VERMONT **GENERAL ASSEMBLY**

The Vermont Statutes Online

Title 30: Public Service

Chapter 5: Powers And Duties Of Department Of Public Service And Public Service Board As To Companies Other Than Railroads And Aircraft

Subchapter 1: General Powers

§ 201. Definitions

(a) As used in this chapter, the word "company" or "companies" means and includes individuals, partnerships, associations, corporations and municipalities, owning or conducting any public service business or property used in connection therewith and covered by the provisions of this chapter. The term "company" or "companies" also includes electric cooperatives organized and operating under chapter 81 of this title, the Vermont public power supply authority to the extent not inconsistent with chapter 84 of this title, and the Vermont Hydro-electric Power Authority to the extent not inconsistent with chapter 90 of this title. In the context of actions requiring prior approval under section 107 of this title, the term "company" shall also mean any individual, partnership, association, corporation, group, syndicate, operating division, joint stock company, trust, other entity, or municipality which would be defined as a company pursuant to this section if such approval were to be granted.

(b) As used in this chapter, "energy" means not only the traditional scientific characteristic of "ability to do work" but also the substances or processes used to produce heat, light, or motion, including but not being limited to: petroleum or other liquid fuels; natural or synthetic fuel gas; solid carbonaceous fuels; solar radiation; geothermal sources; nuclear sources; biomass; organic waste products; wind; or flowing water. (Amended 1969, No. 257 (Adj. Sess.), § 1; 1981, No. 236 (Adj. Sess.), § 3; 1985, No. 48, § 3; 1985, No. 224 (Adj. Sess.), § 6; 1989, No. 96, § 1, eff. June 14, 1989; 1991, No. 170 (Adj. Sess.), § 5, eff. May 15, 1992; 2003, No. 121 (Adj. Sess.), § 103, eff. June 8, 2004.)

§ 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:

(1) an overview, looking 20 years ahead, of statewide growth and development as they relate to future requirements for electrical energy, including patterns of urban expansion, statewide and service area economic growth, shifts in transportation modes, modifications in housing types, and design, conservation, and other trends and factors which, as determined by the Director, will significantly affect State electrical energy policy and programs;

(2) an assessment of all energy resources available to the State for electrical generation or to supply electrical power, including, among others, fossil fuels, nuclear, hydro-electric, biomass, wind, fuel cells, and solar energy and strategies for minimizing the economic and environmental costs of energy supply, including the production of pollutants, by means of efficiency and emission improvements, fuel shifting, and other appropriate means;

(3) estimates of the projected level of electrical energy demand;

(4) a detailed exposition, including capital requirements and the estimated cost to consumers, of how such demand shall be met based on the assumptions made in subdivision (1) of this subsection and the policies set out in subsection (c) of this section; and

(5) specific strategies for reducing electric rates to the greatest extent possible in Vermont over the most immediate six-year period, for the next succeeding six-year period, and long-term sustainable strategies for achieving and maintaining the lowest possible electric rates over the full 20-year planning horizon consistent with the goal of maintaining a financially stable electric utility industry in Vermont.

(c) In developing the Plan, the Department shall take into account the protection of public health and safety; preservation of environmental quality; the potential for reduction of rates paid by all retail electricity customers; the potential for reduction of electrical demand through conservation, including alternative utility rate structures; use of load management technologies; efficiency of electrical usage; utilization of waste heat from generation; and utility assistance to consumers in energy conservation.

(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.

(2) To the extent necessary, include in the Plan surveys to determine needed and desirable plant improvements and extensions and coordination between utility systems, joint construction of facilities by two or more utilities, methods of operations, and any change that will produce better service or reduce costs. To this end, the Director may require the submission of data by each company subject to supervision, of its anticipated electrical demand, including load fluctuation, supplies, costs, and its plan to meet that demand and such other information as the Director deems desirable.

(e) The Department shall conduct public hearings on the final draft and shall consider the evidence presented at such hearings in preparing the final Plan. The Plan shall be adopted no later than January 1, 2016 and readopted in accordance with this section by every sixth January 1 thereafter, and shall be submitted to the General Assembly each time the plan is adopted or readopted. The provisions of 2 V.S.A. § 20(d)(expiration of required reports) shall not apply to the submission to be made under this subsection.

(f) After adoption by the Department of a final plan, any company seeking Board authority to make investments, to finance, to site or construct a generation or transmission facility or to purchase electricity or rights to future electricity, shall notify the Department of the proposed action and request a determination by the Department whether the proposed action is consistent with the Plan. In its determination whether to permit the proposed action, the Board shall consider the Department's determination of its consistency with the Plan along with all other factors required by law or relevant to the Board's decision on the proposed action. If

the proposed action is inconsistent with the Plan, the Board may nevertheless authorize the proposed action if it finds that there is good cause to do so. The Department shall be a party to any proceeding on the proposed action, except that this section shall not be construed to require a hearing if not otherwise required by law.

(g) The Director shall annually review that portion of a Plan extending over the next six years. The Department, through the Director, shall biennially extend the Plan by two additional years; and from time to time, and in any event every sixth year, institute proceedings to review a plan and make revisions, where necessary. The six-year review and any interim revisions shall be made according to the procedures established in this section for initial adoption of the plan. The six-year review and any revisions made in connection with that review shall be performed contemporaneously with readoption of the Comprehensive Energy Plan under section 202b of this title.

(h) The Plans adopted under this section shall become the electrical energy portion of the State Energy Plan.

(i) It shall be a goal of the Electrical Energy Plan to assure, by 2028, that at least 60 MW of power are generated within the State by combined heat and power (CHP) facilities powered by renewable fuels as defined in section 8002 of this title. In order to meet this goal, the Plan shall include incentives for development and strategies to identify locations in the State that would be suitable for CHP. The Plan shall include strategies to assure the consideration of CHP potential during any process related to the expansion of natural gas services in the State. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961; 1979, No. 204 (Adj. Sess.), § 21, eff. Feb. 1, 1981; 1981, No. 236 (Adj. Sess.), § 6; 1983, No. 1, eff. Jan. 31, 1983; 1983, No. 46; 1983, No. 170 (Adj. Sess.), §§ 11, 12, eff. April 19, 1984; 1987, No. 87, § 3; 1991, No. 259 (Adj. Sess.), §§ 4, 5; 2003, No. 69, § 5, eff. June 17, 2003; 2007, No. 209 (Adj. Sess.), § 12; 2013, No. 34, § 18; 2013, No. 91 (Adj. Sess.), § 6, eff. Feb. 4, 2014.)

§ 202a. State energy policy

It is the general policy of the state of Vermont:

(1) To assure, to the greatest extent practicable, that Vermont can meet its energy service needs in a manner that is adequate, reliable, secure and sustainable; that assures affordability and encourages the state's economic vitality, the efficient use of energy resources and cost effective demand side management; and that is environmentally sound.

(2) To identify and evaluate on an ongoing basis, resources that will meet Vermont's energy service needs in accordance with the principles of least cost integrated planning; including efficiency, conservation and load management

alternatives, wise use of renewable resources and environmentally sound energy supply. (Added 1981, No. 236 (Adj. Sess.), § 4; amended 1983, No. 170 (Adj. Sess.), § 13, eff. April 19, 1984; 1991, No. 259 (Adj. Sess.), § 1.)

§ 202b. State Comprehensive Energy Plan

(a) The Department of Public Service, in conjunction with other State agencies designated by the Governor, shall prepare a State Comprehensive Energy Plan covering at least a 20-year period. The Plan shall seek to implement the State energy policy set forth in section 202a of this title. The Plan shall include:

(1) a comprehensive analysis and projections regarding the use, cost, supply, and environmental effects of all forms of energy resources used within Vermont; and

(2) recommendations for State implementation actions, regulation, legislation, and other public and private action to carry out the comprehensive energy plan.

(b) In developing or updating the Plan's recommendations, the Department of Public Service shall seek public comment by holding public hearings in at least five different geographic regions of the State on at least three different dates, and by providing notice through publication once a week and at least seven days apart for two or more successive weeks in a newspaper or newspapers of general circulation in the regions where the hearings will be held, and by delivering notices to all licensed commercial radio and television stations with transmitting facilities within the State, plus Vermont Public Radio and Vermont Educational Television.

(c) The Department shall adopt a State Energy Plan on or before January 1, 2016 and shall readopt the Plan by every sixth January 1 thereafter. On adoption or readoption, the Plan shall be submitted to the General Assembly. The provisions of 2 V.S.A. § 20(d)(expiration of required reports) shall not apply to such submission.

(1) Upon adoption of the Plan, analytical portions of the Plan may be updated and published biennially.

(2) Every fourth year after the adoption or readoption of a Plan under this section, the Department shall publish the manner in which the Department will engage the public in the process of readopting the Plan under this section.

(3) The publication requirements of subdivisions (1) and (2) of this subsection may be met by inclusion of the subject matter in the Department's biennial report.

(4) The Plan's implementation recommendations shall be updated by the Department no less frequently than every six years. These recommendations shall be updated prior to the expiration of six years if the General Assembly passes a joint resolution making a request to that effect. If the Department proposes or the General Assembly requests the revision of implementation recommendations, the Department shall hold public hearings on the proposed revisions.

(d) Distribution of the Plan to members of the General Assembly shall be in accordance with the provisions of 2 V.S.A. § 20(a)-(c). (Added 1981, No. 236 (Adj. Sess.), § 5; amended 1991, No. 259 (Adj. Sess.), § 2; 2013, No. 91 (Adj. Sess.), § 7, eff. Feb. 4, 2014.)

§ 202c. State telecommunications; policy and planning

(a) The General Assembly finds that advances in telecommunications technology and changes in federal regulatory policy are rapidly reshaping telecommunications services, thereby promising the people and businesses of the State communication and access to information, while creating new challenges for maintaining a robust, modern telecommunications network in Vermont.

(b) Therefore, to direct the benefits of improved telecommunications technology to all Vermonters, it is the purpose of this section and section 202d of this title to:

(1) strengthen the State's role in telecommunications planning;

(2) support the universal availability of appropriate infrastructure and affordable services for transmitting voice and high-speed data;

(3) support the availability of modern mobile wireless telecommunications services along the State's travel corridors and in the State's communities;

(4) provide for high-quality, reliable telecommunications services for Vermont businesses and residents;

(5) provide the benefits of future advances in telecommunications technologies to Vermont residents and businesses;

(6) support competitive choice for consumers among telecommunications service providers and promote open access among competitive service providers on nondiscriminatory terms to networks over which broadband and telecommunications services are delivered;

(7) support the application of telecommunications technology to maintain and improve governmental and public services, public safety, and the economic development of the State;

(8) support deployment of broadband infrastructure that:

(A) uses the best commercially available technology;

(B) does not negatively affect the ability of Vermont to take advantage of future improvements in broadband technology or result in widespread installation of technology that becomes outmoded within a short period after installation;

(9) in the deployment of broadband infrastructure, encourage the use of existing facilities, such as existing utility poles and corridors and other structures, in preference to the construction of new facilities or the replacement of existing structures with taller structures; and

(10) support measures designed to ensure that by the end of the year 2024 every E-911 business and residential location in Vermont has infrastructure capable of delivering Internet access with service that has a minimum download speed of 100 Mbps and is symmetrical. (Added 1987, No. 87, § 1; amended 2003, No. 164 (Adj. Sess.), § 15, eff. June 12, 2004; 2009, No. 54, § 49, eff. June 1, 2009; 2011, No. 53, § 24b, eff. May 27, 2011; 2013, No. 190 (Adj. Sess.), § 8, eff. June 16, 2014.)

§ 202d. Telecommunications plan

(a) The Department of Public Service shall constitute the responsible planning agency of the State for the purpose of obtaining for all consumers in the State stable and predictable rates and a technologically advanced telecommunications network serving all service areas in the State. The Department shall be responsible for the provision of plans for meeting emerging trends related to telecommunications technology, markets, financing, and competition.

(b) The Department shall prepare a Telecommunications Plan for the State. The Department of Innovation and Information, the Division for Connectivity and the Agency of Commerce and Community Development shall assist the Department of Public Service in preparing the Plan. The Plan shall be for a ten-year period and shall serve as a basis for State telecommunications policy. Prior to preparing the Plan, the Department shall prepare:

(1) an overview, looking ten years ahead, of future requirements for telecommunications services, considering services needed for economic development, technological advances, and other trends and factors which, as determined by the Department of Public Service, will significantly affect State telecommunications policy and programs;

(2) a survey of Vermont residents and businesses, conducted in cooperation with the Agency of Commerce and Community Development and the Division for Connectivity, to determine what telecommunications services are needed now and in the succeeding ten years;

(3) an assessment of the current state of telecommunications infrastructure;

(4) an assessment, conducted in cooperation with the Department of Innovation and Information and the Division for Connectivity, of the current State telecommunications system and evaluation of alternative proposals for upgrading the system to provide the best available and affordable technology for use by government; and

(5) an assessment of the state of telecommunications networks and services in Vermont relative to other states, including price comparisons for key services and comparisons of the state of technology deployment.

(c) In developing the Plan, the Department shall take into account the policies and goals of section 202c of this title.

(d) In establishing plans, public hearings shall be held and the Department shall consult with members of the public, representatives of telecommunications utilities, other providers, and other interested State agencies, particularly the Agency of Commerce and Community Development, the Division for Connectivity, and the Department of Innovation and Information, whose views shall be considered in preparation of the Plan. To the extent necessary, the Department shall include in the Plan surveys to determine existing, needed, and desirable plant improvements and extensions, access and coordination between telecommunications providers, methods of operations, and any change that will produce better service or reduce costs. To this end, the Department may require the submission of data by each company subject to supervision by the Public Service Board.

(e) Before adopting a Plan, the Department shall conduct public hearings on a final draft and shall consider the testimony presented at such hearings in preparing the final Plan. At least one hearing shall be held jointly with Committees of the General Assembly designated by the General Assembly for this purpose. The Plan shall be adopted by September 1, 2014.

(f) The Department, from time to time, but in no event less than every three years, institute proceedings to review a Plan and make revisions, where necessary. The three-year major review shall be made according to the procedures established in this section for initial adoption of the Plan. For good cause or upon request by a Joint Resolution passed by the General Assembly, an interim review and revision of any section of the Plan may be made after conducting public hearings on the interim revision. At least one hearing shall be held jointly with Committees of the General Assembly designated by the General Assembly for this purpose.

(g) The Department shall review and update the minimum technical service characteristic objectives not less than every three years beginning in 2017. In the event such review is conducted separately from an update of the Plan, the Department shall issue revised minimum technical service characteristic objectives as an amendment to the Plan. (Added 1987, No. 87, § 2; amended 1995, No. 190 (Adj. Sess.), § 1(a); 2003, No. 164 (Adj. Sess.), § 16, eff. June 12, 2004; 2013, No. 190 (Adj. Sess.), § 9, eff. June 16, 2014.)

§ 202e. Repealed. 1993, No. 21, § 16, eff. May 12, 1993.

§ 203. Jurisdiction of certain public utilities

The public service board and the department of public service shall have jurisdiction over the following described companies within the state, their directors, receivers, trustees, lessees or other persons or companies owning or operating such companies and of all plants, lines, exchanges and equipment of such companies used in or about the business carried on by them in this state as covered and included herein. Such 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 may, when they deem the public good requires, examine the plants, equipment, lines, exchanges, stations and property of the companies subject to their jurisdiction under this chapter.

