWABLE ENERGY

(a) The commissioner of buildings and general services and any other state agency that owns or controls state facilities or lands shall offer Vermont retail electricity providers an ongoing option to install a plant that generates

~~electricity from renewable energy on such facilities and lands at no cost for the use of the real property.~~

(b) For the purpose of this section:

(1) "Board," "plant," "renewable energy" and "retail electricity provider" are as defined in 30 V.S.A. § 8002.

(2) "State facilities" is as defined in 3 V.S.A. § 2291(a)(2).

(3) "State lands" means all real property owned or controlled by an agency of the state, whether through fee ownership, easement, or other means, that is not a state facility. The term excludes real property that is subject to a covenant or other binding legal restriction that runs with the land, the terms of which clearly contradict the installation of a renewable energy plant on that land.

(c) The ratepayers of a retail electricity provider that accepts an offer under subsection (a) of this section shall receive the benefit of the use of a state facility or land at no cost, and the provider and the board shall take all steps necessary to ensure that the ratepayers receive this benefit.

(d) A renewable energy plant installed pursuant to this section shall be subject to applicable local taxes.

~~* * * Energy Efficiency Programs;~~

Customer Approach to Energy Use * * *

Sec. 14. 30 V.S.A. § 209(e) is amended to read:

(e) The board shall:

* * *

(16) Require that entities appointed under subdivision (d)(2) of this section implement energy efficiency programs that are designed to promote and encourage customers to modify their approach to the manner in which they use and consume energy. Such program designs may address the size of equipment that uses energy, the timing of when such equipment is used, and the use of services that analyze a customer's use and potential waste of energy, including review of whether equipment and sensors work properly and whether heating and cooling systems operate in a contradictory manner. Such program designs shall include means to assure that customers in fact modify their approach to energy consumption and to verify associated energy savings.

Sec. 15. PROGRAM DESIGN REVIEW; IMPLEMENTATION

No later than July 31, 2011, the entities appointed under 30 V.S.A. § 209(d)(2) shall submit to the public service board proposed program designs or modification or both to implement Sec. 14 of this act, 30 V.S.A. § 209(e)(16). By December 31, 2012, the board shall conduct and complete its review of these submissions and require the establishment of programs to

~~implement 30 V.S.A. § 209(e)(16), commencing no later than March 1, 2012.~~ After that date, design and implementation of 30 V.S.A. § 209(e)(16) and the associated board review shall proceed in the same manner as with other programs by the entities appointed under 30 V.S.A. § 209(d)(2).

* * * Weatherization * * *

Sec. 16. WEATHERIZATION; PROGRAM IMPLEMENTATION BY ENERGY EFFICIENCY ENTITY

(a) Notwithstanding any other provision of law, the home weatherization assistance program described in 33 V.S.A. § 2502(a) shall be implemented by the entity appointed under 30 V.S.A. §§ 209(d)(2) and 235 to deliver energy efficiency programs. Such implementation shall be pursuant to the oversight of the public service board and department of public service as described in 30 V.S.A. §§ 209(e) and 235(d). Such implementation shall be supported by the trust fund and the fuel gross receipts tax described in 33 V.S.A. §§ 2501 and 2503. Such implementation shall include those home weatherization activities in Vermont, and associated funds, supported by the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5. Such implementation shall include exercising all home weatherization program functions and duties of the Office of Economic Opportunity (OEO), which shall no longer have functions and duties, and collaborating with OEO with

~~respect to any functions and duties relating to home energy that remain with~~ OEO.

(b) On or before January 15, 2012, the governor by executive order shall provide for the implementation of subsection (a) of this section and the transfer to the entity described in subsection (a) of this section of all functions and duties of the OEO with respect to the home weatherization assistance program described in that subsection. The order shall conform in all respects to subsection (a) of this section. The provisions of 3 V.S.A. chapter 41 (reorganization by governor) shall apply to the order.

(c) On issuance, the governor shall provide the executive order described in subsection (b) of this section to the general assembly. The governor shall attach a report that details the support for the manner in which the governor chose to implement subsection (a) of this section and shall recommend any proposed changes to statute or session law needed with respect to such implementation.

* * * Heating Oil; Low Sulfur * * *

Sec. 17. 9 V.S.A. § 2697b is added to read:

§ 2697b. HEATING OIL SULFUR REQUIREMENTS

(a) In this section, "heating oil" means No. 2 distillate that has distillation temperatures of 400 degrees Fahrenheit at the 10-percent recovery point and 640 degrees Fahrenheit at the 90-percent recovery point and meets the

~~specifications defined in American Society for Testing and Materials (ASTM) Specification D 396.~~

(b) All heating oil sold within the state for residential, commercial, or industrial uses, including space and water heating, shall have a sulfur content of 15 parts per million or less, unless this requirement is waived pursuant to subsection (f) of this section.

(c) The governor, by executive order, may temporarily suspend the implementation and enforcement of subsection (b) of this section if the governor determines, after consulting with the secretary and the commissioner of public service, that meeting the requirements is not feasible due to an inadequate supply of the required fuel.

* * * Renewable Fuels; Tax Provisions * * *

Sec. 18. BIODIESEL; EXCISE TAX; TEMPORARY EXEMPTION

(a) Commencing January 1, 2012 through December 31, 2016, biodiesel produced in Vermont shall not be subject to taxation under 23 V.S.A. chapters 27 and 28 and 32 V.S.A. chapter 233.

(b) For the purpose of this section, "biodiesel" means fuel composed of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, which meets both the requirements for fuels and fuel additives of 40 C.F.R. Part 79 and the requirements of American Society for Testing and Materials (ASTM) Specification D 6751.

~~Sec. 19. 32 V.S.A. § 9741 is amended to read:~~

§ 9741. SALES NOT COVERED

Retail sales and use of the following shall be exempt from the tax on retail sales imposed under section 9771 of this title and the use tax imposed under section 9773 of this title.

* * *

(48) Sales of equipment used in the production of electric energy from biomass. For the purpose of this subdivision, "biomass" means organic nonfossil material of biological origin constituting a source of renewable energy within the meaning of 30 V.S.A. § 8002(2).

Sec. 20. BUSINESS SOLAR TAX CREDITS; INVESTMENTS ELIGIBLE BUT FOR $9.4-MILLION CAP; PROSPECTIVE REPEAL

(a) This section pertains to business solar energy tax credits for investments that met the terms of 32 V.S.A. § 5930z(c)(1) as amended by Sec. 11 of No. 159 of the Acts of the 2009 Adj. Sess. (2010) and for which such tax credits under 32 V.S.A. § 5822(d) or 5930z, as amended effective June 4, 2010, would have been available but for the $9.4-million limit on certification placed in the first sentence of 32 V.S.A. § 5930z(c) by that Sec. 11 (the $9.4-million cap).

(b) A taxpayer may take, in accordance with this section, the full amount of the business solar energy tax credits described in subsection (a) of this section. This full amount shall be divided into five equal portions. The taxpayer may

~~apply one such portion annually to the taxpayer's liability under 32 V.S.A.~~ § 5822 or 5832, starting with the tax year that begins on January 1, 2011 and ending with the tax year that begins on January 1, 2015.

(c) Notwithstanding 32 V.S.A. § 5930z(f), no funds shall be transferred from the clean energy development fund to the general fund in order to support business solar energy tax credits above the $9.4-million cap that are taken under this section.

(d) No later than August 1, 2011, the clean energy development fund shall provide the department of taxes with a list of all taxpayers known to the fund that submitted a form to the fund pursuant to 32 V.S.A. § 5930z(d) and were not awarded business solar energy tax credits because of the $9.4-million cap. No later than September 15, 2011, the department of taxes shall provide all such taxpayers with a copy of this section and an information sheet explaining its provisions and their operation.

(e) The operation of Sec. 9(1) and (2) (prospective repeals; business solar energy tax credits) of No. 159 of the Acts of the 2009 Adj. Sess. (2010) shall not affect the right of a taxpayer to take credits under this section.

(f) This section shall be repealed effective January 1, 2016.

Sec. 21. EFFECTIVE DATES; RETROACTIVE APPLICATION

(a) The following shall take effect on passage:

~~(1) This section and Secs. 1 (designation of act), 4 (new standard offer; board allocation proceedings; RPS/SPEED study repeal), 6 (clean energy development board; term expiration; transition; new appointments), 12 (net metering), 13 (renewable energy; state facilities and lands), 15 (program design review; implementation), 16(b) and (c) (home weatherization assistance program transfer; reorganization and report by governor), and 20 (business solar energy tax credits) of this act.~~

(2) In Sec. 5 (clean energy development fund): 10 V.S.A. § 6523(c)(3) (advisory committee) and (4) (clean energy development board) for the purpose of Sec. 6 of this act.

(3) Sec. 11 of this act (REI-Vermont program), except for the provisions listed in subdivision (c)(1)(C) of this section.

(b) The following shall take effect on July 1, 2011: Secs. 2 (definitions, renewable energy chapter), 3 (revisions to SPEED and standard offer), 9 (recodification; redesignation), 10 (statutory revision), and 14 (energy efficiency programs; customer approach to energy use) of this act.

