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**State of Vermont
Public Utility Commission**

March 11, 2025

Senator Anne Watson, Chair
Senate Committee on Natural Resources and Energy

SENT VIA EMAIL

Re: PUC's Concerns with Current Version of S. 65

Dear Chair Watson:

The Vermont Public Utility Commission (“Commission”) writes to convey its ongoing concerns with the current version of S.65, “An act relating to energy efficiency utility jurisdiction.”¹ S.65 is legally unsound because it contains internally conflicting standards and creates a regulatory morass likely to result in litigation as regulated monopolies compete over electrification and energy efficiency work.

At a high level, our concerns are as follows:

- The language of S.65 significantly modifies the longstanding legislative intent of the energy efficiency utilities (“EEUs”) and the energy efficiency charge (“EEC”). Under S.65, the EEC becomes a tax to fund decarbonization programs.
- The proposed use of the EEC violates the guiding principle that funding for efficiency and fuel switching must come from sources tied to the relevant fuels to align the costs and benefits, avoid cross-subsidies across fuel types, and motivate customers to take actions that align with policy goals.
- S.65 introduces two new standards for setting the EEC while leaving the established least-cost standard in place. The Commission cannot simultaneously implement the three conflicting methods for setting the EEU budgets and the resulting EEC.
- The language of S.65 also creates direct competition among regulated entities in the provision of service to customers, creating higher costs and reduced efficacy of services.

¹ The Commission’s comments are based on the draft of S.65 on the Committee’s website labeled S.65 – Ellen Czajkowski – 1.1 02-26-2025-2-27-2025, available at <https://legislature.vermont.gov/Documents/2026/Workgroups/Senate%20Natural%20Resources/Bills/S.65/Drafts,%20Amendments,%20and%20Legal%20Documents/S.65~Ellen%20Czajkowski~1.1%2002-26-2025~2-27-2025.pdf>.

Based on these substantial concerns, the Commission urges the Committee to hold this bill for further testimony.

Below, the Commission details the three areas of concern that the Commission has identified: (1) economic policy, (2) conflicting standards of Commission review authority, and (3) competition for electrification. If helpful, the Commission can also provide a list of additional implementation concerns and points for clarification.

Economic Policy

The electric EEC has been collected, pursuant to 30 V.S.A. § 209(d)(3), by the electric distribution utilities and paid to the EEUs to fund electric energy efficiency programs for the past 25 years. The EEU structure is a complement to providing least-cost service to Vermont ratepayers; therefore, the EEC has always been a charge reflecting the cost of providing a necessary monopoly service. The language of S.65 significantly modifies the intent of the EEUs and the EEC such that the EEC becomes a tax to fund decarbonization programs. In addition, to the extent that the EEUs are not realizing all reasonably available cost-effective energy efficiency, it means that the electric and gas utilities may have to increase spending to meet the requirements of least-cost planning in 30 V.S.A. § 218c to “acquire the full amount of cost-effective savings.”

We cannot overstate the need to establish funding for the thermal and transportation sectors from charges on *unregulated* fossil-fuel sources rather than charges on electricity. Vermont should keep electricity affordable because it is a relatively low-emission energy source. Driving up the cost of electricity sends the wrong price signal during a time when the Legislature is also trying to achieve greater electrification. Funding for efficiency and fuel switching must come from sources tied to the relevant fuels to align the costs and benefits, avoid cross-subsidies across fuel types, and motivate customers to use less-desirable fuel types more efficiently or abandon them entirely.

Conflicting Standards of Review

The language of S.65 as currently drafted creates a conflict in the legal standard the Commission applies when setting the EEUs’ budgets. The new subsection (d)(2)(D) reads:

The annual revenue required to be raised by the electric efficiency charge authorized under this subsection (d) shall be equivalent to the inflation-adjusted Commission-approved electric efficiency budget in 2026.²

As we read this provision, the exact amount of the budget is predetermined: take the Commission-approved budget amount from 2026 — \$49,863,797 for Efficiency Vermont and \$2,919,623 for Burlington Electric Department — and adjust it for inflation. A predetermined budget formula contradicts the Commission’s authority under current law — to set the EEC to

² The Commission notes that new subsection (d)(2)(D) is placed in the current subsection (d)(2), which is about the appointment of EEUs, not about the “annual revenue required to be raised by the electric efficiency charge” as referenced. Subsection (d)(3) sets out the Commission’s authority to set the EEC. In addition, it appears the Commission would continue to review and approve natural gas energy efficiency budgets under current law.

