

VERMONT STATUTES RELATED TO EFFICIENCY UTILITIES
AND TO RES TIER 3

For Joint Energy Committee, 2015 Acts and Resolves No. 56, Sec. 14b
Aaron Adler, Legislative Counsel, Sep. 28, 2015

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I. Primary Statute: 30 V.S.A. § 209**§ 209. Jurisdiction; general scope**

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(d) Energy efficiency.

(1) **Programs and measures.** The Department of Public Service, any entity appointed by the Board under subdivision (2) of this subsection, all gas and electric utility companies, and the Board upon its own motion, are encouraged to propose, develop, solicit, and monitor energy efficiency and conservation programs and measures, including appropriate combined heat and power systems that result in the conservation and efficient use of energy and meet the applicable air quality standards of the Agency of Natural Resources. Such programs and measures, and their implementation, may be approved by the Board if it determines they will be beneficial to the ratepayers of the companies after such notice and hearings as the Board may require by order or by rule. The Department of Public Service shall investigate the feasibility of enhancing and expanding the efficiency programs of gas utilities and shall make any appropriate proposals to the Board.

(2) Appointment of independent efficiency entities.

(A) *Electricity and natural gas.* In place of utility-specific programs developed pursuant to this section and section 218c of this title, the Board shall, after notice and opportunity for hearing, provide for the development, implementation, and monitoring of gas and electric energy efficiency and conservation programs and measures, including programs and measures delivered in multiple service territories, by one or more entities appointed by the Board for these purposes. The Board may include appropriate combined heat and power systems that result in the conservation and efficient use of energy and meet the applicable air quality standards of the Agency of Natural Resources. Except with regard to a transmission company, the Board may specify that the appointment of an energy efficiency utility to deliver services within an electric utility's service territory satisfies that electric utility's corresponding obligations, in whole or in part, under section 218c of this title and under any prior orders of the Board.

(B) *Thermal energy and process-fuel customers.* The Board shall provide for the coordinated development, implementation, and monitoring of cost-effective efficiency and conservation programs to thermal energy and process-fuel customers on a whole buildings basis by one or more entities appointed by the Board for this purpose.

(i) In this section, "thermal energy" means the use of fuels to control the temperature of space within buildings and to heat water.

(ii) Periodically on a schedule directed by the Board, the appointed entity or entities shall propose to the Board a plan to implement this subdivision (d)(2)(B). The proposed plan shall comply with subsections (e)-(g) of this section and shall be subject to the Board's approval. The Board shall not conduct the review of the proposed plan as a contested case under 3 V.S.A. chapter 25 but shall provide notice and an opportunity for written and oral comments to the public and affected parties and State agencies.

(3) **Energy efficiency charge; regulated fuels.** In addition to its existing authority, the Board may establish by order or rule a volumetric charge to customers for the support of energy efficiency programs that meet the requirements of section 218c of this title. The charge shall be

known as the energy efficiency charge, shall be shown separately on each customer's bill, and shall be paid to a fund administrator appointed by the Board and deposited into an Electric Efficiency Fund. When such a charge is shown, notice as to how to obtain information about energy efficiency programs approved under this section shall be provided in a manner directed by the Board. This notice shall include, at a minimum, a toll-free telephone number, and to the extent feasible shall be on the customer's bill and near the energy efficiency charge.

(A) Balances in the Electric Efficiency Fund shall be ratepayer funds, shall be used to support the activities authorized in this subdivision, and shall be carried forward and remain in the Fund at the end of each fiscal year. These monies shall not be available to meet the general obligations of the State. Interest earned shall remain in the Fund. The Board will annually provide the General Assembly with a report detailing the revenues collected and the expenditures made for energy efficiency programs under this section. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

(B) The charge established by the Board pursuant to this subdivision (3) shall be in an amount determined by the Board by rule or order that is consistent with the principles of least cost integrated planning as defined in section 218c of this title. As circumstances and programs evolve, the amount of the charge shall be reviewed for unrealized energy efficiency potential and shall be adjusted as necessary in order to realize all reasonably available, cost-effective energy efficiency savings. In setting the amount of the charge and its allocation, the Board shall determine an appropriate balance among the following objectives; provided, however, that particular emphasis shall be accorded to the first four of these objectives: reducing the size of future power purchases; reducing the generation of greenhouse gases; limiting the need to upgrade the State's transmission and distribution infrastructure; minimizing the costs of electricity; reducing Vermont's total energy demand, consumption, and expenditures; providing efficiency and conservation as a part of a comprehensive resource supply strategy; providing the opportunity for all Vermonters to participate in efficiency and conservation programs; and targeting efficiency and conservation efforts to locations, markets, or customers where they may provide the greatest value. The Board, by rule or order, shall establish a process by which a customer who pays an average annual energy efficiency charge under this subdivision (3) of at least \$5,000.00 may apply to the Board to self-administer energy efficiency through the use of an energy savings account which shall contain a percentage of the customer's energy efficiency charge payments as determined by the Board. The remaining portion of the charge shall be used for systemwide energy benefits. The Board in its rules or order shall establish criteria for approval of these applications.

