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April 13, 2022

VIA EMAIL

The Honorable Senator Christopher Bray
Chair, Senate Committee on Natural Resources & Energy

Re: H.715- Clean Heat Standard

Dear Senator Bray:

Please accept this letter as follow-up input from the Department of Public Service (“Department”) on the need for a check-back with the General Assembly on the work of the Public Utility Commission (PUC) in implementing H.715. I am providing these comments in letter form in response to your invitation following your exchange with Senator Dick McCormack toward the end of your committee’s morning session on April 11, 2022. During that exchange, Senator McCormack shared with the SNRE committee that he has become aware of stakeholders who feel they have not had an adequate opportunity to weigh in on the development of H.715.

Pursuant to 30 V.S.A. 2(b), the Department is charged with representing the “interests of the people of the state” in cases requiring hearings before the PUC. Accordingly, the Department takes very seriously the core values of procedural transparency and inclusivity – they are the very foundation of due process and the legitimacy of orders issued and rules promulgated by the PUC. H. 715 squarely contemplates the use of orders and rules to develop and implement the Clean Heat Standard (CHS). It is therefore imperative that every effort be made to ensure that the public generally, and stakeholders specifically, have a full and fair opportunity to be informed and to participate in the development of the CHS, both at the PUC and before the General Assembly.

Senator McCormick’s observation about the need for more time for your committee to hear from more stakeholders – some of whom may include detractors of H.715 – and the press of time that you understandably cited in response are factors that point to the continued need to ensure that transparent process is maximized for developing the CHS program. The PUC process contemplated in H.715 will ultimately identify, illuminate, and define important components and mechanisms that to date remain unknown and therefore unexamined in their impacts. Who wins, who loses, who pays and how much – these conclusions will emerge from the PUC process, and I have no doubt whatsoever that the PUC will conduct a searching process to reach these determinations.

Many of the PUC determinations are likely to substantiate the expert judgments that have been brought to bear to date by the members of the CHS working group in crafting the CHS proposal. It is also possible that the PUC process will bring out considerations that have not been

accounted for to date, and that may well alter the CHS proposal materially – such evolution in programmatic design happens frequently in PUC policy proceedings and creating a full and fair space for debating and deliberating on the facts, analysis, and public policy values as they emerge is precisely what the PUC was created to ensure.

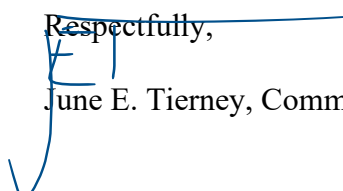
In turn, given the expansive socially and economically transformative nature of the CHS, the PUC's record and conclusions should inform the General Assembly's decision to promulgate a law that authorizes the implementation of the CHS. This supervisory function is central to legislative delegation to any agency of administrative implementation authority -- it is fundamentally why a legislative check-back is needed prior to PUC implementation of its ultimate program design for the CHS.

To be sure, the CHS in many ways resembles prior public policy work the General Assembly has directed the PUC to develop and implement over the years – energy efficiency, standard offer, net metering, and the renewable energy standard come to mind. That said, the CHS is materially different in that it entails a new, broad assertion of regulatory supervision and enforcement over a market sector with many more actors who have no understanding or custom of interfacing with or being disciplined by the PUC -- unlike the comparatively small group of distribution and efficiency utilities who have been the means of implementing Vermont's policies for energy efficiency, standard offer, net metering, and the renewable energy standard. Thus, in light of this new regulatory ground that is being broken with developing and implementing the CHS, good order and social acceptance of the CHS militate strongly in favor of the General Assembly deciding whether to authorize this program as ultimately designed by the PUC, once a transparent and inclusive public process has informed the CHS program design.

In closing, I wish to make clear where the Department stands in relation to the CHS. The Comprehensive Energy Plan released by the Department in January of 2022 at length lays out the need for decarbonizing the thermal sector, and points to the desirability of a CHS approach, expressly calling for study of the CHS by the PUC and further subsequent action by the General Assembly. The Department has not been a member of the CHS working group. Rather, at times I have authorized Department personnel to provide input to the group so as to keep current on the group's thinking, and to ensure that the group could be informed by the Department's clinical data and experience with best practices in developing public policy. As a member of the Climate Council, I voted for the Climate Action Plan, and I specifically supported -- in principle – the policy objectives of the CHS. My understanding was always that the more granular details of the CHS would be worked out through the PUC conducting transparent process - as it always does -that was open and welcoming to all comers, especially those who did not have the opportunity to monitor or share in the CHS working group process.

I hope you will find this letter helpful in informing the public record your committee has worked so diligently to develop under considerable time constraints.

Respectfully,


June E. Tierney, Commissioner