(1) A company engaged in the manufacture, transmission, distribution or sale of gas or electricity directly to the public or to be used ultimately by the public for lighting, heating or power and so far as relates to their use or occupancy of the public highways;

(2) That part of the business of a company which consists of the manufacture, transmission, distribution or sale of gas, or electricity directly to the public or to be used ultimately by the public for lighting, heating or power and so far as relates to their use or occupancy of the public highways;

(3) A company other than a municipality or a water system exempted under the provisions of section 1675a of Title 10 engaged in the collecting, sale and distribution of water for domestic, industrial, business, or fire protection purposes;

(4) A company engaged in the construction and maintenance of dams and storage reservoirs whether for the purpose of prevention of damage by flood, or for the purpose of power to be developed, or for the benefit of waterpower, developed or undeveloped, so situated as to be affected by such reservoirs and dams;

(5) A person or company offering telecommunications service to the public on a common carrier basis. "Telecommunications service" means the transmission of any interactive two-way electromagnetic communications, including voice, image, data and information. Transmission of electromagnetic communications includes the use of any media such as wires, cables, television cables, microwaves, radio waves, light waves or any combination of those or similar media. Telecommunications service does not include value added nonvoice services in which computer processing applications are used to act on the form, content, code and protocol of the information to be transmitted unless those services are provided under tariff approved by the public service board;

(6) A company or that part of a company, other than a municipality, which has obtained a direct or indirect discharge permit issued by the agency of natural resources and is engaged in the collection or disposal of wastewater or domestic

sewage or any combination of these activities, except companies solely involved in the hauling of septage or sludge. This subdivision shall only apply to companies which, together with any affiliates, service 750 or more household or dwelling units. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961; 1961, No. 267, § 1, eff. Aug. 1, 1961; 1979, No. 204 (Adj. Sess.), § 22, eff. Feb. 1, 1981; 1985, No. 224 (Adj. Sess.), § 8; 1987, No. 87, § 5; 1993, No. 21, § 19, eff. May 12, 1993; 1993, No. 120 (Adj. Sess.), § 1; 2007, No. 156 (Adj. Sess.), § 2.)

§ 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. (Added 2007, No. 92 (Adj. Sess.), § 11; amended 2009, No. 54, § 103, eff. June 1, 2009; 2009, No. 1 (Sp. Sess.), § E.235, eff. June 2, 2009; 2013, No. 142 (Adj. Sess.), § 48.)

§ 204. Organization; reports of public utility corporations

Immediately upon the transmission of its articles of association, a corporation subject to supervision under this chapter shall file with the department of public service a copy of such articles, and a copy of its certificate of paid up capital stock if any. The corporation shall also, immediately after its organization, forward to the

department of public service a copy of the report of its organization containing the names and addresses of the directors and other officials of the corporation. At the time of commencing, a business, a municipality, person, or company, other than a corporation which is subject to supervision under this chapter, shall file with the department of public service a written statement giving the location, nature and extent of such business, together with the post office address of the owner or owners, business manager and other officials. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961; 1979, No. 204 (Adj. Sess.), § 23, eff. Feb. 1, 1981.)

§ 205. Duty to furnish copies of contracts

At the request of the department of public service, a corporation subject to supervision under this chapter shall submit to the department for its approval certified copies of contracts entered into after July 1, 1961, between such corporation and any person, partnership, association, trust or corporation holding, controlling or owning 10 percent or more of the voting capital stock of such corporation subject to supervision, or with any other corporation which is itself owned or controlled by a person, partnership, association, trust or corporation so holding, controlling or owning 10 percent or more of the voting capital stock of such corporation subject to supervision. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961; 1961, No. 183, § 3; 1979, No. 204 (Adj. Sess.), § 35, eff. Feb. 1, 1981.)

§ 206. Information to be furnished department

On request by the department of public service, a company owning or operating a plant, line or property subject to supervision under this chapter shall furnish the department information required by it concerning the condition, operation, management, expense of maintenance and operation, cost of production, rates charged for service or for product, contracts, obligations and financial standing of such company. It shall also inform the department of the salaries of, the pensions, option or benefit programs affecting and the expenses reimbursed to its officers or directors, or both. Such information shall be open to public inspection at seasonable times and any person shall be entitled to copies thereof. Information exacted for use by the department in a particular instance shall not be made public, except in the discretion of the department. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961; 1961, No. 183, § 4; 1979, No. 204 (Adj. Sess.), § 35, eff. Feb. 1, 1981.)

§ 207. Report of accidents; investigation

The superintendent or manager of any line or plant, subject to supervision under this chapter, shall notify the department in writing of any accident within this state immediately after its occurrence, upon such line or plant resulting in loss of life or injury to any person which shall incapacitate him or her from engaging in his usual vocations. The department shall inquire into the cause of every such accident, and if, in its judgment, a public investigation is necessary, it shall fix a time and place of

holding the same, and shall thereupon proceed as provided in section 3454 of Title 5 relating to investigation of accidents upon railroads. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961; 1979, No. 204 (Adj. Sess.), § 35, eff. Feb. 1, 1981.)

§ 208. Complaints; investigations; procedure

A complaint to the public service board may be made against a company subject to supervision under the provisions of this chapter concerning any claimed unlawful act or neglect adversely affecting the complainant, who may be a company or five or more individuals or, if less than five are so affected, then any one of them. The complainant may bring his or her complaint directly before the board or he or she may file his or her complaint with the department of public service which shall investigate such complaint and if sufficient cause exists, shall prosecute the same in the name of the state. Upon request of the trustees of an incorporated village or the selectmen or city council or upon its own motion, the department of public service may institute investigations regarding the price, toll, rate or rental charged by any utility. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961; 1979, No. 204 (Adj. Sess.), § 24, eff. Feb. 1, 1981.)

§ 208a. Selection of telecommunications carrier

(a) No provider of telecommunications services shall submit a change order for primary interexchange carrier or for local exchange carrier to any telecommunications company regarding a Vermont customer unless and until the submitting carrier has obtained express authorization from the customer for the change. Upon request of the customer, offers to provide telecommunications services shall be sent to the customer in written form describing the terms and conditions of service. As used in this section, "express authorization" means an express, affirmative act by the customer clearly agreeing to the change in primary interexchange carrier or local exchange carrier, in the form of:

(1) a written authorization;

(2) a customer initiated call to the submitting carrier;

(3) an oral authorization verified by an independent third party and the verification has been recorded;

(4) electronic authorization; or

(5) some other form of recorded authorization.

(b) A petition alleging violation of this section may be brought to the public service board by the customer, by the department of public service, by the attorney general, or by the customer's former carrier. If the public service board determines after

opportunity for hearing that a telecommunications carrier has submitted a change order and cannot demonstrate that it has complied with this section, and with rules adopted by the board, the board may:

(1) void any pending charges and require the submitting carrier to pay to the customer an amount equal to all charges previously paid by the customer to the submitting carrier and made possible by the change order, providing that the voiding and repayment shall apply only for a reasonable time after the customer discovered or should have discovered the change in carriers;

(2) require the submitting carrier to pay to the customer an amount of money to compensate for damages that arose because the change order altered the nature or quality of the customer's telecommunications services;

(3) require the submitting carrier to pay to the former carrier an amount equal to the revenues the former carrier would have received for providing equivalent services to the customer had the unauthorized switch not occurred;

(4) require the submitting carrier to pay to the customer's local exchange carrier, an amount to compensate for any costs arising from changes caused by the invalid change order;

(5) require the submitting carrier to pay, to the petitioner, the costs of prosecuting the complaint before the board, including reasonable attorney fees, witness fees, and incidental costs; and

(6) require the submitting carrier to pay a penalty as authorized by section 30 of this title.

Payments and penalties under this section shall be in addition to those otherwise provided by law.

(c) The public service board shall adopt such rules as are necessary to carry out the purposes of this section. Such rules shall be no less stringent than the federal rules relating to changes of carrier, and shall include such further provisions as are needed to implement the provisions of this section. (Added 1995, No. 182 (Adj. Sess.), § 1, eff. May 22, 1996; amended 1997, No. 135 (Adj. Sess.), § 3.)

§ 208b. Unauthorized billing

A company subject to the jurisdiction of the public service board shall not send a bill to a consumer for goods or services that the company provides and that will appear as a charge on the consumer's telecommunications bill without the consumer's consent. The department shall develop a consumer education plan to ensure that consumers of telecommunications services have adequate notice of this

requirement. A company that violates this section shall be subject to the remedies authorized by this title, including penalties authorized by section 30 and injunctions authorized by section 209. (Added 1999, No. 67 (Adj. Sess.), § 1.)

§ 209. Jurisdiction; general scope

(a) General jurisdiction. On due notice, the Board shall have jurisdiction to hear, determine, render judgment, and make orders and decrees in all matters provided for in the charter or articles of any corporation owning or operating any plant, line, or property subject to supervision under this chapter, and shall have like jurisdiction in all matters respecting:

(1) the purity, quantity, or quality of any product furnished or sold by any company subject to supervision under this chapter, and may prescribe the equipment for and standard of measurement, pressure, or initial voltage of such product;

(2) the providing for each kind of business subject to supervision under this chapter, suitable and convenient standard commercial units of product or service, which standards shall be lawful for the purposes of this chapter;

(3) the manner of operating and conducting any business subject to supervision under this chapter, so as to be reasonable and expedient, and to promote the safety, convenience, and accommodation of the public;

(4) the price, toll, rate, or rental charged by any company subject to supervision under this chapter, when unreasonable or in violation of law;

(5) the sufficiency and maintenance of proper systems, plants, conduits, appliances, wires, and exchanges, and when the public safety and welfare require the location of such wires or any portion thereof underground;

(6) to restrain any company subject to supervision under this chapter from violations of law, unjust discriminations, usurpation, or extortion;

(7) the issue of stock, mortgages, bonds, or other securities as provided in section 108 of this title;

(8) the sale to electric companies of electricity generated by facilities:

(A) which produce electric energy solely by the use of biomass, waste, renewable resources, cogeneration, or any combination thereof; and

(B) which are owned by a person not primarily engaged in the generation or sale of electric power, excluding power derived from facilities described in subdivision (a)(8)(A) of this section; and

(C) which have a power production capacity which, together with any other facilities located at the same site, is not greater than 80 megawatts; and

(9) the issuance of qualified cost mitigation charge orders pertaining to facilities described in subdivision (8) of this subsection, subject to the terms and conditions of section 209a of this title.

(b) Required rules. The provisions of section 218 of this title notwithstanding, the Public Service Board shall, under 3 V.S.A. §§ 803-804, adopt rules applicable to companies subject to this chapter which:

(1) regulate or prescribe terms and conditions of extension of utility service to customers or applicants for service including:

(A) the conditions under which a deposit may be required, if any;

(B) the extension of service lines;

(C) the terms of payment of any required deposit; and

(D) the return of any deposit;

(2) regulate or prescribe the grounds upon which the companies may disconnect or refuse to reconnect service to customers; and

(3) regulate and prescribe reasonable procedures used by companies in disconnecting or reconnecting services and billing customers in regard thereto.

(c) Uninterrupted service; reasonable terms. Rules adopted under subsection (b) of this section shall be aimed at protection of the health and safety of utility customers so that uninterrupted utility service may be continued on reasonable terms for the utility and its customers. Such rules shall also ensure that a reasonable rate of interest, adjusted for variations in market interest rates, be set on security deposits held by utility companies.

(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.

(h) Electricity labeling. The Public Service Board may prescribe, by rule or order, standards for the labeling of electricity delivered or intended for delivery to ultimate consumers as to price, terms, sources and objective environmental impacts, along with such procedures as it deems necessary for verification of information contained in such labels. The Public Service Board may prescribe, by rule or by order, standards and criteria for the substantiation of such labeling or of any claims regarding the price, terms, sources and environmental impacts of electricity delivered or intended for delivery to ultimate consumers in Vermont, along with enforcement procedures and penalties. When establishing standards for the labeling of electricity, the Board shall weigh the cost, as well as the benefits, of compliance with such standards. With respect to companies distributing electricity to ultimate consumers, the Board may order disclosure and publication, not to occur more than once each year, of any labeling required pursuant to the standards established by this subsection. Standards established under this subsection may include provisions for:

(1) the form of labels;

(2) information on retail and wholesale price;

(3) terms and conditions of service;

(4) types of generation resources in a seller's mix and percentage of power produced from each source;

(5) disclosure of the environmental effects of each energy source; and

(6) a description of other services, including energy services or energy efficiency opportunities.

(i) Pole attachments; broadband. For the purposes of Board rules on attachments to poles owned by companies subject to regulation under this title, broadband service providers shall be considered "attaching entities" with equivalent rights to attach facilities as those provided to "attaching entities" in the rules, regardless of whether such broadband providers offer a service subject to the jurisdiction of the Board. The Board shall adopt rules in accordance with 3 V.S.A. chapter 25 to further implement this section. The rules shall be aimed at furthering the State's interest in ubiquitous deployment of mobile telecommunications and broadband services within the State.

(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 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. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961; 1961, No. 183, § 5; 1975, No. 56, § 1; 1979, No. 147 (Adj. Sess.), § 2; 1981, No. 245 (Adj. Sess.), § 2; 1989, No. 112, § 6, eff. June 22, 1989; 1995, No. 182 (Adj. Sess.), § 27a, eff. May 22, 1996; 1999, No. 60, § 1, eff. June 1, 1999; 1999, No. 143 (Adj. Sess.), § 28; 2001, No. 145 (Adj. Sess.), §§ 1, 2; 2005, No. 61, § 6; 2005, No. 208 (Adj. Sess.), § 10; 2007, No. 79, § 6, eff. June 9, 2007; 2007, No. 92 (Adj. Sess.), § 12; 2007, No. 190 (Adj. Sess.), §§ 52, 53, eff. June 6, 2008; 2009, No. 45, §§ 14, 14a, eff. May 27, 2009; 2009, No. 54, § 104,

eff. June 1, 2009; 2009, No. 1 (Sp. Sess.), § E.235.1, eff. June 2, 2009; 2011, No. 47, §§ 3, 20b, eff. May 25, 2011; 2011, No. 170 (Adj. Sess.), § 16; 2013, No. 89, §§ 2, 3; 2013, No. 142 (Adj. Sess.), § 49; 2013, No. 184 (Adj. Sess.), § 1.)

§ 209a. Qualified cost mitigation charge orders

(a) Definitions. As used in this section:

(1) "Electric utility" means any entity engaged in the distribution of electricity directly to the consumers within the state of Vermont.

(2) "Issuer" means any entity approved in a qualified cost mitigation charge order to issue mitigation bonds; "issuer" may include, but is not limited to, the Vermont qualifying facility contract mitigation authority or the Vermont Public Power Supply Authority.

(3) "Mitigation bond" means a note, bond, debenture or any other evidence of indebtedness or certificate evidencing an interest in any evidence of indebtedness authorized by a qualified cost mitigation charge order.

(4) "Mitigation charge" means any volumetric charge imposed by the board pursuant to a qualified cost mitigation charge order.

(5) "Participating qualifying facility" means any facility described in subdivision 209(a)(8) of this title.

(6) "Power purchase arrangement" means a contract for sale of electricity between a participating qualifying facility with a capacity of 900 kilowatts or greater and a Rule 4.100 purchasing agent, approved by the board on or before January 1, 1995.