(C) The Board may authorize the use of funds raised through an energy efficiency charge on electric ratepayers to reduce the use of fossil fuels for space heating by supporting electric technologies that may increase electric consumption, such as air source or geothermal heat pumps if, after investigation, it finds that deployment of the technology:

(i) will be beneficial to electric ratepayers as a whole;

(ii) will result in cost-effective energy savings to the end-user and to the State as a whole;

(iii) will result in a net reduction in State energy consumption and greenhouse gas emissions on a life-cycle basis and will not have a detrimental impact on the environment through other means such as release of refrigerants or disposal. In making a finding under this

subdivision, the Board shall consider the use of the technology at all times of year and any likely new electricity demand created by such use;

(iv) will be part of a comprehensive energy efficiency and conservation program that meets the requirements of subsections (d)-(g) of this section and that makes support for the technology contingent on the energy performance of the building in which the technology is to be installed. The building's energy performance shall achieve or shall be improved to achieve an energy performance level that is approved by the Board and that is consistent with meeting or exceeding the goals of 10 V.S.A. § 581 (building efficiency);

(v) among the product models of the technology that are suitable for use in Vermont, will employ the product models that are the most efficient available;

(vi) will be promoted in conjunction with demand management strategies offered by the customer's distribution utility to address any increase in peak electric consumption that may be caused by the deployment;

(vii) will be coordinated between the energy efficiency and distribution utilities, consistent with subdivision (f)(5) of this section; and

(viii) will be supported by an appropriate allocation of funds among the funding sources described in this subsection (d) and subsection (e) of this section. In the case of measures used to increase the energy performance of a building in which the technology is to be installed, the Board shall assume installation of the technology in the building and then determine the allocation according to the proportion of the benefits provided to the regulated fuel and unregulated fuel sectors. In this subdivision (viii), "regulated fuel" and "unregulated fuel" shall have the same meaning as under subsection (e) of this section.

(4) Contract or order of appointment. Appointment of an entity under subdivision (2) of this subsection may be by contract or by an order of appointment. An appointment, whether by order of appointment or by contract, may only be issued after notice and opportunity for hearing. An order of appointment shall be for a limited duration not to exceed 12 years, although an entity may be reappointed by order or contract. An order of appointment may include any conditions and requirements that the Board deems appropriate to promote the public good. For good cause, after notice and opportunity for hearing, the Board may amend or revoke an order of appointment.

(5) Appointed entity; supervision. Any entity appointed by order of appointment under subdivisions (2) and (4) of this subsection that is not an electric or gas utility already regulated under this title shall not be considered to be a company as defined under section 201 of this title, but shall be subject to the provisions of sections 18-21, 30-32, 205-208, subsection 209(a), sections 219, 221, and subsection 231(b) of this title, to the same extent as a company as defined under section 201 of this title. The Board and the Department of Public Service shall have jurisdiction under those sections over the entity, its directors, receivers, trustees, lessees, or other persons or companies owning or operating the entity and of all plants, equipment, and property of that entity used in or about the business carried on by it in this State as covered and included in this section. This jurisdiction shall be exercised by the Board and the Department so far as may be necessary to enable them to perform the duties and exercise the powers conferred upon them by law. The Board and the Department each may, when they deem the public good requires, examine the plants, equipment, and property of any entity appointed by order of appointment under subdivisions (2) and (4) of this subsection.

(e) **Thermal energy and process fuel efficiency funding.**

(1) Each of the following shall be used to deliver thermal energy and process fuel energy efficiency services in accordance with this section for unregulated fuels to Vermont consumers of such fuels.

(A) Net revenues above costs associated with payments from the New England Independent System Operator (ISO-NE) for capacity savings resulting from the activities of the energy efficiency utility designated under subdivision (2)(A) of this subsection that are not transferred to the State PACE Reserve Fund under 24 V.S.A. § 3270(c). These revenues shall be deposited into the Electric Efficiency Fund established by this section. In delivering services with respect to heating systems using the revenues subject to this subdivision (A), the entity shall give priority to incentives for the installation of high efficiency biomass heating systems and shall have a goal of offering an incentive that is equal to 25 percent of the installed cost of such a system. In this subdivision (A), "biomass" means organic nonfossil material constituting a source of renewable energy within the meaning of subdivision 8002(17) of this title. Provision of an incentive under this subdivision (A) for a biomass heating system shall not be contingent on the making of other energy efficiency improvements at the property on which the system will be installed.

(B) Net revenues above costs from the sale of carbon credits under the cap and trade program established under section 255 of this title, which shall be deposited into the Electric Efficiency Fund established by this section.

(C) Any other monies that are appropriated to or deposited in the Electric Efficiency Fund for the delivery of thermal energy and process fuel energy efficiency services.

(2) If a program combines regulated fuel efficiency services with unregulated fuel efficiency services supported by funds under this section, the Board shall allocate the costs of the program among the funding sources for the regulated and unregulated fuel sectors in proportion to the benefits provided to each sector.

(3) In this subsection:

(A) "Efficiency services" includes the establishment of a statewide information clearinghouse under subsection (g) of this section.

(B) "Regulated fuels" means electricity and natural gas delivered by a regulated utility.

(C) "Unregulated fuels" means fuels used by thermal energy and process fuel customers other than electricity and natural gas delivered by a regulated utility.

