

1 S.112

2 Introduced by Senator Bray

3 Referred to Committee on Finance

4 Date: March 1, 2023

5 Subject: Public service; Public Utility Commission; authority; rulemaking;  
6 energy storage facilities

7 Statement of purpose of bill as introduced: This bill proposes to make  
8 multiple changes related to the Public Utility Commission.

9 An act relating to miscellaneous subjects related to the Public Utility  
10 Commission

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

12 \* \* \* Section 248 \* \* \*

13 Sec. 1. 30 V.S.A. § 248 is amended to read:

14 § 248. NEW GAS AND ELECTRIC PURCHASES, INVESTMENTS, AND  
15 FACILITIES; CERTIFICATE OF PUBLIC GOOD

16 (a)(1) No company, as defined in section 201 of this title, may:

17 \* \* \*

18 (4)(A) With respect to a facility located in the State, in response to a  
19 request from one or more members of the public or a party, the Public Utility  
20 Commission shall hold a nonevidentiary public hearing on a petition for such

1 finding and certificate. The public hearing shall either be remotely accessible  
2 or held in at least one county in which any portion of the construction of the  
3 facility is proposed to be located, or both. The Commission in its discretion  
4 may hold a nonevidentiary public hearing in the absence of any request from a  
5 member of the public or a party. From the comments made at a public  
6 hearing, the Commission shall derive areas of inquiry that are relevant to the  
7 findings to be made under this section and shall address each such area in its  
8 decision. Prior to making findings, if the record does not contain evidence on  
9 such an area, the Commission shall direct the parties to provide evidence on  
10 the area. This subdivision does not require the Commission to respond to each  
11 individual comment.

12 \* \* \*

13 (i)(1) No company, as defined in sections 201 and 203 of this title, without  
14 approval by the Commission, after giving notice of such investment, or filing a  
15 copy of that contract, with the Commission and the Department at least 30  
16 days prior to the proposed effective date of that contract or investment:

17 (A) may invest in a gas-production facility located outside this State;  
18 or

19 (B) may execute a contract for the purchase of gas from outside the  
20 State, for resale to firm-tariff customers, that:

21 (i) is for a period exceeding five years; or

1                   (ii) represents more than 10 percent of that company’s peak  
2 demand for resale to firm-tariff customers.

3                   (2) The Department and the Commission shall consider within 30 days  
4 whether to investigate the proposed investment or contract.

5                   (3) The Commission, upon its own motion, or upon the  
6 recommendation of the Department, may determine to initiate an investigation.

7 If the Commission does not initiate an investigation within such 30-day period,  
8 the contract or investment shall be deemed to be approved. If the Commission  
9 determines to initiate an investigation, it shall give notice of that decision to  
10 the company proposing the investment or contract, the Department, and such  
11 other persons as the Commission determines are appropriate. The Commission  
12 shall conclude its investigation within 120 days of issuance of its notice of  
13 investigation, or within such shorter period as it deems appropriate, unless the  
14 company consents to waive the 120-day requirement. If Except when the  
15 company consents to waive the 120-day requirement, if the Commission fails  
16 to issue a decision within that 120-day period, the contract or investment shall  
17 be deemed to be approved. The Commission may hold informal, public, or  
18 evidentiary hearings on the proposed investment or contract.

19   \* \* \*

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

*(u) For an energy storage facility, a certificate under this section shall only be required for a stationary facility exporting to the grid that has a capacity of 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.*

1 Sec. 2. 30 V.S.A. § 101 is amended to read:

2 § 101. CORPORATIONS SUBJECT TO COMMISSION; FORMATION

3 (a) Subject to the additional or varied requirements of this chapter, a  
4 corporation may be formed pursuant to the provisions of the general  
5 corporation law for the sole purpose of conducting any one or more of the  
6 kinds of business, other than a railroad business, ~~which~~ that are subject to  
7 regulation by the Public Utility Commission.

8 (b) Unless the context clearly requires otherwise, references in this title to a  
9 “corporation” mean and include an individual, partnership, association,  
10 corporation, limited liability company, municipality, cooperative, and any  
11 other legally recognized entity or person.

12 (c) Unless the context clearly requires otherwise, references in this title to  
13 “articles of incorporation” mean and include articles of organization,  
14 partnership agreements, or other documentation submitted to the Vermont  
15 Secretary of State to register or form a business.