(c)(1) The following shall take effect on January 1, 2012:

(A) Except as provided by subdivision (a)(2) of this section, Secs. 5 (clean energy development fund) and 7 (ARRA energy moneys) of this act.

(B) Secs. 8 (grid parity support charge), 18 (biodiesel; excise tax; temporary exemption), and 19 (biomass equipment; sales tax exemption) of this act.

(C) In Sec. 11 of this act (REI-Vermont program): 30 V.S.A. § 8024(1) (renewable investment charge on bill), (2) (default charge rate), (3) (customer election to revise charge rate), (5) (low-income customers), and (6) (electricity provider transmission of assessed charge).

(2) A Vermont retail electricity provider within the meaning of 30 V.S.A. § 8002(9) shall:

(A) During the monthly billing cycle that commences in October 2011 provide notice, in a form directed by the commissioner of public service, of the grid party support charge under Sec. 8 of this act.

(B) Implement Sec. 8 of this act (grid parity support charge) and, under Sec. 11 of this act (REI-Vermont program), implement the assessment of the renewable investment contribution charge pursuant to 30 V.S.A. § 8024 on bills rendered on and after January 1, 2012.

(d) Sec. 16(a)(home weatherization assistance program implementation) shall take effect on April 1, 2012.

(e)(1) Sec. 13 of this act, containing 9 V.S.A. § 2697b (heating fuel; sulfur requirement), shall take effect on the later of the following:

(A) July 1, 2012.

(B) The date on which, through legislation, rule, agreement, or other binding means, the last of the surrounding states has adopted requirements that are substantially similar to or more stringent than the requirements contained in 9 V.S.A. § 2697b(b). The attorney general shall determine when this date has occurred.

(2) For the purpose of this subsection, the term "surrounding states" means the states of Massachusetts, New Hampshire, and New York, and the term "last" requires that all three of the surrounding states have adopted a substantially similar or more stringent requirement.

(f) In Sec. 12 of this act, 30 V.S.A. § 219a(h)(1)(J) shall apply to petitions filed by an electric company with the public service board on and after May 1, 2010.

** * * Net Metering * * **

Sec. 1. 30 V.S.A. § 219a is amended to read:

§ 219a. SELF-GENERATION AND NET METERING

(a) As used in this section:

* * *

(3) "Net metering system" means a facility for generation of electricity that:

(A) is of no more than ~~250 kilowatts (AC)~~ 500 kW capacity;

(B) operates in parallel with facilities of the electric distribution system;

(C) is intended primarily to offset ~~part or all of~~ the customer's own electricity requirements;

(D) is located on the customer's premises or, in the case of a group net metering system, on the premises of a customer who is a member of the group; and

(E)(i) employs a renewable energy source as defined in subdivision 8002(2) of this title; or

(ii) is a qualified micro-combined heat and power system of 20 ~~kilowatts~~ kW or fewer that meets the definition of combined heat and power in 10 V.S.A. § 6523(b) and may use any fuel source that meets air quality standards.

(4) ~~"Farm system" means a facility of no more than 250 kilowatts (AC) output capacity, except as provided in subdivision (k)(5) of this section, that generates electric energy on a farm operated by a person principally engaged in the business of farming, as that term is defined in Regulation 1.175-3 of the Internal Revenue Code of 1986, from the anaerobic digestion of agricultural products, byproducts, or wastes, or other renewable sources as defined in subdivision (3)(E) of this subsection, intended to offset the meters designated under subdivision (g)(1)(A) of this section on the farm or has entered into a contract as specified in subsection (k) of this section.~~ "Facility" means a structure or piece of equipment and associated machinery and fixtures that generates electricity. A group of structures or pieces of equipment shall be considered one facility if it uses the same fuel source and infrastructure and is located in close proximity. Common ownership shall be relevant but not sufficient to determine that such a group constitutes a facility.

(5) "kW" means kilowatt or kilowatts (AC).

(6) "kWh" means kW hour or hours.

(7) "MW" means megawatt or megawatts (AC).

(b) A customer shall pay the same rates, fees, or other payments and be subject to the same conditions and requirements as all other purchasers from the electric company in the same rate-class, except as provided for in this section, and except for appropriate and necessary conditions approved by the board for the safety and reliability of the electric distribution system.

(c) The board shall establish by rule or order standards and procedures governing application for, and issuance or revocation of a certificate of public good for net metering systems under the provisions of section 248 of this title. A net metering system shall be deemed to promote the public good of the state if it is in compliance with the criteria of this section, and board rules or orders. In developing such rules or orders, the board:

(1) With respect to a solar net metering system of 5 kW or less, shall provide that the system may be installed ten days after the customer's submission to the board and the interconnecting electric company of a completed registration form and certification of compliance with the applicable interconnection requirements. Within that ten-day period, the

interconnecting electric company may deliver to the customer and the board a letter detailing any issues concerning the interconnection of the system. The customer shall not commence construction of the system prior to the passage of this ten-day period and, if applicable, resolution by the board of any interconnection issues raised by the electric company in accordance with this subsection. If the ten-day period passes without delivery by the electric company of a letter that raises interconnection issues in accordance with this subsection, a certificate of public good shall be deemed issued on the 11th day without further proceedings, findings of fact, or conclusions of law, and the customer may commence construction of the system. On request, the clerk of the board promptly shall provide the customer with written evidence of the system's approval. For the purpose of this subdivision, the following shall not be included in the computation of time: Saturdays, Sundays, state legal holidays under 1 V.S.A. § 371(a), and federal legal holidays under 5 U.S.C. § 6103(a).

(2) With respect to a net metering system for which a certificate of public good is not deemed issued under subdivision (1) of this subsection:

(A) may waive the requirements of section 248 of this title that are not applicable to net metering systems, including, but not limited to, criteria that are generally applicable to public service companies as defined in this title;

~~(2)~~(B) may modify notice and hearing requirements of this title as it deems appropriate;

~~(3)~~(C) shall seek to simplify the application and review process as appropriate; and

~~(4)~~(D) shall find that such rules are consistent with state power plans.

(d)(1) An applicant for a certificate of public good for a net metering system shall be exempt from the requirements of subsection 202(f) of this title.

(2) Any certificate issued under this section shall be automatically transferred to any subsequent owner of the property served by the net metering system, provided, in accordance with rules adopted by the board, the board and the electric company are notified of the transfer, and the subsequent owner agrees to comply with the terms and conditions of the certificate.

(3) Nonuse of a certificate of public good for a period of one year following the date on which the certificate is issued or, under subdivision (1) of this subsection, deemed issued shall constitute an abandonment of the net metering system and the certificate shall be considered expired. For the purpose of this section, for a certificate to be considered "used," installation of the net metering system must be completed within the one-year period,

unless installation is delayed by litigation or unless, at the time the certificate is issued or in a subsequent proceeding, the board provides that installation may be completed more than one year from the date the certificate is issued.

(e) Consistent with the other provisions of this title, electric energy measurement for net metering systems using a single nondemand meter that are not ~~farm~~ group systems shall be calculated in the following manner:

* * *

(3) If electricity generated by the customer exceeds the electricity supplied by the electric company:

(A) ~~The customer shall be billed for the appropriate charges for that month, in accordance with subsection (b) of this section~~ The electric company shall calculate a monetary credit to the customer by multiplying the excess kWh generated during the billing period by the kWh rate paid by the customer for electricity supplied by the company and shall apply the credit to any remaining charges on the customer's bill for that period;

(B) ~~The customer shall be credited for the excess kilowatt hours generated during the billing period, with this kilowatt-hour credit appearing on the bill for the following billing period~~ If application to such charges does not use the entire balance of the credit, the remaining balance of the credit shall appear on the customer's bill for the following billing period; and

(C) Any accumulated ~~kilowatt hour~~ credits shall be used within 12 months, or shall revert to the electric company, without any compensation to the customer. Power reverting to the electric company under this subdivision (3) shall be considered SPEED resources under section 8005 of this title.

* * *

(f) Consistent with the other provisions of this title, electric energy measurement for ~~net metering farm or~~ group net metering systems shall be calculated in the following manner:

(1) Net metering customers that are ~~farm or~~ group net metering systems may credit on-site generation against all meters designated to the ~~farm system or~~ group net metering system under subdivision (g)(1)(A) of this section.

(2) Electric energy measurement for ~~farm or~~ group net metering systems shall be calculated by subtracting total usage of all meters included in the ~~farm or~~ group net metering system from total generation by the ~~farm or~~ group net metering system. If the electricity generated by the ~~farm or~~ group net metering system is less than the total usage of all meters included in the ~~farm or~~ group net metering system during the billing period, the ~~farm or~~ group net metering system shall be credited for any accumulated kilowatt-hour credit

and then billed for the net electricity supplied by the electric company, in accordance with the procedures in subsection (g) (group net metering) of this section.

