


30 V.S.A. § 248

Current through Act Nos. 104 and M-21 of the 2023 Adjourned Session of the 2023-2024 Vermont General Assembly

Vermont Statutes Annotated > Title 30 Public Service (Pts. 1 — 3) > Part 1. Department of Public Service and Public Utility Commission (Chs. 1 — 14) > Chapter 5. State Policy; Plans; Jurisdiction and Regulatory Authority of Commission and Department (Subchs. 1 — 2) > Subchapter 1. General Powers (§§ 201 — 255)

Notice

 This section has more than one version with varying effective dates.

§ 248. New gas and electric purchases, investments, and facilities; certificate of public good [Effective July 1, 2024]

(a)

(1) No company, as defined in section 201 of this subchapter, may:

(A) in any way purchase electric capacity or energy from outside the State:

(i) for a period exceeding five years, that represents more than three percent of its historic peak demand, unless the purchase is from a plant as defined in section 8002 of this title that produces electricity from renewable energy as defined under section 8002; or

(ii) for a period exceeding 10 years, that represents more than 10 percent of its historic peak demand, if the purchase is from a plant as defined in section 8002 of this title that produces electricity from renewable energy as defined under section 8002; or

(B) invest in an electric generation facility, energy storage facility, or transmission facility located outside this State unless the Public Utility Commission first finds that the same will promote the general good of the State and issues a certificate to that effect.

(2) Except for the replacement of existing facilities with equivalent facilities in the usual course of business, and except for electric generation or energy storage facilities that are operated solely for on-site electricity consumption by the owner of those facilities and for hydroelectric generation facilities subject to licensing jurisdiction under the Federal Power Act, 16 U.S.C. chapter 12, subchapter 1:

(A) no company, as defined in section 201 of this title, and no person, as defined in 10 V.S.A. § 6001(14), may begin site preparation for or construction of an electric generation

facility, energy storage facility, or electric transmission facility within the State that is designed for immediate or eventual operation at any voltage; and

(B) no such company may exercise the right of eminent domain in connection with site preparation for or construction of any such transmission facility, energy storage facility, or generation facility, unless the Public Utility Commission first finds that the same will promote the general good of the State and issues a certificate to that effect.

(3) No company, as defined in section 201 of this title, and no person, as defined in 10 V.S.A. § 6001(14), may in any way begin site preparation for or commence construction of any natural gas facility, except for the replacement of existing facilities with equivalent facilities in the usual course of business, unless the Public Utility Commission first finds that the same will promote the general good of the State and issues a certificate to that effect pursuant to this section.

(A) For the purposes of this section, the term “natural gas facility” shall mean any natural gas transmission line, storage facility, manufactured-gas facility, or other structure incident to any such line or facility. For purposes of this section, a “natural gas transmission line” shall include any feeder main or any pipeline facility constructed to deliver natural gas in Vermont directly from a natural gas pipeline facility that has been certified pursuant to the Natural Gas Act, 15 U.S.C. § 717 et seq.

(B) For the purposes of this section, the term “company” shall not include a “natural gas company” (including a “person which will be a natural gas company upon completion of any proposed construction or extension of facilities”), within the meaning of the Natural Gas Act, 15 U.S.C. § 717 et seq.; provided however, that the term “company” shall include any “natural gas company” to the extent it proposes to construct in Vermont a natural gas facility that is not solely subject to federal jurisdiction under the Natural Gas Act.

(C) The Public Utility Commission shall have the authority to, and may in its discretion, conduct a proceeding, as set forth in subsection (h) of this section, with respect to a natural gas facility proposed to be constructed in Vermont by a “natural gas company” for the purpose of developing an opinion in connection with federal certification or other federal approval proceedings.

(4)

(A) With respect to a facility located in the State, in response to a request from one or more members of the public or a party, the Public Utility Commission shall hold a nonevidentiary public hearing on a petition for such finding and certificate in at least one county in which any portion of the construction of the facility is proposed to be located. The Commission in its discretion may hold a nonevidentiary public hearing in the absence of any request from a member of the public or a party. From the comments made at a public hearing, the Commission shall derive areas of inquiry that are relevant to the findings to be made under this section and shall address each such area in its decision. Prior to making findings, if the record does not contain evidence on such an area, the Commission shall direct the parties to provide evidence on the area. This subdivision does not require the Commission to respond to each individual comment.

