

Senate proposal of amendment

H. 431

An act relating to miscellaneous energy subjects

The Senate proposes to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Occupational Safety and Health * * *

Sec. 1. 30 V.S.A. § 207 is amended to read:

§ 207. REPORT OF ACCIDENTS; INVESTIGATION

The superintendent or manager of any line or plant, subject to supervision under this chapter, shall, immediately after its occurrence, notify the Department in writing of any accident that occurs within this State ~~immediately after its occurrence~~, upon such line or plant ~~resulting that results~~ in loss of life or injury to any person that ~~shall incapacitate~~ incapacitates him or her from engaging in his or her usual vocations. ~~The~~ If the accident is subject to investigation by VOSHA pursuant to 21 V.S.A. chapter 3, subchapters 4 and 5, the Department shall provide support as requested by VOSHA, and VOSHA shall, to the extent permitted by law, provide the Department with any information pertaining to the investigation that is requested by the Department. If the accident it not subject to investigation by VOSHA, the Department shall inquire into the cause of every such the accident, and ~~if, in its judgment, a public investigation is necessary, it shall fix a time and place of holding the same, and shall thereupon proceed as provided in 5 V.S.A. § 3454 relating to investigation of accidents upon railroads shall make any recommendations to the company and to the Public Utility Commission as appropriate.~~

* * * Public Records Act * * *

Sec. 2. 1 V.S.A. § 317 is amended to read:

§ 317. DEFINITIONS; PUBLIC AGENCY; PUBLIC RECORDS AND DOCUMENTS; EXEMPTIONS

* * *

(c) The following public records are exempt from public inspection and copying:

* * *

(43) Records relating to a regulated utility's cybersecurity program, assessments, and plans, including all reports, summaries, compilations, analyses, notes, or other cybersecurity information.

* * *

* * * Energy Storage * * *

Sec. 3. 10 V.S.A. § 6001 is amended to read:

§ 6001. DEFINITIONS

~~In~~ As used in this chapter:

* * *

(3)(A) “Development” means each of the following:

* * *

(D) The word “development” does not include:

* * *

(ii) The construction of improvements for an electric generation, energy storage, or transmission facility that requires a certificate of public good under 30 V.S.A. § 248, or is subject to regulation under 30 V.S.A. § 8011, a natural gas facility as defined in 30 V.S.A. § 248(a)(3), or a telecommunications facility issued a certificate of public good under 30 V.S.A. § 248a.

* * *

Sec. 4. 24 V.S.A. § 4413 is amended to read:

§ 4413. LIMITATIONS ON MUNICIPAL BYLAWS

* * *

(b) A bylaw under this chapter shall not regulate ~~public utility power generating plants~~ electric generation facilities, energy storage facilities, and transmission facilities regulated under 30 V.S.A. § 248 or subject to regulation under 30 V.S.A. § 8011.

* * *

Sec. 5. 30 V.S.A. § 201 is amended to read:

§ 201. DEFINITIONS

As used in this chapter:

* * *

(4) “Energy storage facility” means a stationary device or system that captures energy produced at one time, stores that energy for a period of time, and delivers or may deliver that energy as electricity to the grid for use at a future time ~~uses mechanical, chemical, or thermal processes to store energy for export to the grid.~~

(5) “Energy storage aggregation” means a virtual resource formed by

combining multiple stationary energy storage devices at different points of interconnection on the distribution system.

(6) “Energy storage aggregator” means an entity other than a distribution utility that is operating an energy storage aggregation of 100 kW or greater aggregate nameplate capacity.

Sec. 6. 30 V.S.A. § 203 is amended to read:

§ 203. JURISDICTION OF CERTAIN PUBLIC UTILITIES

* * *

(1) A company engaged in the manufacture, transmission, distribution, storage, or sale of gas or electricity directly to the public or to be used ultimately by the public for lighting, heating, or power and so far as relates to their use or occupancy of the public highways.

(2) That part of the business of a company that consists of the manufacture, transmission, distribution, storage, or sale of gas or electricity directly to the public or to be used ultimately by the public for lighting, heating, or power and so far as relates to their use or occupancy of the public highways.

* * *

(8) For purposes of this section, “storage” has the same meaning as “energy storage facility” as defined in section 201 of this title.