(3) If electricity generated by the ~~farm or~~ group net metering system exceeds the electricity supplied by the electric company~~:~~ ,

~~(A) The farm or group net metering system shall be billed for the appropriate charges for each meter for that month, in accordance with subsection (b) of this section.~~

~~(B) Excess kilowatt hours generated during the billing period shall be added to the accumulated balance with this kilowatt-hour credit appearing on the bill for the following billing period.~~

~~(C) Any accumulated kilowatt hour credits shall be used within 12 months or shall revert to the electric company without any compensation to the farm or group net metering system. Power reverting to the electric company under this subdivision (3) shall be considered SPEED resources under section 8005 of this title~~ the provisions of subdivision (e)(3) (credit for excess generation) of this section shall apply, with credits allocated to and appearing on the bill of each member of the group net metering system in accordance with subsection (g) (group net metering) of this section.

(g)(1) In addition to any other requirements of section 248 of this title and this section and board rules thereunder, before a ~~farm or~~ group net metering system including more than one meter may be formed and served by an electric company, the proposed ~~farm or~~ group net metering system shall file with the board, with copies to the department and the serving electric company, the following information:

(A) the meters to be included in the ~~farm or~~ group net metering system, which shall be associated with the buildings and residences owned or occupied by the person operating the ~~farm or~~ group net metering system, or the person's family or employees, or other members of the group, identified by account number and location;

(B) a procedure for adding and removing meters included in the ~~farm or~~ group net metering system, and direction as to the manner in which the electric company shall allocate any accrued credits among the meters included in the system, which allocation subsequently may be changed only on written notice to the electric company in accordance with subdivision (4) of this subsection;

(C) a designated person responsible for all communications from the ~~farm or~~ group net metering system to the serving electric company~~, for receiving and paying bills for any service provided by the serving electric~~

~~company for the farm or group net metering system, and for receiving any other communications regarding the farm or group net metering system~~ except for communications related to billing, payment, and disconnection; and

(D) a binding process for the resolution of any disputes within the ~~farm or~~ group net metering system relating to net metering that does not rely on the serving electric company, the board, or the department. However, this subdivision (D) shall not apply to disputes between the serving electric company and individual members of a group net metering system regarding billing, payment, or disconnection.

(2) The ~~farm or~~ group net metering system shall, at all times, maintain a written designation to the serving electric company of a person ~~who shall be the sole person authorized to receive and pay bills for any service provided by the serving electric company, and~~ to receive any ~~other~~ communications regarding ~~the farm system,~~ the group net metering system~~,~~ or net metering that do not relate to billing, payment, or disconnection.

(3) The serving electric company shall bill directly and send all communications regarding billing, payment, and disconnection directly to the customer name and address listed for the account of each individual meter designated under subdivision (1)(A) of this subsection as being part of a group net metering system. The usage charges for any account so billed shall be based on the individual meter for the account. The credit applied on that bill for electricity generated by the group net metering system shall be calculated in the manner directed by the system under subdivision (1)(B) of this subsection.

(4) The serving ~~utility~~ electric company shall implement appropriate changes to the ~~farm or~~ group net metering system within 30 days after receiving written notification from the designated person. However, written notification of a change in the person designated under subdivision (2) of this subsection shall be effective upon receipt by the serving ~~utility~~ electric company. The serving ~~utility~~ electric company shall not be liable for action based on such notification, but shall make any necessary corrections and bill adjustments to implement revised notifications.

~~(4)~~(5) Pursuant to subsection 231(a) of this title, after such notice and opportunity for hearing as the board may require, the board may revoke a certificate of public good issued to a ~~farm or~~ group net metering system.

~~(5)~~(6) A group net metering system may consist only of customers that are located within the service area of the same electric company. Various buildings owned by municipalities, including water and wastewater districts, fire districts, villages, school districts, and towns, may constitute a group net metering system. A union or district school facility shall be considered in the

same group net metering system with buildings of its member municipalities that are located within the service area of the same electric company that serves the facility. If it determines that it would promote the general good, the board shall permit a noncontiguous group of net metering customers to comprise a group net metering system.

(h)(1) An electric company:

(A) Shall make net metering available to any customer using a net metering system~~,~~ or group net metering system~~, or farm system~~ on a first-come, first-served basis until the cumulative output capacity of net metering systems equals ~~2.0~~ 4.0 percent of the distribution company's peak demand during 1996; or the peak demand during the most recent full calendar year, whichever is greater. The board may raise the ~~2.0~~ 4.0 percent cap. In determining whether to raise the cap, the board shall consider the following:

(i) the costs and benefits of net metering systems already connected to the system; and

(ii) the potential costs and benefits of exceeding the cap, including potential short and long-term impacts on rates, distribution system costs and benefits, reliability and diversification costs and benefits;

* * *

(E) May require a customer to comply with generation interconnection, safety, and reliability requirements, as determined by the public service board by rule or order, and may charge reasonable fees for interconnection, establishment, special metering, meter reading, accounting, account correcting, and account maintenance of net metering arrangements of greater than 15 ~~kilowatt (AC)~~ kW capacity;

* * *

(J) May in its rate schedules offer credits or other incentives that may include monetary payments to net metering customers. These credits or incentives shall not displace the benefits provided to such customers under subsections (e) and (f) of this section.

(K) Except as provided in subdivision (1)(K)(v) of this subsection, shall in its rate schedules offer a credit to each net metering customer using solar energy that shall apply to each kWh generated by the customer's solar net metering system and that shall not displace the benefits provided to such customers under subsections (e) and (f) of this section.

(i) The credit required by this subdivision (K) shall be $0.20 minus the highest residential rate per kWh paid by the company as of the date it files with the board a proposed modification to its rate schedules to effect

this subdivision (K) or to revise a credit previously instituted under this subdivision (K). Notwithstanding the basis for this credit calculation, the amount of the credit shall not fluctuate with changes in the underlying residential rate used to calculate the amount.

(ii) The electric company shall apply the credit calculated in accordance with subdivision (1)(K)(i) of this subsection to generation from each net metering system using solar energy regardless of the customer's rate class. A credit under this subdivision (K) shall be applied to all charges on the customer's bill from the electric company and shall be subject to the provisions of subdivisions (e)(3)(B) (credit for unused balance) and (C) (12-month reversion) and (f)(3) (credit for excess generation; group net metering) of this section.

(iii) An electric company's proposed modification to a rate schedule to offer a credit under this subdivision (K) and any investigation initiated by the board or party other than the company of an existing credit contained in such a rate schedule shall be reviewed in accordance with the procedures set forth in section 225 of this title, except that:

(I) A company's proposed modification shall take effect on filing with the board and shall not be subject to suspension under section 226 of this title;

(II) Such a modification or investigation into an existing credit shall not require review of the company's entire cost of service; and

(III) Such a modification or existing credit may be altered by the board for prospective effect only commencing with the date of the board's decision.

(iv) Within 30 days of this subdivision's effective date, each electric company shall file a proposed modification to its rate schedule that complies with this subdivision (K). Such proposed modification, as it may be revised by the board, shall not be changed for two years starting with the date of the board's decision on the modification. After the passage of that two-year period, further modifications to the amount of a credit under this subdivision may be made in accordance with subdivisions (1)(K)(i)-(iii) of this subsection.

(v) An electric company shall not be required to offer a credit under this subdivision (K) if, as of the effective date of this subdivision, the result of the calculation described in subdivision (1)(K)(i) of this subsection is zero or less.

(vi) A solar net metering system shall receive the amount of the credit under this subdivision (K) that is in effect for the service territory in which the system is installed as of the date of the system's installation and

shall continue to receive that amount for not less than 10 years after that date regardless of any subsequent modification to the credit as contained in the electric company's rate schedules.

(2) All such requirements or credits or other incentives shall be pursuant to and governed by a tariff approved by the board and any applicable board rule, which tariffs and rules shall be designed in a manner reasonably likely to facilitate net metering. With respect to a credit or incentive under subdivision (1)(J) (optional credit or incentive) or (K) (solar credit) of this subsection that is provided to a net metering system that constitutes new renewable energy under subdivision 8002(4) of this title:

(A) If the credit or incentive applies to each kWh generated by the system, then the system's energy production shall count toward the goals and requirements of subsection 8005(d) of this title.

(B) If the credit or incentive applies only to the system's net energy production supplied to the company, then the increment of net energy production supplied by the customer to the company through a net metering system that is supported by such additional credit or incentive shall count toward the goals and requirements of subsection 8005(d) of this title.

* * *

(k) Notwithstanding the provisions of subsections (f) and (g) of this section, an electric company may contract to purchase all or a portion of the output products from a ~~farm or~~ group net metering system, provided:

(1) the ~~farm or~~ group net metering system obtains a certificate of public good under the terms of subsections (c) and (d) of this section;

(2) any contracted power shall be subject to the limitations set forth in subdivision (h)(1) of this section;

(3) any contract shall be subject to interconnection and metering requirements in subdivisions (h)(1)(C)~~,~~ and (i)(2) and (3) of this section;

(4) any contract may permit all or a portion of the tradeable renewable energy credits for which the ~~farm~~ system is eligible to be transferred to the electric company;

(5) the output capacity of a system may exceed ~~250 kilowatts~~ 500 kW, provided:

(A) the contract assigns the amount of power to be net metered; and

(B) the net metered amount does not exceed ~~250 kilowatts~~ 500 kW; and

(C) only the amount assigned to net metering is assessed to the cap provided in subdivision (h)(1)(A) of this section.