(f) **Goals and criteria; all energy efficiency programs.** With respect to all energy efficiency programs approved under this section, the Board shall:

(1) Ensure that all retail consumers, regardless of retail electricity, gas, or heating or process fuel provider, will have an opportunity to participate in and benefit from a comprehensive set of cost-effective energy efficiency programs and initiatives designed to overcome barriers to participation;

(2) Require that continued or improved efficiencies be made in the production, delivery, and use of energy efficiency services, including the use of compensation mechanisms for any energy efficiency entity appointed under subdivision (d)(2) of this section that are based upon verified savings in energy usage and demand, and other performance targets specified by the Board. The linkage between compensation and verified savings in energy usage and demand (and other performance targets) shall be reviewed and adjusted not less than triennially by the Board;

(3) Build on the energy efficiency expertise and capabilities that have developed or may develop in the State;

(4) Promote program initiatives and market strategies that address the needs of persons or businesses facing the most significant barriers to participation, including those who do not own their place of residence;

(5) Promote and ensure coordinated program delivery, including coordination with low income weatherization programs, entities that fund and support affordable housing, regional and local efficiency entities within the State, other efficiency programs, and utility programs;

(6) Consider innovative approaches to delivering energy efficiency, including strategies to encourage third party financing and customer contributions to the cost of efficiency measures;

(7) Provide a reasonably stable multiyear budget and planning cycle in order to promote program improvement, program stability, enhanced access to capital and personnel, improved integration of program designs with the budgets of regulated companies providing energy services, and maturation of programs and delivery resources;

(8) Approve programs, measures, and delivery mechanisms that reasonably reflect current and projected market conditions, technological options, and environmental benefits;

(9) Provide for delivery of these programs as rapidly as possible, taking into consideration the need for these services, and cost-effective delivery mechanisms;

(10) Provide for the independent evaluation of programs delivered under subsection (d) of this section;

(11) Require that any entity appointed by the Board under subsection (d) of this section deliver Board-approved programs in an effective, efficient, timely, and competent manner and meet standards that are consistent with those in section 218c of this title, the Board's orders in Public Service Board docket 5270, and any relevant Board orders in subsequent energy efficiency proceedings;

(12) Require verification, on or before January 1, 2003, and every three years thereafter, by an independent auditor of the reported energy and capacity savings and cost-effectiveness of programs delivered by any entity appointed by the Board to deliver energy efficiency programs under subdivision (d)(2) of this section;

(13) Ensure that any energy efficiency program approved by the Board shall be reasonable and cost-effective;

(14) Consider the impact on retail electric rates and bills of programs delivered under subsection (d) of this section and the impact on fuel prices and bills;

(15) Ensure that the energy efficiency programs implemented under this section are designed to make continuous and proportional progress toward attaining the overall State building efficiency goals established by 10 V.S.A. § 581, by promoting all forms of energy end-use efficiency and comprehensive sustainable building design.

(g) **Thermal energy and process fuel efficiency programs; additional criteria.** With respect to energy efficiency programs delivered under this section to thermal energy and process fuel customers, the Board shall:

(1) ensure that programs are delivered on a whole-buildings basis to help meet the State's building efficiency goals established by 10 V.S.A. § 581 and to reduce greenhouse gas emissions from thermal energy and process fuel use in Vermont;

(2) require the establishment of a statewide information clearinghouse to enable effective access for customers to and effective coordination across programs. The clearinghouse shall

serve as a portal for customers to access thermal energy and process fuel efficiency services and for coordination among State, regional, and local entities involved in the planning or delivery of such services, making referrals as appropriate to service providers and to entities having information on associated environmental issues such as the presence of asbestos in existing insulation;

(3) in consultation with the Agency of Natural Resources, establish annual interim goals starting in 2014 to meet the 2017 and 2020 goals for improving the energy fitness of housing stock stated in 10 V.S.A. § 581(1);

(4) ensure the monitoring of the State's progress in meeting the goals of 10 V.S.A. § 581(1). This monitoring shall be performed according to a standard methodology and on a periodic basis that is not less than annual.

* * *

(j) Self-managed energy efficiency programs.

(1) There shall be a class of self-managed energy efficiency programs for transmission and industrial electric ratepayers only.

(2) The Board, by order, shall enact this class of programs.

(3) Entities approved to participate in the self-managed energy efficiency program class shall be exempt from all statewide charges under subdivision (d)(3) of this section that support energy efficiency programs performed by or on behalf of Vermont electric utilities. If an electric ratepayer approved to participate in this program class also is a customer of a natural gas utility, the ratepayer shall be exempt from all charges under subdivision (d)(3) of this section or contained within the rates charged by the natural gas utility to the ratepayer that support energy efficiency programs performed by or on behalf of that utility, provided that the ratepayer complies with this subsection.

(4) All of the following shall apply to a class of programs under this subsection:

(A) A member of the transmission or industrial electric rate classes shall be eligible to apply to participate in the self-managed energy efficiency program class if the charges to the applicant, or to its predecessor in interest at the served property, under subdivision (d)(3) of this section were a minimum of \$1.5 million during calendar year 2008.

(B) A cost-based fee to be determined by the Board shall be charged to the applicant to cover the administrative costs, including savings verification, incurred by the Board and Department. The Board shall determine procedures for savings verification. Such procedures shall be consistent with savings verification procedures established for entities appointed under subdivision (d)(2) of this section.

(C) An applicant shall demonstrate to the Board that it has a comprehensive energy management program with annual objectives. Achievement of certification of ISO standard 14001 shall be eligible to satisfy the requirements of having a comprehensive program.

(D) An applicant shall commit to an annual average energy efficiency investment during each three-year period that the applicant participates in the program of no less than \$1 million. To achieve the exemption from energy efficiency charges related to natural gas under subdivision (3) of this subsection (j), the applicant shall make an additional annual energy efficiency investment in an amount not less than \$55,000.00.

(E) Participation in the self-managed program includes efficiency programs and measures applicable to electric and other forms of energy. A participant may balance efficiency investments across all types of energy or fuels without limitations.