(B) The Public Utility Commission shall hold evidentiary hearings at locations that it selects in any case conducted under this section in which contested issues remain or when

any party to a case requests that an evidentiary hearing be held. In the event a case is fully resolved and no party requests a hearing, the Commission may exercise its discretion and determine that an evidentiary hearing is not necessary to protect the interests of the parties or the public, or for the Commission to reach its decision on the matter.

(C) Within two business days following notification from the Commission that the petition is complete, the petitioner shall serve copies of the complete petition on the Attorney General and the Department of Public Service, and, with respect to facilities within the State, the Department of Health; Agency of Natural Resources; Historic Preservation Division; Agency of Transportation; Agency of Agriculture, Food and Markets; and to the chair or director of the municipal and regional planning commissions and the municipal legislative body for each town and city in which the proposed facility will be located.

(D) Notice of the public hearing shall be published and maintained on the Commission's website for at least 12 days before the day appointed for the hearing. Notice of the public hearing shall be published once in a newspaper of general circulation in the county or counties in which the proposed facility will be located, and the notice shall include an Internet address where more information regarding the proposed facility may be viewed.

(E) The Agency of Natural Resources shall appear as a party in any proceedings held under this subsection, shall provide evidence and recommendations concerning any findings to be made under subdivision (b)(5) of this section, and may provide evidence and recommendations concerning any other matters to be determined by the Commission in such a proceeding.

(F) The following shall apply to the participation of the Agency of Agriculture, Food and Markets in proceedings held under this subsection:

(i) In any proceeding regarding an electric generation facility that will have a capacity greater than 500 kilowatts or an energy storage facility that will have a capacity greater than 1 megawatt and will be sited on a tract containing primary agricultural soils as defined in 10 V.S.A. § 6001, the Agency shall appear as a party and provide evidence and recommendations concerning any findings to be made under subdivision (b)(5) of this section on those soils, and may provide evidence and recommendations concerning any other matters to be determined by the Commission in such a proceeding.

(ii) In a proceeding other than one described in subdivision (i) of this subdivision (4)(F), the Agency shall have the right to appear and participate.

(G) The regional planning commission for the region in which the facility is located shall have the right to appear as a party in any proceedings held under this subsection. The regional planning commission of an adjacent region shall have the same right if the distance of the facility's nearest component to the boundary of that planning commission is within 500 feet or 10 times the height of the facility's tallest component, whichever is greater.

(H) The legislative body and the planning commission for the municipality in which a facility is located shall have the right to appear as a party in any proceedings held under this subsection. The legislative body and planning commission of an adjacent municipality shall have the same right if the distance of the facility's nearest component to the boundary

of that adjacent municipality is within 500 feet or 10 times the height of the facility's tallest component, whichever is greater.

(I) When a person has the right to appear as a party in a proceeding before the Commission under this chapter, the person may exercise this right by filing a letter with the Commission stating that the person appears through the person's duly authorized representative, signed by that representative.

(J) This subdivision (J) applies to an application for an electric generation facility with a capacity that is greater than 50 kilowatts and to an application for an energy storage facility that is greater than 1 megawatt, unless the facility is located on a new or existing structure the primary purpose of which is not the generation of electricity. In addition to any other information required by the Commission, the application for such a facility shall include information that delineates:

- (i)** the full limits of physical disturbance due to the construction and operation of the facility and related infrastructure, including areas disturbed due to the creation or modification of access roads and utility lines and the clearing or management of vegetation;
- (ii)** the presence and total acreage of primary agricultural soils as defined in 10 V.S.A. § 6001 on each tract to be physically disturbed in connection with the construction and operation of the facility, the amount of those soils to be disturbed, and any other proposed impacts to those soils;
- (iii)** all visible infrastructure associated with the facility; and
- (iv)** all impacts of the facility's construction and operation under subdivision (b)(5) of this section, including impacts due to the creation or modification of access roads and utility lines and the clearing or management of vegetation.

(5) The Commission shall adopt rules regarding standard conditions on postconstruction inspection and maintenance of aesthetic mitigation and on decommissioning to be included in certificates of public good for in-state facilities approved under this section. The purpose of these standard conditions shall be to ensure that all required aesthetic mitigation is performed and maintained and that facilities are removed once they are no longer in service.

(6) In any certificate of public good issued under this section for an in-state plant as defined in section 8002 of this title that generates electricity from wind, the Commission shall require the plant to install radar-controlled obstruction lights on all wind turbines for which the Federal Aviation Administration (FAA) requires obstruction lights, if the plant includes four or more wind turbines and the FAA allows the use of radar-controlled lighting technology.