* * *

(m) A facility for the generation of electricity to be consumed primarily by the military department established under 3 V.S.A. § 212 and 20 V.S.A. § 361(a) or the National Guard as defined in 32 U.S.C. § 101(3), and installed on property of the military department or National Guard located in Vermont, shall be considered a net metering system for purposes of this section if it has a capacity of 2.2 MW ~~(AC)~~ or less and meets the provisions of subdivisions (a)(3)(B) through (E) of this section. Such a facility shall not be subject to and shall not count toward the capacity limits of subdivisions (a)(3)(A) (no more than ~~250~~ 500 kW) and (h)(1)(A) (~~two~~ four percent of peak demand) of this section.

Sec. 2. IMPLEMENTATION; RETROACTIVE APPLICATION

(a) In Sec. 1 of this act, 30 V.S.A. § 219a(h)(1)(J) (optional credits or incentives) and (K) (required credit; solar systems) shall apply to petitions pertaining to net metering systems filed by an electric company with the public service board on and after May 1, 2010. Notwithstanding 30 V.S.A. § 225(a), an electric company may amend the proof in support of such a petition that is pending as of the effective date of this section if the amendment is to effect compliance with Sec. 1, 30 V.S.A. § 219a(h)(1)(K).

(b) With respect to farm net metering systems under 30 V.S.A. § 219a as it existed prior to the effective date of this section, each such system for which a certificate of public good was issued prior to or for which an application for a certificate of public good is pending as of that date shall be deemed to be a group net metering system under Sec. 1 of this act.

(c) With respect to group net metering systems under Sec. 1 of this act in existence as of the effective date of this section:

(1) Within 30 days of that date, each electric distribution company subject to jurisdiction under 30 V.S.A. § 203 shall provide notice to each such system that it serves, in a form acceptable to the commissioner of public service, of the provisions respecting such systems contained in Sec. 1 of this act and this section, and shall request the system's allocation of credits pursuant to Sec. 1, 30 V.S.A. § 219a(g)(1)(B).

(2) Within 60 days of that date, each such system shall provide direction to the serving electric company of the allocation of credits pursuant to Sec. 1, 30 V.S.A. § 219a(g)(1)(B).

(d) Within 60 days of the effective date of this section, each electric distribution company subject to jurisdiction under 30 V.S.A. § 203 shall take

all actions necessary to implement Sec. 1 of this act, 30 V.S.A. § 219a(e)(3) (credit for excess generation), (f)(3) (credit for excess generation), and (g) (group net metering; allocation of credits; direct billing of group members).

(e) No later than 180 days after the effective date of this section, the public service board shall revise its rules and take all actions necessary to implement the amendments to 30 V.S.A. § 219a(c)(1) (systems of 5 kW or less) contained in Sec. 1 of this act. For the purpose of this subsection, the board is authorized to and shall use the procedures for emergency rules pursuant to 3 V.S.A. § 844, except that the board need not determine that there exists an imminent peril to public health, safety, or welfare, and the provisions of 3 V.S.A. § 844(b) (expiration of emergency rules) shall not apply. Prior to adopting the rule revisions, the board shall issue a draft of the revisions and provide notice of and opportunity to comment on the draft revisions in a manner that is consistent with the time frame for adoption required by this subsection.

** * * Self-Managed Energy Efficiency Programs * * **

Sec. 3. 30 V.S.A. § 209(h) is amended to read:

(h)(1) ~~No later than September 1, 2009, the department shall recommend to the board a three-year pilot project for~~ There shall be a class of self-managed energy efficiency programs for transmission and industrial electric ratepayers only.

(2) The board ~~will review the department's recommendation and~~, by order, shall enact ~~a~~ this class of ~~self-managed energy efficiency~~ programs ~~by December 31, 2009, to take effect for a three year period beginning January 1, 2010~~.

(3) Entities approved to participate in the self-managed energy efficiency program class shall be exempt from all statewide charges under subdivision (d)(3) of this section that support energy efficiency programs performed by or on behalf of Vermont electric utilities.

(4) All of the following shall apply to a class of programs under this subsection:

** * **

(D) An applicant shall commit to ~~a three-year minimum energy efficiency investment of~~ an annual average energy efficiency investment during each three-year period that the applicant participates in the program of no less than $1 million.

** * **

(H) Upon approval of an application by the board, the applicant shall be able to participate in the class of self-managed energy efficiency programs ~~for a three year period~~.

** * **

(N) If, at the end of ~~the~~ every third year after an applicant's approval to participate in the self-managed efficiency program (the three-year period), the applicant has not met the commitment required by subdivision (4)(D) of this subsection, the applicant shall pay to the electric efficiency fund described in subdivision (d)(3) of this section the difference between the investment the applicant made while in the self-managed energy efficiency program and the charges the applicant would have incurred under subdivision (d)(3) of this section during the three-year period had the applicant not been a participant in the program. This payment shall be made no later than 90 days after the end of the three-year period.

Sec. 4. RETROACTIVE APPLICATION

(a) Sec. 3 of this act shall apply to the public service board's order on the self-managed energy efficiency program entered December 28, 2009 and its clarifying order on the same program entered April 7, 2010, including the approval in those orders of an entity's participation in the program. Such approval shall be ongoing under the terms and conditions of 30 V.S.A. § 209(h) as amended by Sec. 3 of this act and shall not be limited to the three years commencing January 1, 2010.

(b) Within 60 days of this section's effective date, the board shall take all appropriate steps to implement Sec. 3 of this act.

** * * Section 248 Certificates; Long-term Electricity Purchases, Out-of-State Resources * * **

Sec. 5. 30 V.S.A. § 248 is amended to read:

§ 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:

(i) for a period exceeding five years, that represents more than ~~one~~ three percent of its historic peak demand, unless the purchase is from a plant as defined in subdivision 8002(12) of this title that produces electricity from renewable energy as defined under subdivision 8002(2); or

(ii) for a period exceeding ten years, that represents more than ten percent of its historic peak demand, if the purchase is from a plant as defined in subdivision 8002(12) of this title that produces electricity from renewable energy as defined under subdivision 8002(2); 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.

** * **

** * * Revisions to SPEED Program and Standard Offer * * **

Sec. 6. 30 V.S.A. § 8001 is amended to read:

§ 8001. RENEWABLE ENERGY GOALS

(a) The general assembly finds it in the interest of the people of the state to promote the state energy policy established in section 202a of this title by:

(1) Balancing the benefits, lifetime costs, and rates of the state's overall energy portfolio to ensure that to the greatest extent possible the economic benefits of renewable energy in the state flow to the Vermont economy in general, and to the rate paying citizens of the state in particular.

(2) Supporting development of renewable energy and related planned energy industries in Vermont, ~~in particular~~ and the jobs and economic benefits associated with such development, while retaining and supporting existing renewable energy infrastructure.

(3) Providing an incentive for the state's retail electricity providers to enter into affordable, long-term, stably priced renewable energy contracts that mitigate market price fluctuation for Vermonters.

(4) Developing viable markets for renewable energy and energy efficiency projects.

(5) Protecting and promoting air and water quality by means of renewable energy programs.

(6) Contributing to reductions in global climate change and anticipating the impacts on the state's economy that might be caused by federal regulation designed to attain those reductions.

(7) Supporting and providing incentives for small, distributed renewable energy generation, including incentives that support locating such generation in areas that will provide benefit to the operation and management of the state's electric grid.

** * **

Sec. 7. 30 V.S.A. § 8002 is amended to read:

§ 8002. DEFINITIONS

* * *

(4) "New renewable energy" means renewable energy produced by a generating resource coming into service after December 31, 2004. ~~This~~ With respect to a system of generating resources that includes renewable energy, the percentage of the system that constitutes new renewable energy shall be determined through dividing the plant capacity of the system's generating resources coming into service after December 31, 2004 that produce renewable energy by the total plant capacity of the system. "New renewable energy" also may include the additional energy from an existing renewable facility retrofitted with advanced technologies or otherwise operated, modified, or expanded to increase the kwh output of the facility in excess of an historical baseline established by calculating the average output of that facility for the 10-year period that ended December 31, 2004. If the production of new renewable energy through changes in operations, modification, or expansion involves combustion of the resource, the system also must result in an incrementally higher level of energy conversion efficiency or significantly reduced emissions. For the purposes of this chapter, renewable energy refers to either "existing renewable energy" or "new renewable energy."

* * *

(10) "Board" means the public service board under section 3 of this title~~, except when used as part of the phrase "clean energy development board" or when the context clearly refers to the latter board~~.

* * *

(16) "Department" means the department of public service under section 1 of this title, unless the context clearly indicates otherwise.

(17) "kW" means kilowatt or kilowatts (AC).