(F) A participant shall provide to the Board and Department annually an accounting of energy investments and energy savings in the form prescribed by the Board, which may conduct reasonable audits to ensure accuracy of the data provided.

(G) The Board shall report to the General Assembly annually by April 30 concerning the prior calendar year's class of self-managed energy efficiency programs. The report shall include identification of participants, their annual investments, and resulting savings, and any actions taken to exclude entities from the program.

(H) Upon approval of an application by the Board, the applicant shall be able to participate in the class of self-managed energy efficiency programs.

(I) On a determination that, for a given three-year period, a participant in the self-managed efficiency program class did not meet or has not met the commitment required by subdivision (4)(D) of this subsection, the Board shall terminate the participant's eligibility for the self-managed program class.

(i) On such termination, the former participant will be subject fully to the then existing charges applicable to its rate class without exemption under subdivision (3) of this subsection, and within 90 days of such termination shall pay:

(I) the difference between the investment it made pursuant to the self-managed energy efficiency program during the three-year period of noncompliance and the full amount of the charges and rates related to energy efficiency it would have incurred during that period absent exemption under subdivision (3) of this subsection; and

(II) the difference between the investment it made pursuant to the program within the current three-year period, if different from the period of noncompliance, and the full amount of the charges and rates related to energy efficiency it would have incurred during the current period absent exemption under subdivision (3) of this subsection.

(ii) Payments under subdivision (4)(i) of this subsection (j) shall be made to the entities to which the full amount of charges and rates would have been paid absent exemption under subdivision (3) of this subsection.

(iii) A former participant may not reapply for membership in the self-managed program after termination under this subdivision (4)(I).

(J) A participant in the self-managed program class may request confidentiality of data it reports to the Board if the data would qualify for exemption from disclosure under 1 V.S.A. § 317. If such confidentiality is requested, the Board shall disclose the data only in accordance with a protective agreement approved by the Board and signed by the recipient of the data, unless a court orders otherwise.

(K) Any data not subject to a confidentiality request under subdivision (4)(J) of this subsection will be a public record.

(L) A participant in the self-managed program class may submit projects to the independent system operator of New England, including through recognized aggregators, for payments under that operator's forward capacity market program, and shall invest such payments in electric or fuel efficiency.

(M) A participant in the self-managed program class may receive funding from an energy program administered by a government or other entity which is not the participant but

may not count such funds received as part of the annual commitment to its self-managed energy efficiency program.

(N) If, at the end of every third year after an applicant's approval to participate in the self-managed efficiency program (the three-year period), the applicant has not met the commitment required by subdivision (4)(D) of this subsection, the applicant shall pay the difference between the investment the applicant made while in the self-managed energy efficiency program and the full amount of charges and rates that the applicant would have incurred absent the exemption under subdivision (3) of this subsection. This payment shall be made no later than 90 days after the end of the three-year period to the entities to which the full amount of those charges and rates would have been paid absent the exemption.

(5) This subdivision applies to a transferee of all or substantially all of the assets at the served property of an entity approved to participate in the self managed energy efficiency program. The Board shall allow the transferee to continue as a participant in the self managed energy efficiency program class in the same manner and under the same terms and conditions that the transferor participant was authorized to participate, provided:

(A) the transferor participant met the requirements of subdivision (4)(A) of this subsection (j) and the transferee otherwise meets the requirements of this subsection; and

(B) the transferee assumes the obligation to fulfill any outstanding commitment of the transferor participant under subdivision (4)(D) of this subsection.

II. Least Cost Planning: 30 V.S.A. § 218c

§ 218c. Least cost integrated planning

(a)(1) A "least cost integrated plan" for a regulated electric or gas utility is a plan for meeting the public's need for energy services, after safety concerns are addressed, at the lowest present value life cycle cost, including environmental and economic costs, through a strategy combining investments and expenditures on energy supply, transmission, and distribution capacity, transmission and distribution efficiency, and comprehensive energy efficiency programs. Economic costs shall be assessed with due regard to:

(A) the greenhouse gas inventory developed under the provisions of 10 V.S.A. § 582;

(B) the State's progress in meeting its greenhouse gas reduction goals;

(C) the value of the financial risks associated with greenhouse gas emissions from various power sources; and

(D) consistency with section 8001 (renewable energy goals) of this title.

(2) "Comprehensive energy efficiency programs" shall mean a coordinated set of investments or program expenditures made by a regulated electric or gas utility or other entity as approved by the Board pursuant to subsection 209(d) of this title to meet the public's need for energy services through efficiency, conservation or load management in all customer classes and areas of opportunity which is designed to acquire the full amount of cost effective savings from such investments or programs.

(b) Each regulated electric or gas company shall prepare and implement a least cost integrated plan for the provision of energy services to its Vermont customers. At least every third year on a

schedule directed by the Public Service Board, each such company shall submit a proposed plan to the Department of Public Service and the Public Service Board. The Board, after notice and opportunity for hearing, may approve a company's least cost integrated plan if it determines that the company's plan complies with the requirements of subdivision (a)(1) of this section and of sections 8004 and 8005 of this title.