(A) Nothing in this subdivision shall allow the Commission to approve obstruction lights that do not meet FAA standards.

(B) The purpose of this subdivision (6) is to reduce the visual impact of wind turbine obstruction lights on the environment and nearby properties. The General Assembly finds that wind turbine obstruction lights that remain illuminated through the night create light pollution. Radar-controlled obstruction lights are only illuminated when aircraft are detected in the area, and therefore the use of these lights will reduce the negative environmental impacts of obstruction lights.

(7) When a certificate of public good under this section or amendment to such a certificate is issued for an in-state electric generation or energy storage facility with a capacity that is greater than 15 kilowatts, the certificate holder within 45 days shall record a notice of the certificate or amended certificate, on a form prescribed by the Commission, in the land records of each municipality in which a facility subject to the certificate is located and shall submit proof of this recording to the Commission. The recording under this subsection shall be indexed as though the certificate holder were the grantor of a deed. The prescribed form shall not exceed one page and shall require identification of the land on which the facility is to be located by reference to the conveyance to the current landowner, the number of the certificate, and the name of each person to which the certificate was issued, and shall include information on how to contact the Commission to view the certificate and supporting documents.

(b) Before the Public Utility Commission issues a certificate of public good as required under subsection (a) of this section, it shall find that the purchase, investment, or construction:

(1) With respect to an in-state facility, will not unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality. However:

(A) With respect to a natural gas transmission line subject to Commission review, the line shall be in conformance with any applicable provisions concerning such lines contained in the duly adopted regional plan; and, in addition, upon application of any party, the Commission shall condition any certificate of public good for a natural gas transmission line issued under this section so as to prohibit service connections that would not be in conformance with the adopted municipal plan in any municipality in which the line is located.

(B) With respect to a ground-mounted solar electric generation facility, the facility shall comply with the screening requirements of a municipal bylaw adopted under 24 V.S.A. § 4414(15) or a municipal ordinance adopted under 24 V.S.A. § 2291(28), and the recommendation of a municipality applying such a bylaw or ordinance, unless the Commission finds that requiring such compliance would prohibit or have the effect of prohibiting the installation of such a facility or have the effect of interfering with the facility's intended functional use.

(C) With respect to an in-state electric generation facility, the Commission shall give substantial deference to the land conservation measures and specific policies contained in a duly adopted regional and municipal plan that has received an affirmative determination of energy compliance under 24 V.S.A. § 4352. In this subdivision (C), "substantial deference" means that a land conservation measure or specific policy shall be applied in accordance with its terms unless there is a clear and convincing demonstration that other factors affecting the general good of the State outweigh the application of the measure or policy. The term shall not include consideration of whether the determination of energy compliance should or should not have been affirmative under 24 V.S.A. § 4352.

(2) Is required to meet the need for present and future demand for service that could not otherwise be provided in a more cost-effective manner through energy conservation programs

and measures and energy-efficiency and load management measures, including those developed pursuant to the provisions of subsection 209(d), section 218c, and subsection 218(b) of this title. In determining whether this criterion is met, the Commission shall assess the environmental and economic costs of the purchase, investment, or construction in the manner set out under subdivision 218c(a)(1) (least cost integrated plan) of this title and, as to a generation facility, shall consider whether the facility will avoid, reduce, or defer transmission or distribution system investments.

- (3)** Will not adversely affect system stability and reliability.
- (4)** Will result in an economic benefit to the State and its residents.
- (5)** With respect to an in-state facility, will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, the use of natural resources, and the public health and safety, with due consideration having been given to the criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K), impacts to primary agricultural soils as defined in 10 V.S.A. § 6001, and greenhouse gas impacts.
- (6)** With respect to purchases, investments, or construction by a company, is consistent with the principles for resource selection expressed in that company's approved least-cost integrated plan.
- (7)** Except as to a natural gas facility that is not part of or incidental to an electric generating facility, is in compliance with the electric energy plan approved by the Department under section 202 of this title, or that there exists good cause to permit the proposed action.
- (8)** Does not involve a facility affecting or located on any segment of the waters of the State that has been designated as outstanding resource waters by the Secretary of Natural Resources, except that with respect to a natural gas or electric transmission facility, the facility does not have an undue adverse effect on those outstanding resource waters.
- (9)** With respect to a waste to energy facility:
 - (A)** is included in a solid waste management plan adopted pursuant to 24 V.S.A. § 2202a, which is consistent with the State Solid Waste Management Plan; and
 - (B)** is included in a solid waste management plan adopted pursuant to 24 V.S.A. § 2202a for the municipality and solid waste district from which 1,000 tons or more per year of the waste is to originate, if that municipality or district owns an operating facility that already beneficially uses a portion of the waste.
- (10)** Except as to a natural gas facility that is not part of or incidental to an electric generating facility, can be served economically by existing or planned transmission facilities without undue adverse effect on Vermont utilities or customers.
- (11)** With respect to an in-state generation facility that produces electric energy using woody biomass, will:
 - (A)** comply with the applicable air pollution control requirements under the federal Clean Air Act, 42 U.S.C. § 7401 et seq.;
 - (B)** achieve the highest design system efficiency that is commercially available, feasible, and cost-effective for the type and design of the proposed facility; and