“realize all reasonably available, cost-effective energy efficiency savings,” as set forth in existing subsection (d)(3)(B).

S.65 makes changes to the numbering of the existing statutory authority, but much of the language of subsection (d)(3)(B) still remains in subdivision (d)(5)(A), which includes new language requiring “priority consideration given to the greenhouse gas emissions reductions.” Subsection (d)(5)(A) includes two conflicting tests for conducting the EEU-budget-setting analysis: the established least-cost-integrated-planning test and a societally cost-effective test.

These two subsections of S.65 propose radically different methodologies for carrying out the Commission’s regulatory review of EEU budgets. The new subsection (d)(2)(D) applies an inflation multiplier to the 2026 budget, while subsection (d)(5)(A) would have the Commission evaluate and set the EEUs’ budgets by conducting full analyses pursuant to both least-cost and societally cost-effective methods. *Simply put, the Commission cannot do both.* If it is the intent of S.65 to maintain the 2026 energy efficiency budgets in perpetuity without the Department of Public Service’s evaluation or the Commission’s review, then the language in subsection (d)(5)(A) should be eliminated. If the opposite is intended, then subsection (d)(2)(D) should be removed.

Competition for Electrification

The language of S.65 as currently drafted also creates the potential for direct competition among regulated entities in the provision of service to customers. We interpret the insertion of “electrification” into subsections 209(d)(1), 209(d)(2)(A), 209(d)(5)(A) to be a directive that the EEUs would provide thermal and transportation electrification services using energy efficiency funds at the same time that electric distribution utilities would be providing these services pursuant to 30 V.S.A. § 8005(a)(3). In other words, S.65 requires two monopoly utilities to use ratepayer funds to achieve the same result. This competition to provide the same services by different regulated utilities would introduce unwarranted inefficiencies. Competition among monopoly utility service providers is also counter to Vermont’s long tradition of granting public service utilities exclusive franchise service territories.

In the alternative, the insertion of the word “electrification” in subsection 209(d)(2)(A), which lists the services to be fulfilled by appointed energy efficiency utilities “in place of utility-specific programs,” could be interpreted as a determination that electric distribution utilities would no longer provide electrification as part of their Tier 3 portfolios.

Similarly, by allowing energy efficiency funds to be used by Burlington Electric Department’s EEU to deliver thermal services “regardless of preexisting fuel source,” Section 209(d)(4)(D) appears to put Burlington’s EEU in direct competition with Vermont Gas’s EEU within the City of Burlington by allowing Burlington Electric Department to provide thermal efficiency services for Vermont Gas customers.

We strongly recommend against instituting programs that direct regulated entities to compete with each other to provide the same service. This has the potential to cause customer confusion, duplicate utility administrative costs, and, as we have seen in the past, generate disagreements about which entity may claim savings for a project. A better approach would be to make clear which regulated entity or entities bear responsibility for implementing these important programs.

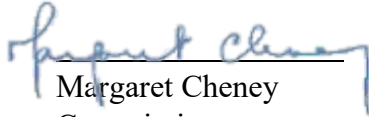
S.65 creates a regulatory structure we cannot implement and increases costs for Vermonters. If the Committee nonetheless moves forward with S.65, clarity around a single

standard to apply when setting the EEUs' budgets will be essential for the Commission, EEUs, electric distribution utilities, and the Department of Public Service to carry out this work. We respectfully request that the Committee consider the Commission's concerns and hold the bill for further testimony.

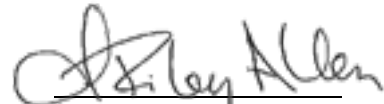
Sincerely,



Edward McNamara
Chair



Margaret Cheney
Commissioner



J. Riley Allen
Commissioner