(7) "Qualified cost mitigation charge order" means an order of the board that complies with the requirements of this section.

(8) "Rule 4.100" means public service board Rule 4.100 or any amended or successor rule regarding small power production or cogeneration.

(9) "Rule 4.100 purchasing agent" means an entity designated by the board to perform the power and financial accounting requirements of Rule 4.100.

(10) "Savings" means the total benefit to electric ratepayers resulting from a qualified cost mitigation charge order, including specifically those benefits resulting from modifications of purchase power arrangements and benefits attributable to the availability of a qualified cost mitigation charge order to pay for those modifications, offset by the costs incurred to obtain the qualified cost mitigation charge order and purchase power arrangement modifications.

(b) General. Upon an application submitted by the Rule 4.100 purchasing agent or other person or entity, and subject to the terms and conditions of this section, the board may issue within five years following the effective date of this section one or more qualified cost mitigation charge orders. A qualified cost mitigation charge order shall impose mitigation charges payable to the issuer of mitigation bonds in order to finance the costs associated with mitigating one or more power purchase arrangements.

(c) Qualified cost mitigation charge order provisions. A qualified cost mitigation order shall contain, at a minimum, all of the following:

(1) a finding that a qualified cost mitigation charge order will promote the general good within the state of Vermont;

(2) a uniform mitigation charge imposed for the benefit of the issuer on the consumption of all electricity within the state of Vermont to the extent such electricity is conveyed to consumers by electric utilities, and a requirement that such charge be reflected on ratepayer bills in a manner which clearly reflects both the amount of the charge and the reduction in power costs resulting from the charge;

(3) a specific mechanism for automatic adjustment of the mitigation charge, at least annually, in accordance with electricity consumption forecasts prepared by the Rule 4.100 purchasing agent or other entity approved by the board, so that the mitigation charge is imposed at all levels designed to provide revenues sufficient to make timely payments of accrued interest and scheduled principal on all mitigation bonds, as well as ongoing administrative expenses, credit enhancement fees and scheduled overcollateralization amounts with respect to such mitigation bonds. This automatic adjustment may implement a system in which the mitigation charge is initially paid in full by the electric utilities, and uncollectable amounts plus reasonable carrying costs are reimbursed to the utilities as part of the adjustment;

(4) the covenant and pledge of the state of Vermont set forth in subsection (h) of this section.

(d) Approval by the board. The board may approve within five years following the effective date of this section a qualified cost mitigation charge order for buydowns or other appropriate modifications, except buyouts, of power purchase arrangements upon finding that such an order will promote the general good within the state of Vermont. To determine that such an order will promote the general good, the board shall find that:

(1) significant, quantifiable savings are substantially likely to result from the buydowns and other appropriate modification of purchase power arrangements and the amount of such savings;

(2) such savings will be passed on to electric ratepayers pursuant to subsection (m) of this section;

(3) facilities whose power purchase arrangements are the subject of the buydowns or other appropriate modifications will be reasonably assured to continue to operate for the life of their power purchase arrangements.

(e) Additional factors. The board shall also give consideration to the following factors:

(1) the feasibility of any prospective alternative methods of achieving ratepayer savings;

(2) any impact of the transaction on existing or prospective opportunities for electric consumers to exercise retail choice;

(3) the impact of the transaction on renewable energy resources;

(4) the specific regulatory and accounting treatment that will be required of the purchasing agent, the issuer, the participating qualifying facilities and the participating electric utilities; and

(5) such other related factors as the board deems appropriate.

(f) Collections and remittances. Mitigation charges and the right to receive mitigation charges shall be property of the issuer. The right to receive mitigation charges shall constitute a present interest in property. If requested by the issuer or any successor that is entitled to receive mitigation charges, mitigation charges shall be collected by each participating electric utility for the benefit of the issuer or the issuer's transferee. Mitigation charges collected by an electric utility shall be remitted by such electric utility to the issuer or its designee within one month after receipt thereof by such electric utility, or such shorter period as shall be designated by the board. Upon 30 days' written notice to an electric utility, the issuer or any successor entitled to receive mitigation charges at any time and for any reason may direct that the electric utility shall cease to collect mitigation charges. Any electric utility in possession of mitigation charges shall have no right, title or interest in such collections, but rather shall hold such collections in trust for the benefit of the issuer.

(g) Nonbypassable. Mitigation charges shall be separately stated on consumers' retail electric bills, and shall be payable regardless of any change in structure or identity of the electric utility, and regardless of any change in ownership or operation of any electric generation, transmission or distribution facilities. If a consumer pays only part of its electric bill for any period, a pro rata portion of the payment may be applied to payment of the mitigation charge for the period.

(h) State pledge. The state of Vermont covenants and pledges for the benefit of the issuer, any assignee of the issuer, and the owners of mitigation bonds that neither the mitigation charge nor the automatic adjustment mechanism set forth in subsection (e) of this section shall be altered, revoked, amended, postponed, impaired, limited or terminated by the state of Vermont, by the board or by any other agency or instrumentality of the state, absent adequate provision for the protection of the issuer, any designee of the issuer, and the owners of the mitigation bonds. The board, as agent of the state of Vermont, is authorized and directed to deliver written confirmation of this covenant and pledge in connection with the issuance of all mitigation bonds.

(i) Bankruptcy. A qualified cost mitigation charge order shall remain in full force and effect, notwithstanding any bankruptcy, reorganization or other insolvency proceeding with respect to:

(1) any electric utility or successor or assign of any electric utility; or

(2) the Rule 4.100 purchasing agent or any successor or assign of the Rule 4.100 purchasing agent.

(j) Assignment of mitigation charge revenues. The issuer may grant a security interest in, or otherwise assign mitigation charges and the right to receive mitigation charges in connection with, the issuance of mitigation bonds. Such grant or assignment shall be valid and enforceable without delivery or filing.

(k) Hearing procedure. A qualified cost mitigation charge order shall be issued only upon hearing, following due notice to all electric utilities, the owners of all participating qualifying facilities, the department and the Rule 4.100 purchasing agent. A qualified cost mitigation charge order issued under this section shall involve all of the state's electric utilities, absent a showing of good cause by any such utility as to why the requirements and customer benefits resulting from a qualified cost mitigation charge order should not be applicable to it.

(l) Pass through of savings. A qualified cost mitigation charge order shall contain measures to assure that savings resulting from that order are passed through to the benefit of electric ratepayers. Such measures may include, but shall not be limited to, reduction in utility regulatory assets or creation of regulatory liabilities, adjustments to depreciation or amortization schedules, or the filing of revised tariffs reflecting such savings, which tariffs may be ordered by the board without regard to the remaining provisions of this title.

(m) In establishing the appraisal value for the assessment of property taxes on the facilities whose power purchase arrangements are the subject of the buydowns or other appropriate modifications, the municipality may include the amount of any cost

mitigation payments made under the authority of this section. For municipalities using an income-based valuation method, the value of any lump sum mitigation payment shall be amortized or prorated over the period of the cost mitigation contract.

(n) Report to legislature. Upon approval of a cost mitigation order, the board shall submit a report to the legislature containing the order and detailed information on the findings of the board including the risks, savings and costs likely to result from the buydowns and other appropriate modifications of purchase power arrangements contained in the order. (Added 2001, No. 145 (Adj. Sess.), § 3.)

§ 209b. [Reserved for future use.]

§ 209c. Electricity affordability program

(a) The Public Service Board shall design a proposed electricity affordability program in the form of draft legislation. The program shall be developed with the aid of an electricity affordability program collaborative. The collaborative, composed of representatives from the electric utilities, residential customers, consumer representatives, low-income program representatives, representatives from programs for elders, the Department of Public Service, the Agency of Human Services, and other stakeholders identified by the Board, shall aid in the development of an electricity affordability program, as well as requirements for the implementation and funding of the program. The proposed electricity affordability program will be presented to the Vermont General Assembly in the form of draft legislation for consideration in January 2007.

(b) The proposed electricity affordability program shall provide assistance in the payment of electricity bills for eligible low income residential customers served by electric companies subject to the jurisdiction of the Board.

(c) In developing the electricity affordability program, the Board shall review the successes and administrative burdens of similar programs in operation in other states and consider the following goals, which shall be afforded equal weight in formulating the program:

(1) the need to provide payment assistance to low-income customers at and below 150 percent of the Federal Poverty Level;

(2) the need for automatic screening and enrollment methods of eligible customers by means of information obtained from existing means-tested financial assistance programs administered by other Vermont agencies such as food stamps, Medicaid, LIHEAP or TANF; and

(3) the need to design a program that is funded by all customer classes in an equitable and reasonable manner and that results in the reimbursement of net incremental costs incurred by electric utilities to implement the program, taking into

consideration the benefits as well as the costs. (Added 2005, No. 208 (Adj. Sess.), § 10a; amended 2013, No. 96 (Adj. Sess.), § 191.)

§ 210. Electric companies; interconnection facilities

(a) The public service board shall have jurisdiction to order electric companies subject to its supervision to build or rebuild electric transmission lines in order to provide adequate interconnection between the transmission systems of the state. The board shall have power to exercise the jurisdiction herein conferred only after due notice to all interested parties and opportunity for hearing and after making findings based upon adequate evidence that the ordered construction:

(1) Is necessary in the interests of consumers of electrical energy;

(2) Is not detrimental to the interests of the investors of the company ordered to build or rebuild;

(3) Will serve the public good.

(b) The board may allocate the cost of building or rebuilding between the companies whose facilities are to be interconnected providing that the findings herein referred to are made as to each company affected by such allocation. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961; 1999, No. 157 (Adj. Sess.), § 3.)

§ 211. Electric energy from inside or outside State

(a) The Department of Public Service is hereby designated as the agent of the State of Vermont with full powers to act for and represent the State in any negotiations, arrangements, or proceedings for the procurement of electric energy from any source outside the State of Vermont or electric energy generated in the State by a producer, cooperative, municipal, or privately owned, which is subject to the supervision of the Department under this chapter with the right, with the approval of the Board and the Governor, to contract for the purchase of such power and the resale on a nonprofit basis of such power to the electric distribution or transmission companies, cooperative, municipal, and privately owned, without preference or discrimination, for distribution within the State, provided, however, that purchases from sources inside the State of Vermont may be contracted for by the Department of Public Service as agent for the State only upon request of the seller and a determination by the Department that the purchase of such power and its resale on a nonprofit basis to electric distribution or transmission companies, cooperative, municipal, and privately owned, is in furtherance of the needs of the State of Vermont. If the term of any proposed purchase exceeds five years, it shall be subject to the approval of the board under section 248 of this title. In addition the Department of Public Service may, with the approval of the Board and the Governor, contract for the resale of the power outside the State of Vermont, if resale outside

the State is reasonably incidental to and in furtherance of the needs of the State of Vermont. Revenues realized by the Department from such resale outside the State shall be used to defray the costs of such resale, and any revenues in excess of such costs, including interest earned on excess revenues, shall be applied first to reduce the Department's retail rates under section 212a of this title, and thereafter any remaining excess shall be applied to reduce the Department's wholesale rates to Vermont utilities. The Department of Public Service, with the approval of the Board, is authorized and empowered to enter into contracts for the transmission of such energy from the place of purchase to the point or points of resale. The Department shall take all reasonable steps to ensure that the contracts it enters into for the transmission, purchase, and wholesale or retail sale of electricity shall be in writing. The Department of Public Service is authorized and empowered to employ additional engineering and legal personnel to assist in the procurement of such energy.

(b) Repealed.]

(c) An Enterprise Fund is established in the Department of Public Service to consist of revenues from the resale of power and to support the activities authorized in this section and sections 212 and 212a of this title. Balances shall remain in the Fund at the end of each fiscal year, and the Fund shall be appropriated and expended in accordance with 32 V.S.A. § 462(b). These monies shall not be available to meet the general obligations of the State. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961; 1967, No. 196; 1979, No. 204 (Adj. Sess.), § 25, eff. Feb. 1, 1981; 1987, No. 65, § 2, eff. May 28, 1987; 1987, No. 281 (Adj. Sess.), § 308, eff. June 21, 1988; 2011, No. 139 (Adj. Sess.), § 51, eff. May 14, 2012; 2011, No. 162 (Adj. Sess.), § E.233.)

§ 212. Niagara power project

The department of public service in addition to the powers conferred upon it by section 211 of this title and notwithstanding any limitations on such authority imposed thereby or by any other law of this state, is hereby designated as the agent of the state of Vermont with full power to act for and represent the state in any negotiations, arrangements or proceedings for the procurement of electrical energy from the Niagara power project authorized by Congress in Public Law 85-159 (16 U.S.C.A. § 836) and for which a license was issued to the power authority of the state of New York by the federal power commission as Project 2216, with the right, with the approval of the board, to contract for the purchase of such power and resale thereof in accordance with the terms of said federal legislation with federal license. (1959, No. 326 (Adj. Sess.), eff. Jan. 29, 1960; amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961; 1979, No. 204 (Adj. Sess.), § 26, eff. Feb. 1, 1981.)

§ 212a. Retail sales by department; statutory authorization

(a) The department of public service, in addition to the powers conferred upon it by sections 211 and 212 of this title and notwithstanding any limitations on that authority imposed by those sections or by any other law of this state, is authorized to purchase from any source and to distribute and sell at retail without unjust discrimination, electrical energy directly to all consumers of electricity in Vermont, under the provisions of this section and sections 212b-212f of this title.

(b) The department may continue to purchase, sell and distribute electric capacity and energy at retail pursuant to contracts or arrangements that existed under the terms of this section prior to changes effected by this act. Any purchase, sale and distribution of electricity by the department to replace or exceed amounts sold at retail by the department on the effective date of this act shall be subject to the provisions of this section and sections 212b-212f as added or amended by this act. (Added 1985, No. 20, eff. April 23, 1985; amended 1987, No. 65, § 3, eff. May 28, 1987.)

§ 212b. Review board on retail sales

(a) There is established a board to represent the interests of the state and its residents with respect to retail sales. The board shall consist of the governor, the speaker of the house, the house majority leader, the house minority leader, one other member of the house from the party other than that of the speaker appointed by the speaker, the president pro tem of the senate, the senate majority leader, the senate minority leader, and one other senator from the party other than that of the president pro tem appointed by the committee on committees. The review board shall seek to obtain information from interested parties including, if appropriate, a representative of each of the following: consumer-owned utilities, investor-owned utilities, electric consumers of the state, and environmental interest groups.

(b) The governor shall serve as chair. The board shall meet as necessary to discharge its duties under this section, and for attendance at meetings during adjournment of the general assembly, legislative members of the board shall be entitled to reimbursement for expenses and per diem compensation under subsection 406(a) of Title 2. Meetings shall be at the call of the chair, or a majority of the voting members of the board.

(c) Prior to any filing with the public service board under section 212c of this title, the department shall submit any proposal for retail sales of electric energy or capacity to the review board on retail sales for its review and approval. The review board shall approve a proposal for filing with the public service board only if it is satisfied that the potential benefits of the retail sale to the ratepayers of the state outweigh any potential risks to the state's residents, that the sale does not expose the state to unreasonable financial liability, that the sale does not adversely affect the retail electrical energy distribution system as a whole, and that the sale will promote

effective competition. The board shall conduct its review under such rules and procedures as it deems appropriate. The department may proceed to file the proposal for retail sales with the public service board upon approval by the review board and failure of the board to act within 60 days of submission of the proposal shall be deemed to be approval. (Added 1987, No. 65, § 4, eff. May 28, 1987.)