(C) comply with harvesting procedures and procurement standards that ensure long-term forest health and sustainability. These procedures and standards at a minimum shall be consistent with the guidelines and standards developed pursuant to 10 V.S.A. § 2750 (harvesting guidelines and procurement standards) when adopted under that statute.

(c)

(1) Except as otherwise provided in subdivision (j)(3) of this section, in the case of a municipal plant or department formed under local charter or chapter 79 of this title or a cooperative formed under chapter 81 of this title, any proposed investment, construction, or contract subject to this section shall be approved by a majority of the voters of a municipality or the members of a cooperative voting upon the question at a duly warned annual or special meeting to be held for that purpose. However, in the case of a cooperative formed under chapter 81 of this title, an investment in or construction of an in-state electric transmission facility shall not be subject to the requirements of this subsection if the investment or construction is solely for reliability purposes and does not include new construction or upgrades to serve a new generation facility.

(2) The municipal department or cooperative shall provide to the voters or members, as the case may be, written assessment of the risks and benefits of the proposed investment, construction, or contract that were identified by the Public Utility Commission in the certificate issued under this section. The municipal department or cooperative also may provide to the voters an assessment of any other risks and benefits.

(d) Nothing in this section shall be construed to prohibit a company from executing a letter of intent or entering into a contract before the issuance of a certificate of public good under this section, provided that the company's obligations under that letter of intent or contract are made subject to compliance with the requirements of this section.

(e)

(1) Before a certificate of public good is issued for the construction of a nuclear energy generating plant within the State, the Public Utility Commission shall obtain the approval of the General Assembly and the Assembly's determination that the construction of the proposed facility will promote the general welfare. The Public Utility Commission shall advise the General Assembly of any petition submitted under this section for the construction of a nuclear energy generating plant within this State, by written notice delivered to the Speaker of the House of Representatives and to the President of the Senate. The Department of Public Service shall submit recommendations relating to the proposed plant, and shall make available to the General Assembly all relevant material. The requirements of this subsection shall be in addition to the findings set forth in subsection (b) of this section.

(2) No nuclear energy generating plant within this State may be operated beyond the date permitted in any certificate of public good granted pursuant to this title, including any certificate in force as of January 1, 2006, unless the General Assembly approves and determines that the operation will promote the general welfare, and until the Public Utility Commission issues a certificate of public good under this section. If the General Assembly has not acted under this subsection by July 1, 2008, the Commission may commence proceedings under this section and under 10 V.S.A. chapter 157, relating to the storage of radioactive material, but may not issue a final order or certificate of public good until the General

Assembly determines that operation will promote the general welfare and grants approval for that operation.

(f) However, plans for the construction of such a facility within the State must be submitted by the petitioner to the municipal and regional planning commissions no less than 45 days prior to application for a certificate of public good under this section, unless the municipal and regional planning commissions shall waive such requirement.

(1) The municipal or regional planning commission may take one or more of the following actions:

(A) Hold a public hearing on the proposed plans. The planning commission may request that the petitioner or the Department of Public Service, or both, attend the hearing. The petitioner and the Department each shall have an obligation to comply with such a request. The Department shall consider the comments made and information obtained at the hearing in making recommendations to the Commission on the application and in determining whether to retain additional personnel under subdivision (1)(B) of this subsection.

(B) Request that the Department of Public Service exercise its authority under section 20 of this title to retain experts and other personnel to review the proposed facility. The Department may commence retention of these personnel once the petitioner has submitted proposed plans under this subsection. The Department may allocate the expenses incurred in retaining these personnel to the petitioner in accordance with section 21 of this title. Granting a request by a planning commission pursuant to this subdivision shall not oblige the Department or the personnel it retains to agree with the position of the commission.

(C) Make recommendations to the petitioner within 40 days following the petitioner's submittal to the planning commission under this subsection.