Sec. 7. 30 V.S.A. § 209 is amended to read:

§ 209. JURISDICTION; GENERAL SCOPE

* * *

(k) Energy storage facilities. Except when owned by a retail distribution utility, an energy efficiency utility, or the Vermont Electric Power Company, Inc., competitive suppliers of energy storage services that do not serve retail customers shall be exempt from sections 107, 108, and 109 of this title.

Sec. 8. 30 V.S.A. § 231 is amended to read:

§ 231. CERTIFICATE OF PUBLIC GOOD; ABANDONMENT OF SERVICE; HEARING

* * *

(c) An energy storage aggregator that operates an energy storage facility is subject to this section only if the aggregator is not a retail electric provider.

Sec. 9. 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:

* * *

(4)(A) With respect to a facility located in the State, in response to a request from one or more members of the public or a party, the Public Utility Commission shall hold a nonevidentiary public hearing on a petition for such finding and certificate in at least one county in which any portion of the construction of the facility is proposed to be located. The Commission in its discretion may hold a nonevidentiary public hearing in the absence of any request from a member of the public or a party. From the comments made at a public hearing, the Commission shall derive areas of inquiry that are relevant to the findings to be made under this section and shall address each such area in its decision. Prior to making findings, if the record does not contain evidence on such an area, the Commission shall direct the parties to provide evidence on the area. This subdivision does not require the Commission to respond to each individual comment.

* * *

(F) The following shall apply to the participation of the Agency of Agriculture, Food and Markets in proceedings held under this subsection:

(i) In any proceeding regarding an electric generation facility that will have a capacity greater than 500 kilowatts or an energy storage facility that will have a capacity greater than 1 megawatt and will be sited on a tract containing primary agricultural soils as defined in 10 V.S.A. § 6001, the Agency shall appear as a party and provide evidence and recommendations concerning any findings to be made under subdivision (b)(5) of this section on those soils, and may provide evidence and recommendations concerning any other matters to be determined by the Commission in such a proceeding.

* * *

(J) This subdivision (J) applies to an application for an electric generation facility with a capacity that is greater than 50 kilowatts and to an application for an energy storage facility that is greater than 1 megawatt, unless the facility is located on a new or existing structure the primary purpose of which is not the generation of electricity. In addition to any other information required by the Commission, the application for such a facility shall include information that delineates:

* * *

(k)(1) Notwithstanding any other provisions of this section, the Commission may waive, for a specified and limited time, the prohibitions contained in this section upon site preparation for or construction of an electric transmission facility, ~~or a generation facility,~~ or an energy storage facility as necessary to ensure the stability or reliability of the electric system or a natural

gas facility, pending full review under this section.

* * *

(l) Notwithstanding other provisions of this section, and without limiting any existing authority of the Governor, and pursuant to 20 V.S.A. § 9(10) and (11), when the Governor has proclaimed a state of emergency pursuant to 20 V.S.A. § 9, the Governor, in consultation with the Chair of the Public Utility Commission and the Commissioner of Public Service or their designees, may waive the prohibitions contained in this section upon site preparation for or construction of an electric transmission facility, ~~or a generation facility, or an energy storage facility~~ as necessary to ensure the stability or reliability of the electric system or a natural gas facility. Waivers issued under this subsection shall be subject to such conditions as are required by the Governor, and shall be valid for the duration of the declared emergency plus 180 days, or such lesser overall term as determined by the Governor. Upon the expiration of a waiver under this subsection, if a certificate of public good has not been issued under this section, the Commission shall require the removal, relocation, or alteration of the facilities, subject to the waiver, as the Commission finds will best promote the general good of the State.

* * *

(u) ~~For an energy storage facility, A~~ a certificate under this section shall only be required for ~~an energy storage a stationary facility exporting to the grid~~ that has a capacity of ~~500~~ 100 kW or greater, unless the Commission establishes a larger threshold by rule. The Commission shall establish a simplified application process for energy storage facilities subject to this section with a capacity of up to 1 MW, unless it establishes a larger threshold by rule. For facilities eligible for this simplified application process, a certificate of public good will be issued by the Commission by the forty-sixth day following filing of a complete application, unless a substantive objection is timely filed with the Commission or the Commission itself raises an issue. The Commission may require facilities eligible for the simplified application process to include a letter from the interconnecting utility indicating the absence or resolution of interconnection issues as part of the application.

