

January 20, 2023

Senator Bray,

Thank you for the opportunity to testify in the Senate Natural Resources and Energy Committee regarding S.5, also known as the Affordable Heat Act. Below is a summary of concerns from Vermont's heating fuel and heating service sector.

As stated, there are significant complications with an all-electric thermal energy policy. Ductless, cold climate electric heat pump mini-splits **are not** central heating systems. They are installed in walls and provide space cooling and heating. Given Vermont's building stock, climate, and the state of current technology, meeting our heating needs with electrification alone **is simply not possible**. The proposed legislation recognizes this flawed energy policy and provides an opportunity for non-electric sources of heat and other non-electric measures that can demonstrate a reduction in greenhouse gas emissions in the thermal sector. A "fuel neutral" approach also embraces the reality that Vermont's existing heating fuel and service infrastructure is integral to the effort to meet the mandates in the Global Warming Solutions Act. However, there are many issues that need to be resolved before this policy advances any further.

## **WRONG REGULATOR**

Choosing a regulator to ensure compliance with a thermal performance standard is critical. This is no small matter. Three out of every five Vermonters depend on a truck delivering liquid fuel for heat and hot water. And there are thousands of trucks that deliver heating fuels in Vermont coming from approximately two hundred retail locations inside and outside the state. *See map on page 7.* The one state agency that has no jurisdiction over liquid heating fuel and service providers is the Public Utility Commission (PUC), which is the one designated by S.5 as the regulatory authority. That said, oilheat, kerosene, and propane retailers are not "unregulated." In fact, the non-utility heating fuel and heating service industry has many regulators in Vermont. *A partial list is below.*

- Agency of Agriculture, Department of Weights and Measures
- Agency of Human Services, Office of Economic Opportunity, Department of Children and Families
- Agency of Natural Resources
- Department of Environmental Conservation
- Department of Motor Vehicles, Commercial Enforcement Division
- Department of Public Safety, Division of Fire Safety

- Department of Tax
- Office of the Attorney General
- Public Service Department

The reason the Public Utility Commission has no jurisdiction over the deliverable fuel industry is because the hundreds of businesses in and around Vermont that provide heating fuel and heating service are not utilities. The PUC has power over utilities through rate making in which the utility is guaranteed a rate of return on their capital investment. The success or failure of heating oil and propane suppliers is not a concern of the PUC. The PUC is the wrong regulator. They have no experience or knowledge of who sells fuel in Vermont, where it comes from, where it is sold, and how much is sold. And the PUC has no ability to pull over the thousands of trucks and track the gallons. **We know this because the PUC told us.** In testimony on 2/3/22 before the House Energy Committee, the PUC Policy Director stated: *"The question about enforcement, I just don't have an answer right now.....I can't tell you who the obligated parties would be.....I am sorry to say, that I don't have an answer to that question, as to what tools are needed and whether the PUC possesses those tools."*

**This is a problem.** Can the PUC ensure that the thousands of trucks carrying heating oil, propane or kerosene have enough corresponding "non-tangible" credits? Failure to "possess these tools" will cause irreparable damage to a competitive marketplace. An obligation to obtain a "non-tangible" credit based on volume of sales from the prior year can not be enforced within the four walls of the Public Utility Commission on 112 State Street. It can only be enforced on Vermont's town roads and state highways. We know that the PUC does not have this authority or staff. We have no idea how much it would cost if they did. A government policy that relies on businesses to "raise their hand" so that they can pay a competitor to take away their customers is not logical. This lack of understanding about how fuel is distributed will insert chaos into the orderly distribution of an essential commodity that a majority of Vermonters rely on for heat, hot water, and/or cooking.

**A Clean Heat Standard can not be implemented until the Legislature determines who all of the obligated parties are and how to enforce compliance.**

## **WHAT USE?**

Propane and #2 Fuel Oil have many non-heat uses. S.5 does not state clearly whether non-thermal uses of these fuels will be counted against an obligated party. For instance, propane and #2 fuel are both sold to Vermont farmers, loggers, municipalities and other customer to operate non-highway equipment or vehicles that do not have to pay the diesel excise tax. Propane and #2 Fuel Oil are also sold to

Vermont utilities, businesses and homeowners for electric power generation. And propane is used for cooking in tens of thousands of Vermont homes and restaurants. ***If the intent of the legislation is to exclude these uses, the language in S.5 should make it clear.***

### **NO DOUBLE COUNTING**

You shouldn't be able to sell the same horse twice. The Senate can fix this flaw in S.5 by not allowing any electric utility to claim Tier 3 credits under the Renewable Energy Standard and also sell credits under the Clean Heat Standard for the very same product or service. Suggested language is below.

