



**STATE OF VERMONT**  
OFFICE OF LEGISLATIVE COUNSEL

**MEMORANDUM**

To: Members of the Vermont General Assembly  
From: Ellen Czajkowski and Jen Carbee  
Date: May 5, 2023  
Subject: S.5 “check-back” language and implementation

---

Introduction

On April 27, the General Assembly passed S.5, An act relating to affordably meeting the mandated greenhouse gas reductions for the thermal sector through efficiency, weatherization measures, electrification, and decarbonization. This bill enacts 30 V.S.A. chapter 94, which establishes the Clean Heat Standard (CHS). The Clean Heat Standard requires natural gas utilities, heating fuel importers, and heating fuel producers<sup>1</sup> to reduce their greenhouse gas emissions. They are given four options for how to do this:

1. pay a default delivery agent to conduct activities that reduce greenhouse gas emissions;
2. conduct activities themselves that reduce greenhouse gas emissions (which can include selling biofuels or installing equipment that reduces emissions);
3. contract with another entity to conduct activities that reduce greenhouse gas emissions; or
4. purchase credits generated by others conducting activities that reduce greenhouse gas emissions.

The bill directs the Public Utility Commission (PUC) to adopt rules to “implement and enforce” the Clean Heat Standard. These rules are important because while the bill itself establishes the basic structure of the Clean Heat Standard, it does not include some of the specific details necessary for the program to function, including the amount of emissions reductions required for each year. It states that the PUC shall set the amount at “a pace sufficient for Vermont’s thermal sector to achieve lifecycle carbon dioxide equivalent (CO<sub>2</sub>e) emission reductions consistent with the requirements of 10 V.S.A. § 578(a)(2) and (3).”<sup>2</sup> The PUC will need to determine the exact amount of emissions reductions that will be necessary each year to achieve the emissions reduction requirements of the Vermont Global Warming Solutions Act in 2030 and 2050.

“Check-back”

We have received a number of questions from members about the “check-back” language in S.5. The language appears in the bill in two different places. The language in Sec. 3 will be codified at 30 V.S.A. § 8131 and says that the Public Utility Commission “shall not file proposed rules with the Secretary of State implementing the Clean Heat Standard without specific authorization enacted by the General Assembly.” Similar language in Sec. 6(f), regarding implementation of the Clean Health

---

<sup>1</sup> These entities are defined as “obligated parties” under 30 V.S.A. § 8122, as enacted in S.5.

<sup>2</sup> 30 V.S.A. § 8124(a)(1)

Standard, directs the PUC to submit its final proposed rules to implement the Clean Heat Standard to the General Assembly and specifies that the Commission shall not file those rules with the Secretary of State “until specific authorization is enacted by the General Assembly to do so.”

Ch. II, § 6 of the Vermont Constitution empowers the House and Senate to “prepare bills and *enact them into laws*” (emphasis added). Ch. II, § 10 of the Vermont Constitution establishes the style of the laws of this State as “It is hereby *enacted* by the General Assembly of the State of Vermont” (emphasis added), and Ch. II, § 11 of the Vermont Constitution specifies that “[e]very bill which shall have passed the Senate and House of Representatives shall, *before it becomes law*, be presented to the Governor,” (emphasis added) for the Governor to sign, veto, or allow to become law without the Governor’s signature. The language in S.5 that prohibits the Public Utility Commission from filing proposed rules implementing the CHS “without specific authorization *enacted* by the General Assembly” (emphasis added) means that no proposed rules can be filed without specific authorization prepared as a bill and enacted into law by the General Assembly, which necessarily includes the constitutionally required presentation to the Governor before that authorization can become law.

In his April 21, 2023, press release, the Governor said he was “particularly concerned that the PUC plan will not be returning to the Legislature in normal bill form and go through the full legislative process and, if passed, go to the Governor for signature.” But that is, in fact, exactly what the language in Secs. 3 and 6(f) requires.

Additionally, the language in 30 V.S.A. § 8131 starts with the phrase “Notwithstanding any other provision of law to the contrary.” The word “notwithstanding” means “in spite of” and it overrides any other provisions of the bill that may otherwise conflict with it. Several sections of the bill grant the PUC the authority to adopt rules, but the language in section 8131 overrides those provisions so that the PUC cannot file rules implementing the Clean Heat Standard without the General Assembly’s authorization.