(D) Once the petition is filed with the Public Utility Commission, make recommendations to the Commission by the deadline for submitting comments or testimony set forth in the applicable provision of this section, Commission rule, or scheduling order issued by the Commission.

(2) The petitioner's application shall address the substantive written comments related to the criteria of subsection (b) of this section received by the petitioner within 45 days following the submittal made under this subsection and the substantive oral comments related to those criteria made at a public hearing under subdivision (1) of this subsection.

(g) Notwithstanding the 45 days' notice required by subsection (f) of this section, plans involving the relocation of an existing transmission line within the State must be submitted to the municipal and regional planning commissions no less than 21 days prior to application for a certificate of public good under this section.

(h) The position of the State of Vermont in federal certification or other approval proceedings for natural gas facilities shall be developed in accordance with this subsection.

(1) A natural gas facility requiring federal approval shall apply to the Public Utility Commission for an opinion under this section (on or before the date on which the facility applies for such federal approval in the case of a facility that has not applied for federal approval before January 16, 1988). Any opinion issued under this subsection shall be developed based upon the criteria established in subsection (b) of this section.

(2) If the Commission conducts proceedings under this subsection, the Department shall give due consideration to the Commission's opinion as to facilities of a natural gas company, and that opinion shall guide the position taken before federal agencies by the State of Vermont, acting through the Department of Public Service under section 215 of this title.

(3) If the Commission conducts proceedings under this subsection, it may consolidate them, solely for purposes of creating a common record, with any related proceedings conducted under subdivision (a)(3) of this section.

(i)

(1) No company, as defined in sections 201 and 203 of this chapter, without approval by the Commission, after giving notice of such investment or filing a copy of that contract with the Commission and the Department at least 30 days prior to the proposed effective date of that contract or investment:

(A) may invest in a gas-production facility located outside this State; or

(B) may execute a contract for the purchase of gas from outside the State, for resale to firm-tariff customers, that:

(i) is for a period exceeding five years; or

(ii) represents more than 10 percent of that company's peak demand for resale to firm-tariff customers.

(2) The Department and the Commission shall consider within 30 days whether to investigate the proposed investment or contract.

(3) The Commission, upon its own motion or upon the recommendation of the Department, may determine to initiate an investigation. If the Commission does not initiate an investigation within such 30-day period, the contract or investment shall be deemed to be approved. If the Commission determines to initiate an investigation, it shall give notice of that decision to the company proposing the investment or contract, the Department, and such other persons as the Commission determines are appropriate. The Commission shall conclude its investigation within 120 days following issuance of its notice of investigation, or within such shorter period as it deems appropriate, unless the company consents to waive the 120-day requirement. Except when the company consents to waive the 120-day requirement, if the Commission fails to issue a decision within that 120-day period, the contract or investment shall be deemed to be approved. The Commission may hold informal, public, or evidentiary hearings on the proposed investment or contract.

(4) Nothing in this subsection shall prohibit a company from negotiating or adjusting periodically the price of other terms of supply through a supplement to such a contract, provided that the supplement falls within the terms specified in such a contract, as approved. The Commission's authority to investigate such adjustments under other authorities of this title shall not be impaired. Such a company shall file with the Department and the Commission a copy of any such supplement to the contract or other documentation that states any terms that have been renegotiated or adjusted by the company at least 30 days prior to the effective date of the renegotiated or adjusted price or other terms.

(5) Nothing in this subsection shall be construed to prohibit a gas company from executing a development contract, a contract for design and engineering, a contract to seek regulatory approvals for a gas-production facility, or a letter of intent for such purchase of gas that makes the company's obligations under that letter of intent subject to the requirements of this subsection, prior to the filing with the Commission and Department of such notice or proposed contract or pending any investigation under this subsection.

(j)

(1) The Commission may, subject to such conditions as it may otherwise lawfully impose, issue a certificate of public good in accordance with the provisions of this subsection and without the notice and hearings otherwise required by this chapter if the Commission finds that:

- (A) approval is sought for construction of facilities described in subdivision (a)(2) or (3) of this section;
- (B) such facilities will be of limited size and scope;
- (C) the petition does not raise a significant issue with respect to the substantive criteria of this section; and
- (D) the public interest is satisfied by the procedures authorized by this subsection.