III. Revenues from Regional Greenhouse Gas Initiative (RGGI): 30 V.S.A. § 255

§ 255. Regional coordination to reduce greenhouse gases

* * *

(d) **Appointment of consumer trustees.** The Public Service Board, by rule, order, or competitive solicitation, may appoint one or more consumer trustees to receive, hold, bank, and sell tradable carbon credits created under this program. Trustees may include Vermont electric distribution utilities, the fiscal agent collecting and disbursing funds to support the statewide efficiency utility, or a financial institution or other entity with the expertise and financial resources to manage a portfolio of carbon credits for the long-term benefit of Vermont energy consumers. The net proceeds above costs from the sale of carbon credits shall be deposited into the Electric Efficiency Fund established under subdivision 209(d)(3) of this title. These funds shall be used by the entity or entities appointed under subdivision 209(d)(2)(B) of this title to help meet the building efficiency goals established under 10 V.S.A. § 581 by delivering heating and process-fuel energy efficiency services to Vermont consumers who use such fuel.

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IV. Renewable Energy Standard (RES), Definition of Energy Transformation Project: 30 V.S.A. § 8002

§ 8002. Definitions

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(25) “Energy transformation project” means an undertaking that provides energy-related goods or services but does not include or consist of the generation of electricity and that results in a net reduction in fossil fuel consumption by the customers of a retail electricity provider and in the emission of greenhouse gases attributable to that consumption. Examples of energy transformation projects may include home weatherization or other thermal energy efficiency measures; air source or geothermal heat pumps; high efficiency heating systems; increased use of biofuels; biomass heating systems; support for transportation demand management strategies; support for electric vehicles or related infrastructure; and infrastructure for the storage of renewable energy on the electric grid.

* * *

V. RES; Energy Transformation Category (known as Tier 3): 30 V.S.A. § 8005**§ 8005. RES categories**

(a) **Categories.** This section specifies three categories of required resources to meet the requirements of the RES established in section 8004 of this title: total renewable energy, distributed renewable generation, and energy transformation.

* * *

(3) Energy transformation.

(A) *Purpose; establishment.* This subsection establishes an energy transformation category for the RES. This category encourages Vermont retail electricity providers to support additional distributed renewable generation or to support other projects to reduce fossil fuel consumed by their customers and the emission of greenhouse gases attributable to that consumption. A retail electricity provider may satisfy the energy transformation requirement through distributed renewable generation in addition to the generation used to satisfy subdivision (a)(2) of this section or energy transformation projects or a combination of such generation and projects.

(B) *Required amounts.* For the energy transformation category, the required amounts shall be two percent of each retail electricity provider's annual retail electric sales during the year beginning January 1, 2017, increasing by an additional two-thirds of a percent each subsequent January 1 until reaching 12 percent on and after January 1, 2032. However, in the case of a provider that is a municipal electric utility serving not more than 6,000 customers, the required amount shall be two percent of the provider's annual retail sales beginning on January 1, 2019, increasing by an additional two thirds of a percent each subsequent January 1 until reaching 10 and two thirds percent on and after January 1, 2032. Prior to January 1, 2019, such a municipal electric utility voluntarily may engage in one or more energy transformation projects in accordance with this subdivision (3).

(C) *Eligibility criteria.* For an energy transformation project to be eligible under this subdivision (a)(3), each of the following shall apply:

(i) Implementation of the project shall have commenced on or after January 1, 2015.

(ii) Over its life, the project shall result in a net reduction in fossil fuel consumed by the provider's customers and in the emission of greenhouse gases attributable to that consumption, whether or not the fuel is supplied by the provider.

(iii) The project shall meet the need for its goods or services at the lowest present value life cycle cost, including environmental and economic costs. Evaluation of whether this subdivision (iii) is met shall include analysis of alternatives that do not increase electricity consumption.

(iv) The project shall cost the utility less per MWH than the applicable alternative compliance payment rate.

(D) *Conversion.* For the purpose of determining eligibility and the application of the energy transformation project to a provider's annual requirement, the provider shall convert the net reduction in fossil fuel consumption resulting from the energy transformation project to a MWH equivalent of electric energy, in accordance with rules adopted by the Board. The

conversion shall use the most recent year's approximate heat rate for electricity net generation from the total fossil fuels category as reported by the U.S. Energy Information Administration in its Monthly Energy Review. If an energy transformation project is funded by more than one regulated entity, the Board shall prorate the reduction in fossil fuel consumption among the regulated entities. In this subdivision (D), "regulated entity" includes each provider and each efficiency entity appointed under subsection 209(d) of this title.

(E) *Other sources.*

(i) A retail electricity provider or a provider's partner may oversee an energy transformation project under this subdivision (3). However, the provider shall deliver the project's goods or services in partnership with persons other than the provider unless exclusive delivery through the provider is more cost-effective than delivery by another person or there is no person other than the provider with the expertise or capability to deliver the goods or services.

(ii) An energy transformation project may provide incremental support to a program authorized under Vermont statute that meets the eligibility criteria of this subdivision (3) but may take credit only for the additional amount of service supported and shall not take credit for that program's regularly budgeted or approved investments.

(iii) To meet the requirements of this subdivision (3), one or more retail electricity providers may jointly propose with an energy efficiency entity appointed under subdivision 209(d)(2) of this title an energy transformation project or group of such projects. The proposal shall include standards of measuring performance and methods to allocate savings and reductions in fossil fuel consumption and greenhouse gas emissions among each participating provider and efficiency entity.

(F) *Implementation.* To carry out this subdivision (3), the Board shall adopt rules:

(i) For the conversion methodology in accordance with subdivision (3)(D) of this subsection (a).

(ii) To provide a process for prior approval of energy transformation projects by the Board or its designee. This process shall ensure that each of these projects meets the requirements of this subdivision (3) and need not consist of individual review of each energy transformation project prior to implementation as long as the mechanism ensures those requirements are met. An energy transformation project that commenced prior to initial adoption of rules under this subdivision (F) may seek approval after such adoption.