### Orders

The bill also grants the PUC authority to issue orders “to implement and enforce” the Clean Heat Standard.<sup>3</sup> An order is a written document used to convey the PUC’s procedural decisions. The PUC uses orders in a variety of areas within its jurisdiction. S.5 grants the PUC the authority to issue orders on multiple topics, including to implement and enforce the CHS,<sup>4</sup> to establish clean heat credits and a system for transferring them,<sup>5</sup> to appoint the default delivery agent,<sup>6</sup> to establish the timeline for default delivery agent credit costs and obligated party plans,<sup>7</sup> and to establish the emissions schedule for clean heat measures to generate credits.<sup>8</sup>

By allowing some parts of the CHS program to be adopted through orders, S.5 allows the PUC to do as much upfront work developing the program as possible over the next 18 months so that in the event the General Assembly enacts legislation authorizing the rules to be adopted, the program can begin as soon as possible.

### Public Utility Commission Rules

The House added language in S.5 that specifies that the rules proposed to the General Assembly pursuant to Sec. 6(f) must include the establishment of the annual emission reduction

<sup>3</sup> 30 V.S.A. § 8124(d) and § 8126(a)

<sup>4</sup> Id.

<sup>5</sup> 30 V.S.A. § 8122(b) and § 8127(a)

<sup>6</sup> 30 V.S.A. § 8125(b)

<sup>7</sup> 30 V.S.A. § 8125(d)(3)

<sup>8</sup> 30 V.S.A. § 8127(g)

requirements and that those requirements shall not be established by order.<sup>9</sup> This is the primary component of the Clean Heat Standard; without it, the other parts of the CHS cannot be used. As mentioned above, the bill does not establish the exact amount of credits<sup>10</sup> that obligated parties need to retire every year. Without the annual required amount established, the only other part of the CHS program that could be enforced against the obligated parties is the requirement that fuel sellers register with the PUC.<sup>11</sup>

The General Assembly could choose not to act on the PUC's final proposed rules. Were this to happen, the language in 30 V.S.A. chapter 94 would remain codified until it was amended or repealed, but the Clean Heat Standard could not be implemented or enforced. Any orders that the PUC issued would remain in effect but likely would not be of much use. By way of example, the appointment of the default delivery agent can happen in an order, but the bill does not provide funding for the default delivery agent. The bill states it will be funded by credits paid for by the obligated parties. The credits themselves do not exist yet, which is also something the PUC is allowed to establish in an order, and they have no value unless the CHS is implemented. The price for default delivery agent credits will also need to be set by the PUC and that cannot happen until after the Department of Public Service completes the potential study<sup>12</sup>, which will be a study of the market potential of the Vermont thermal sector. Still further, the amount of credits an obligated party needs each year, as previously stated, is not in S.5 and will not be in statute. It is addressed in Sec. 6(f)(5), which requires it to be in the rules that come to the General Assembly in 2025. If the General Assembly does not give approval for the rules to be adopted, then there will be a default delivery agent with no funds to do work and clean heat credits that cannot be used for anything.

### Conclusion

S.5 codified the Clean Heat Standard in 30 V.S.A. chapter 94. The bill directs the PUC to submit final proposed rules to the General Assembly by January 15, 2025. The "check-back" language, located in two sections<sup>13</sup> of the bill, states that the final proposed rules cannot take effect until the General Assembly enacts a bill authorizing the rules to be adopted. Enactment requires passage by both bodies of the General Assembly and presentment to the Governor. S.5 requires that the first set of annual requirements for obligated parties be part of the final proposed rules, so while the bill does allow the PUC to issue orders addressing some aspects of the CHS, the primary component of the CHS must be part of the rules proposed to the General Assembly.

---

<sup>9</sup> Sec. 6(f)(5)

<sup>10</sup> Clean heat credits represent the amount emissions reduced by an action.

<sup>11</sup> 30 V.S.A. § 8124(b)(1)

<sup>12</sup> 30 V.S.A. § 8125(e)(1)(A)

<sup>13</sup> 30 V.S.A. § 8131 and Sec. 6(f)(5)