§ 212c. Retail sale by the department; public service board approval

(a) The department shall not enter into a contract or arrangement for retail sales unless approved by the public service board under this section. Before the public service board approves any retail sale of energy or capacity under this section it shall conclude that the sale will promote the public good of the state by finding that:

(1) the proposed sale, where appropriate, is reasonably required to meet actual or projected growth in statewide demand, to replace amounts of electricity or capacity sold at retail by the department on the effective date of this act, or to provide capacity or energy needs arising from a bankruptcy filing by any Vermont electric utility;

(2) the department's retail rates are just and reasonable, the sale will not result in unjust discrimination in rates, and the sale will result in economic benefits for the state and its residents;

(3) the sale will not adversely affect system stability and reliability, and the sale will be in compliance with the electric energy plan adopted under section 202 of this title, or that there exists good cause to permit the proposed sale; and

(4) the sale is in the best interests of the ratepayers, and that the current and future benefits of the sale outweigh the current and future costs to the state's residents.

(b) The board shall make its final determination under this subsection within six months after a filing by the department. The department's rate filings and any adjustments or exceptions thereto shall be consistent with the procedures set forth in sections 225, 226, 227, 228, and 229 of this title, where applicable. (Added 1987, No. 65, § 4, eff. May 28, 1987.)

§ 212d. Access; negotiations; board order

(a) Upon a finding by the board that the retail sale will promote the general good of the state under section 212c of this title, Vermont electric utility companies shall enter into negotiations for contracts with the department that are necessary for sale and distribution, including, without limitation, lease of facilities, provision of services to the department to distribute electric energy, and the assurance of adequate reliability. The rates, charges, terms or other conditions of such contracts shall be established by negotiations or pursuant to subsection (b) of this section. No electric

utility company with which the department shares a service territory may unreasonably deny replacement power needed by the department to assure adequate reliability of service.

(b) If, pursuant to subsection (a) of this section, the department and a company are unable to negotiate the rates, charges, terms or other conditions of such contracts including the assurance of adequate reliability, either may petition the public service board to establish the rates, terms, charges, or conditions thereunder, or resolve any other related matter, as the board determines to be just and reasonable. The board shall establish rates or charges under this section to compensate or reimburse such company for all costs reasonably and necessarily incurred by it to provide such arrangements. The board shall offer an opportunity for commencing a hearing within 45 days of filing of the petition and shall make either a final decision or, if unable to do so, an interim decision within three months of filing of the petition. If, within three months of filing, the board is unable to reach a final decision on the petition, the board shall direct the company to provide to the department the necessary arrangements, including if necessary or appropriate, backup reliability, and access to facilities to allow the department to distribute the electric energy involved in its proposal on an interim basis under such interim terms and conditions as the board finds to be reasonable pending a final board decision on the petition. The board shall render a final decision on the petition within six months from the date it is filed. (Added 1987, No. 65, § 4, eff. May 28, 1987; amended 1999, No. 157 (Adj. Sess.), § 4.)

§ 212e. Representation of public; production of records

(a) The board shall request the appearance of the attorney general or shall appoint a member of the Vermont bar to represent the interests of the public or the state in any hearings before the board under sections 212a, 212c or 212d of this title regarding either:

(1) the sale of electrical energy by the department of public service; or

(2) any other matter in which, upon petition of a company directly affected, the board finds that there is a conflict or a likelihood of a conflict between the department's role as seller or distributor of electrical energy under this section and the department's responsibility to represent the interests of the public or the state in that matter.

The department shall upon request provide sufficient funds to the attorney general or person so appointed to engage necessary engineering or other technical advice.

(b) Any request by the department of public service, or subpoena issued by the department of public service for the production and examination of books, records and witnesses, or to furnish information under this title, may, upon motion to the board by the company affected, be quashed upon a finding by the board that the

request or subpoena would result in the production of a trade secret or other confidential research, development, or commercial information of the company which would materially disadvantage the company as a competitor to the department in the sale or distribution of electrical energy. (Added 1987, No. 65, § 4, eff. May 28, 1987.)

§ 212f. Identification of department sales on bills

Each electric company, municipal, cooperative or private, shall print on all bill statements to customers at least the following information:

(1) the number of kilowatt hours of electricity available to the customer from the department of public service per billing cycle;

(2) the number of kilowatt hours of department electricity sold to the customer during the billing cycle; and

(3) the price to the customer of the department's electricity per kilowatt hour.

With respect to the above information, the companies are required to identify clearly the department of public service as the retail source of the electricity. (Added 1987, No. 65, § 5.)

§ 213. Interchange of electric facilities: power shortage

The public service board, in the interest of public necessity, is hereby empowered to order in writing a company engaged in the manufacture, transmission, distribution or sale of electricity directly to the public or to be used ultimately by the public for lighting, heating, or power, to transport electric energy over its transmission or distribution facilities at a reasonable service charge and in such manner as the board shall direct when such transmission will alleviate an electric power shortage within this state. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961; 1961, No. 180, § 1; 1967, No. 185, § 1, eff. April 17, 1967.)

§ 214. Application for interconnection; joint use of facilities, and resolution of transmission disputes

(a) The public service board, upon application of any electric company, municipal, cooperative, or privately owned, engaged or authorized to engage in the manufacture, transmission, distribution or sale of electric energy may by order direct an electric company, municipal, cooperative, or privately owned, engaged in the manufacture, transmission, distribution or sale of electric energy, to establish physical connection of its transmission or distribution facilities with the facilities of one or more other such electric company or companies, to sell energy to, to exchange energy with, to transmit or distribute energy for any other such electric company or companies. In addition the board, upon application of the department of public service, may by order direct an electric company engaged in the transmission of electric energy to transmit energy for the department. For the purposes of this

section, a company "authorized to engage" means a municipal company authorized under chapter 79 of this title, a cooperative authorized under chapter 81 of this title, or a privately-owned company authorized by its articles of association, charter or bylaws. However, the board shall have no authority to compel any electric company to sell or exchange, transmit or distribute energy when to do so would impair its ability to render adequate service to its customers. The board's order may only be issued after due notice to all interested parties and findings based upon adequate evidence that the board's action will be consistent with the general good of the state and that it is not detrimental to the interest of investors or consumers. The board may prescribe the terms and conditions of the arrangement to be made between the electric companies, including the department of public service, affected by the order including the compensation or reimbursement reasonably due to any of them, and in the case of a new physical connection the apportionment of costs between or among them, provided that a company making application for a connection which will inure to its sole benefit shall assume the entire cost of the connection.

(b) The board shall have authority to arbitrate disputes between or among users or prospective users of transmission facilities located within the state, where such disputes arise under any agreement or under any state or federal tariff relating to the provision of or entitlements to transmission services and providing for arbitration by the board. In conducting such arbitration, the board shall apply the terms and conditions set forth in the agreement or tariff; provided, that where a user or prospective user proposes a change in the provision of entitlements to transmission services, it shall bear the burden of proving that the proposed change, including any reduction in or adverse effect upon the transmission services of or entitlements held by any other user, promotes the general good of the state.

(c) In any arbitration proceeding conducted pursuant to this section, the board shall give notice to all Vermont electric companies, the department, and any other persons or entities that have notified the board that they hold entitlements to the transmission services that will be the subject of the proceeding. Upon proper application, all persons and entities entitled to notice under this subsection shall be permitted to participate in the proceeding.

(d) The provisions of subdivisions 5671(6) through 5671(9) and sections 5676 through 5679 of Title 12 shall not apply to any arbitration proceeding conducted pursuant to the provisions of this section if the agreement or tariff under which arbitration is being conducted provides for direct appeal of questions of law to the supreme court. In such cases, any award, order or decree of the board shall, solely for purposes of proceedings subsequent to the issuance of the same, be treated as if it were an order of the board acting in a quasi-judicial capacity in a contested case, except that the board shall have no power of enforcement. The provisions of sections 12, 14 and 15 of this title shall also apply in such cases.

(e) Notwithstanding subsection 5652(b) of Title 12, a provision to arbitrate transmission disputes is enforceable if contained in a validly filed state or federal tariff. Unless otherwise provided, a provision to arbitrate contained in a validly filed tariff creates a duty to arbitrate and is valid and enforceable, except upon such grounds as exist for the termination or revocation of the tariff. (Added 1967, No. 185, § 22, eff. April 17, 1967; amended 1981, No. 149 (Adj. Sess.), eff. April 13, 1982; 1987, No. 65, § 6, eff. May 28, 1987; 1987, No. 237 (Adj. Sess.), eff. May 24, 1988.)

§ 215. Natural gas

The department of public service, or its duly appointed representative, is hereby authorized as an agency of the state to represent the interests of the state before the federal power commission or other body in all matters relating to the transportation and distribution of natural gas into the state of Vermont or the New England states. Upon findings by the natural gas study commission that (a) the procurement of natural gas for the state of Vermont or parts thereof is economically feasible and could substantially promote the interests of Vermont consumers, domestic and industrial, and (b) that such procurement cannot be obtained by agreement between or among gas transmission or distribution companies within and without the state, within a reasonable time, not to exceed two years, the department of public service shall be also designated as the agent of the state of Vermont with full powers to act for and represent the state in any negotiations, arrangements or proceedings for the procurement of natural gas from any source within or outside of the state of Vermont with the right, with the approval of the governor, to contract for the purchase and transmission of such gas and the resale thereof on a nonprofit basis to the gas transmission or distribution companies, cooperative, municipal and privately owned, without preference or discrimination, for transmission or distribution within the state. With the approval of the governor, it may enter into contracts for the transmission of natural gas from the place of purchase to a point or points within the state of Vermont. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961; 1961, No. 267, § 2, eff. Aug. 1, 1961; 1979, No. 204 (Adj. Sess.), § 35, eff. Feb. 1, 1981.)

§ 216. Gas rate fixing

The public service board, under its general jurisdiction over public utilities, shall have authority to fix rates and determine the minimum standards of service for consumers in the event natural gas shall be piped into the state. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961.)

§ 217. Department of public service to prosecute

The department of public service, through the director for public advocacy, shall represent the public at such hearing when the matters involved result directly from a proposed increase in rates, tolls or charges, or the issuing of stock, bonds, notes or other evidence of indebtedness for which the approval of the board is required by

law. In any proceeding, the board may request the appearance of the attorney general or appoint a member of the Vermont bar to represent the interests of the public or state. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961; 1979, No. 204 (Adj. Sess.), § 27, eff. Feb. 1, 1981.)

§ 218. Jurisdiction over charges and rates

(a) When, after opportunity for hearing, the rates, tolls, charges, or schedules are found unjust, unreasonable, insufficient, or unjustly discriminatory, or are found to be preferential or otherwise in violation of a provision of this chapter, the Board may order and substitute therefor such rates, tolls, charges, or schedules, and make such changes in any regulations, measurements, practices, or acts of such company relating to its service, and may make such order as will compel the furnishing of such adequate service as shall at such hearing be found by it to be just and reasonable. This section shall not be construed to require the same rates, tolls, or charges from any company subject to supervision under this chapter for like service in different parts of the State, but the Board in determining these questions shall investigate local conditions and its final findings and judgment shall take cognizance thereof. This section does not prohibit a telecommunications company from filing tariffs that condition the availability of an intrastate service upon subscription to an interstate or unregulated service from the same or an affiliated company; provided that an incumbent local exchange carrier shall provide a plan to allocate reasonably revenue between the regulated intrastate service and other services. The Board shall retain the authority to review the tariff filing to determine whether it is just and reasonable.

(b) The Department of Public Service shall propose, and the Board through the establishment of rates of return, rates, tolls, charges, or schedules shall encourage the implementation by electric and gas utilities of energy-efficiency and load management measures which will be cost-effective for the utilities and their customers on a life cycle cost basis. The Board shall approve rate designs to encourage the efficient use of natural gas and electricity, including consideration of the creation of an inclining block rate structure for residential rate customers with an initial block of low-cost power available to all residences.

(1) To implement the requirements of this subsection, the Public Service Board shall continue its investigation of the following:

(A) the parameters for residential inclining block rate designs;

(B) alternative rate designs, such as critical peak pricing programs or more widespread use of time-of-day rates, that would encourage more efficient use of electricity;

(C) the possible inclusion of exemptions from otherwise applicable inclining block rates or rate designs to encourage efficiency for situations in which special health needs or another extraordinary situation presents such a significant demand for electricity that the Board determines use of those rates would cause undue financial hardship for the customer.

(2) By December 31, 2008, the Board shall issue a report and plan for implementation based upon the results of its investigation. The plan shall require each retail company to upgrade its rates as necessary to implement new rate designs appropriate to encourage efficient energy use, which shall include residential inclining block rates, if the Board determines that those rates would be appropriate, by a specified date, or as part of its next rate-related appearance before the Board, or according to a timetable otherwise specified by the Board. In implementing these rate designs, the Board shall consider the appropriateness of phasing in the rate design changes to allow large users of energy a reasonable opportunity to employ methods of conservation and energy efficiency in advance of the full effect of the changes.

(3) Smart grid. Notwithstanding any provision of law to the contrary, an applicant may propose and the Board may approve or require an applicant to adopt a rate design that includes dynamic pricing, such as real-time pricing rates. Under such circumstances, the Board may alter or waive the notice and filing provisions that would apply otherwise under section 225 of this title, provided the applicant ensures that each customer receives sufficient advance notice of the time-of-day usage rates.

(c)(1) The Public Service Board shall take action, including the setting of telephone rates, enabling the State of Vermont to participate in the Federal Communications Commission telephone Lifeline program. The Board shall set one or more residential basic exchange Lifeline telephone service credits, for those persons eligible to participate in the Federal Communications Commission Lifeline program.

(2) A person shall be eligible for the Lifeline benefit who meets the Department for Children and Families means test of eligibility, which shall include all persons participating in public assistance programs administered by the Department. The Department for Children and Families shall verify this eligibility, in compliance with Federal Communications Commission requirements.

(A) The benefit under this subdivision shall be equal to the full subscriber line charge, plus an amount equal to the larger of:

(i) 50 percent of the monthly basic service charge, including 50 percent of all mileage charges and, if the Board determines after notice and opportunity for hearing that their inclusion will make Lifeline benefits more comparable in different areas, 50 percent of the usage cost arising from a fixed amount of monthly local usage; and

(ii) $7.00 per month;

(B) provided that in no event shall the amount of the monthly credit exceed the monthly basic service charge, including any standard usage and mileage charges.

(3) A person shall also be eligible for the Lifeline benefit who submits to the Commissioner for Children and Families an application containing any information and disclosure of information authorization necessary to process the Lifeline credit. Such application shall be filed with the Commissioner on or before June 15 of each year and shall be signed by the applicant under the pains and penalties of perjury. A person shall be eligible who is 65 years of age or older whose modified adjusted gross income as defined in 32 V.S.A. § 6061(5) for the preceding taxable year was less than 175 percent of the official poverty line established by the federal Department of Health and Human Services for a family of two published as of October 1 of the preceding taxable year. A person shall be eligible whose modified adjusted gross income as defined in 32 V.S.A. § 6061(5) for the preceding taxable year was less than 150 percent of the official poverty line established by the federal Department of Health and Human Services for a family of two published as of October 1 of the preceding taxable year. In the case of sickness, absence, disability, excusable neglect, or when, in the judgment of the Secretary of Human Services good cause exists, the Secretary may extend the deadline for filing claims under this section. The provisions of 32 V.S.A. § 5901 shall apply to such application. The Secretary of Human Services shall perform income verification. Upon enrollment in the program, and for each period of renewal, such participant shall receive the credit for 12 ensuing months.

