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07/02/24

Legislative Committee on Administrative Rules
c/o, Legislative Counsel
Vermont State House
Montpelier, VT 05633-5301

Re: Written Determination Pursuant to 3 V.S.A. § 848(d)(1)

Pursuant to 3 V.S.A. § 848(d)(1), the Vermont Department of Public Service (“Department”) hereby provides its written determination regarding the effect of Act 151 of 2024 on two existing rules: Rule 23-018, known as the Vermont Residential Building Energy Standards Amendments (“RBES”), and Rule 23-019, known as the Vermont Commercial Building Energy Standards Amendments (“CBES”). These rules can be found in the Code of Vermont Rules at CVR 31-000-004 (RBES) and CVR 31-000-003 (CBES).¹ Act 151 of 2024 (“Act 151” or the “Act”) took effect on June 3, 2024. *See* Public Act No. 151 (2024). The Act includes amendments to 30 V.S.A. §§ 51 and 53, which contain the statutory authority for the RBES and CBES as stated by the Department under 3 V.S.A. § 838(a)(10). After review, the Department concludes that the Act (1) does not repeal the statutory authority for the RBES and CBES rules and (2) does not require revision of the rules.

As enabling statutes, 30 V.S.A. §§ 51 and 53 authorize the use of administrative rules to promulgate the RBES and CBES respectively. Both statutes include language specifying that “[t]he Commissioner of Public Service shall amend and update [the RBES or CBES] by means of administrative rules adopted in accordance with 3 V.S.A. Chapter 25.” *See* 30 V.S.A. § 51(c) (RBES); 30 V.S.A. § 53(c) (CBES). Act 151 made changes to 30 V.S.A. §§ 51(c) and 53(c) but did not alter the statutory language above. Instead, the Act removed language from Section 51(c) requiring that “appropriate revisions are made promptly,” and removed language from Section 53(c) requiring updates “at least every three years.” *See* Public Act No. 151, Sections 3–4 (2024). The Act also added language to both provisions stating that the Commissioner “may direct the timely and appropriate revision of” the rules. *See id.* With the exception of these amendments

¹ The Department notes that the Lexis document currently available for CVR 31-000-003 (CBES) appears to reflect the prior version of the rule, effective in 2020, rather than Rule 23-019 which is effective July 1, 2024.



relating to the timing of future updates, all references to rulemaking are left intact. This leads the Department to conclude that Act 151 does not repeal the statutory authority for the existing RBES and CBES rules within the meaning of 3 V.S.A. § 848.

The statutes authorizing the RBES and CBES, 30 V.S.A. §§ 51 and 53, also include provisions relating to the content and effect of the rules. *See, e.g.*, 30 V.S.A. §§ 51(c)(1)–(6), (d)–(i); 30 V.S.A. §§ 53(c)(1)–(5), (d)–(g). Act 151 did not include any amendments to these provisions. *See* Public Act No. 151, Sections 3–4 (2024). Therefore, the Department concludes that Act 151 does not require revisions to the existing RBES and CBES rules.

Please contact me with any questions about this determination.

Sincerely,

/s/Ben Civiletti

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