(18) "kWh" means kW hour or hours.

(19) "MW" means megawatt or megawatts (AC).

(20) "MWH" means MW hour or hours.

Sec. 8. 30 V.S.A. § 8005 is amended to read:

§ 8005. SUSTAINABLY PRICED ENERGY ENTERPRISE DEVELOPMENT (SPEED) PROGRAM

* * *

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

* * *

(2) ~~No later than September 30, 2009, put into effect, on behalf of all Vermont retail electricity providers,~~ Issue standard offers for qualifying SPEED resources with a plant capacity of 2.2 MW or less. These standard offers shall be available until the cumulative plant capacity of all such resources commissioned in the state that have accepted a standard offer under this subdivision (2) equals or exceeds 50 MW; provided, however, that a plant owned and operated by a Vermont retail electricity provider shall count toward this 50-MW ceiling if the plant has a plant capacity of 2.2 MW or less and is commissioned on or after September 30, 2009. The term of a standard offer required by this subdivision (2) shall be 10 to 20 years, except that the term of a standard offer for a plant using solar power shall be 10 to 25 years. The price paid to a plant owner under a standard offer required by this subdivision shall include an amount for each kilowatt-hour (kWh) generated that shall be set as follows:

* * *

(G) Notwithstanding the requirement of this subsection (b) that a standard offer be available for qualifying SPEED resources, the board shall make a standard offer available under this subdivision (2) to an existing hydroelectric plant that does not exceed the 2.2 MW plant capacity limit of this subsection. To such plants, the board shall not allocate more of the cumulative 50-MW plant capacity under this subdivision (2) than exceeds the amount of such capacity that is unsubscribed as of January 1, 2012. Before making this standard offer available, the board shall notify potentially eligible plants known to it and shall publish broad public notice of the future availability of the standard offer. The notice shall direct that all potentially eligible plants shall file with the board a statement of interest in the standard offer by a date to be no less than 30 days from the date of the notice. No plant may participate in this standard offer unless it timely files such a statement. The filing of such a statement shall constitute the consent of the plant owner to produce such information as the board may reasonably require to carry out this subdivision (2)(G), including information the board deems necessary to determine a generic cost in setting the price. The board shall have authority to require the production of such information from a plant that files a statement of interest. For the purpose of this subdivision (2)(G):

(i) "Existing hydroelectric plant" means a hydroelectric plant located in the state that was in service as of January 1, 2009 and does not, as of the effective date of this subdivision (2)(G), have an agreement with the public service board's purchasing agent for the purchase of its power pursuant to subdivision 209(a)(8) of this title and board rules adopted under that subdivision. The term includes hydroelectric plants that have never had such an agreement and hydroelectric plants for which such an agreement expired prior to the effective date of this subdivision (2)(G).

(ii) The provisions of subdivisions (2)(B)(i)(I)–(III) of this subsection (standard offer pricing criteria) shall apply, except that:

(I) The term "generic cost," when applied by the board to determine the price of a standard offer for an existing hydroelectric plant, shall mean the cost to own, reliably operate, and maintain such a plant for the duration of the standard offer contract. In determining this cost, the board shall consider including a generic assumption with respect to rehabilitation costs based on relevant factors such as the age of the potentially eligible plants; recently constructed or currently proposed rehabilitations to such plants; the investment that a reasonably prudent person would have made in such a plant to date under the circumstances of the plant, including the price received for power; and the availability for such a plant of improved technology.

(II) The incentive described under subdivision (2)(B)(i)(III) of this subsection shall be an incentive for continued safe, efficient, and reliable operation of existing hydroelectric plants.

* * *

(5) Require all Vermont retail electricity providers to purchase ~~through~~ from the SPEED ~~program~~ facilitator, in accordance with subdivision (g)(2) of this section, the power generated by the plants that accept the standard offer required to be issued under subdivision (2) of this subsection. For the purpose of this subdivision (5), the board and the SPEED facilitator constitute instrumentalities of the state.

* * *

(e) ~~By no later than September 1, 2006, the public service~~ The board shall provide, by order or rule, the regulations and procedures that are necessary to allow the public service board and the department of public service to implement, and to supervise further the implementation and maintenance of the SPEED program. These rules shall assure that decisions with respect to certificate of public good applications for SPEED resources shall be made in a timely manner.

* * *

(g) With respect to executed contracts for standard offers under this section:

* * *

(2) The SPEED facilitator shall distribute the electricity purchased ~~and any associated costs~~ to the Vermont retail electricity providers at the price paid to the plant owners, allocated to the providers based on their pro rata share of total Vermont retail kWh sales for the previous calendar year, and the Vermont retail electricity providers shall accept and pay the SPEED facilitator for ~~those costs~~ the electricity. ~~For the purpose of this subdivision, a Vermont retail electricity provider shall receive a credit toward its share of those costs for any plant with a plant capacity of 2.2 MW or less that it owns or operates and that is commissioned on or after September 30, 2009. The amount of such credit shall be the amount that the plant owner otherwise would be eligible to receive, if the owner were not a retail electricity provider, under a standard offer in effect at the time of commissioning. The amount of any such credit shall be redistributed to the Vermont retail electricity providers on a basis such that all providers pay for a proportionate volume of plant capacity up to the 50 MW ceiling for standard offer contracts stated in subdivision (b)(2) of this section.~~

* * *

(m) The state and its instrumentalities shall not be liable to a plant owner or retail electricity provider with respect to any matter related to SPEED, including costs associated with a standard offer contract under this section or any damages arising from breach of such a contract, the flow of power between a plant and the electric grid, or the interconnection of a plant to that grid.

* * *

Sec. 9. IMPLEMENTATION; BOARD PROCEEDINGS

(a) By October 1, 2011, the board shall take all appropriate steps to effect the notice required by Sec. 8, 30 V.S.A. § 8005(b)(2)(G) (existing hydroelectric plants).

(b) By March 1, 2012, the board shall conduct and complete such proceedings and issue such orders as necessary to effect the standard offer required by Sec. 8 of this act, 30 V.S.A. § 8005(b)(2)(G) (existing hydroelectric plants). The board shall not be required to conduct such proceedings as a contested case under 3 V.S.A. chapter 25.

(c) Commencing April 1, 2012, the board shall make available the standard offer required by Sec. 8 of this act, 30 V.S.A. § 8005(b)(2)(G) (existing hydroelectric plants).

Sec. 10. 30 V.S.A. § 30 is amended to read:

§ 30. PENALTIES; AFFIDAVIT OF COMPLIANCE

(a)(1) A person, company or corporation subject to the supervision of the board or the department of public service, who refuses the board or the department of public service access to the books, accounts or papers of such person, company or corporation within this state, so far as may be necessary under the provisions of this title, or who fails, other than through negligence, to furnish any returns, reports or information lawfully required by it, or who willfully hinders, delays or obstructs it in the discharge of the duties imposed upon it, or who fails within a reasonable time to obey a final order or decree of the board, or who violates a provision of ~~chapters~~ chapter 7 ~~or~~, 75, or 89 of this title, or a provision of section 231 or 248 of this title, or a rule of the board, shall be required to pay a civil penalty as provided in subsection (b) of this section, after notice and opportunity for hearing.

* * *

** * * Baseload Renewable Portfolio Requirement * * **

Sec. 11. 30 V.S.A. § 8009 is added to read:

§ 8009. BASELOAD RENEWABLE POWER PORTFOLIO REQUIREMENT

(a) In this section:

(1) "Baseload renewable power" means a plant that generates electricity from renewable energy; that, during normal operation, is capable of taking all or part of the minimum load on an electric transmission or distribution system; and that produces electricity essentially continuously at a constant rate.

(2) "Baseload renewable power portfolio requirement" means an annual average of 175,000 MWh of baseload renewable power from an in-state woody biomass plant that was commissioned prior to September 30, 2009, has a nominal capacity of 20.5 MW, and was in service as of January 1, 2011.

(3) "Biomass" means organic nonfossil material of biological origin constituting a source of renewable energy within the meaning of 30 V.S.A. § 8002(2).

(4) "Vermont composite electric utility system" means the combined generation, transmission, and distribution resources along with the combined retail load requirements of the Vermont retail electricity providers.

(b) Notwithstanding subsection 8004(a) and subdivision 8005(d)(1) of this title, commencing November 1, 2012, the electricity supplied by each Vermont retail electricity provider to its customers shall include the provider's pro rata share of the baseload renewable power portfolio requirement, which shall be based on the total Vermont retail kWh sales of all such providers for the previous calendar year. The obligation created by this subsection shall cease on November 1, 2022.

(c) A plant used to satisfy the baseload renewable power portfolio requirement shall be a qualifying small power production facility under 16 U.S.C. § 796(17)(C) and 18 C.F.R. part 292.