(2) Any party seeking to proceed under the procedures authorized by this subsection shall file a proposed certificate of public good and proposed findings of fact with its petition. Within two business days following notification by the Commission that the filing is complete, the party shall serve copies of the complete filing on the parties specified in subdivision (a)(4)(C) of this section and the party shall give written notice of the proposed certificate and of the Commission's determination that the filing is complete to those parties, to any public interest organization that has in writing requested notice of applications to proceed under this subsection, and to any other person found by the Commission to have a substantial interest in the matter. The notice shall request comment within 30 days following the date of service of the complete filing on the question of whether the petition raises a significant issue with respect to the substantive criteria of this section. If the Commission finds that the petition raises a significant issue with respect to the substantive criteria of this section, the Commission shall hear evidence on any such issue.

(3) The construction of facilities authorized by a certificate issued under this subsection shall not require the approval of voters of a municipality or the members of a cooperative, as would otherwise be required under subsection (c) of this section.

(k)

(1) Notwithstanding any other provisions of this section, the Commission may waive, for a specified and limited time, the prohibitions contained in this section upon site preparation for or construction of an electric transmission facility, a generation facility, or an energy storage facility as necessary to ensure the stability or reliability of the electric system or a natural gas facility, pending full review under this section.

(2) A person seeking a waiver under this subsection shall file a petition with the Commission and shall provide copies to the Department of Public Service and the Agency of Natural

Resources. Upon receiving the petition, the Commission shall conduct an expedited preliminary hearing, upon such notice to the governmental bodies listed in subdivision (a)(4)(C) of this section as the Commission may require.

(3) An order granting a waiver may include terms, conditions, and safeguards, including the posting of a bond or other security, as the Commission deems proper, considering the scope and duration of the requested waiver.

(4) A waiver shall be granted only upon a showing that:

(A) good cause exists because an emergency situation has occurred;

(B) the waiver is necessary to provide adequate and efficient service or to preserve the property of the public service company devoted to public use;

(C) measures will be taken, as the Commission deems appropriate, to minimize significant adverse impacts under the criteria specified in subdivisions (b)(5) and (8) of this section; and

(D) taking into account any terms, conditions, and safeguards that the Commission may require, the waiver will promote the general good of the State.

(5) Upon the expiration of a waiver, if a certificate of public good has not been issued under this section, the Commission shall require the removal, relocation or alteration of the facilities subject to the waiver, as it finds will best promote the general good of the State.

(l) Notwithstanding other provisions of this section, and without limiting any existing authority of the Governor, and pursuant to 20 V.S.A. § 9(10) and (11), when the Governor has proclaimed a state of emergency pursuant to 20 V.S.A. § 9, the Governor, in consultation with the Chair of the Public Utility Commission and the Commissioner of Public Service or their designees, may waive the prohibitions contained in this section upon site preparation for or construction of an electric transmission facility, a generation facility, or an energy storage facility as necessary to ensure the stability or reliability of the electric system or a natural gas facility. Waivers issued under this subsection shall be subject to such conditions as are required by the Governor and shall be valid for the duration of the declared emergency plus 180 days or such lesser overall term as determined by the Governor. Upon the expiration of a waiver under this subsection, if a certificate of public good has not been issued under this section, the Commission shall require the removal, relocation, or alteration of the facilities, subject to the waiver, as the Commission finds will best promote the general good of the State.

(m) In any matter with respect to which the Commission considers the operation of a nuclear energy generating plant beyond the date permitted in any certificate of public good granted under this title, including any certificate in effect as of January 1, 2006, the Commission shall evaluate the application under current assumptions and analyses and not an extension of the cost benefit assumptions and analyses forming the basis of the previous certificate of public good for the operation of the facility.

(n)

(1) No company as defined in section 201 of this chapter and no person as defined in 10 V.S.A. § 6001(14) may place or allow the placement of wireless communications facilities on an electric transmission or generation facility located in this State, including a net metering

system, without receiving a certificate of public good from the Public Utility Commission pursuant to this subsection. The Public Utility Commission may issue a certificate of public good for the placement of wireless communications facilities on electric transmission and generation facilities if such placement is in compliance with the criteria of this section and Commission rules or orders implementing this section. In developing such rules and orders, the Commission:

- (A) may waive the requirements of this section that are not applicable to wireless telecommunication facilities, including criteria that are generally applicable to public service companies as defined in this title;
- (B) may modify notice and hearing requirements of this title as it deems appropriate;
- (C) shall seek to simplify the application and review process as appropriate; and
- (D) shall be aimed at furthering the State's interest in ubiquitous mobile telecommunications and broadband service in the State.