(iii) For cost-effectiveness screening of energy transformation projects. This screening shall be consistent with the provisions of this subdivision (3) and, as applicable, the screening tests developed under subsections 209(d) (energy efficiency) and 218c(a) (least-cost integrated planning) of this title.

(iv) To allow a provider who has met its required amount under this subdivision (3) in a given year to apply excess net reduction in fossil fuel consumption, expressed as a MWH equivalent, from its energy transformation project or projects during that year toward the provider's required amount in a future year.

(v) To ensure periodic evaluation of an energy transformation project's claimed fossil fuel reductions, avoided greenhouse gas emissions, conversion to MWH equivalent, cost effectiveness and, if applicable, energy savings, and to ensure annual verification and auditing of a provider's claims regarding project completion and resulting MWH equivalent. Changes to project claims resulting from periodic evaluations shall not reduce retroactively claims made on

behalf of a project approved under subdivision (3)(F)(ii) of this subsection (a) or reduce verified claims carried forward under subdivision (3)(F)(iv) of this subsection (a).

(vi) To ensure that all ratepayers have an equitable opportunity to participate in, and benefit from, energy transformation projects regardless of rate class, income level, or provider service territory.

(vii) To ensure the coordinated delivery of energy transformation projects with the delivery of similar services, including low income weatherization programs, entities that fund and support affordable housing, energy efficiency programs delivered under section 209 of this title, and other energy efficiency programs delivered locally or regionally within the State.

(viii) To ensure that, if an energy transformation project will increase the use of electric energy, the project incorporates best practices for demand management, uses technologies appropriate for Vermont, and encourages the installation of the technologies in buildings that meet minimum energy performance standards.

(ix) To provide a process under which a provider may withdraw from or terminate, in an orderly manner, an ongoing energy transformation project that no longer meets the eligibility criteria because of one or more factors beyond the control of the project and the provider.

(G) *Petitions*. On petition of a retail electricity provider in any given year, the Board may:

(i) reduce the provider's required amount under this subdivision (3) for that year, without penalty or alternative compliance payment, if the Board finds that compliance with the required amount for that year will:

(I) cause the provider to increase significantly its retail rates; or

(II) materially impair the provider's ability to meet the public's need for energy services after safety concerns are addressed, in the manner set forth in subdivision 218c(a)(1) (least-cost integrated planning) of this title; or

(ii) allow a provider who failed to achieve the required amount under this subdivision (3) during the preceding year to avoid paying the alternative compliance payment if the Board:

(I) finds that the provider made a good faith effort to achieve the required amount and its failure to achieve that amount resulted from market factors beyond its control; and

(II) directs that the provider add the difference between the required amount and the provider's actually achieved amount for that year to its required amount for one or more future years.

VI. Property Assessed Clean Energy (PACE)

A. PACE Written Agreement; Prior Analysis: 24 V.S.A. § 3262

§ 3262. Written agreements; consent of property owners; energy savings analysis

(a) Upon an affirmative vote made pursuant to section 3261 of this title and the performance of an energy savings analysis pursuant to subsection (b) of this section, an owner of a dwelling, as defined in Section 103(v) of the federal Truth in Lending Act, within the boundaries of a district may enter into a written agreement with the municipality that shall constitute the owner's

consent to be subject to a special assessment, as set forth in section 3255 of this title. Entry into such an agreement may occur only after January 1, 2012. A participating municipality shall follow underwriting criteria established by the Department of Financial Regulation, and shall establish other qualifying criteria to provide an adequate level of assurance that property owners will have the ability to meet assessment payment obligations. A participating municipality shall refuse to enter into a written agreement with a property owner who fails to meet the underwriting or other qualifying criteria.

(b) Prior to entering into a written agreement, a property owner shall have an analysis performed to quantify the project costs and energy savings and estimated carbon impacts of the proposed energy improvements, including an annual cash-flow analysis. This analysis shall be conducted by the entities appointed as energy efficiency utilities under 30 V.S.A. § 209(d)(2), or conducted by another entity deemed qualified by the participating municipality. All analyses shall be reviewed and approved by the entities appointed as energy efficiency utilities.

(c) A written agreement shall provide that:

(1) The length of time allowed for the property owner to repay the assessment shall not exceed the life expectancy of the project. In instances where multiple projects have been installed, the length of time shall not exceed the average lifetime of all projects, weighted by cost. Lifetimes of projects shall be determined by the entities appointed as energy efficiency utilities under 30 V.S.A. § 209(d)(2) or another qualified technical entity designated by a participating municipality.

* * *

B. PACE; Eligible Projects; Assistance to Municipalities: 24 V.S.A. § 3267

§ 3267. Eligible energy efficiency projects; assistance to municipalities

Those entities appointed as energy efficiency utilities under 30 V.S.A. § 209(d):

(1) shall develop a list of eligible energy efficiency projects and shall make the list available to the public on or before July 1 of each year; and

(2) shall provide information concerning implementation of this subchapter to each municipality, within the area in which the entity delivers efficiency services, that requests such information, and shall contact each such municipality that votes to establish a district to offer this information.

C. PACE; Reserve Fund Administration: 24 V.S.A. § 3269

§ 3269. Reserve fund

(a) A reserve fund is created for use in paying the past due balances of an assessment under this subchapter in the event that there is a foreclosure upon the property subject to the assessment and the proceeds resulting from the foreclosure are, after all superior liens have been satisfied, insufficient to pay those past due balances. The reserve fund shall comply with the provisions of subsections (b) through (e) of this section and shall be administered by and in the custody of the entity described in subsection (f) of this section. Each municipality that establishes a district under this subchapter shall participate in the reserve fund created by this subsection.