Clean Heat Credits can not be sold by electric utilities who are using the same product or service to meet their obligations under the Renewable Energy Standard Tier 3 program.

### **ELIMINATE THE THREE TIER CREDIT SYSTEM**

S.5 creates a three-tier system of credits based on a customer's financial status. *The intent is understandable, the implementation is not feasible.* Under §8124(d), heating fuel and heating service employees are compelled to conduct income verification checks which are both invasive to the customer and an unnecessary administrative burden on fuel sellers. The alternative is to accept self attestations which allows for fraud. No other government policy imposes a financial penalty on a business based on their customer's annual income. Also problematic is that the low and moderate income tiers require one half of the credits come from "installed measures" that require a capital investment. All measures that qualify should count. Otherwise the program is not fuel neutral.

### **FIX THE DDA**

One way to lessen the negative financial impact of the Clean Heat Standard on low income Vermonters is to clarify who can become the Designated Default Delivery Agent (DDA). In order to ensure a more equitable energy transition, the DDA should not be a market participant. The DDA should be a division of the Office of Economic Opportunity (OEO) or similarly aligned non-profit entity designated by (OEO) that provides energy services to economically disadvantaged Vermonters. ***The DDA should be a state agency, or a non-profit designated by a state agency, and be fuel neutral.*** Failure to do so allows the government to hand out a license to a for-profit corporation and require the competition to be the source of capital. The point of the CHS is to be technology neutral. ***We respectfully ask for language making it***

**clear the DDA must be an agency within state government and can not be a participant in the credit market.**

### **GREET IS GOOD**

S.5 refers to the GREET model. GREET (which stands for “Greenhouse gases, Regulated Emissions, and Energy use in Transportation”) is a full life-cycle model designed by the Argonne National Laboratory at the United States Department of Energy's Office of Energy Efficiency and Renewable Energy. **It is good.** Any greenhouse gas accounting method should be based on this schedule of transparent and accurate emissions. A Vermont flavor of greenhouse gas accounting methodology could be used to pick favorites. There is a national standard. *Vermont should follow it. Delete this provisions in S.5: “Or an alternative of comparable analytical rigor to fit the Vermont thermal sector context.”*

### **FIX THE TAG**

S.5 asks the Vermont Public Utility Commission to regulate five fuels, four of which they have never done before (propane, kerosene, heating oil, and coal). There are hundreds of entities in and around Vermont that sell these fuels. The Technical Advisory Group (TAG) has one person representing all of the obligated parties. These are businesses and fuels that are in competition with one another. The fix will be in for whichever fuel gets a representative assigned to the TAG. The GWSA and the Climate Council did not include any representative from the propane industry, which is the second most popular deliverable fuel in Vermont. This can not happen again. **There should be at least one representative on the TAG for all fuels that are obligated.**

### **THE CHECK BACK**

All of this highlights the need for an actual **‘Check-Back.’** Given the uncertainty around the regulatory structure for the distribution of an essential commodity that most Vermonters needs to heat their home and/or cook their food, it is necessary and appropriate that this policy first be designed before it is implemented.

*Please add the following:*

*(e) The Clean Heat Standard shall not take effect until an Act accepting the January 15, 2025, report on projected costs and benefits of the Clean Heat Standard is passed by the General Assembly and becomes law in accordance with Chapter 2, § 11 of the Vermont Constitution. In the absence of such an Act the Public Utility Commission is not required to meet the additional deadlines established in this Act.*

This provision is necessary to ensure the the entire Vermont Legislature fully reviews the Clean Heat Standard **after** it is designed by the Vermont Public Utility Commission, but **before** it is implemented. If S.5 becomes law, the PUC will be asked to do something they have never been done before. They will try and create a credit market of Non-Tangible Commodities (NTCs) and assess a fee on sellers of natural gas, heating oil, propane, coal, and kerosene if they do not have enough NTCs based on sales from the prior year. As currently written, the cost of the credits are unknown, the Designated Delivery Agent could be an out of state for-profit company, and local energy suppliers have little confidence that the PUC can ensure all obligated parties comply with the law.