(2) Notwithstanding subdivision (1)(B) of this subsection, if the Commission finds that a petition filed pursuant to this subsection does not raise a significant issue with respect to the criteria enumerated in subdivisions (b)(1), (3), (4), (5), and (8) of this section, the Commission shall issue a certificate of public good without a hearing. If the Commission fails to issue a final decision or identify a significant issue with regard to a completed petition made under this section within 60 days following its filing with the Clerk of the Commission and service to the Director of Public Advocacy for the Department of Public Service, the petition is deemed approved by operation of law. The rules required by this subsection shall be adopted within six months of the effective date of this section, and rules under this section may be adopted on an emergency basis to comply with the dates required by this section. As used in this subsection, "wireless communication facilities" include antennae, related equipment, and equipment shelter, but do not include equipment used by utilities exclusively for intra- and inter-utility communications.

(o) The Commission shall not reject as incomplete a petition under this section for a wind generation facility on the grounds that the petition does not specify the exact make or dimensions of the turbines and rotors to be installed at the facility as long as the petition provides the maximum horizontal and vertical dimensions of those turbines and rotors and the maximum decibel level that the turbines and rotors will produce as measured at the nearest residential structure over a 12-hour period commencing at 7:00 p.m.

(p) An in-state generation facility receiving a certificate under this section that produces electric energy using woody biomass shall annually disclose to the Commission the amount, type, and source of wood acquired to generate energy.

(q)

(1) A certificate under this section shall be required for a plant using methane derived from an agricultural operation as follows:

- (A) With respect to a plant that constitutes farming pursuant to 10 V.S.A. § 6001(22)(F), only for the equipment used to generate electricity from biogas, the equipment used to refine biogas into natural gas, the structures housing such equipment used to generate electricity or refine biogas, and the interconnection to electric and natural gas distribution

and transmission systems. The certificate shall not be required for the methane digester, the digester influents and non-gas effluents, the buildings and equipment used to handle such influents and non-gas effluents, or the on-farm use of heat and exhaust produced by the generation of electricity, and these components shall not be subject to jurisdiction under this section.

(B) With respect to a plant that does not constitute farming pursuant to 10 V.S.A. § 6001(22)(F) but which receives feedstock from off-site farms, for all on-site components of the plant, for the transportation of feedstock to the plant from off-site contributing farms, and the transportation of effluent or digestate back to those farms. The certificate shall not regulate any farming activities conducted on the contributing farms that provide feedstock to a plant or use of effluent or digestate returned to the contributing farms from the plant.

(2) Notwithstanding 1 V.S.A. § 214 and Commission Rule 5.408, if the Commission issued a certificate to a plant using methane derived from an agricultural operation prior to July 1, 2013, such certificate shall require an amendment only when there is a substantial change, pursuant to Commission Rule 5.408, to the equipment used to generate electricity from biogas, the equipment used to refine biogas into natural gas, the structures housing such equipment used to generate electricity or refine biogas, or the interconnection to electric and natural gas distribution and transmission systems. The Commission's jurisdiction in any future proceedings concerning such a certificate shall be limited pursuant to subdivision (1) of this subsection.

(3) This subsection shall not affect the determination, under section 8005a of this title, of the price for a standard offer to a plant using methane derived from an agricultural operation.

(4) As used in this section, "biogas" means a gas resulting from the action of microorganisms on organic material such as manure or food processing waste.

(r) The Commission may provide that, in any proceeding under subdivision (a)(2)(A) of this section for the construction of a renewable energy plant, a demonstration of compliance with subdivision (b)(2) of this section, relating to establishing need for the plant, shall not be required if all or part of the electricity to be generated by the plant is under contract to one or more Vermont electric distribution companies and if no part of the plant is financed directly or indirectly through investments, other than power contracts, backed by Vermont electricity ratepayers. In this subsection, "plant" and "renewable energy" shall be as defined in section 8002 of this title.

(s) This subsection sets minimum setback requirements that shall apply to in-state ground-mounted solar electric generation facilities approved under this section, unless the facility is installed on a canopy constructed on an area primarily used for parking vehicles that is in existence or permitted on the date the application for the facility is filed.

(1) The minimum setbacks shall be:

(A) from a State or municipal highway, measured from the edge of the traveled way:

(i) 100 feet for a facility with a plant capacity exceeding 150 kW; and

(ii) 40 feet for a facility with a plant capacity less than or equal to 150 kW but greater than 15 kW.

