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Kristin L. Clouser, Secretary

TO: House Committee on Environment and Energy
FROM: Office of Racial Equity
DATE: March 24, 2023
RE: Summary of testimony on S.5, Affordable Heat Act

Dear Chair Sheldon,

Thank you for the opportunity for the Office of Racial Equity to provide comments on S.5, the Affordable Heat Act. The following letter summarizes the Office’s testimony provided in-person on Friday, March 24, 2023.

The Office wishes to reiterate the data shared during testimony regarding economic inequities. A recent study by the US Federal Reserve in November 2020 found that, “less than two-thirds of Black and Hispanic adults were doing at least okay financially, compared with 80 percent of White adults and 84 percent of Asian adults. The gap in financial well-being between White adults and Black and Hispanic adults grew by 4 percentage points since 2017.”¹ In addition, 36% of adults in the 11,000 households surveyed reported they would be unable to afford a \$400 emergency expenditure without borrowing money, skipping paying their monthly bills, or carrying a balance forward on their credit cards.² Without adequate consideration for the financial realities of low- and moderate-income households, the “Affordable Heat Act” is likely to be unaffordable and racially inequitable. The Office recommends that the Legislature document what appropriations it plans to provide in future fiscal years to cover **the full installed cost of clean heat measures delivered to income-eligible customers** once the Public Utilities Commission releases the finalized Clean Heat Standards. A promise of future appropriations to cover the full installed cost of clean heat measures for income-eligible customers would help to alleviate our Office’s concerns about the affordability of clean heat measures.

On the subject of income data collection, the Office is comfortable with the guidance provided to the Public Utilities Commission (hereafter referred to as “the Commission”) under page 12, [S.5 As Passed by Senate](#),³ 94 V.S.A. §8124 Clean Heat Standard Compliance, (b)(7):

¹ Board of Governors of the Federal Reserve System. (24 May, 2022.) Economic Well-Being of U.S. Households in 2020-May 2021: Executive Summary. <https://www.federalreserve.gov/publications/2021-economic-well-being-of-us-households-in-2020-executive-summary.htm>

² Board of Governors of the Federal Reserve System. (13 June, 2022.) Economic Well-Being of U.S. Households in 2020-May 2021: Dealing with Unexpected Expenses. <https://www.federalreserve.gov/publications/2021-economic-well-being-of-us-households-in-2020-dealing-with-unexpected-expenses.htm>

³ Full link text: <https://legislature.vermont.gov/Documents/2024/Docs/BILLS/S-0005/S-0005%20As%20Passed%20by%20the%20Senate%20Unofficial.pdf>

(7) Customer income data collected shall be kept confidential by the Commission, the Department of Public Service, the obligated parties and any entity that delivers clean heat measures.

The Office suggests that the Commission should direct obligated parties and designated delivery agents to collect the minimum amount and type of data needed to verify customer income during the delivery of clean heat measures. The Office further recommends that the same income data be collected from all customers to whom clean heat measures are provided so that the burden of sharing private information does not fall solely on low- and moderate-income people. Income disclosure requirements for only low- and moderate-income customers would place a higher burden of disclosing private information on people of color. The Office will be available to consult with the Commission during the rulemaking process to provide feedback on data equity concerns.

The Committee asked the Office to provide suggested language for the changes recommended during testimony. The suggested language below follows the Office of Legislative Counsel’s drafting conventions. New additions to the existing version of [S.5 As Passed by the Senate](#)¹ are indicated by underlined text. Recommendations to strike text from S.5 As Passed by the Senate are indicated with a ~~strikethrough-as shown here~~.

The Office recommends that S.5 be modified to direct the Commission to provide language access services to people who use languages other than English. The Office suggests inserting a fourth and fifth provision related to language access under 94 V.S.A. §8126. RULEMAKING subsection (c), found on page 19 of [S.5 As Passed by the Senate](#):

(c) The Commission’s rules may include a provision that allows the Commission to revise its Clean Heat Standard rules by order of the Commission without the revisions being subject to the rulemaking requirements of the 3 V.S.A. chapter 25, provided the Commission:

- (1) provides notice of any proposed changes,
- (2) allows for a 30-day comment period, ~~and~~
- (3) responds to all comments received on the proposed change
- (4) provides a notice of language assistance services⁴ on all public outreach materials, and
- (5) arrange for language assistance to be provided to members of the public as requested using professional language services companies.