Sec. 10. 30 V.S.A. § 8002 is amended to read:

§ 8002. DEFINITIONS

As used in this chapter:

* * *

(30) “Energy storage facility” has the same meaning as in section 201 of this title.

Sec. 11. 30 V.S.A. § 8011 is added to read:

§ 8011. ENERGY STORAGE FACILITIES

(a) The Commission may adopt and implement rules that govern the installation and operation of energy storage facilities of all sizes.

(b) The rules may establish a size threshold below which storage facilities need not submit an application for a certificate of public good pursuant to section 248 of this title.

(c) The rules may include provisions that govern:

(1) the respective duties of retail electricity providers and energy storage facility owners or operators;

(2) the electrical and fire safety, power quality, interconnection, metering, and decommissioning of energy storage facilities;

(3) the resolution of disputes between energy storage facility owners, operators, and the interconnecting provider;

(4) energy storage aggregators and the operation of aggregations; and

(5) energy storage facilities paired with other resources, such as net metering and standard offer plants, including retrofits of existing plants.

(d) The rules shall establish standards and procedures governing application for and issuance or revocation of a certificate of public good for certain energy storage facilities under the provisions of section 248 of this title. In establishing these standards and procedures, the rules may:

(1) waive the requirements of section 248 of this title that are not applicable to energy storage facilities, including criteria that are generally applicable to public service companies as defined in this title;

(2) modify notice and hearing requirements of this title as the Commission considers appropriate; and

(3) seek to simplify the application and review process.

Sec. 12. PUBLIC UTILITY COMMISSION RULEMAKING;
INTERCONNECTION RULE

On or before March 15, 2022, the Public Utility Commission shall propose an updated interconnection rule that:

(1) incorporates energy storage facilities with a capacity of 1 MW or more; and

(2) incorporates a simplified process for energy storage facilities with a capacity of between 100 kW and 1 MW.

* * * Nuclear Decommissioning Citizens Advisory Panel * * *

Sec. 13. 18 V.S.A. § 1700 is amended to read:

§ 1700. CREATION; MEMBERSHIP; OFFICERS; QUORUM

(a) There is created the Nuclear Decommissioning Citizens Advisory Panel that shall consist of the following:

- (1) The Secretary of Human Services, ex officio, or designee.
 - (2) The Secretary of Natural Resources, ex officio, or designee.
 - (3) The Commissioner of Public Service, ex officio, or designee.
 - (4) The Secretary of Commerce and Community Development, ex officio, or designee.
 - (5) One member of the House Committee on Energy and Technology, chosen by the Speaker of the House.
 - (6) One member of the Senate Committee on Natural Resources and Energy, chosen by the Committee on Committees.
 - (7) One representative of the Windham Regional Commission or designee, selected by the Regional Commission.
 - (8) ~~One representative~~ Two representatives of the Town of Vernon or ~~designee~~ designees, selected by the legislative body of that town.
 - (9) Six members of the public, two each selected by the Governor, the Speaker of the House, and the President Pro Tempore of the Senate. Under this subdivision, each appointing authority initially shall appoint a member for a three-year term and a member for a four-year term. Subsequent appointments under this subdivision shall be for terms of four years.
 - (10) Two representatives of the owners of the Vermont Yankee Nuclear Power Station (VYNPS or Station) selected by the owner of the Station site.
 - (11) ~~A representative of the International Brotherhood of Electric Workers (IBEW) selected by the IBEW who shall be a present or former employee at the VYNPS.~~
 - ~~(12)~~ (12) One optional member who will represent collectively the Towns of Chesterfield, Hinsdale, Richmond, Swanzey, and Winchester, New Hampshire, when selected by the Governor of New Hampshire at the invitation of the Commissioner of Public Service.
 - ~~(13)~~ (12) One optional member who will represent collectively the Towns of Bernardston, Colrain, Gill, Greenfield, Leyden, Northfield, and Warwick, Massachusetts, when selected by the Governor of Massachusetts at the invitation of the Commissioner of Public Service.
- (b) Ex officio members shall serve for the duration of their time in office or until a successor has been appointed. Members of the General Assembly shall be appointed for two years or until their successors are appointed,

beginning on or before January 15 in the first year of the biennium. Representatives designated by ex officio members shall serve at the direction of the designating authority.