(b) The reserve fund shall be funded by participating property owners at a level sufficient to provide for the payment of past due balances described in subdivision 3262(c)(2) of this title in the event of a foreclosure upon a participating property and the costs of administering the reserve fund and shall only be used to provide for such payment and administration.

* * *

(f) An entity appointed under 30 V.S.A. § 209(d)(2) to deliver energy efficiency programs to multiple service territories shall administer the reserve fund created under subdivision (a)(1) of this section.

(1) The entity's costs of administering the reserve fund shall be considered costs of operating the districts under section 3263 of this title.

(2) In the event of foreclosure on a property that is subject to a special assessment and is in a district that participates in the reserve fund administered by the entity, the entity's obligation shall be to disburse, at the direction of the municipality, monies from the reserve fund to apply to the past due balances of the assessment. In no event shall other monies received or held by the entity be available to meet this obligation or the payment of balances on an assessment.

(3) The entity shall keep an accurate account of all activities and receipts and expenditures under this subsection. An independent audit of the reserve fund shall be conducted annually. The cost of such an audit shall be considered a cost of administering the reserve fund. Where feasible, the entity shall cause this audit to be conducted in conjunction with other independent audits of its accounts, receipts, and expenditures. An audit conducted under this subdivision shall be available, on request, to the Auditor of Accounts and the Commissioners of Financial Regulation and of Public Service.

D. State PACE Reserve Fund: 24 V.S.A. § 3270

§ 3270. State PACE reserve fund

(a) The State PACE Reserve Fund is established to be held in the custody of and administered by the State Treasurer. The purpose of the State PACE Reserve Fund shall be to reduce, for those districts for which the entity described in subsection 3269(f) of this title administers the loss reserve fund, the risk faced by an investor making an agreement with a municipality to finance such a district.

* * *

(c) At the direction of the Treasurer, a sum shall be transferred to the Fund from monies deposited into the Energy Efficiency Fund pursuant to 30 V.S.A. § 209(d)(7) (net capacity savings payments) and (8) (net revenues from the sale of carbon credits).

* * *

(2) When directing a transfer under this subsection, the Treasurer shall notify the Commissioners of Finance and Management and of Public Service, the Chair of the Public Service Board, and the entity described in subsection 3269(f) of this title. Monies shall not be disbursed from the State PACE Reserve Fund until necessary resources are transferred to the Fund.

E. Monitoring EEU Participation in PACE: 24 V.S.A. § 3271**§ 3271. Monitoring; compliance; underwriting criteria**

The Department of Public Service created under 30 V.S.A. § 1 shall monitor and evaluate, for compliance with the underwriting criteria, standards, and procedures established under subsections 3262(a) (underwriting criteria for assessments) and 3269(c) and (d) (underwriting standards and procedures; loss reserve fund) of this title, all activities to which those criteria, standards, and procedures apply that are undertaken by an entity appointed under 30 V.S.A. § 209(d)(2) to deliver energy efficiency programs. The Department shall consult with the Department of Financial Regulation in performing these tasks. The Department of Public Service may combine its tasks under this section with monitoring and evaluation of an energy efficiency entity conducted pursuant to 30 V.S.A. § 209(d) or (e).

VII. Misc. Potentially Relevant Statutes**A. Electrical Energy Planning: 30 V.S.A. § 202****§ 202. Electrical energy planning**

(a) The Department of Public Service, through the Director for Regulated Utility Planning, shall constitute the responsible utility planning agency of the State for the purpose of obtaining for all consumers in the State proper utility service at minimum cost under efficient and economical management consistent with other public policy of the State. The Director shall be responsible for the provision of plans for meeting emerging trends related to electrical energy demand, supply, safety, and conservation.

(b) The Department, through the Director, shall prepare an electrical energy plan for the State. The Plan shall be for a 20-year period and shall serve as a basis for State electrical energy policy. The Electric Energy Plan shall be based on the principles of "least cost integrated planning" set out in and developed under section 218c of this title. The Plan shall include at a minimum:

* * *

(d) In establishing plans, the Director shall:

(1) Consult with:

- (A) the public;
- (B) Vermont municipal utilities;
- (C) Vermont cooperative utilities;
- (D) Vermont investor-owned utilities;
- (E) Vermont electric transmission companies;
- (F) environmental and residential consumer advocacy groups active in electricity issues;
- (G) industrial customer representatives;
- (H) commercial customer representatives;
- (I) the Public Service Board;

- (J) an entity designated to meet the public's need for energy efficiency services under subdivision 218c(a)(2) of this title;
- (K) other interested State agencies; and
- (L) other energy providers.

* * *

B. Fuel Efficiency Fund: 30 V.S.A. § 203a

§ 203a. Fuel Efficiency Fund

(a) Fuel Efficiency Fund. There is established the Fuel Efficiency Fund to be administered by a fund administrator appointed by the Board. Balances in the Fund shall be ratepayer funds, shall be used to support the activities authorized in this subdivision, and shall be carried forward and remain in the Fund at the end of each fiscal year. These monies shall not be available to meet the general obligations of the State. Interest earned shall remain in the Fund. The Fund shall contain such sums as appropriated by the General Assembly or as otherwise provided by law, in addition to revenues from the sale of credits under the RGGI cap and trade program as provided for under section 255 of this title.