(d) The board shall determine the price to be paid to a plant used to satisfy the baseload renewable power portfolio requirement. The board shall not be required to make this determination as a contested case under 3 V.S.A. chapter 25. The price shall be the avoided cost of the Vermont composite electric utility system. For the purpose of this subsection, the term "avoided cost" means the incremental cost to retail electricity providers of electric energy or capacity or both, which, but for the purchase from the plant proposed to satisfy the baseload renewable power portfolio requirement, such providers would obtain from a new source using the same generation technology as the proposed plant. For the purpose of this subsection, the term "avoided cost" also includes the board's consideration of each of the following:

(1) The relevant cost data of the Vermont composite electric utility system.

(2) The terms of the potential contract, including the duration of the obligation.

(3) The availability, during the system's daily and seasonal peak periods, of capacity or energy from a proposed plant.

(4) The relationship of the availability of energy or capacity from the proposed plant to the ability of the Vermont composite electric utility system or a portion thereof to avoid costs.

(5) The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from the proposed plant.

(6) The supply and cost characteristics of the proposed plant, including the costs of operation and maintenance of an existing plant during the term of a proposed contract.

(e) In determining the price under subsection (d) of this section, the board may require a plant proposed to be used to satisfy the baseload renewable power portfolio requirement to produce such information as the board reasonably deems necessary.

(f) With respect to a plant used to satisfy the baseload renewable power portfolio requirement:

(1) The electricity purchased and any associated costs shall be allocated to the Vermont retail electricity providers based on their pro rata share of total Vermont retail kWh sales for the previous calendar year, and the Vermont retail electricity providers shall accept and pay those costs.

(2) Any tradeable renewable energy credits attributable to the electricity purchased shall be transferred to the Vermont retail electricity providers in accordance with their pro rata share of the costs for such electricity as determined under subdivision (1) of this subsection.

(3) All capacity rights attributable to the plant capacity associated with the electricity purchased shall be transferred to the Vermont retail electricity providers in accordance with their pro rata share of the costs for such electricity as determined under subdivision (1) of this subsection.

(4) All reasonable costs of a Vermont retail electricity provider incurred under this section shall be included in the provider's revenue requirement for purposes of ratemaking under sections 218, 218d, 225, and 227 of this title. In including such costs, the board shall appropriately account for any credits received under subdivision (2) of this subsection. Costs included in a retail electricity provider's revenue requirement under this subdivision shall be allocated to the provider's ratepayers as directed by the board.

(g) A retail electricity provider shall be exempt from the requirements of this section if, and for so long as, one-third of the electricity supplied by the provider to its customers is from a plant that produces electricity from woody biomass.

(h) The board may issue rules or orders to carry out this section.

** * * Clean Energy Development Fund and Support Charge * * **

Sec. 12. 10 V.S.A § 6523 is amended to read:

§ 6523. VERMONT CLEAN ENERGY DEVELOPMENT FUND

(a) Creation of fund.

(1) There is established the Vermont clean energy development fund to consist of each of the following:

~~(A) The proceeds due the state under the terms of the memorandum~~ of understanding between the department of public service and Entergy Nuclear VY and Entergy Nuclear Operations, Inc. that was entered under public service board docket 6812; together with the proceeds due the state under the terms of any subsequent memoranda of understanding entered before July 1, 2005 between the department of public service and Entergy Nuclear VY and Entergy Nuclear Operations, Inc.

(B) The proceeds of the clean energy support charge established under Sec. 15 of this act.

(C) Any other monies that may be appropriated to or deposited into the fund.

* * *

(c) Purposes of fund. The purposes of the fund shall be to promote the development and deployment of cost-effective and environmentally sustainable electric power and thermal energy or geothermal resources~~, and emerging energy efficient technologies,~~ for the long-term benefit of Vermont consumers, primarily with respect to renewable energy resources, and the use of combined heat and power technologies. The fund also may be used to support natural gas vehicles in accordance with subdivision (d)(1)(K) of this section. The general assembly expects and intends that the public service board, public service department, and the state's power and efficiency utilities will actively implement the authority granted in Title 30 to acquire all reasonably available cost-effective energy efficiency resources for the benefit of Vermont ratepayers and the power system.

(d) Expenditures authorized.

* * *

(2) If during a particular year, the ~~clean energy development board~~ commissioner of public service determines that there is a lack of high value projects eligible for funding, as identified in the five-year plan, or as otherwise identified, the ~~clean energy development board may~~ commissioner shall consult with the ~~public service~~ clean energy development board, and shall consider transferring funds to the energy efficiency fund established under the provisions of 30 V.S.A. § 209(d). Such a transfer may take place only in response to an opportunity for a particularly cost-effective investment in energy efficiency, and only as a temporary supplement to funds collected under that subsection, not as replacement funding.

(3) A sum equal to the cost for the 2010 and preceding tax years of the business solar energy income tax credits authorized in 32 V.S.A. § 5822(d) and 5930z(a), net of any such costs for which a transfer has already been made

~~*under this subdivision, shall be transferred annually from the clean energy*~~ *development fund to the general fund.*

(c) Management of fund.

(1) ~~*There is created the clean energy development board, which shall consist of the following nine directors:*~~

~~*(A) Three at-large directors appointed by the speaker of the house;*~~

~~*(B) Three at-large directors appointed by the president pro tempore of the senate.*~~

~~*(C) Two at-large directors appointed by the governor.*~~

~~*(D) The state treasurer, ex officio.*~~ *This fund shall be administered by the department of public service to facilitate the development and implementation of clean energy resources. The department is authorized to expend moneys from the clean energy development fund in accordance with this section. The commissioner of the department shall make all decisions necessary to implement this section and administer the fund except those decisions committed to the clean energy development board under this subsection. The department shall assure an open public process in the administration of the fund for the purposes established in this subchapter.*

(2) During fiscal years after FY 2006, up to five percent of amounts appropriated to the public service department from the fund may be used for administrative costs related to the clean energy development fund ~~*and after FY 2007, another five percent of amounts appropriated to the public service department from the fund not to exceed $300,000.00 in any fiscal year shall be transferred to the secretary of the agency of agriculture, food and markets for agricultural and farm-based energy project development activities.*~~

(3) ~~*(A) A quorum of the clean energy development board shall consist of five directors. The directors of the board shall select a chair and vice chair.*~~ *There is created the clean energy development board, which shall consist of seven persons appointed in accordance with subdivision (4) of this subsection. The clean energy development board shall have decision-making and approval authority with respect to the plans, budget, and program designs described in subdivisions (7)(B)–(D) of this subsection. The clean energy development board shall function in an advisory capacity to the commissioner on all other aspects of this section's implementation.*

B) During a board member's term and for a period of one year after the member leaves the board, the clean energy development fund shall not make any award of funds to and shall confer no financial benefit on a company or corporation of which the member is an employee, officer, partner, proprietor, or board member or of which the member owns more than 10

~~percent of the outstanding voting securities. This prohibition shall not apply to~~ a financial benefit that is available to any person and is not awarded on a competitive basis or offered only to a limited number of persons.

(4) ~~In making appointments of at-large directors to the clean energy development board, the appointing authorities shall give consideration to citizens of the state with knowledge of relevant technology, regulatory law, infrastructure, finance, and environmental permitting. A director shall recuse himself or herself from all matters and decisions pertaining to a company or corporation of which the director is an employee, officer, partner, proprietor, or board member. The at-large directors of the board shall serve terms of four years beginning July 1 of the year of appointment. However, one at large director appointed by the speaker and one at large director appointed by the president pro tempore shall serve an initial term of two years. Any vacancy occurring among the at large directors shall be filled by the respective appointing authority and shall be filled for the balance of the unexpired term. A director may be reappointed.~~ The commissioner of public service shall appoint three members of the clean energy development board, and the chairs of the house and senate committees on natural resources and energy each shall appoint two members of the clean energy development board. The terms of the members of the clean energy development board shall be four years, except that when appointments to this board are made for the first time after the effective date of this act, each appointing authority shall appoint one member for a two-year term and the remaining members for four-year terms. When a vacancy occurs in the board during the term of a member, the authority who appointed that member shall appoint a new member for the balance of the departing member's term.

(5) Except for those ~~directors~~ members of the clean energy development board otherwise regularly employed by the state, the compensation of the ~~directors~~ members shall be the same as that provided by ~~subsection~~ 32 V.S.A. § 1010(a) ~~of Title 32. All directors of the clean energy development board, including those directors otherwise regularly employed by the state, shall receive their actual and necessary expenses when away from home or office upon their official duties~~.

(6) ~~At least every three years, the clean energy development board shall commission a detailed financial audit by an independent third party of the fund and the activities of the fund manager, which shall make available to the auditor its books, records, and any other information reasonably requested by the board or the auditor for the purpose of the audit.~~

~~(7)~~ In performing its duties, the clean energy development board may utilize the legal and technical resources of the department of public service ~~or, alternatively~~, may utilize reasonable amounts from the clean energy

~~*development fund to retain qualified private legal and technical service providers*~~. *The department of public service shall provide the clean energy development board* ~~*and its fund manager*~~ *with administrative services.*

~~*(8)*~~*(7) The* ~~*clean energy development board*~~ *department shall perform each of the following:*

(A) By January 15 of each year, ~~*commencing in 2010,*~~ *provide to the house and senate committees on natural resources and energy, the senate committee on finance, and the house committee on commerce and economic development a report for the fiscal year ending the preceding June 30 detailing the activities undertaken, the revenues collected, and the expenditures made under this subchapter.*

(B) Develop, and submit to the clean energy development board for review and approval, a five-year strategic plan and an annual program plan, both of which shall be developed with input from a public stakeholder process and shall be consistent with state energy planning principles.