(A) The benefit under this subdivision shall be equal to the full subscriber line charge, plus an amount equal to the larger of:

(i) 50 percent of the monthly basic service charge, including 50 percent of all mileage charges and, if the Board determines after notice and opportunity for hearing that their inclusion will make Lifeline benefits more comparable in different areas, 50 percent of the usage cost arising from a fixed amount of monthly local usage; and

(ii) $7.00 per month.

(B) The amount of the monthly credit pursuant to subdivision (A) of this subdivision (3) shall not exceed the monthly basic service charge, including any standard usage and mileage charges.

(4) Notwithstanding any provisions of this subsection to the contrary, a subscriber who is enrolled in the Lifeline program and has obtained a final relief from abuse order in accordance with the provisions of 15 V.S.A. chapter 21 or 33 V.S.A.

chapter 69 shall qualify for a Lifeline benefit credit for the amount of the incremental charges imposed by the local telecommunications company for treating the number of the subscriber as nonpublished and any charges required to change from a published to a nonpublished number. Such subscribers shall be deemed to have good cause by the Secretary of Human Services for the purpose of extending the application deadline in subdivision (3) of this subsection. For purposes of this section, "nonpublished" means that the customer's telephone number is not listed in any published directories, is not listed on directory assistance records of the company, and is not made available on request by a member of the general public, notwithstanding any claim of emergency a requesting party may present. The Department shall develop an application form and certification process for obtaining this Lifeline benefit credit. Upon enrollment in the program, such participant shall receive the Lifeline benefit credit until the end of the calendar year. Renewals shall be for a period of one year.

(5) Repealed.]

(d) The Board may permit recovery in a company's rates of all or a reasonable portion of the company's expenditures directly related to aesthetic improvements of utility substations, provided that such aesthetic improvements are incidental to other necessary expenditures at or in the vicinity of the substation.

(e) Notwithstanding any other provisions of this section, the Board, on its own motion or upon petition of any person, may issue an order approving a rate schedule, tariff, agreement, contract, or settlement that provides reduced rates for low income electric utility consumers better to assure affordability. For the purposes of this subsection, "low income electric utility consumer" means a customer who has a household income at or below 150 percent of the current federal poverty level. When considering whether to approve a rate schedule, tariff, agreement, contract, or settlement for low income electric utility consumers, the Board shall take into account the potential impact on, and cost-shifting to, other utility customers.

(f) Regulatory incentives for renewable generation.

(1) Notwithstanding any other provision of law, an electric distribution utility subject to rate regulation under this chapter shall be entitled to recover in rates its prudently incurred costs in applying for and seeking any certificate, permit, or other regulatory approval issued or to be issued by federal, State, or local government for the construction of new renewable energy to be sited in Vermont, regardless of whether the certificate, permit, or other regulatory approval ultimately is granted.

(2) The Board is authorized to provide to an electric distribution utility subject to rate regulation under this chapter an incentive rate of return on equity or other reasonable incentive on any capital investment made by such utility in a renewable energy generation facility sited in Vermont.

(3) For the purpose of this subsection, "renewable energy" and "new renewable energy" shall be as defined in section 8002 of this title.

(g) Each company subject to the Public Service Board's jurisdiction that distributes electrical energy shall have in place a rate schedule for street lighting that provides an option under which efficient streetlights, including light-emitting diode (LED) lights, are installed on company-owned fixtures. These rate schedules also shall include a separate option under which customers may own street lighting and install efficient streetlights, including LED lights, on customer-owned fixtures. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961; 1981, No. 245 (Adj. Sess.), § 1; 1985, No. 13, eff. April 11, 1985; 1985, No. 48, § 2; 1985, No. 176 (Adj. Sess.), eff. May 13, 1986; 1989, No. 146 (Adj. Sess.); 1991, No. 239 (Adj. Sess.), § 1, eff. June 1, 1992; 1995, No. 99 (Adj. Sess.), § 7; 1997, No. 135 (Adj. Sess.), § 2; 1999, No. 147 (Adj. Sess.), § 4; 1999, No. 152 (Adj. Sess.), § 273; 1999, No. 157 (Adj. Sess.), §§ 5, 16; 2003, No. 98 (Adj. Sess.), § 2; 2005, No. 174 (Adj. Sess.), § 58; 2003, No. 208 (Adj. Sess.), § 11; 2007, No. 92 (Adj. Sess.), §§ 13, 13a; 2009, No. 45, § 6, eff. May 27, 2009; 2009, No. 78 (Adj. Sess.), § 23, eff. April 15, 2010; 2011, No. 47, § 20f, eff. May 25, 2011; 2011, No. 139 (Adj. Sess.), § 51, eff. May 14, 2012; 2013, No. 105 (Adj. Sess.), § 1.)

§ 218a. Permanent Telecommunications Relay Service

(a) The Department of Public Service shall develop the necessary standards for the establishment of a permanent, statewide telecommunications relay service and for an associated equipment program. The standards developed by the department shall be equal to or exceed those standards mandated by the Americans With Disabilities Act of 1990 (Public Law 101-336, 104 Stat. 327 (1990)) and expressly require that the designated provider of Vermont's telecommunications relay services comply, as expeditiously as possible, with any additional federal regulations which may be promulgated by the Federal Communications Commission in accordance with the provisions of this section.

(b) The Department of Public Service shall issue a request for proposal seeking competitive bids from qualified vendors to provide telecommunications relay services and competitive bids from qualified vendors to provide telecommunications equipment in accordance with the provisions of this section, including the standards developed under subsection (a) of this section. The term of any contract shall not exceed four years.

(c) The Department of Public Service may contract with the qualified bidder offering the most favorable proposal, giving due consideration to costs, to quality of service, and to the interests of the community of people who are deaf, hard of hearing, or have speech limitations.

(d) The Department of Public Service shall establish a Vermont Telecommunications Relay Service Advisory Council composed of the following members: one representative of the Department of Public Service, who shall act as chair and who shall be designated by the Commissioner of Public Service; one representative of the Department of Disabilities, Aging, and Independent Living, who shall act as vice chair; two representatives of the deaf community; one member of the community of people who are hard of hearing or have a speech limitation; one representative of a company providing local exchange service within the State; and one representative of an organization currently providing telecommunications relay services. The members of the Council who are not officers or employees of the State shall receive per diem compensation and expense reimbursement in amounts authorized by 32 V.S.A. § 1010(b). The costs of such compensation and reimbursement, and any other necessary administrative costs shall be included within the contract entered into under subsection (c) of this section. The Council shall advise the Department of Public Service and the contractor for telecommunications relay services on all matters concerning the implementation and administration of the State's telecommunications relay service.

(e) The Department shall propose and the Board shall establish by rule or order a telecommunications equipment grant program to assist persons who are deaf, deaf-blind, hard of hearing, have a speech limitation, and persons with physical disabilities that limit their ability to use standard telephone equipment to communicate by telephone. Pursuant to this program a person who is deaf, deaf-blind, hard of hearing, has a speech limitation, or a person with a physical disability that limits his or her ability to use standard telephone equipment whose modified adjusted gross income as defined in 32 V.S.A. § 5829(b)(1) for the preceding taxable year was less than 200 percent of the official poverty line established by the U.S. Department of Health and Human Services for a family of six or the actual number in the family, whichever is greater, published as of October 1 of the preceding taxable year, may be eligible for a benefit towards the purchase, upgrade, or repair of equipment used to access the relay service or otherwise communicate by telephone. The total benefits allocable under this section shall not exceed $75,000.00 per year. In adopting rules, the Board shall consider the following:

(1) prior benefits;

(2) degree of functional need;

(3) income;

(4) number of applicants;

(5) disposition of equipment upon change of residence; and

(6) appropriate limits on per person benefit levels based on the equipment needed and the income level of the applicant.

(f) The costs of the State's telecommunications relay service and any equipment benefit under subsection (e) of this section shall be included as part of the Vermont Universal Service Fund Program. (Added 1991, No. 6, § 2, eff. March 20, 1991; amended 1997, No. 135 (Adj. Sess.), § 4; 1999, No. 67 (Adj. Sess.), § 2; 1999, No. 157 (Adj. Sess.), § 6; 2001, No. 93 (Adj. Sess.), § 1; 2005, No. 171 (Adj. Sess.), § 4; 2005, No. 174 (Adj. Sess.), § 59; 2013, No. 96 (Adj. Sess.), § 192.)

§ 218b. Farm customers; energy efficiency; electric energy generation

Each Vermont electric distribution utility shall develop and implement comprehensive energy efficiency programs for its livestock and domestic fowl farm customers. Such programs shall include all program measures that the public service board determines will be cost-effective as part of the utility's least cost integrated plan. Utilities shall file such proposed programs by August 1, 1991. The board shall require each utility to deliver approved program measures to farm customers as rapidly as possible thereafter, taking into consideration the need for these services, utility financial constraints, and cost-effective delivery mechanisms. (Added 1991, No. 98; amended 1997, No. 124 (Adj. Sess.), § 5, eff. April 21, 1998.)

§ 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 is reasonably consistent with achieving the goals and targets of subsection 8005(d) (2017 SPEED goal; total renewables targets) of this title.

(c) Repealed.]

(d)(1) Least cost transmission services shall be provided in accordance with this subsection. Not later than July 1, 2006, any electric company that does not have a designated retail service territory and that owns or operates electric transmission facilities within the State of Vermont, in conjunction with any other electric companies that own or operate these facilities, jointly shall prepare and file with the Department of Public Service and the Public Service Board a Transmission System Plan that looks forward for a period of at least 10 years. A copy of the plan shall be filed with each of the following: the House Committees on Commerce and on Natural Resources and Energy and the Senate Committees on Finance and on Natural Resources and Energy. The objective of the Plan shall be to identify the potential need for transmission system improvements as early as possible, in order to allow sufficient time to plan and implement more cost-effective nontransmission alternatives to meet reliability needs, wherever feasible. The Plan shall:

(A) identify existing and potential transmission system reliability deficiencies by location within Vermont;

(B) estimate the date, and identify the local or regional load levels and other likely system conditions at which these reliability deficiencies, in the absence of further action, would likely occur;

(C) describe the likely manner of resolving the identified deficiencies through transmission system improvements;

(D) estimate the likely costs of these improvements;

(E) identify potential obstacles to the realization of these improvements; and

(F) identify the demand or supply parameters that generation, demand response, energy efficiency, or other nontransmission strategies would need to address to resolve the reliability deficiencies identified.

(2) Prior to the adoption of any Transmission System Plan, a utility preparing a Plan shall host at least two public meetings at which it shall present a draft of the Plan and facilitate a public discussion to identify and evaluate nontransmission alternatives. The meetings shall be at separate locations within the State, in proximity to the transmission facilities involved or as otherwise required by the Board, and each shall be noticed by at least two advertisements, each occurring between one and three weeks prior to the meetings, in newspapers having general circulation within the State and within the municipalities in which the meetings are to be held. Copies of the notices shall be provided to the Public Service Board, the Department of Public Service, any entity appointed by the Public Service Board pursuant to subdivision 209(d)(2) of this title, the Agency of Natural Resources, the Division for Historic Preservation, the Department of Health, the Byways Advisory Council, the Agency of Transportation, the Attorney General, the chair of each regional planning commission, each retail electricity provider within the State, and any public interest group that requests, or has made a standing request for, a copy of the notice. A verbatim transcript of the meetings shall be prepared by the utility preparing the Plan, shall be filed with the Public Service Board and the Department of Public Service, and shall be provided at cost to any person requesting it. The Plan shall contain a discussion of the principal contentions made at the meetings by members of the public, by any State agency, and by any utility.

(3) Prior to the issuance of the Transmission Plan or any revision of the Plan, the utility preparing the Plan shall offer to meet with each retail electricity provider within the State, with any entity appointed by the Public Service Board pursuant to subdivision 209(d)(2) of this title, and with the Department of Public Service, for the purpose of exchanging information that may be relevant to the development of the Plan.

(4)(A) A Transmission System Plan shall be revised:

(i) within nine months of a request to do so made by either the Public Service Board or the Department of Public Service; and

(ii) in any case, at intervals of not more than three years.

(B) If more than 18 months shall have elapsed between the adoption of any version of the Plan and the next revision of the Plan, or since the last public hearing to address a proposed revision of the Plan and facilitate a public discussion that identifies and evaluates nontransmission alternatives, the utility preparing the Plan, prior to issuing the next revision, shall host public meetings as provided in

subdivision (2) of this subsection, and the revision shall contain a discussion of the principal contentions made at the meetings by members of the public, by any State agency, and by any retail electricity provider.

(5) On the basis of information contained in a Transmission System Plan, obtained through meetings held pursuant to subdivision (2) of this subsection, or obtained otherwise, the Public Service Board and the Department of Public Service shall use their powers under this title to encourage and facilitate the resolution of reliability deficiencies through nontransmission alternatives, where those alternatives would better serve the public good. The Public Service Board, upon such notice and hearings as are otherwise required under this title, may enter such orders as it deems necessary to encourage, facilitate, or require the resolution of reliability deficiencies in a manner that it determines will best promote the public good.

(6) The retail electricity providers in affected areas shall incorporate the most recently filed Transmission Plan in their individual least cost integrated planning processes, and shall cooperate as necessary to develop and implement joint least cost solutions to address the reliability deficiencies identified in the Transmission Plan.

(7) Before the Department of Public Service takes a position before the Board concerning the construction of new transmission or a transmission upgrade with significant land use ramifications, the Department shall hold one or more public meetings with the legislative bodies or their designees of each town, village, or city that the transmission lines cross, and shall engage in a discussion with the members of those bodies or their designees and the interested public as to the Department's role as public advocate. (Added 1991, No. 99, § 2; amended 1999, No. 60, § 2, eff. June 1, 1999; 1999, No. 157 (Adj. Sess.), § 7; 2005, No. 61, § 9; 2007, No. 209 (Adj. Sess.), § 13; 2011, No. 62, § 25; 2011, No. 170 (Adj. Sess.), § 11.)

§ 218d. Alternative regulation of electric and natural gas companies

(a) Notwithstanding section 218 and sections 225-227 of this title, upon petition of an electric or natural gas company, upon request of the department of public service, or on its own initiative, the public service board may, after opportunity for hearing, approve alternative forms of regulation for an electric or natural gas company; provided, however, in the case of a municipal plant or department formed under local charter or chapter 79 of this title or an electric cooperative formed under chapter 81 of this title, any alternative forms of regulation approved by the board shall also be approved by a majority of the voters of a municipality or cooperative voting upon the question at a duly warned annual or special meeting held for that purpose. Before doing so, the board shall find that the proposed form of alternative regulation will:

(1) establish a system of regulation in which such companies have clear incentives to provide least-cost energy service to their customers;

(2) provide just and reasonable rates for service to all classes of customers;

(3) deliver safe and reliable service;

(4) offer incentives for innovations and improved performance that advance state energy policy such as increasing reliance on Vermont-based renewable energy and decreasing the extent to which the financial success of distribution utilities between rate cases is linked to increased sales to end use customers and may be threatened by decreases in those sales;

(5) promote improved quality of service, reliability, and service choices;

(6) encourage innovation in the provision of service;

(7) establish a reasonably balanced system of risks and rewards that encourages the company to operate as efficiently as possible using sound management practices; and

(8) provide a reasonable opportunity, under sound and economical management, to earn a fair rate of return, provided such opportunity must be consistent with flexible design of alternative regulation and with the inclusion of effective financial incentives in such alternatives.