The Office also recommends adding provisions relating to language access at Sec. 6. PUBLIC UTILITY COMMISSION IMPLEMENTATION, subsection (d) Advertising, found on page 35 of [S.5 As Passed by the Senate](#):

⁴ Providing notices of language services is a federal requirement for any entity that receives federal funding. For additional information about notices of language access services and definitions related terms, see the 2023 Office of Racial Equity Language Access Report, pages 23-24, “Notices of the Availability of Language Services” and pages 37-50, “Appendix A: Glossary of Abbreviations and Terminology.” Full text available at <https://racialequity.vermont.gov/document/2023-language-access-report>.

(d) Advertising. The Commission shall use funding appropriated in this act on advertising the public meetings in order to provide notice to a wide variety of segments of the public. All advertisements of public meetings shall include a notice of language assistance services. The Commission shall arrange for language assistance to be provided to members of the public as requested using the services of professional language services companies.

The Office of Racial Equity previously provided testimony in favor of the creation of the Clean Heat Standard Equity Advisory Group provided that their per-diem payment levels were increased. The Office wishes to withdraw that testimony in favor of recommending that the Clean Heat Standard Equity Advisory Group and any references to it be removed from S.5 entirely. In doing so, the Office references the [2022 Report of the Executive Director of the Office of Racial Equity](#), published January 15, 2023:

“Notwithstanding, embedding equity into all government activities does not require new entities or the tokenistic inclusion of certain predictable ones. Rather, building equitable and inclusive practices into government work requires that existing entities carry out their duties in inclusive ways. Further, the siloing of work through creation of duplicative or parallel workgroups requires thoughtful planning about the practical ways in which these various groups are intersecting or collaborating, and the adequacy of the per diem compensation structure that is offered to some of the members of these workgroups.”

After consultation with leadership at the Agency of Natural Resources, the Office does not recommend that the work of the Clean Heat Standards Advisory Group be transferred to the Environmental Justice Advisory Council created under Act 154 of 2022. The Agency of Natural Resources reports that the Environmental Justice Advisory Council is already burdened with a great deal of requirements and a short timeframe in which to complete them. The Office instead recommends that the Commission hire a third-party consultant to conduct public engagement in a manner that focuses on the dimensions of diversity, equity, inclusion, and justice previously assigned to the Clean Heat Standards Equity Advisory Group. The funding that was intended for per-diem payments to the Clean Heat Standards Equity Advisory Group should instead be used to support the hiring of a third-party facilitator and paying for language access services during the public engagement process. The Office suggests the following changes to Sec. 6 PUBLIC UTILITIES COMMISSION IMPLEMENTATION subsection (b), found on page 33 of [S.5 As Passed by the Senate](#):

(b) Facilitator. The Commission ~~may~~ shall hire a third-party consultant to design and conduct public engagement. The Commission may use funds appropriated under this act on hiring the consultant.

- (1) The facilitator shall provide notices of language assistance services on all public engagement materials.
- (2) The facilitator shall coordinate the translation of public engagement materials as requested by members of the public who use languages other than English. The facilitator shall use the funds appropriated to the Commission under this act to pay for language services.
- (3) The facilitator shall use the services of professional language services companies to provide language assistance during the public engagement process.

The Office recommends Sec. 6 (b)(3) to ensure that the facilitator hired by the Commission uses professional language services providers as recommended in the 2023 Office of Racial Equity Language Access Report and not untrained lay people or bilingual State staff.⁵ The Office also recommends that the duties laid out for the Clean Heat Standards Equity Advisory Group under 94 V.S.A. §8129 (page 30 [S.5 As Passed by the Senate](#)) instead are assigned to the public engagement process and inserted after Sec. 6 (b)(3) as subsection (c) as follows:

(c) Public engagement guidance. Public engagement shall be conducted by the facilitator hired by the Commission for the purposes of:

~~(1) providing feedback to the Commission on strategies for engaging Vermonters with low income and moderate income in the public process for developing the Clean Heat Standard program;~~⁶

~~(2)~~ supporting the Commission in assessing whether customers ~~are~~ will be equitably served by clean heat measures and how to increase equity in the delivery of clean heat measures;

~~(3)~~ identifying actions needed to provide customers with low income and moderate income with better service and to mitigate the fuel price impacts calculated in section 8128 of this title;

~~(4)~~ recommending any additional programs, incentives, or funding needed to support customers with low income and moderate income and organizations that provide social services to Vermonters in affording heating fuel and other heating expenses;

~~(5) providing feedback to the Commission on the impact of the Clean Heat Standard on the experience of Vermonters with low income and moderate income; and~~

~~(6)~~ 5 providing information to the Commission on the challenges renters face in equitably accessing clean heat measures and recommendations to ensure that renters have equitable access to clean heat measures.