(C) Develop, and submit to the clean energy development board for review and approval, an annual operating budget.

(D) Develop, and submit to the clean energy development board for review and approval, proposed program designs to facilitate clean energy market and project development (including use of financial assistance, investments, competitive solicitations, technical assistance, and other incentive programs and strategies). Prior to any approval of a new program or of a substantial modification to a previously approved program of the clean energy development fund, the department of public service shall publish online the proposed program or modification, shall provide an opportunity for public comment of no less than 30 days, and shall provide to the clean energy development board copies of all comments received on the proposed program or modification. For the purpose of this subdivision (D), "substantial modification" shall include a change to a program's application criteria or application deadlines and shall include any change to a program if advance knowledge of the change could unfairly benefit one applicant over another applicant. For the purpose of 3 V.S.A. § 831(b) (initiating rulemaking on request), a new program or substantial modification of a previously approved program shall be treated as if it were an existing practice or procedure.

~~*(9)*~~*(8) At least* ~~*quarterly*~~ *annually, the clean energy development board and the commissioner or designee jointly shall hold a public meeting to review and discuss the status of the fund, fund projects, the performance of the fund manager, any reports, information, or inquiries submitted by the fund manager or the public, and any additional matters* ~~*the clean energy development board deems*~~ *they deem necessary to fulfill* ~~*its*~~ *their obligations under this section.*

~~*(10) The clean energy development board shall administer and is authorized to expend monies from the clean energy development fund in accordance with this section.*~~

(f) Clean energy development fund manager. The clean energy development fund shall have a fund manager who shall be ~~a state~~ an employee ~~retained and supervised by the board and housed within and assigned for administrative purposes to~~ of the department of public service.

(g) Bonds. The commissioner of public service, in consultation with the clean energy development board, may explore use of the fund to establish one or more loan-loss reserve funds to back issuance of bonds by the state treasurer otherwise authorized by law, including clean renewable energy bonds, that support the purposes of the fund.

(h) ARRA funds. All American Recovery and Reinvestment Act (ARRA) funds described in section 6524 of this title shall be disbursed, administered, and accounted for in a manner that ensures rapid deployment of the funds and is consistent with all applicable requirements of ARRA, including requirements for administration of funds received and for timeliness, energy savings, matching, transparency, and accountability. These funds shall be expended for the following categories listed in this subsection, provided that no single project directly or indirectly receives a grant in more than one of these categories. ~~The~~ After consultation with the clean energy development board, the commissioner of public service shall have discretion to use non-ARRA moneys within the fund to support all or a portion of these categories and shall direct any ARRA moneys for which non-ARRA moneys have been substituted to the support of other eligible projects, programs, or activities under ARRA and this section.

* * *

(4) $2 million for a public-serving institution efficiency and renewable energy program that may include grants and loans and create a revolving loan fund. For the purpose of this subsection, "public-serving institution" means government buildings and nonprofit public and private universities, colleges, and hospitals. In this program, awards shall be made through a competitive bid process. ~~On or before January 15, 2011, the clean energy development board shall report to the general assembly on the status of this program, including each award made and, for each such award, the expected energy savings or generation and the actual energy savings or generation achieved.~~

* * *

(8) Concerning the funds authorized for use in subdivisions (4)–(7) of this subsection:

~~*(A) To the extent permissible under ARRA, up to five percent may be spent for administration of the funds received.*~~

(B) In the event that the ~~clean energy development board~~ commissioner of public service determines that a recipient of such funds has insufficient eligible projects, programs, or activities to fully utilize the authorized funds, then after consultation with the clean energy development board, the commissioner shall have discretion to reallocate the balance to other eligible projects, programs, or activities under this section.

(9) The ~~clean energy development board~~ commissioner of public service is authorized, to the extent allowable under ARRA, to utilize up to 10 percent of ARRA funds received for the purpose of administration. The ~~board~~ commissioner shall allocate a portion of the amount utilized for administration to retain permanent, temporary, or limited service positions or contractors and the remaining portion to the oversight of specific projects receiving ARRA funding ~~through the board~~ pursuant to section 6524 of this title.

(i) Rules. The department and the clean energy development board each may adopt rules pursuant to 3 V.S.A. chapter 25 to carry out its functions under this section~~. The board~~ and shall consult with ~~the commissioner of public service~~ each other either before or during the rulemaking process.

~~*(j) Governor disapproval. The governor shall have the authority within 30 days of approval or adoption to disapprove a project, program, or other activity approved by the clean energy development board if the source of the funds is ARRA; and any rules adopted under subsection (i) of this section. The governor may at any time waive his or her authority to disapprove any project, program, or other activity or rule under this subsection.*~~

Sec. 13. CLEAN ENERGY DEVELOPMENT BOARD; TRANSITION; TERM EXPIRATION; NEW APPOINTMENTS

(a) The terms of all members of the clean energy development board under 10 V.S.A. § 6523 appointed prior to the effective date of this section shall expire on September 30, 2011.

(b) No later than August 31, 2011, the appointing authorities under Sec. 12 of this act, 10 V.S.A. § 6523(e)(4), shall appoint the members of the clean energy development board created by Sec. 12, 10 V.S.A. § 6523(e)(3). The terms of the members so appointed shall commence on October 1, 2011. The appointing authorities may appoint members of the clean energy development board as it existed prior to the effective date of this section. 10 V.S.A. § 6523(e)(3)(B) (board members; prohibition; financial benefits) shall apply only to members of the clean energy development board appointed to terms commencing on and after October 1, 2011.

~~(c) With respect to the clean energy development fund established under 10 V.S.A. § 6523, as of October 1, 2011:~~

~~(1) The department of public service shall be the successor to the clean energy development board as it existed on September 30, 2011, and any legal obligations incurred by the clean energy development board as of September 30, 2011 shall become legal obligations of the department of public service.~~

~~(2) The clean energy development board shall exercise prospectively such functions and authority as this act confers on that board.~~

Sec. 14. 10 V.S.A. § 6524 is amended to read:

§ 6524. ARRA ENERGY MONEYS

The expenditure of each of the following shall be subject to the direction and approval of the commissioner of public service, after consultation with the clean energy development board established under subdivision ~~6523(e)(1)~~ 6523(e)(4) of this title, and shall be made in accordance with subdivisions 6523(d)(1)(expenditures authorized), ~~(e)(3)(quorum), (e)(4)(appointments; recusal), (e)(5)(compensation), (e)(7)(assistance, administrative support),~~ and (e)(8)(A)(reporting) and subsections 6523(f)(fund manager), (h)(ARRA funds), and (i)(rules)~~, and (j)(governor disapproval)~~ of this title and applicable federal law and regulations:

(1) The amount of $21,999,000.00 in funds received by the state under the appropriation contained in the American Recovery and Reinvestment Act (ARRA) of 2009, Pub.L. No. 111-5, to the state energy program authorized under 42 U.S.C. § 6321 et seq.

(2) The amount of $9,593,500.00 received by the state under ARRA from the United States Department of Energy through the energy efficiency and conservation block grant program.

Sec. 15. CLEAN ENERGY SUPPORT CHARGE

(a) Each Vermont retail electricity provider as defined in 30 V.S.A. § 8002(9) shall assess on each customer for a period of 12 months commencing with the provider's August 2011 billing cycle a clean energy support charge of $0.55 per month.

(b) For the purpose of this section, "customer" shall mean a meter that measures the flow of electricity from the provider to a consumer. If a person consumes electricity that flows through more than one meter, each meter shall be assessed the charge under subsection (a) of this section.

(c) At the end of each monthly billing cycle during the period described in subsection (a) of this section, a Vermont retail electricity provider shall

transmit to the clean energy development fund the total amount of the clean energy support charge assessed to the provider's customers during the immediately preceding monthly billing cycle.

(d) The amount of the clean energy support charge shall be part of the total payment due on the customer's electric bill during the period described in subsection (a) of this section and shall be subject to the deposit and disconnection rules of the board.

Sec. 16. NOTICE

A Vermont retail electricity provider within the meaning of 30 V.S.A. § 8002(9) during its July 2011 billing cycle shall provide notice to its customers, in a form directed by the commissioner of public service, of the clean energy support charge under Sec. 15 of this act.

Sec. 17. RECODIFICATION; REDESIGNATION

(a) 10 V.S.A. §§ 6523 and 6524 are recodified respectively as 30 V.S.A. §§ 8015 and 8016. The office of legislative council shall revise accordingly any references to these statutes contained in the Vermont Statutes Annotated. Any references in session law to these statutes as previously codified shall be deemed to refer to the statutes as recodified by this act.