(b) If savings result from alternative regulation, the savings shall be shared with ratepayers as determined by the board.

(c) In the case of a municipal plant or department formed under local charter or chapter 79 of this title or an electric cooperative formed under chapter 81 of this title, alternative regulation may include authority for local elected officials to set and revise rates.

(d) Alternative regulation may include such changes or additions to, waivers of, or alternatives to, traditional rate-making procedures, standards, and mechanisms, including substantive changes to rate base-rate of return rate setting, as the board finds will promote the public good and will support the required findings in subsection (a) of this section.

(e) The public service board may establish, by rule or order, requirements governing the filing of a petition to approve an alternative regulation plan.

(f) The board shall act on the petition within 12 months of the filing of a petition that complies with the board's rules.

(g) An alternative regulation plan shall take effect not sooner than 30 days following its approval by the board.

(h) The board may establish, by rule or order, and may amend from time to time standards and procedures by which the effectiveness of the alternative form of regulation can be determined.

(i) The board, on its own motion or the motion of the department of public service or a company operating under an alternative regulation plan pursuant to this section, may investigate any alternative regulation plan that is in effect. Following notice and an opportunity for hearing, the board may terminate or modify the alternative regulation plan upon a finding of good cause. Where the board revokes prior approval, the board shall determine whether the company's current rates are just and reasonable, and, if not, shall establish new rates that are just and reasonable.

(j) Notwithstanding any provision of this section, a company may file for rates determined under and in accordance with sections 218, 225, 226, and 227 of this title to be effective at the time of the termination of any approved alternative regulation plan.

(k) In the case of a municipal utility, the board shall approve an alternative regulation plan only if the board finds that the plan will:

(1) permit the municipal plant or department to fulfill all of its obligations, including its obligations to the holders of bonds issued under local charter or state law;

(2) not violate existing covenants in outstanding municipal bonds or in contracts securing bonds issued by the Vermont public power supply authority;

(3) not impair the municipality's access to capital, including that in the municipal bond market. The board will consider the opinion of the utility's bond counsel in making this decision; and

(4) not impair the municipal utility's ability to participate in future bond issues by the authority as contemplated by chapter 84 of this title. The board will consider the opinion of the Vermont public power supply authority in making this decision.

(l) In the case of an electric cooperative, the board shall approve an alternative regulation plan only if the board finds the plan will not violate covenants in existing mortgages or impair the cooperative's access to capital.

(m) In the case of an investor-owned company, the board shall approve an alternative regulation plan, only if the board finds the plan will:

(1) not have an adverse impact on the electric company's eligibility for rate-regulated accounting in accordance with generally accepted accounting standards if applicable; and

(2) reasonably preserve the availability of equity and debt capital resources to the company on favorable terms and conditions. (Added 2003, No. 69, § 2, eff. June 17, 2003; amended 2005, No. 61, § 11.)

§ 218e. Implementing State energy policy; manufacturing

To give effect to the policies of section 202a of this title to provide reliable and affordable energy and assure the State's economic vitality, it is critical to retain and recruit manufacturing and other businesses and to consider the impact on manufacturing and other businesses when issuing orders, adopting rules, and making other decisions affecting the cost and reliability of electricity and other fuels. Implementation of the State's energy policy should:

(1) encourage recruitment and retention of employers providing high-quality jobs and related economic investment and support the State's economic welfare; and

(2) appropriately balance the objectives of this section with the other policy goals and criteria established in this title. (Added 2013, No. 199 (Adj. Sess.), § 12.)

§ 219. Service

Each company subject to supervision under this chapter shall be required to furnish reasonably adequate service, accommodation and facilities to the public. The charge made by any such company for any product or service shall be reasonable and without discrimination, except as provided in this chapter.

[Section 219a effective until January 1, 2017; see also section 219a effective January 1, 2017 set out below.]

[Section 219a effective until January 1, 2017; see also section 219a effective January 1, 2017 set out below.]**§ 219a. Self-generation and net metering**

(a) As used in this section:

(1) "Capacity" means the rated electrical nameplate for a net metering system, except that for a solar net metering system, the term shall have the same meaning as set forth for a solar energy plant under "plant capacity" in section 8002 of this title.

(2) "Customer" means a retail electric consumer who uses a net metering system.

(3) "Environmental attributes" shall have the same meaning as under section 8002 of this title.

(4) "Facility" means a structure or piece of equipment and associated machinery and fixtures that generates electricity. A group of structures or pieces of equipment shall be considered one facility if it uses the same fuel source and infrastructure and is located in close proximity. Common ownership shall be relevant but not sufficient to determine that such a group constitutes a facility.

(5) "Net metering" means measuring the difference between the electricity supplied to a customer and the electricity fed back by a net metering system during the customer's billing period:

(A) using a single, nondemand meter or such other meter that would otherwise be applicable to the customer's usage but for the use of net metering; or

(B) on group systems, using multiple meters as specified in this chapter. The calculation will be made by converting all meters to a nondemand, nontime-of-day meter, and equalizing them to the tariffed kilowatt-hour rate.

(6) "Net metering system" means a facility for generation of electricity that:

(A) is of no more than 500 kW capacity;

(B) operates in parallel with facilities of the electric distribution system;

(C) is intended primarily to offset the customer's own electricity requirements; and

(D)(i) employs a renewable energy source as defined in subdivision 8002(17) of this title; or

(ii) is a qualified micro-combined heat and power system of 20 kW or fewer that meets the definition of combined heat and power in subsection 8015(b) of this title and may use any fuel source that meets air quality standards.

(7) "kW" means kilowatt or kilowatts (AC).

(8) "kWh" means kW hour or hours.

(9) "MW" means megawatt or megawatts (AC).

(10) "Tradeable renewable energy credits" shall have the same meaning as under section 8002 of this title.

(b) A customer shall pay the same rates, fees, or other payments and be subject to the same conditions and requirements as all other purchasers from the electric company in the same rate-class, except as provided for in this section, and except for appropriate and necessary conditions approved by the Board for the safety and reliability of the electric distribution system.

(c) The Board shall establish by rule or order standards and procedures governing application for, and issuance or revocation of a certificate of public good for net metering systems under the provisions of section 248 of this title. A net metering system shall be deemed to promote the public good of the State if it is in compliance with the criteria of this section and board rules or orders. In developing such rules or orders:

(1) With respect to a solar net metering system of 15 kW or less, the Board shall provide that the system may be installed ten days after the customer's submission to the Board and the interconnecting electric company of a completed registration form and certification of compliance with the applicable interconnection requirements.

Within that ten-day period, the interconnecting electric company may deliver to the customer and the Board a letter detailing any issues concerning the interconnection of the system. The customer shall not commence construction of the system prior to the passage of this ten-day period and, if applicable, resolution by the Board of any interconnection issues raised by the electric company in accordance with this subsection. If the ten-day period passes without delivery by the electric company of a letter that raises interconnection issues in accordance with this subsection, a certificate of public good shall be deemed issued on the 11th day without further proceedings, findings of fact, or conclusions of law, and the customer may commence construction of the system. On request, the Clerk of the Board promptly shall provide the customer with written evidence of the system's approval. For the purpose of this subdivision, the following shall not be included in the computation of time: Saturdays, Sundays, State legal holidays under 1 V.S.A. § 371(a), and federal legal holidays under 5 U.S.C. § 6103(a).

(2) With respect to a net metering system for which a certificate of public good is not deemed issued under subdivision (1) of this subsection, the Board:

(A) may waive the requirements of section 248 of this title that are not applicable to net metering systems, 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 find that such rules are consistent with State power plans.

(3) The Board shall require that the registration or application for approval of a net metering system declare whether the customer retains ownership of the environmental attributes of any electricity generated by the net metering system or transfers ownership of those attributes to the interconnecting electric company.

(d)(1) An applicant for a certificate of public good for a net metering system shall be exempt from the requirements of subsection 202(f) of this title.

(2) Any certificate issued under this section shall be automatically transferred to any subsequent owner of the property served by the net metering system, provided, in accordance with rules adopted by the Board, the Board and the electric company are notified of the transfer, and the subsequent owner agrees to comply with the terms and conditions of the certificate.

(3) Nonuse of a certificate of public good for a period of one year following the date on which the certificate is issued or, under subdivision (c)(1) of this section, deemed issued shall constitute an abandonment of the net metering system and the certificate shall be considered expired. For the purpose of this section, for a certificate to be considered "used," installation of the net metering system must be completed within the one-year period, unless installation is delayed by litigation or unless, at the time the certificate is issued or in a subsequent proceeding, the Board provides that installation may be completed more than one year from the date the certificate is issued.

(e) Consistent with the other provisions of this title, electric energy measurement for net metering systems using a single nondemand meter that are not group systems shall be calculated in accordance with subdivisions (1)-(3) of this subsection, and electric energy measurement for net metering systems that use other types of meters shall be calculated in accordance with subdivision (4) of this subsection.

(1) The electric company which serves the net metering customer shall measure the net electricity produced or consumed during the customer's billing period, in accordance with normal metering practices.

(2) If the electricity supplied by the electric company exceeds the electricity generated by the customer and fed back to the electric distribution system during the billing period, the customer shall be billed for the net electricity supplied by the electric company, in accordance with normal metering practices.

(3) If electricity generated by the customer exceeds the electricity supplied by the electric company, each of the following shall apply:

(A) The electric company shall calculate a monetary credit to the customer by multiplying the excess kWh generated during the billing period by the kWh rate paid by the customer for electricity supplied by the company and shall apply the credit to any remaining charges on the customer's bill for that period. If the applicable rate schedule includes inclining block rates:

(i) for a net metering system that does not use solar energy, the rate used for this calculation shall be a blend of those rates determined by adding together all of the revenues to the company during a recent test year from kWh sold under those block rates and dividing the sum by the total kWh sold by the company at those rates during that same year; and

(ii) for a solar net metering system, the rate used for this calculation:

(I) during the ten years immediately following the system's installation shall be the highest of those block rates and, after this ten-year period, shall be the blended rate in accordance with subdivision (i) of this subdivision (A); or

(II) if the electric company's highest block rate exceeds the adder sum described in subdivision (h)(1)(K) of this section, then for the first year immediately following the system's installation, the electric company may use the adder sum to calculate the credit in lieu of the highest block rate, provided that during the following nine years, the electric company shall adjust the system's credit by a percentage equal to the percentage of each change in its highest block rate during the same period, and after the first ten years following the system's installation, the rate used to calculate the credit shall be the blended rate in accordance with subdivision (i) of this subdivision (A).

(B) If application to such charges does not use the entire balance of the credit, the remaining balance of the credit shall appear on the customer's bill for the following billing period.

(C) Any accumulated credits shall be used within 12 months, or shall revert to the electric company, without any compensation to the customer. Power reverting to the electric company under this subdivision (3) shall be considered SPEED resources under section 8005 of this title.

(4) For a net metering system serving a customer on a demand or time-of-use rate schedule, the manner of measurement and the application of bill credits for the electric energy produced or consumed shall be substantially similar to that specified in this subsection for use with a single nondemand meter. However, if such a net metering system is interconnected directly to the electric company through a separate meter whose primary purpose is to measure the energy generated by the system:

(A) The bill credits shall apply to all kWh generated by the net metering system and shall be calculated as if the customer were charged the kWh rate component of the interconnecting company's general residential rate schedule that consists of two rate components: a service charge and a kWh rate, excluding time-of-use rates and demand rates.

(B) If a company's general residential rate schedule includes inclining block rates, the residential rate used for this calculation shall be a rate calculated in the same manner as under subdivision (3)(A) of this subsection (e).

(f) Consistent with the other provisions of this title, electric energy measurement for group net metering systems shall be calculated in the following manner:

(1) Net metering customers that are group net metering systems may credit on-site generation against all meters designated to the group net metering system under subdivision (g)(1)(A) of this section.

(2) Electric energy measurement for group net metering systems shall be calculated by subtracting total usage of all meters included in the group net metering system from total generation by the group net metering system. If the electricity generated by the group net metering system is less than the total usage of all meters included in the group net metering system during the billing period, the group net metering system shall be credited for any accumulated credit and then billed for the net electricity supplied by the electric company, in accordance with the procedures in subsection (g) (group net metering) of this section.

(3) If electricity generated by the group net metering system exceeds the electricity supplied by the electric company, the provisions of subdivision (e)(3) (credit for excess generation) of this section shall apply, with credits allocated to and appearing on the bill of each member of the group net metering system in accordance with subsection (g) (group net metering) of this section.

(4) The Board shall apply the provisions of subdivision (e)(4) of this section (measurement and credits; nonstandard meters) to group net metering systems that serve one or more customers who are on a demand or time-of-use rate schedule.

(g)(1) In addition to any other requirements of section 248 of this title and this section and Board rules thereunder, before a group net metering system including more than one meter may be formed and served by an electric company, the proposed group net metering system shall file with the Board, with copies to the department and the serving electric company, the following information:

(A) the meters to be included in the group net metering system, which shall be associated with the buildings and residences owned or occupied by the person operating the group net metering system, or the person's family or employees, or other members of the group, identified by account number and location;

(B) a procedure for adding and removing meters included in the group net metering system, and direction as to the manner in which the electric company shall allocate any accrued credits among the meters included in the system, which allocation subsequently may be changed only on written notice to the electric company in accordance with subdivision (4) of this subsection;

(C) a designated person responsible for all communications from the group net metering system to the serving electric company except for communications related to billing, payment, and disconnection; and

(D) a binding process for the resolution of any disputes within the group net metering system relating to net metering that does not rely on the serving electric company, the Board, or the Department. However, this subdivision (D) shall not apply to disputes between the serving electric company and individual members of a group net metering system regarding billing, payment, or disconnection.

(2) The group net metering system shall, at all times, maintain a written designation to the serving electric company of a person to receive any communications regarding the group net metering system or net metering that do not relate to billing, payment, or disconnection.

(3) The serving electric company shall bill directly and send all communications regarding billing, payment, and disconnection directly to the customer name and address listed for the account of each individual meter designated under subdivision (1)(A) of this subsection as being part of a group net metering system. The usage charges for any account so billed shall be based on the individual meter for the account. The credit applied on that bill for electricity generated by the group net metering system shall be calculated in the manner directed by the system under subdivision (1)(B) of this subsection.

(4) The serving electric company shall implement appropriate changes to the group net metering system within 30 days after receiving written notification from the designated person. However, written notification of a change in the person designated under subdivision (2) of this subsection shall be effective upon receipt by the serving electric company. The serving electric company shall not be liable for action based on such notification, but shall make any necessary corrections and bill adjustments to implement revised notifications.

(5) Pursuant to subsection 231(a) of this title, after such notice and opportunity for hearing as the Board may require, the Board may revoke a certificate of public good issued to a group net metering system.