* * *

(f) Members of the panel who are not ex officio members, employees of the State of Vermont, representatives of the ~~VYNPS~~ owners of the Vermont Yankee site, or members representing towns outside Vermont, and who are not otherwise compensated or reimbursed for their attendance, shall be entitled to \$50.00 per diem and their necessary and actual expenses. Funds for this purpose shall come from the monies collected under 30 V.S.A. § 22 for the purpose of maintaining the Department of Public Service. Legislative members shall not be entitled to a per diem under this section for meetings while the General Assembly is in session.

(g) The Commissioner of Public Service shall:

* * *

(6) ~~hire experts, contract for services, and provide for materials and other reasonable and necessary expenses of the Panel as the Commissioner may consider appropriate on request of the Panel from time to time. Funds for this purpose shall come from the monies collected under 30 V.S.A. § 22 for the purpose of maintaining the Department of Public Service and such other sources as may be or become available.~~ owners of the Vermont Yankee site as the Commissioner of Public Service may consider appropriate, not to exceed \$35,000.00 annually. The obligation to support the Panel's activities shall cease upon the submission of the application for Partial License Termination by the owners of the Vermont Yankee site to the U.S. Nuclear Regulatory Commission. On or before June 30 annually, the Commissioner of Public Service shall render to the owners of the Vermont Yankee site a statement detailing the amount of money expended or contracted for under this subdivision (6), which shall be paid within 30 days by the owners of the Vermont Yankee site into the special fund established pursuant to 30 V.S.A. § 22 for the purpose of maintaining the Department of Public Service and Public Utility Commission. The funds paid into the special fund by the owners of the Vermont Yankee site shall be paid solely to the Department. Within 30 days after receiving the statement of funds due, the owners of the Vermont Yankee site may petition the Public Utility Commission for a hearing to review and determine the necessity and reasonableness of such expenses. Following the review, the Public Utility Commission may amend or revise the cost assessments as it deems appropriate.

Sec. 14. 18 V.S.A. § 1701 is amended to read:

§ 1701. DUTIES

The Panel shall serve in an advisory capacity only and shall not have authority to direct decommissioning of the ~~VYNPS~~ Vermont Yankee site. The duties of the Panel shall be:

(1) To hold a minimum of ~~four~~ three public meetings each year for the purpose of discussing issues relating to the decommissioning of ~~the VYNPS Vermont Yankee~~. The Panel may hold additional meetings.

(2) To advise the Governor, the General Assembly, the agencies of the State, and the public on issues related to the decommissioning of ~~the VYNPS Vermont Yankee~~, with a written report being provided annually to the Governor and to the energy committees of the General Assembly. The provisions of 2 V.S.A. § 20(d) (expiration of reports) shall not apply to this report.

(3) To serve as a conduit for public information and education on and to encourage community involvement in matters related to the decommissioning of ~~the VYNPS Vermont Yankee~~ and to receive written reports and presentations on the decommissioning of the ~~Station~~ site at its regular meetings.

(4) To periodically receive reports, including those required by the Public Utility Commission Docket No. 8880 Order, on the Decommissioning Trust Fund and other funds associated with decommissioning of or site restoration at ~~the VYNPS Vermont Yankee~~, including fund balances, expenditures made, and reimbursements received.

(5) To receive reports and presentations at regular meetings regarding the decommissioning progress and plans for the VYNPS Vermont Yankee, including any site assessments and post-shutdown decommissioning assessment reports; provide a forum for receiving public comment on these plans and reports; and ~~to~~ provide comment on these plans and reports as the Panel may consider appropriate to State agencies and the owner of ~~the VYNPS Vermont Yankee~~ and in the annual report described in subdivision (2) of this subsection.

Sec. 15. 18 V.S.A. § 1702 is amended to read:

§ 1702. ASSISTANCE

The Department of Public Service, the Agency of Human Services, and the Agency of Natural Resources shall furnish administrative support to the Panel, with assistance from the owners of the ~~VYNPS Vermont Yankee site~~ as the Commissioner of Public Service may consider appropriate.

