

History of Utility Regulation in Vermont and Outline of Regulatory Landscape
Office of Legislative Council 1/8/16

I. Brief History of Vermont Electric Utility Regulation

- a. Appointment of a Railroad Commissioner
 - i. No. 26 of the Acts of 1855
 - ii. Railroad commissioner appointed by the Supreme Court
 - iii. Authority over physical and financial condition of each RR corporation and its franchises
 - iv. Reports to the General Assembly
 - v. Oversight over monopoly providers of service

- b. Munn v. Illinois, 94 U.S. 113 (1877)
 - i. Allowed states to regulate certain businesses within their borders
 - ii. Private utilities serving the public interest subject to regulation
 - iii. Regulatory Compact: utility accepts an obligation to serve in return for the government's promise to set rates that will compensate it fully for the costs it incurs to meet that obligation¹
 - iv. Regulation is an exercise of the police power of the state, over an industry that is "affected with the public interest"

- c. Earliest Electric Company Regulation by Municipalities²
 - i. 1882 – Thomas Edison established first commercial electric company in NY
 - ii. "Franchise contract" – in return for use of city streets for lines, etc., provided adequate and safe service, affordable rates
 - iii. By 1900s, with utility growth beyond town lines and lack of skilled municipal personnel, becoming less workable

- d. Board of RR Commissioners
 - i. No. 126 of the Acts of 1906
 - ii. Chair and two associates appointed by governor with advice and consent of the senate
 - iii. Court of record – issue and enforce orders like other courts of law and equity; with jurisdiction over crossings; securities; tolls and rates; unjust discrimination

- e. Public Service Commission (later, in 1960, became the PSB)
 - i. No. 116 of the Acts of 1908
 - ii. Replaces Board of RR Commissioners
 - iii. Jurisdiction over gas, electric, telegraph, telephone, and express companies (services; rates; discrimination; operations; capitalization)

¹ "Electricity Regulation in the US: A Guide," The Regulatory Assistance Project, March 2011.

² "A History of Electric Utility Regulation in Vermont 1880-1965," Lee Webb 1974.

- iv. Certificate of public convenience and necessity
 - v. Appeals to the Supreme Court
- f. 1981 – Board and Department Split (No. 204 of the Acts of 1980)

II. The Regulatory Landscape Today

- a. The Public Service Board (PSB)
 - i. Three members (including the chair) and staff
 - ii. Decision-maker on utility issues – examples:
 - 1. Electric utility rates and terms of service
 - 2. Acquisitions and mergers of retail electric utilities
 - 3. Approval of new electric generation and transmission facilities
 - iii. Quasi-judicial board
 - 1. Court-like proceedings
 - 2. Prohibition on ex parte contacts
 - 3. Issues findings of fact and conclusions of law based on evidence and argument by parties
 - iv. Has non-quasi-judicial authority
 - 1. Rulemaking applicable to electric utilities – examples:
 - a. Net metering rules
 - b. Rules for Renewable Energy Standard
 - c. Pole attachment rules
 - d. Line extension rules
 - 2. Administrative oversight on, among other items:
 - a. Efficiency Vermont
 - b. The standard offer program
- b. The Department of Public Service (DPS)
 - i. Commissioner and staff
 - ii. Advocate before PSB
 - 1. Represents “the interests of the consuming public” in rate cases – 30 V.S.A. § 2(a)(6)
 - 2. Represents “the interests of the people of the state” in all cases before the PSB – 30 V.S.A. § 2(b)
 - 3. In a given case, the PSB may request that the attorney general or a member of the bar represent the public or the state
 - iii. Planning entity
 - 1. Comprehensive energy plan
 - a. DPS to perform comprehensive analysis and projections on the use, cost, supply, and environmental effects of all forms of energy resources used in Vermont
 - b. DPS to recommend state implementation actions, regulation, and legislation, as well as other public and private action

2. 20-year electric plan
 - a. Plan to serve as basis for state electric energy policy.
 - b. Plan to include an overview of statewide growth, and development as it relates for future electrical energy needs and an assessment of available electric energy resources and projected demand.
 - c. Plan to take into account reducing rates; alternative utility rate structures; protecting health, safety and the environment; and reducing demand.
 3. For both plans:
 - a. 20-year planning horizon.
 - b. DPS directed to implement policies contained in state statutes.
 - c. Public process required before adoption.
 - d. To be updated at least every five years.
- c. The administration
- i. Governor appoints the DPS commissioner
 1. Cabinet-level appointee
 2. Serves at pleasure of governor
 3. Takes direction from governor
 - ii. Governor appoints PSB chair and members when there is a vacancy, subject to senate confirmation
 1. PSB chair nominated, appointed and confirmed in the same manner as superior judge
 2. PSB members appointed through similar process
 3. Six-year terms
 4. Removable for cause only
- d. The general assembly
- i. Enacts and amends the statutes creating and governing the PSB and DPS, subject to the constitution including the requirement of presentment to the governor
 - ii. Determines the appropriations for the PSB and DPS
 - iii. Senate confirmation of PSB chair and members on appointment by governor
- e. The judiciary
- i. Appeals from the quasi-judicial decisions of the PSB are to the Vermont Supreme Court
 - ii. Deferential standard of review