The Office prefers the enhancement of the public engagement process used to inform the Commission's rulemaking process, rather than creating yet another equity-related working group. Attached as an appendix to this letter is a non-exhaustive list of the 31 equity-related working groups the Office participated in during Calendar Year 2022.

A final suggestion the Office makes is related to list of eligible clean heat measures established under 94 V.S.A. §8127, TRADEABLE CLEAN HEAT CREDITS subsection (d) List of eligible measures. This change has been previously proposed by the Commission on page 19 of [their testimony on Draft 2.1 of S.5](#).⁷ during testimony today, the Office expressed concerns that the list of eligible measures may include sources whose environmental impacts not sufficiently well understood to justify their inclusion.

⁵ See Finding and Recommendation 3.H and 3.I, page 31-32 of the 2023 Office of Racial Equity Language Access Report.

⁶ The Office of Racial Equity is willing to assist the Commission and the hired facilitator with developing equitable engagement strategies, as it has done with numerous other State government entities.

⁷ Landis Marinello, K. (2023). *PUC Suggested Edits to Affordable Heat Act*.

<https://legislature.vermont.gov/Documents/2024/WorkGroups/Senate%20Natural%20Resources/Bills/S.5/Witness%20Documents/S.5~Kyle%20Landis%20Marinello~PUC%20Suggested%20Edits%20to%20Affordable%20Heat%20Act~2-14-2023.pdf>

The Office recommends letting the Clean Heat Standards Technical Advisory Group and consultant hired by the Commission determined the final list of eligible clean heat measures. The Office's recommended change to 94 V.S.A. §8127, TRADEABLE CLEAN HEAT CREDITS subsection (d) (page 22 of [S.5 As Passed by the Senate](#)) follows:

(d) List of eligible measures. Eligible clean heat measures delivered to or installed in Vermont ~~shall include~~ may include:

- (1) thermal energy efficiency improvements and weatherization;
- (2) cold-climate air, ground source, and other heat pumps, including district, network, grid, microgrid, and building geothermal systems;
- (3) heat pump water heaters;
- (4) utility-controlled electric water heaters;
- (5) solar hot water systems;
- (6) electric appliances providing thermal end uses;
- (7) advanced wood heating;
- (8) noncombustion or renewable energy-based district heating services;
- (9) the supply of sustainably sourced biofuels;
- (10) the supply of green hydrogen⁸; and
- (11) the replacement of a manufactured home with a high efficiency manufactured home.

Thank you for the opportunity for the Office of Racial Equity to provide testimony on this momentous bill to address greenhouse gas emissions.

⁸ Given that “green” hydrogen is a relatively new technology that has yet to see commercial implementation, the Legislature should not be prescriptive in directing the Commission to adopt “green” hydrogen as a clean heat measure with the use of “shall include” in subsection (d) List of eligible measures. “*So far, techno-economic analyses (TEA) and net energy assessments (NEA) have shown that the PEC [green hydrogen] approach is not yet competitive for large-scale implementation. Hydrogen from PEC systems today costs about 10 USD/kg, about 6 times more than hydrogen from fossil methane steam reforming (1.5 USD/kg). Moreover, the cumulative energy demand for PEC water splitting is estimated to be 4 -- 20 times higher than for hydrogen production with wind turbines and electrolyzers.*” From “‘Green’ hydrogen: how photoelectrochemical water splitting may become competitive,” published **March 20, 2023**. Available at Science Daily: <https://www.sciencedaily.com/releases/2023/03/230320143753.htm>

Appendix: Non-Exhaustive List of Equity-Related Workgroups that the Office of Racial Equity Participated in during Calendar Year 2022

From the [2022 Report of the Executive Director of the Office of Racial Equity](#), published January 15, 2023:

“This list does not include the many coalitions and workgroups performing equity work in Vermont’s communities. It includes state-created or state-led groups, which have the distinct characteristic of being legally mandated to serve their specified function and meet defined expectations. In addition to this non-exhaustive list, Vermont is also home to numerous community-based organizations performing important and impactful equity work across the state. It is equally important that the state actively engage with and support these organizations, given their deep contacts in communities and their contributions to the state’s advancements in equity.”

“[M]—Director is a member of this workgroup. [L]—Director serves as liaison or advisor to this workgroup. [C]/[VC]—Director is a chairperson or vice chairperson of this group.”