There has never been a more complicated and consequential policy that attempts to deconstruct how an essential commodity is distributed in Vermont. *What if the PUC can't figure it out? Shouldn't all lawmakers have the right to review their work before it is implemented?*

This is not a tax, fee, or financial penalty paid by out-of-state entities. It will be paid primarily by locally owned businesses who will have no choice but to pass on the added expense to Vermonters who continue to use these fuels for heat, hot water, and cooking. While we know S.5 will add a new cost to fuel, we don't know how much until the PUC has finished their work. And we don't know if this will be enforceable until the PUC has finished their work. **Given the stakes, it only makes sense for the Legislature to review the program for final approval after the PUC finishes their work.**

**Please do not allow S.5 to become law without these important changes.**

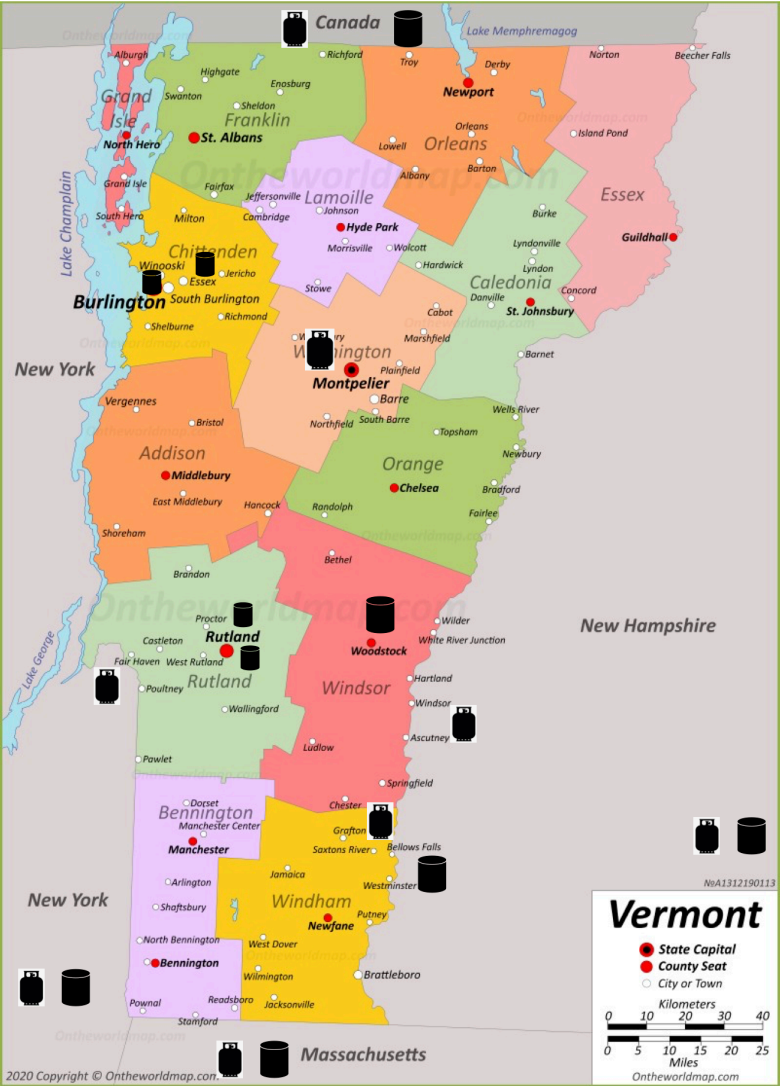
Thank you for your consideration.

Matt Cota  
Meadow Hill Consulting

Attached  
*Map of wholesale fuel locations*  
*Map of retail fuel outlets*

# Obligated Parties

The entity that makes the first sale into or in the state of Vermont for consumption within the state







**There are more than 150,000 buildings in Vermont that rely on delivered liquid heating fuel.**

**These customers are served by thousands of delivery trucks which come from more than 200 different locations in and around Vermont.**

**Over a third of these retail locations operate outside of Vermont.**

**Approximately 80% of the heating fuel retailers that are located in Vermont purchase some or all of their fuel from a terminal rack outside of Vermont.**