* * * Energy Storage; Uniform Capacity Tax * * *

Sec. 16. 32 V.S.A. § 8701 is amended to read:

§ 8701. UNIFORM CAPACITY TAX

(a) As used in this section, the terms “energy storage facility,” “kW,” “kWh,” “plant,” “plant capacity,” and “renewable energy” shall be as defined in 30 V.S.A. §§ 201(4) and 8002; provided, however, that any tax or exemption under this chapter shall only apply to the fixtures and personal property of a plant, and not to the underlying land.

(b)(1) There is assessed on any renewable energy plant in Vermont commissioned to generate solar power an annual tax of \$4.00 per kW of plant capacity.

(2) There is assessed on any stationary grid-connected energy storage facility in Vermont that has a plant energy rating of 600 kWh or larger and that is not connected to a renewable energy plant an annual tax of \$0.50 per kWh of plant energy rating.

(3) The tax imposed under this section shall be paid to the Department of Taxes ~~no~~ not later than April 15 of each year and accompanied by a return with such information as the Department of Taxes may require. The Department of Taxes shall deposit the taxes collected under this section into the Education Fund. The Department of Taxes may adopt procedures and rules necessary to implement the tax in this section.

(c) A renewable energy plant that generates electricity from solar power shall be exempt from taxation under this section if it has a plant capacity of less than 50kW. An energy storage facility shall be exempt from taxation under this section if it has a plant energy rating of less than 600 kWh.

(d) The existence of a renewable energy plant or energy storage facility subject to tax under subsection (b) of this section shall not:

(1) alter the exempt status of any underlying property under section 3802 or subdivision 5401(10)(F) of this title; or

(2) alter the taxation of the underlying property under chapter 135 of this title.

* * * Property Tax * * *

Sec. 17. 32 V.S.A. § 3800(n) is added to read:

(n) The statutory purpose of the exemptions for renewable energy plants generating electricity from solar power in subdivision 3802(17) of this title and for energy storage facilities in subdivision 3802(19) of this title is to lower the cost of generating and storing electricity from solar power for smaller plants and facilities.

Sec. 18. 32 V.S.A. § 3802 is amended to read:

§ 3802. PROPERTY TAX

The following property shall be exempt from taxation:

* * *

(17) Real and personal property, except land, ~~composing~~ comprising a renewable energy plant generating electricity from solar power ~~which~~ that has a plant capacity of less than 50 kW and is either:

(A) operated on a net-metered system; or

(B) not connected to the electric grid and provides power only on the property on which the plant is located.

(18) [Repealed.]

(19) Real and personal property, except land, comprising an energy storage facility that has a plant energy rating of less than 600 kWh.

Sec. 19. 32 V.S.A. § 3481(1)(E) is added to read:

(E) For real and personal property comprising an energy storage facility, except land and property that is exempt under subdivision 3802(19) of this title, the appraisal value shall be \$0.25 per kWh of plant energy rating.

Sec. 20. 32 V.S.A. § 5401(10) is amended to read:

(10) “Nonhomestead property” means all property except:

* * *

(J) Buildings and fixtures of:

(i) wind-powered electric generating facilities taxed under section 5402c of this title; and

(ii) renewable energy plants generating electricity from solar power and energy storage facilities that are taxed under section 8701 of this title.

* * * Tax exemption; Fuels * * *

Sec. 21. 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-;

* * *

(26) Sales of electricity, oil, gas, and other fuels used in a residence for all domestic use, including heating, but not including fuel sold at retail in free-standing containers, or sold as part of a transaction where a free-standing container is exchanged without a separate charge. Wood pellets sold to an individual on the vendor’s premises or delivered to an individual’s residence

shall be presumed to be purchased for residential use and shall be exempt sales under this subdivision unless the vendor knew or ought reasonably to have known that the wood pellets were not purchased for residential use. A certificate of exemption shall not be required for exempt retail sales of wood pellets to an individual. The Commissioner shall by rule determine that portion of the sales attributable to domestic use where fuels are used for purposes in addition to domestic use.

* * *

* * * Effective Dates * * *

Sec. 22. EFFECTIVE DATES

This act shall take effect on July 1, 2021, except that Sec. 9 (30 V.S.A. § 248) shall take effect on December 31, 2022 and Sec. 21 (32 V.S.A. § 9741) shall take effect on passage.