(6) A group net metering system may consist only of customers that are located within the service area of the same electric company. Various buildings owned by municipalities, including water and wastewater districts, fire districts, villages, school districts, and towns, may constitute a group net metering system. A union or district school facility shall be considered in the same group net metering system with buildings of its member municipalities that are located within the service area of the same electric company that serves the facility. If it determines that it would promote the general good, the Board shall permit a noncontiguous group of net metering customers to comprise a group net metering system.

(h)(1) An electric company:

(A) Shall make net metering available to any customer using a net metering system or group net metering system on a first-come, first-served basis until the cumulative output capacity of net metering systems equals 15 percent of the distribution company's peak demand during 1996; or the peak demand during the most recent full calendar year, whichever is greater. However, after reaching this cap, an electric company may continue to accept solar net metering systems of 15 kW or

less without prior Board approval. For other net metering systems, the Board may raise the 15 percent cap on petition of an electric company. In determining whether to raise the cap, the Board shall consider the following:

(i) the costs and benefits of net metering systems already connected to the system;

(ii) the potential costs and benefits of exceeding the cap, including potential short- and long-term impacts on rates, distribution system costs and benefits, reliability, and diversification costs and benefits; and

(iii) the environmental benefits and costs.

(B) Shall allow net metering systems to be interconnected using a kilowatt-hour meter capable of registering the flow of electricity in two directions or such other comparably equipped meter that would otherwise be applicable to the customer's usage but for the use of net metering.

(C) May, at its own expense, and with the written consent of the customer, install one or more additional meters to monitor the flow of electricity in each direction.

(D) Except as otherwise provided in this section, shall charge the customer a minimum monthly fee that is the same as for other customers of the electric distribution company in the same rate class, but shall not charge the customer any additional standby, capacity, interconnection, or other fee or charge.

(E) May require a customer to comply with generation interconnection, safety, and reliability requirements, as determined by the Public Service Board by rule or order, and may charge reasonable fees for interconnection, establishment, special metering, meter reading, accounting, account correcting, and account maintenance of net metering arrangements of greater than 15 kW capacity.

(F) May charge, if the capacity of the distribution system is insufficient for the designed generation, subject to determination by the Board, a reasonable fee to cover the cost of electric company improvements necessary to distribute power.

(G) May require that all meters included within a farm or group net metering system be read on the same billing cycle.

(H) May book and defer, with carrying costs, additional incremental costs, to the extent that such costs are not recovered through charges, authorized in subdivisions (D), (E), and (F) of this subdivision (1), directly related to implementing net metering of greater than 15 kilowatt (AC) capacity.

(I) At the option of a net metering customer of the company, may receive ownership of the environmental attributes of electricity generated by the customer's net metering system, including ownership of any associated tradeable renewable

energy credits. If a customer elects this option, the company shall retain ownership of and shall retire the attributes and credits received from the customer, which shall apply toward compliance with any statutes enacted or rules adopted by the State requiring the company to own the environmental attributes of renewable energy.

(J) May in its rate schedules offer credits or other incentives that may include monetary payments to net metering customers. These credits or incentives shall not displace the benefits provided to such customers under subsections (e) and (f) of this section.

(K) Shall in its rate schedules offer a credit to each net metering customer using solar energy that shall apply to each kWh generated by the customer's solar net metering system and that shall not displace the benefits provided to such customers under subsections (e) and (f) of this section.

(i) The credit required by this subdivision (K) shall be the adder sum minus the residential rate per kWh charged by the company as of the date it files with the Board a proposed modification to its rate schedules to effect this subdivision (K) or to revise a credit previously instituted under this subdivision (K). Under this subdivision (K):

(I) The adder sum shall be $0.20 if the solar net metering system is of 15 kW capacity or less and otherwise shall be $0.19.

(II) The residential rate shall be the kWh rate charged by the company under its general residential rate schedule that consists of two rate components: a service charge and a kWh rate, and shall exclude time-of-use rates and demand rates.

(III) If a company's general residential rate schedule includes inclining block rates, the residential rate shall be the highest of those block rates.

(IV) Notwithstanding the basis for this credit calculation, the amount of the credit shall not fluctuate with changes in the underlying residential rate used to calculate the amount.

(ii) The electric company shall apply the credit calculated in accordance with subdivision (i) of this subdivision (1)(K) to generation from each net metering system using solar energy regardless of the customer's rate class. A credit under this subdivision (K) shall be applied to all charges on the customer's bill from the electric company and shall be subject to the provisions of subdivisions (e)(3)(B) (credit for unused balance) and (C) (12-month reversion) and (f)(3) (credit for excess generation; group net metering) of this section.

(iii) An electric company's proposed modification to a rate schedule to offer a credit under this subdivision (K) and any investigation initiated by the Board or party other than the company of an existing credit contained in such a rate schedule shall be reviewed in accordance with the procedures set forth in section 225 of this title, except that:

(I) A company's proposed modification shall take effect on filing with the Board and shall not be subject to suspension under section 226 of this title;

(II) Such a modification or investigation into an existing credit shall not require review of the company's entire cost of service; and

(III) Such a modification or existing credit may be altered by the Board for prospective effect only commencing with the date of the Board's decision.

(iv) An electric company shall not be required to offer a credit under this subdivision (K) if the result of the calculation described in subdivision (i) of this subdivision (1)(K) is zero or less.

(v) A solar net metering system shall receive the amount of the credit under this subdivision (K) that is in effect for the service territory in which the system is installed as of the date of the system's installation and shall continue to receive that amount for not less than 10 years after that date regardless of any subsequent modification to the credit as contained in the electric company's rate schedules.

(vi) If a solar net metering system placed into service prior to the interconnecting electric company's first rate schedule proposed to comply with this subdivision (1)(K) accepted that rate schedule, the system shall receive the credit for not less than 10 years after the date of that acceptance, provided that the system remains in service, and regardless of any subsequent modification to the credit as contained in the company's rate schedules.

(vii) Should an additional meter at the premises of the net metering customer be necessary to implement this subdivision (K), or should that meter need replacement because it fails or is destroyed, the net metering customer shall not pay a charge greater than the cost of the equipment and installation of the additional or replacement meter.

(2) All such requirements or credits or other incentives shall be pursuant to and governed by a tariff approved by the Board that is consistent with Board rules under this section, which tariffs and rules shall be designed in a manner reasonably likely to facilitate net metering. With respect to a credit or incentive under subdivision (1)(J) (optional credit or incentive) or (K) (solar credit) of this subsection (h) that is provided to a net metering system that constitutes new renewable energy under subdivision 8002(4) of this title:

(A) If the credit or incentive applies to each kWh generated by the system, then the system's energy production shall count toward the goals and requirements of subsection 8005(d) of this title.

(B) If the credit or incentive applies only to the system's net energy production supplied to the company, then the increment of net energy production supplied by the customer to the company through a net metering system that is supported by such additional credit or incentive shall count toward the goals and requirements of subsection 8005(d) of this title.

(i)(1) A net metering system using photovoltaic generation shall conform to applicable electrical safety, power quality, and interconnection requirements established by the National Electrical Code, the Institute of Electrical and Electronic Engineers, and Underwriters Laboratories. The customer shall be responsible for installation, testing, accuracy, and maintenance of net metering equipment.

(2) The Board shall adopt, by rule or order, electrical safety, power quality, and interconnection requirements for net metering equipment which uses generation technologies other than photovoltaic technology. In developing safety rules, and any amendments to those rules, the Board shall solicit input from representatives of utilities and agents representing line workers.

(3) The Board may adopt, by rule or order, additional safety, power quality, and interconnection requirements for customers that the Board determines are necessary to protect public safety and system reliability.

(4) An electric company may, at its own expense, and upon reasonable written notice to the customer, perform such testing and inspection of a net metering system in order to confirm that the system conforms to applicable electrical safety, power quality, and interconnection requirements.

(j) [Repealed.]

(k) Notwithstanding the provisions of subsections (f) and (g) of this section, an electric company may contract to purchase all or a portion of the output products from a group net metering system, provided:

(1) the group net metering system obtains a certificate of public good under the terms of subsections (c) and (d) of this section;

(2) any contracted power shall be subject to the limitations set forth in subdivision (h)(1) of this section;

(3) any contract shall be subject to interconnection and metering requirements in subdivisions (h)(1)(C) and (i)(2) and (3) of this section;

(4) any contract may permit all or a portion of the tradeable renewable energy credits for which the system is eligible to be transferred to the electric company;

(5) the output capacity of a system may exceed 500 kW, provided:

(A) the contract assigns the amount of power to be net metered; and

(B) the net metered amount does not exceed 500 kW; and

(C) only the amount assigned to net metering is assessed to the cap provided in subdivision (h)(1)(A) of this section.

(l) The board shall adopt rules regarding the application of the esthetics criterion established in subdivision 248(b)(5) of this title to an application for a certificate under this section for a single, net metered wind turbine that is less than 150 feet in height.

(m)(1) A facility for the generation of electricity to be consumed primarily by the Military Department established under 3 V.S.A. § 212 and 20 V.S.A. § 361(a) or the National Guard as defined in 32 U.S.C. § 101(3), and installed on property of the Military Department or National Guard located in Vermont, shall be considered a net metering system for purposes of this section if it has a capacity of 2.2 MW or less and meets the provisions of subdivisions (a)(6)(B)-(D) of this section.

(2) If the interconnecting electric company agrees, a solar facility or group of solar facilities for the generation of electricity, to be installed by one or more municipalities on a closed landfill, shall be considered a net metering system for purposes of this section if the facility or group of facilities has a total capacity of 5 MW or less and meets the provisions of subdivisions (a)(6)(B)-(D) of this section. The facilities or group of facilities may serve as a group net metering system that includes and is limited to each participating municipality. In this subdivision (2), "municipality" shall have the same meaning as under 24 V.S.A. § 4551.

(3) In addition to facilities authorized under subdivision (2) of this subsection, an interconnecting electric company may agree to one solar facility in its service territory for the generation of electricity to be installed and consumed primarily by a customer or group of customers, which shall be considered a net metering system for purposes of this section if:

(A) the facility has a total capacity of 5 MW or less and meets the provisions of subdivisions (a)(6)(B)-(D) of this section; and

(B) the interconnecting electric company does not undertake a pilot project under subsection (n) of this section.

(4) A facility described in this subsection shall not be subject to and shall not count toward the capacity limits of subdivisions (a)(6)(A) (no more than 500 kW) and (h)(1)(A) (15 percent of peak demand) of this section.

(n) As a pilot project, an electric cooperative under chapter 81 of this title may construct a solar generation facility or group of solar generation facilities to produce power to be consumed by the company or its customers and to be installed on land

owned or leased by the company.

(1) Under this pilot project, the Board shall consider the facility or group of facilities a net metering system if the cumulative capacity of the facility or group of facilities does not exceed five MW and each facility otherwise meets the definition of a net metering system. In applying this definition to the facility or group of facilities, the Board shall treat the electric cooperative's consumption as the consumption of a customer.

(2) As part of this pilot project, the electric cooperative may propose to the Board alternatives to the requirements of subsections (b) (same rates and charges), (e) (credits; single meter systems), (f) (credits; group net metering systems), and (g) (requirements; group net metering systems) and subdivision (h)(1)(K) (required solar incentive) of this section, including alternative credit amounts, bill procedures, and energy measurement methodologies. Using the procedures set forth in section 225 of this title, the Board may approve these alternatives if it determines that they are just and reasonable.

(3) Under this pilot project, the electric cooperative may seek siting approval for the facility or group of facilities pursuant to the Board's order issued under subsection 8007(b) of this title, notwithstanding that subsection's limitation to plants with a plant capacity greater than 150 kW and 2.2 MW or less.

(4) If an electric cooperative elects to implement a pilot project under this subsection, then:

(A) the allocation of the pilot project toward the cooperative's cumulative output capacity under subdivision (h)(1)(A) of this section shall be four percent; and

(B) any remaining unallocated capacity of the cooperative under subdivision (h)(1)(A) of this section as of the effective date of this subsection shall be allocated equally among calendar years 2014, 2015, and 2016, with any unused capacity in 2014 carried forward to and allocated equally between the other two years.

(o) An electric company that meets and maintains the renewable energy achievement requirements of subdivision (1) of this subsection (the achievement requirements) shall obtain relief from the obligations described in subdivision (2) of this subsection by submitting to the Board a proposed rate schedule for an alternative net metering program under subdivision (3) of this subsection within 90 days of meeting the achievement requirements.

(1) This renewable energy achievement provision shall require that:

(A) the cumulative output capacity of net metering systems installed in the electric company's service territory, calculated in accordance with subdivision (h)(1)(A) of this section, meets or exceeds 10 percent;

(B) the electric company owns and has retired tradeable renewable energy credits monitored and traded on the New England Generation Information System or otherwise approved by the Board equivalent to 90 percent of the company's total periodic retail sales of electricity calculated on a monthly basis commencing with April 1, 2014 and switching to an annual basis beginning April 1, 2015; and

(C) the electric company certifies, by annual written submission to the Board, compliance with the requirements of subdivisions (1)(A) and (B) of this subsection (o).

(2) The obligations for which this subsection authorizes relief are the obligations to make net metering available in accordance with subsections (b) (same rates and charges), (e) (measurement; credits), (f) (credits; group net metering systems), (g) (requirements; group net metering systems), and (h) (electric company obligations; authority) of this section.

(3) Using the procedures set forth in section 225 of this title, an electric company that meets the achievement requirements may propose to the Board a rate schedule to implement a net metering program in its service territory that may have a capacity limit that differs from the limit contained in the definition of net metering system, that may require the company to own all or a portion of the environmental attributes of generation within the program and any associated tradeable renewable energy credits, that may require customer charges or other charges to capture fixed costs necessary to support the utility's infrastructure, and that may propose alternatives to the requirements listed in subdivision (2) of this subsection, including alternative credit amounts, bill procedures, and energy measurement methodologies. The Board may approve this rate schedule if it determines that it is just and reasonable.

(p) The Department of Public Service shall maintain a web page with current information on the capacity of net metering systems installed and interconnected in Vermont.

(1) This web page shall:

(A) state the total number and capacity of these systems statewide, by electric company service territory, and by category of renewable energy technology such as solar or wind; and

(B) state the progress of each electric company toward the cumulative output capacity described in subdivision (h)(1)(A) of this section.

(2) To effectuate this web page:

(A) At a frequency and in the manner directed by the Department, each electric company shall report to the Department the total number and capacity of net metering systems installed and interconnected in the company's service territory,

with an itemization of these systems by category of renewable energy technology.

(B) In the first report submitted under this subdivision (2), each electric company shall provide the total number and capacity of net metering systems installed and interconnected in the company's service territory up to the date of the report, with an itemization of these systems by category of renewable energy. (Added 1997, No. 136 (Adj. Sess.), § 2, eff. April 21, 1998; amended 1999, No. 157 (Adj. Sess.), § 17; 2001, No. 145 (Adj. Sess.), § 5; 2005, No. 208 (Adj. Sess.), § 12; 2007, No. 92 (Adj. Sess.), § 14; 2009, No. 159 (Adj. Sess.), § 1, eff. June 4, 2010; 2011, No. 47, § 1, eff. May 27, 2011; 2011, No. 125 (Adj. Sess.), § 1, eff. June 10, 2012; 2011, No. 125 (Adj. Sess.), §§ 1, 3, 4, 5, eff. May 11, 2012; 2013, No. 99 (Adj. Sess.), § 1, eff. April 1, 2014.)

[Section 219a effective January 1, 2017; see also section 219a effective until January 1, 2017 set out above.]