16 \* \* \* Hearings \* \* \*

17 Sec. 3. 30 V.S.A. § 506 is amended to read:

18 § 506. RENEWAL

19 Certificates with a limited duration may be renewed during or at the end of  
20 the period, after opportunity for hearing held according to the criteria for the  
21 granting of an original certificate in section 504 of this title and after the

1 Commission has made the finding required by that section. As part of the  
2 renewal proceedings, the Commission shall hold a public hearing. The public  
3 hearing shall either be remotely accessible or held in each county served  
4 pursuant to the certificates ~~which~~ that are the subject of the renewal  
5 proceedings, or both.

6 Sec. 4. 30 V.S.A. § 102 is amended to read:

7 § 102. PETITION; HEARING; CERTIFICATE

8 (a) Before the articles of incorporation are transmitted to the Secretary of  
9 State, the incorporators shall petition the Public Utility Commission to  
10 determine whether the establishment and maintenance of ~~sueh~~ the corporation  
11 will promote the general good of the State and shall at that time file a copy of  
12 any ~~sueh~~ petition with the Department. The Department, within 12 days, shall  
13 review the petition and file a recommendation regarding the petition in the  
14 same manner as is set forth in subsection 225(b) of this title. ~~Sueh~~ The  
15 recommendation shall set forth reasons why the petition shall be accepted  
16 without hearing or shall request that a hearing on the petition be scheduled. If  
17 the Department requests a hearing on the petition, or, if the Commission deems  
18 a hearing necessary, it shall appoint a time and place either remotely accessible  
19 or in the county where the proposed corporation is to have its principal office  
20 for hearing the petition, ~~and shall make an order for the publication of the~~  
21 ~~substance thereof and of the time and place of hearing two weeks successively~~

1 in a newspaper of general circulation in the county to be served by the  
2 corporation, the last publication to be at least 12 days before the day appointed  
3 for the hearing. At least 12 days before this hearing, notice of the hearing  
4 shall be published on the Commission's website and once in a newspaper of  
5 general circulation in the county in which the proposed corporation is to have  
6 its principal office. The website notice shall be maintained through the date of  
7 the hearing. The newspaper notice shall include an Internet address where  
8 more information regarding the petition may be viewed. The Department of  
9 Public Service, through the Director for Public Advocacy, shall represent the  
10 public at the hearing.

11 \* \* \*

12 Sec. 5. 30 V.S.A. § 227 is amended to read:

13 § 227. SUSPENSION, REFUND

14 (a) If the Commission orders that a change shall not go into effect until  
15 final determination of the proceedings, it shall proceed to hear the matter as  
16 promptly as possible and shall make its determination within seven months  
17 from the date that it orders the investigation unless the company consents to  
18 waive the seven-month requirement. If a company files for a change in rate  
19 design among classes of ratepayers, and the company has a rate case pending  
20 before the Commission, the Commission shall make its determination on the  
21 rate design change within seven months after the rate case is decided by the

1 Commission unless the company consents to waive the seven-month  
2 requirement. ~~If~~ Except when the company consents to waive the seven-month  
3 requirement, if the Commission fails to make its determination within the time  
4 periods set by this subsection, the changed rate schedules filed by the company  
5 shall become effective and final.

6 \* \* \*

7 \* \* \* Rulemaking Authority \* \* \*

8 Sec. 6. 30 V.S.A. § 11 is amended to read:

9 § 11. PLEADINGS; RULES OF PRACTICE; HEARINGS; FINDINGS OF  
10 FACT

11 (a)(1) The forms, pleadings, and rules of practice and procedure before the  
12 Commission shall be prescribed by it.

13 (2) With regard to the general procedural rules codified in Commission  
14 Rule 2.000, notwithstanding the rulemaking provisions of the Vermont  
15 Administrative Procedure Act, the Commission is empowered to prescribe and  
16 amend from time to time general rules with respect to pleadings, practice,  
17 evidence, procedure, and forms for all Commission proceedings.

18 (3) The rules prescribed or amended shall not abridge, enlarge, or  
19 modify any substantive rights of any person provided by law.

20 (4) The rules, when initially prescribed or any amendments to them,  
21 including any repeal, modification, or addition, shall take effect on the date



1 provided by the Commission in its order of promulgation unless objected to by  
2 the Legislative Committee on Judicial Rules as provided in 12 V.S.A. chapter  
3 1. If an objection is made by the Legislative Committee on Judicial Rules, the  
4 initially prescribed rules in question shall not take effect until they have been  
5 reported to the General Assembly by the Chair of the Commission at any  
6 regular, adjourned, or special session thereof, and until after the expiration of  
7 45 legislative days of that session, including the date of the filing of the report.

8 (5) The General Assembly may repeal, revise, or modify any rule or  
9 amendment, and its action shall not be abridged, enlarged, or modified by  
10 subsequent rule.