Group	Formal Title	Relevant Documents
Act 186	Act 186 Population-Level Outcomes Working Group [L]	<ul style="list-style-type: none"> • Enabling statute: Act 186 Population Level Working Group
AIAC	Artificial Intelligence Advisory Council	<ul style="list-style-type: none"> • Enabling statute: 3 V.S.A. §5023
BTF	Buprenorphine Task Force [M]	<ul style="list-style-type: none"> • Enabling order: Executive Order 05-21
CCB	Cannabis Control Board [L]	<ul style="list-style-type: none"> • Enabling statute: 7 V.S.A. Ch. 31 Sub Ch. 2 • Board website
CJC	Vermont Criminal Justice Council [VC]	<ul style="list-style-type: none"> • Enabling statute: 20 V.S.A. § 2351 • Council website
CYFAAC	Child Youth Family Advocate Advisory Council [M]	<ul style="list-style-type: none"> • Enabling statute: 33 V.S.A. §3211
DEW/NESSC	Diversifying the Educator Workforce (Vermont delegates to NESSC) [M]	<ul style="list-style-type: none"> • State Profile on NESSC
EJAC	Environmental Justice Advisory Council [M]	<ul style="list-style-type: none"> • Enabling statute: 3 V.S.A. §6006
EJIAC	Environmental Justice Inter-Agency Committee [M]	<ul style="list-style-type: none"> • Enabling statute: 3 V.S.A. §6006
ELs	Equity Liaisons [C]	<ul style="list-style-type: none"> • Organized on Teams channel for SOV employees only
ESESAWG	Ethnic and Social Equity Standards Advisory Working Group [M]	<ul style="list-style-type: none"> • Enabling statute: Act 1 of 2019 • General Information & meeting materials
FIP	Fair and Impartial Policing Committee	<ul style="list-style-type: none"> • Fair & Impartial Policing policy
GDSC	Giglio Database Study Committee [M]	<ul style="list-style-type: none"> • Report submitted, group sunset as of Dec 1, 2022
GWEDC	Governor's Workforce Equity and Diversity Council [L]	<ul style="list-style-type: none"> • Enabling Order: 3 App. V.S.A. ch. 3, § 59 • General Information

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HEAC	Health Equity Advisory Commission [M]	<ul style="list-style-type: none"> • Enabling statute: 18 V.S.A. § 252 • Commission website
HHB	Harassment, Hazing and Bullying Advisory Council	<ul style="list-style-type: none"> • Enabling statute: 16 V.S.A. § 570 • General Information
HRC	Vermont Human Rights Commission [L]	<ul style="list-style-type: none"> • Enabling statute: 9 V.S.A. § 4551 • Commission website
ICAR	Interagency Committee on Administrative Rules	<ul style="list-style-type: none"> • Committee website
JDEC	Vermont National Guard Joint Diversity Executive Council [M]	<ul style="list-style-type: none"> • Joint Diversity Executive Council website
JRII-DV	Justice Reinvestment - Domestic Violence Response Systems [M]	<ul style="list-style-type: none"> • Justice Reinvestment II working group website • Presentation on the Domestic Violence Response Systems working group
LAOB	Land Access and Opportunity Board [M]	<ul style="list-style-type: none"> • Board website
LEDC	Law Enforcement Data Collection [M]	<ul style="list-style-type: none"> • Enabling statute: Act 161 of 2022, Section 1
NCJRP	National Criminal Justice Reporting Project [M]	<ul style="list-style-type: none"> • ORE involvement concluded as of Oct. 2022
RDAP	Racial Disparities in the Criminal & Juvenile Justice System Advisory Panel [M]	<ul style="list-style-type: none"> • Enabling statute: 3 V.S.A. § 168 • General Information
REAP	Racial Equity Advisory Panel [ED]	<ul style="list-style-type: none"> • Enabling statute: 3 V.S.A. § 5002 • Panel website
RJSAC	Racial Justice Statistics Advisory Council [ED]	<ul style="list-style-type: none"> • Enabling Act: Act 142 of 2022
SEC	Social Equity Legislative Caucus	<ul style="list-style-type: none"> • SEC website
SHCSTF	State House Curatorial Special Task Force [M]	<ul style="list-style-type: none"> • Vermont State Curator's Office
TSR	Traffic Stop Regulation	<ul style="list-style-type: none"> • Enabling statute: Act 106 of 2022
TRC	Truth & Reconciliation Commission	<ul style="list-style-type: none"> • Enabling statute: Act 128 of 2022
VCNAA	Vermont Commission on Native American Affairs	<ul style="list-style-type: none"> • Enabling statute: 1 V.S.A. § 852 • General Information