(B) From each property boundary that is not a State or municipal highway:

- (i) 50 feet for a facility with a plant capacity exceeding 150 kW; and
 - (ii) 25 feet for a facility with a plant capacity less than or equal to 150 kW but greater than 15 kW.
- (2) This subsection does not require a setback for a facility with a plant capacity equal to or less than 15 kW.
- (3) On review of an application, the Commission may:
- (A) require a larger setback than this subsection requires;
 - (B) approve an agreement to a smaller setback among the applicant, the municipal legislative body, and each owner of property adjoining the smaller setback; or
 - (C) require a setback for a facility constructed on an area primarily used for parking vehicles, if the application concerns such a facility.
- (4) In this subsection:
- (A) “kW” and “plant capacity” shall have the same meaning as in section 8002 of this title.
 - (B) “Setback” means the shortest distance between the nearest portion of a solar panel or support structure for a solar panel, at its point of attachment to the ground, and a property boundary or the edge of a highway’s traveled way.
- (t) Notwithstanding any contrary provision of the law, primary agricultural soils as defined in 10 V.S.A. § 6001 located on the site of a solar electric generation facility approved under this section shall remain classified as such soils, and the review of any change in use of the site subsequent to the construction of the facility shall treat the soils as if the facility had never been constructed. Each certificate of public good issued by the Commission for a ground-mounted solar generation facility shall state the contents of this subsection.
- (u) For an energy storage facility, a certificate under this section shall only be required for a stationary facility exporting to the grid that has a capacity of 100 kW or greater, unless the Commission establishes a larger threshold by rule. The Commission shall establish a simplified application process for energy storage facilities subject to this section with a capacity of up to 1 MW, unless it establishes a larger threshold by rule. For facilities eligible for this simplified application process, a certificate of public good will be issued by the Commission by the forty-sixth day following filing of a complete application, unless a substantive objection is timely filed with the Commission or the Commission itself raises an issue. The Commission may require facilities eligible for the simplified application process to include a letter from the interconnecting utility indicating the absence or resolution of interconnection issues as part of the application.

History

Added 1969, No. 69, § 1, eff. April 18, 1969; amended 1969, No. 207 (Adj. Sess.), § 12, eff. March 24, 1970; 1971, No. 208 (Adj. Sess.), eff. March 31, 1972; 1975, No. 23; 1977, No. 11, §§ 1, 2; 1979, No. 204 (Adj. Sess.), § 31, eff. Feb. 1, 1981; 1981, No. 111 (Adj. Sess.); 1983, No. 45; 1985, No. 48, § 1; 1987, No. 65, § 1, eff. May 28, 1987; 1987, No. 67, § 14; 1987, No. 273 (Adj. Sess.) § 1, eff. June 21, 1988; 1989, No. 256 (Adj. Sess.), § 10(a), eff. Jan. 1, 1991; 1991, No. 99, §§ 3, 4; 1991, No. 259 (Adj. Sess.), §§ 6, 7; 1993, No. 21, § 10, eff. May 12, 1993; 1993, No. 159 (Adj. Sess.), § 1a, eff. May 19, 1994; 2003,

No. 42, § 2, eff. May 27, 2003; 2003, No. 82 (Adj. Sess.), §§ 2, 3; 2005, No. 160 (Adj. Sess.), §§ 2, 3; 2007, No. 79, § 16, eff. June 9, 2007; 2009, No. 6, §§ 1, 2, 3, eff. April 30, 2009; 2009, No. 45, § 7, eff. May 27, 2009; 2009, No. 146 (Adj. Sess.), § F30; 2011, No. 47, § 5; 2011, No. 62, § 26; 2011, No. 138 (Adj. Sess.), § 27, eff. May 14, 2012; 2011, No. 170 (Adj. Sess.), § 12, eff. May 18, 2012; 2013, No. 24, § 4, eff. May 13, 2013; 2013, No. 88, § 1; 2015, No. 23, § 151; 2015, No. 40, § 31; 2015, No. 51, § F.9, eff. June 3, 2015; 2015, No. 56, §§ 19, 20; 2015, No. 56, §§ 26a, 26b, 26c, eff. June 11, 2015; 2015, No. 174 (Adj. Sess.), § 11, eff. June 13, 2016; 2017, No. 53, §§ 1, 3, 4; 2017, No. 74, § 125; 2017, No. 163 (Adj. Sess.), § 1; 2019, No. 31, §§ 17, 25; 2021, No. 42, § 6; 2021, No. 54, § 9, eff. Dec. 31, 2022; 2023, No. 33, § 1, eff. July 1, 2023; 2023, No. 85 (Adj. Sess.), § 384, eff. July 1, 2024.