11 (6) The Commission shall adopt rules that include, among other things,  
12 provisions that:

13 (1)(A) A utility whose rates are suspended under the provisions of  
14 section 226 of this title shall, within 30 days from the date of the suspension  
15 order, file with the Commission all exhibits it intends to use in the hearing  
16 thereon together with the names of witnesses it intends to produce in its direct  
17 case and a short statement of the purposes of the testimony of each witness.

18 Except in the discretion of the Commission, a utility shall not be permitted to  
19 introduce into evidence in its direct case exhibits which are not filed in  
20 accordance with this rule.

1           (~~2~~)(B) A scheduling conference shall be ordered in every contested rate  
2 case. At such conference the Commission may require the State or any person  
3 opposing such rate increase to specify what items shown by the filed exhibits  
4 are conceded. Further proof of conceded items shall not be required.

5                                   \* \* \*

6 Sec. 7. 12 V.S.A. § 2 is amended to read:

7 § 2. DEFINITIONS

8 As used in sections 3 and 4 of this chapter:

9           (1) “Adopting authority” means the Chief Justice of the Supreme Court  
10 or the Chief Superior Judge, where appropriate.

11           (2) “Commission” means the Public Utility Commission.

12           (3) “Court” means the Supreme Court, except in those instances where  
13 the statutes permit rules to be adopted by the Chief Superior Judge, in which  
14 case, the word “court” means the Chief Superior Judge.

15           (~~3~~)(4) “Rule” means a statement of general applicability that  
16 implements, interprets, or prescribes law or policy or the general procedural  
17 rules codified in Commission Rule 2.000. It includes judicial or administrative  
18 orders such as those issued under sections 31 and 37 of the Constitution of the  
19 State of Vermont and all substantive or procedural requirements of a court,  
20 which affect one or more persons who are not employees of the court, which  
21 are used by the court in the discharge of its duties. It shall not include judicial

1 orders or opinions issued in the resolution of a case or controversy. It shall not  
2 include any orders or rules of the Commission other than the general  
3 procedural rules codified in Commission Rule 2.000.

4 Sec. 8. 12 V.S.A. § 3 is amended to read:

5 § 3. LEGISLATIVE COMMITTEE ON JUDICIAL RULES

6 \* \* \*

7 (d) In addition to its powers under section 4 of this title concerning rules,  
8 the Committee may, in a similar manner, conduct public hearings, object, and  
9 notify the Court or Commission of objections concerning existing rules. A  
10 rule reviewed under this subsection shall remain in effect until amended or  
11 repealed.

12 (e) Rules or amendments thereto promulgated by the Supreme Court or the  
13 Commission, including any repeal, modification, or addition to existing rules,  
14 shall be submitted to the Legislative Committee on Judicial Rules at least 60  
15 days prior to their effective date.

16 Sec. 9. 12 V.S.A. § 4 is amended to read:

17 § 4. REVIEW BY LEGISLATIVE COMMITTEE

18 (a) The Legislative Committee on Judicial Rules, by majority vote of the  
19 entire Committee, may object to proposed rules or amendments and  
20 recommend that the Court or the Commission amend or withdraw the  
21 proposal. The Court or the Commission shall be notified promptly of the

1 objections. The Court or the Commission may respond in writing to the  
2 Committee. After receipt of a response, the Committee may withdraw or  
3 modify its objections.

4 (b) The Committee shall report on each proposal with the Committee's  
5 recommendations; annually to the General Assembly on or before January 10.

6 \* \* \*

7 Sec. 10. 3 V.S.A. § 810 is amended to read:

8 § 810. RULES OF EVIDENCE; OFFICIAL NOTICE

9 In contested cases:

10 (1) Irrelevant, immaterial, or unduly repetitious evidence shall be  
11 excluded. The Rules of Evidence as applied in civil cases in the Superior  
12 Courts of this State shall be followed. When necessary to ascertain facts not  
13 reasonably susceptible of proof under those rules, evidence not admissible  
14 thereunder may be admitted (except where precluded by statute) if it is of a  
15 type commonly relied upon by reasonably prudent ~~men~~ persons in the conduct  
16 of their affairs. Agencies shall give effect to the rules of privilege recognized  
17 by law. Objections to evidentiary offers may be made and shall be noted in the  
18 record. Subject to these requirements, when a hearing will be expedited and  
19 the interests of the parties will not be prejudiced substantially, any part of the  
20 evidence may be received in written form.

21 \* \* \*

1

\* \* \* Effective Date \* \* \*

2

Sec. 11. EFFECTIVE DATE

3

This act shall take effect on July 1, 2023.