(b) Within 30 V.S.A. chapter 89 (renewable energy programs):

(1) §§ 8001–8014 shall be within subchapter 1 and designated to read:

Subchapter 1. General Provisions

(2) §§ 8015–8016 shall be within subchapter 2 and designated to read:

Subchapter 2. Clean Energy Development Fund

(c) In 30 V.S.A. § 8015(a)(1)(B) (clean energy support charge), the office of legislative council shall revise "Sec. 15 of this act" to refer to Sec. 15 of the act number of this session assigned to this act on passage.

Secs. 12–17. [Deleted.]

Sec. 18. STATUTORY REVISION

In all provisions of 30 V.S.A. chapter 89, except 30 V.S.A. § 8002(10) and (16)–(20), the office of legislative council shall substitute "board" for "public service board," "department" for "department of public service," "kW" for "kilowatt" or "kilowatts (AC)," "kWh" for "kilowatt hours," and "MW" for "megawatt" or "megawatts."

** * * Heating Oil; Low Sulfur; Biodiesel * * **

Sec. 19. 10 V.S.A. § 585 is added to read:

§ 585. HEATING OIL CONTENT; SULFUR, BIODIESEL

(a) Definitions.

(1) In this section, "heating oil" means No. 2 distillate that meets the specifications or quality certification standard for use in residential, commercial, or industrial heating applications established by the American Society for Testing and Materials (ASTM).

(2) "Biodiesel" means monoalkyl esters derived from plant or animal matter which meet the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. § 7545), and the requirements of ASTM D6751-10.

(b) Sulfur content. Unless a requirement of this subsection is waived pursuant to subsection (e) of this section:

(1) On or before July 1, 2014, all heating oil sold within the state for residential, commercial, or industrial uses, including space and water heating, shall have a sulfur content of 500 parts per million or less.

(2) On or before July 1, 2018, all heating oil sold within the state for residential, commercial, or industrial uses, including space and water heating, shall have a sulfur content of 15 parts per million or less.

(c) Biodiesel content. Unless a requirement of this subsection is waived pursuant to subsection (e) of this section, all heating oil sold within the state for residential, commercial, or industrial uses, including space and water heating, by volume shall:

(1) On or before July 1, 2012, contain at least three percent biodiesel.

(2) On or before July 1, 2015, contain at least five percent biodiesel.

(3) On or before July 1, 2016, contain at least seven percent biodiesel.

(d) Blending; certification. In the case of biodiesel and heating oil that has been blended by a dealer or seller of heating oil, the secretary may allow the dealer or seller to demonstrate compliance with this section by providing documentation that the content of the blended fuel in each delivery load meets the requirements of this section.

(e) Temporary suspension. The governor, by executive order, may temporarily suspend the implementation and enforcement of subsection (b) or (c) of this section if the governor determines, after consulting with the

secretary and the commissioner of public service, that meeting the requirements is not feasible due to an inadequate supply of the required fuel.

(f) The secretary may adopt rules to implement this section. This section does not limit any authority of the secretary to control the sulfur or biodiesel content of distillate or residual oils that do not constitute heating oil as defined in this section.

** * * Report; Payment of Utility Bills by Credit or Debit Card * * **

Sec. 20. UTILITY BILL PAYMENT; CREDIT OR DEBIT CARD; REPORT

On or before January 15, 2012, the public service board shall submit to the general assembly a report on whether, in the board's opinion, it is in the public interest for the cost of service of a company subject to the board's jurisdiction under 30 V.S.A. § 203 to include fees and expenses incurred by the company in accepting payments from customers of retail charges by credit or debit card. ~~In its report, the board shall consider and discuss the advantages and disadvantages of including these fees and expenses in a company's cost of service, including the extent to which allowing inclusion of such fees and expenses may avoid or reduce costs that would otherwise be incurred by the company, shall quantify on a statewide basis the expected cost impacts of allowing such inclusion, and shall attach a draft statute or statutory amendment that would authorize such inclusion~~. In its report, the board shall consider and discuss the advantages and disadvantages of including these fees and expenses in a company's cost of service, including the extent to which allowing inclusion of such fees and expenses may avoid or reduce costs that would otherwise be incurred by the company; shall quantify on a statewide basis the expected cost impacts of requiring all ratepayers to bear the cost of these fees and expenses, including the amount, if any, of cross-subsidy that would occur from customers who do not pay utility bills by credit or debit card to customers who do pay utility bills by credit or debit card; and shall propose a draft statute or a statutory amendment to effect the board's recommendation.

Sec. 21. EFFECTIVE DATES

(a) This section shall take effect on passage.

(b) The following shall take effect on passage:

(1) Sec. 1 of this act (net metering), except that 30 V.S.A. § 219a(c)(1) (systems of 5 kW or less) shall take effect on January 1, 2012. Sec. 2(d) of this act shall govern the date by which an electric distribution company shall implement the following provisions contained in Sec. 1 of this act: 30 V.S.A. § 219a(e)(3) (credit for excess generation), (f)(3) (credit for excess

generation), and (g) (group net metering; allocation of credits; direct billing of group members).

(2) Secs. 2 (implementation; retroactive application), 3 (self-managed energy efficiency programs), 4 (retroactive application), 6 (renewable energy goals), 7 (definitions, renewable energy chapter), 9 (implementation; board proceedings), 10 (penalties), 13 (clean energy development board; term expiration; transition; new appointments), 16 (notice; implementation), and 20 (payment of utility bills by credit or debit card) of this act.

(3) Sec. 8 (SPEED program) of this act, except that Sec. 9 (board proceedings) of this act shall govern the date on which the availability of the standard offer revision described in Sec. 9(c) (existing hydroelectric plants) shall commence.

(4) In Sec. 12 (clean energy development fund) of this act: 10 V.S.A. § 6523(e)(3) (clean energy development board) and (4) (appointments to clean energy development board) for the purpose of Sec. 13 of this act.

(c) The following shall take effect on July 1, 2011: Secs. 5 (new gas and electric purchases); 11 (baseload renewable power portfolio requirement); 17 (recodification; redesignation); 18 (statutory revision); and 19 (heating oil) of this act, except for 10 V.S.A. § 585(c) (heating oil; biodiesel requirement).

(d) Except as provided under subdivision (b)(4) of this section, Secs. 12 (clean energy development fund) and 14 (ARRA energy moneys) shall take effect on October 1, 2011.

(e) Sec. 15 (clean energy support charge) of this act shall take effect on passage. (f)(1) In Sec. 19 of this act, 10 V.S.A. § 585(c) (heating fuel; biodiesel requirement) shall take effect on the later of the following:

(A) July 1, 2012.

(B) The date on which, through legislation, rule, agreement, or other binding means, the last of the surrounding states has adopted requirements that are substantially similar to or more stringent than the requirements contained in 10 V.S.A. § 585(c). The attorney general shall determine when this date has occurred.

(2) For the purpose of this subsection, the term "surrounding states" means the states of Massachusetts, New Hampshire, and New York, and the term "last" requires that all three of the surrounding states have adopted a substantially similar or more stringent requirement.

Sec. 21. EFFECTIVE DATES

(a) This section shall take effect on passage.

(b) The following shall take effect on passage:

(1) Sec. 1 of this act (net metering), except that 30 V.S.A. § 219a(c)(1) (systems of 5 kW or less) shall take effect on January 1, 2012. Sec. 2(d) of this act shall govern the date by which an electric distribution company shall implement the following provisions contained in Sec. 1 of this act: 30 V.S.A. § 219a(e)(3) (credit for excess generation), (f)(3) (credit for excess generation), and (g) (group net metering; allocation of credits; direct billing of group members).

(2) Secs. 2 (implementation; retroactive application), 3 (self-managed energy efficiency programs), 4 (retroactive application), 6 (renewable energy goals), 7 (definitions, renewable energy chapter), 9 (implementation; board proceedings), 10 (penalties), and 20 (payment of utility bills by credit or debit card) of this act.

(3) Sec. 8 (SPEED program) of this act, except that Sec. 9 (board proceedings) of this act shall govern the date on which the availability of the standard offer revision described in Sec. 9(c) (existing hydroelectric plants) shall commence.

(c) The following shall take effect on July 1, 2011: Secs. 5 (new gas and electric purchases); 11 (baseload renewable power portfolio requirement); 18 (statutory revision); and 19 (heating oil) of this act, except for 10 V.S.A. § 585(c) (heating oil; biodiesel requirement).

(d)(1) In Sec. 19 of this act, 10 V.S.A. § 585(c) (heating fuel; biodiesel requirement) shall take effect on the later of the following:

(A) July 1, 2012.

(B) The date on which, through legislation, rule, agreement, or other binding means, the last of the surrounding states has adopted requirements that are substantially similar to or more stringent than the requirements contained in 10 V.S.A. § 585(c). The attorney general shall determine when this date has occurred.

(2) For the purpose of this subsection, the term "surrounding states" means the states of Massachusetts, New Hampshire, and New York, and the term "last" requires that all three of the surrounding states have adopted a substantially similar or more stringent requirement.