(b) Use of the Fund. The Fuel Efficiency Fund shall be used to support the delivery of energy efficiency services to Vermont heating and process fuel consumers and to carry out cost-effective efficiency measures and reductions in greenhouse gas emissions from those sectors. These energy efficiency services shall be delivered by the service provider or providers selected by the Public Service Department under section 235 of this title to perform these functions.

(c) Report. On or before January 15, 2010, and annually thereafter, the Department of Public Service shall report to the General Assembly on the expenditure of funds from the Fuel Efficiency Fund to meet the public's needs for energy efficiency services. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

(d) Department costs. Up to five percent of amounts allocated to the Public Service Department from the Fund may be used for administrative costs directly related to the Fuel Efficiency Fund.

C. Heat and Process Fuel Efficiency Program: 30 V.S.A. § 235

§ 235. Heating and process fuel efficiency program

(a) After consultation with fuel dealers, any appointed efficiency entity, financial institutions, the board, representatives of the weatherization program, and other stakeholders, the department of public service shall propose, develop, solicit, and monitor any combination of energy efficiency and conservation programs, measures, and compensation mechanisms to provide fuel efficiency services on a statewide basis for Vermont heating or process fuel consumers. The department shall select one or more service providers as needed and pursuant to a competitive bidding process to implement those programs, measures, or compensation mechanisms by means of performance-based contracts that are based upon verified savings in energy usage and demand, and other performance targets. The contracts entered into during the first year after the

effective date of this section shall be for a period of time of no greater than three years. Those programs, measures, and compensation mechanisms shall include fuel efficiency services that:

- (1) produce whole building and process heat efficiency, regardless of the fuel type used;
- (2) facilitate appropriate fuel switching; and
- (3) promote coordination, to the fullest practical extent, with the electric efficiency

programs established and administered pursuant to this chapter, as well as with low income weatherization programs and any utility energy efficiency programs.

(b) Prior to the department of public service entering a contract with service providers under this section and after such notice and hearings as it may require, the public service board shall review the programs, measures, and compensation mechanisms selected by the department to determine whether these programs, measures, and compensation mechanisms promote the public good. The board may alter or impose conditions on any combination of these programs, measures, or compensation mechanisms as it deems necessary to promote the public good. If the department thereafter changes the programs, measures, or compensation mechanisms, it shall request review under this section by the board prior to implementing those changes.

(c) Funding for the program established under this section shall be provided from the fuel efficiency fund established under section 203a of this title. During fiscal year 2009, any contracts or grants to be made from the fund for other than administrative purposes shall be subject to appropriation by the general assembly. The department shall provide the joint fiscal committee, at the committee's November 2008 meeting, with a preliminary report on the program to be presented to the public service board.

* * *

D. "Attribute" Revenues: 30 V.S.A. § 8008

§ 8008. Agreements; attribute revenues; disposition by Board

(a) For the purpose of this section, "the revenues" means revenues that are from the sale, through tradeable renewable energy certificates or other means, of environmental attributes associated with the generation of renewable energy from a system of generation resources with a total plant capacity greater than 200 MW and that are received by a Vermont retail electricity provider on and after May 1, 2012, pursuant to an agreement, contract, memorandum of understanding, or other transaction in which a person or entity agrees to transfer such revenues or rights associated with such attributes to the provider.

(b) After notice and opportunity for hearing, the Board shall determine the disposition, allocation, and use of the revenues in a manner that promotes State energy policy as stated in section 202a of this title and the goals of this chapter and supports achievement of the greenhouse gas reduction and building efficiency goals contained in 10 V.S.A. §§ 578(a) and 581.

(1) The Board shall provide notice of the proceeding to each Vermont retail electricity provider, the Department, the Clean Energy Development Board under 10 V.S.A. § 6523, each fuel efficiency service provider appointed under subsection 203a(b) of this title, each energy efficiency entity appointed under subdivision 209(d)(2) of this title, the Institute for Energy and the Environment at the Vermont Law School, the Transportation Research Center at the

University of Vermont, and any other persons or entities that have requested notice. The Board may provide notice to additional persons or entities.

(2) In determining the disposition, allocation, and use of the revenues, the Board shall consider each of the following potential uses of the revenues:

(A) Development of in-state renewable energy resources.

(B) Deposit into the Clean Energy Development Fund for use pursuant to section 8015 of this title.

(C) Deposit into the Fuel Efficiency Fund for use pursuant to section 203a of this title.

(D) Deposit into the Electric Efficiency Fund for use pursuant to section 209(d) of this title.

(E) Application, for the benefit of ratepayers, to the revenue requirement of one or more Vermont retail electricity providers.

(F) Development of transportation alternatives to vehicles that use gasoline such as electric or natural gas vehicles and supporting infrastructure and the coordination of such development with so-called "smart grid" electric transmission and distribution networks.

(G) Any other uses that support the statutory policy and goals referenced in this subsection (b).

(c) A Vermont retail electricity provider shall notify the Board within 30 days of the first receipt of the revenues pursuant to an agreement, contract, memorandum of understanding, or other transaction under which it will receive the revenues. The Board will open a proceeding under this section promptly on receipt of such notice and shall issue a final order in the proceeding within 12 months of such receipt.

(d) Any of the revenues that are received prior to completion of the 12-month period described in subsection (c) of this section shall be credited, for the benefit of ratepayers, against the revenue requirement of the Vermont retail electricity provider that receives the revenues.