[Section 219a effective January 1, 2017; see also section 219a effective until January 1, 2017 set out above.]**§ 219a. Repealed. 2013, No. 99 (Adj. Sess.), § 10(c), effective** January 1, 2017.

[Section 219b effective until January 1, 2017; see also section 219b effective January 1, 2017 set out below.]

[Section 219b effective until January 1, 2017; see also section 219b effective January 1, 2017 set out below.]**§ 219b. Net metering program expansion**

(a) The Public Service Board shall expand the scope of the net metering program established in section 219a of this title, by rule or order, in accordance with the provisions of this section. As part of this expansion, the Board shall consider:

(1) expanding the maximum kilowatt (AC) capacity of facilities that may participate in the program;

(2) allowing group net meter systems and defining membership in the group, which may be limited to, but need not be limited to, groups that consist of:

(A) physically contiguous customers; and

(B) a municipal customer for municipal and school uses, regardless of whether those uses are contiguous;

(3) providing compensation to the customer for any remaining unused kilowatt-hour credit accumulated during the previous 12 months;

(4) developing a system that allows the capture and sale of renewable energy credits (RECs) from net metering, including consideration of the need for electric companies to meet their infrastructure costs and the need to provide net metered energy producers with sufficient incentives to encourage substantial development of net metered sources of electricity; and

(5) allowing net metering systems to be considered SPEED resources.

(b) Among the factors the Board shall consider in performing its functions under this section shall be the following: potential short- and long-term impacts on rates, distribution system costs and benefits, and reliability and diversification costs and benefits.

(c) Before December 15, 2006, the Public Service Board shall file a report with the Senate Committees on Finance and on Natural Resources and Energy and the House Committees on Commerce and on Natural Resources and energy regarding the expansion of net metering. (Added 2005, No. 208 (Adj. Sess.), § 13.)

[Section 219b effective January 1, 2017; see also section 219b effective until January 1, 2017 set out above.]

[Section 219b effective January 1, 2017; see also section 219b effective until January 1, 2017 set out above.]**§ 219b. Repealed. 2013, No. 99 (Adj. Sess.), § 10(c), effective** January 1, 2017.

§ 220. Repealed. 1975, No. 56, § 2.

§ 221. Forms; orders

The board may prescribe the forms of all books, accounts, papers and records of any public utility over which it has jurisdiction and such public utility shall keep and render its books, accounts, papers and records accurately and faithfully in the manner and form prescribed by the board and comply with all orders and directions of the board relating to such books, accounts, papers and records. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961; 1985, No. 224 (Adj. Sess.), § 7.)

§ 222. Exceptions

Public utilities under the jurisdiction of a federal commission shall not be required to keep any system of accounts and records which would conflict with any requirement of such federal commission.

§ 223. Appeal from municipal authorities

A person or corporation aggrieved by an order or decision of the municipal authorities made under the provisions of any statute, relative to the granting of a license or permit for location, may appeal therefrom to the board at any time within 30 days from the date of such order or decision. After notice and public hearing of all parties interested, as provided in section 208 of this title, the decision of the board thereon shall be final, subject to a right to transfer such cause to the supreme court as provided by section 12 of this title. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961.)

§ 224. Special authority to municipality, to be under supervision of public service board

Any statute conferring authority upon municipalities to supervise or to make any order or regulation respecting any location, business or company, subject to the provisions of this chapter, shall be construed as giving such municipalities jurisdiction without authority to alter or modify any order, judgment, decree or regulation made by the public service board. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961.)

§ 225. Rate schedules

(a) Within a time to be fixed by the board, each company subject to the provisions of this chapter shall file with the department, with separate filings to the directors for regulated utility planning and public advocacy, schedules which shall be open to public inspection, showing all rates including joint rates for any service performed or any product furnished by it within the state, and as a part thereof shall file the rules and regulations that in any manner affect the tolls or rates charged or to be charged for any such service or product. Those schedules, or summaries of the schedules approved by the department, shall be published by the company in two newspapers with general circulation in the state within 15 days after such filing. A change shall not thereafter be made in any such schedules, including schedules of joint rates or in any such rules and regulations, except upon 45 days notice to the board and to the department of public service, and such notice to parties affected by such schedules as the board shall direct. The board shall consider the department's recommendation and take action pursuant to sections 226 and 227 of this title before the date on which the changed rate is to become effective. All such changes shall be plainly indicated upon existing schedules, or by filing new schedules in lieu thereof 45 days prior to the time the same are to take effect. Subject only to temporary increases, rates may not thereafter be raised without strictly complying with the notice and filing requirements set forth in this section. In no event may a company amend, supplement or alter an existing filing or substantially revise the proof in support of such filing in order to increase, decrease or substantiate a pending rate request, unless, upon opportunity for hearing, the company demonstrates that such a change in filing or proof is necessary for the purpose of providing adequate and efficient service. However, upon application of any company subject to the provisions of this chapter, and with the consent of the department of public service, the board may for good cause shown prescribe a shorter time within which such change may be made; but a change which in effect decreases such tolls or rates may be made upon five days' notice to the board and the department of public service and such notice to parties affected as the board shall direct.

(b) Immediately upon receipt of notice of a change in a rate schedule filed by a company, the department shall investigate the justness and reasonableness of that change. At least 15 days prior to the date on which the change is to become effective, the department shall either report to the board the results of its investigations together with its recommendation for acceptance of the change, or it shall notify the board and other parties that it opposes the change. If the department of public service reports its acceptance of the change in rates the board may accept the change, or it may on its own motion conduct an investigation into the justness and reasonableness of the change, or it may order the department to appear before it to justify its recommendation to accept the change. In no event shall a change go into effect without the approval of the board, except when a rate change is suspended and temporary or permanent rates are allowed to go into effect pursuant to subsection 226(a) or 227(a) of this title. The board shall consider the department's recommendation and take action pursuant to sections 226 and 227 of this title before the date on which the changed rate is to become effective. In the event that the department opposes the change, the board shall hear evidence on the matter and make such orders as justice and law require. In any hearing on a change in rates, whether or not opposed by the department, the board may request the appearance of the attorney general or appoint a member of the Vermont bar to represent the public or the state.

(c) Repealed.] (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961; 1961, No. 263, § 2, eff. July 31, 1961; 1979, No. 204 (Adj. Sess.), § 28, eff. Feb. 1, 1981; 1981, No. 226 (Adj. Sess.), §§ 1, 2, eff. May 6, 1982; 1985, No. 224 (Adj. Sess.), § 8; 1999, No. 157 (Adj. Sess.), § 8.)

§ 226. Rates, hearings, bond

(a) Except in the case of municipal companies formed under local charter or under chapter 79 and cooperatives formed under chapter 81 of this title, upon six days' notice to the company affected, the board may suspend a rate change until it makes a final determination on the request for a rate change. However, if it shall be made to appear to the satisfaction of the board, that the public interest requires a change in rates, charges or services, or that such change is necessary for the purpose of providing adequate and efficient service or for the preservation of the property of the public service company devoted to public use, the board, after public notice and preliminary hearing, shall authorize upon such terms, conditions or safeguards as it deems proper an immediate reasonable temporary increase in such price pending the final determination of the price to be thereafter charged by any such public service company and the board may as a condition of its order allowing such temporary increase, require the petitioning company to file with the board a bond running to the board members and their successors in office in amount and with sureties approved by the board, conditioned that within a reasonable time prescribed

by the board after the termination of such proceedings, the company shall, with interest, repay to or may credit the account of the persons from whom such changed rates shall be collected all sums collected in excess of the rate in force at the time such changes are filed or of such rate as shall be determined to be just and reasonable. If the board fails to determine the application for temporary rates, if requested, within 30 days after it is made or within 45 days after suspension, whichever is later, the requested temporary rates shall take effect subject to refund as provided above.

(b) In the case of municipal companies formed under local charter or under chapter 79 and cooperatives formed under chapter 81 of this title, the public service board shall not be empowered to suspend a change in the rates of a municipality or of a cooperative pending final determination as to the justness or reasonableness of such change, but the board shall require that the municipality or cooperative refund revenues collected in excess of those which are finally determined to be just and reasonable. Any increase in the rates of a municipality or cooperative shall be implemented by means of an identical percentage increase to each class or division of ratepayers under rate design tariffs previously approved by the public service board until such time as the public service board shall specifically approve an alteration in such rate design and corresponding tariffs.

(c) If the department does not oppose the change as provided in section 225 of this title, five persons adversely affected by the change, or, if the change adversely affects less than five persons, any one person so affected may apply at their own expense to the board by petition alleging why the change is unreasonable and unjust and asking that the board investigate the matter and make such orders as justice and law require. The petition shall be filed at least seven days before the date the rates become effective. The board may suspend the rates as a result of the petition. The board may hold a hearing on the petition. Whether or not a hearing is held, the board shall make such orders as justice and law require. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961; 1961, No. 263, § 3, eff. July 31, 1961; 1979, No. 204 (Adj. Sess.),§§ 29, 30, eff. Feb. 1, 1981; 1981, No. 226 (Adj. Sess.), §§ 3, 4, eff. May 6, 1982.)

§ 226a. Contracts regarding basic exchange telecommunications services

(a) As used in this section, "basic exchange telecommunications service" shall mean the provision of publicly switched, voice grade interactive telecommunications services between or among two or more end users, where a single central office provides that service to those two or more end users. The term may also, at the Board's discretion, include services which are or have been tariffed at rates equivalent to local service rates for basic exchange services.

(b) The Department is authorized to negotiate, and upon approval of the Board may execute on behalf of the State, a contract for a fixed term with any company providing basic exchange telecommunications services. Any such contract shall provide for:

(1) specified basic exchange rates during the life of the contract;

(2) minimum plant and equipment modernization schedules;

(3) specified service quality levels for telecommunications services, including those offered to competitors, measured by objective standards;

(4) furnishing such technical information as may be needed by a competitor in order for the competitor to offer and provide competitive services which require access to or utilize the company's regulated basic exchange services in a manner technically equivalent to the company's use of those regulated services;

(5) rates, terms, and conditions for access charges for use of the company's facilities by competitors, that are established by order of the Board unless otherwise approved under this section by the Board;

(6) elimination or reduction of regulatory requirements under subsection 218(a) and sections 225, 226, 227, and 229 of this title, including rate of return requirements; and

(7) such other rates, terms, and conditions as the Department and company may agree upon and the Board approves, provided that the parties to the contract affirmatively demonstrate and the Board finds that such rates, terms, and conditions are consistent with the State telecommunications purposes established under section 202c of this title and after its adoption with a State Telecommunications Plan established under section 202d of this title.

(c) Any contract made pursuant to this section shall be written, signed by the parties, and filed with the Board. At the time of filing a contract with the Board, the company also shall file with the Board for public inspection all information made available to the Department during the negotiations. After public notice and no less than 45 days after the parties have filed a contract with it, the Board shall hold a hearing to determine whether it should approve the contract. In such proceedings, the public contract advocate appointed by the Attorney General under 3 V.S.A. § 165 shall represent the interests of the public and the State, and any interested party may intervene. The Board shall grant approval only if it finds that a contract in its entirety is just and reasonable giving due consideration to the services and price levels covered and any risk of cross-subsidization, promotes the general good of the State, supports reasonable competition, contains fair and equitable provisions for the treatment of customer privacy interests, and takes into consideration any State Telecommunications Plan or policy adopted pursuant to section 202d. The Board

shall render its decision within seven and one-half months from the date of filing of a contract. If the Board does not grant approval, it may recommend modifications to the contract. Within 30 days after issuance of the Board's order, the company and the Department may file with the Board, with service on parties to the proceeding, a modified contract, incorporating the Board's recommended modifications. Within 20 days after such filing, the Board on its motion may conduct, or other substantially affected parties may request that the Board conduct hearings or other proceedings on the proposed modifications. Such requests shall be granted only if the Board finds that the proposed modifications deviate in substance from those recommended by the Board or that the public interest requires that hearings be held. If no such requests are made or if the requests are denied, the Board shall make a final decision approving or disapproving the modified contract within 45 days after the modified contract was filed. If the Board conducts hearings, it shall make a final decision within 90 days after the modified contract was filed.

(d) The Board shall retain jurisdiction over any contract under this section and shall hear and resolve any disputes or claims which may arise regarding its application. During the period of any contract under this section, a company shall continue to file with the Board and the Department its rates, tariffs, and tolls for any service provided including any service subject to the contract, and shall also file on a monthly basis its rate of return under the contract.

(e) If at any time, after notice and opportunity for hearing, the Board determines that changes in federal regulatory law, unforeseen and significant economic shifts, or changes in technology have created either extremely severe economic hardships for the company or a condition that is severely detrimental and contrary to the public good, the Board shall order the Department and the company to renegotiate relevant portions of a contract negotiated under this section, and any renegotiated provisions shall be subject to the Board's approval under the procedures of subsection (c) of this section. If at any time the General Assembly is concerned that such conditions exist, it may by joint resolution, direct the Board to conduct a hearing and make a determination thereon. If the Department and the company fail to reach a negotiated agreement within four months of receipt of an order to negotiate from the Board, the Board shall hold a hearing to determine the appropriate content of the relevant portions of the contract. In such proceedings, the public contract advocate shall represent the interests of the public and the State, and any interested party may intervene. The Board shall complete its hearings and render its decision within four months from the date that the Department and the company failed to agree under an order to negotiate. If the Department and the company agree within 14 days of the Board's decision to accept the Board's determination of the appropriate content of the contract, the contract shall continue in effect as modified until its termination

date. If the Department or the company does not accept the Board's determination, the contract shall terminate under the terms specified in subsection (f) of this section 30 days after the date of the Board's decision.

(f) Any contract under this section shall extend for no more than five years, and this section and any contract shall terminate December 31, 1997. Upon expiration or termination of a contract, the rates, terms, and conditions then in effect under the contract shall continue in effect as duly filed and approved rates and schedules under this title and shall thereafter be subject to all of the provisions of this title. (Added 1987, No. 87, § 6, eff. June 9, 1987; amended 1991, No. 63; 1999, No. 157 (Adj. Sess.), § 9; 2003, No. 98 (Adj. Sess.), § 3; 2009, No. 33, § 59.)

§ 226b. Incentive regulation of basic exchange telecommunications providers

(a) Upon petition of a basic exchange telecommunications service provider, upon request of the department of public service, or on its own initiative, the public service board may approve alternative forms of regulation other than the traditional methods based upon cost of service, rate base and rate of return.

(b) As used in this section:

(1) "Alternative forms of regulation" include, but are not limited to, incentive regulation, earnings sharing, categorization of services for the purpose of pricing, price caps, price indexing formulae, ranges of authorized returns, detariffing and reduction or suspension of regulatory requirements.

(2) "Basic exchange telecommunications service" has the same meaning as under section 226a of this title.

(c) The board shall approve alternative forms of regulation only if it finds, after notice and hearing, that such regulation, in its entirety:

(1) promotes the general good of the state;

(2) is consistent with the state telecommunications purposes established under section 202c of this title;

(3) is consistent with the state telecommunications plan adopted by the department of public service under section 202d of this title, or there exists good cause to approve alternative forms of regulation notwithstanding this inconsistency;

(4) is consistent with the public's interests relating to appropriate quality telecommunications services;

(5) is consistent with the goal of protecting or promoting universal service to residential users of telecommunications;

(6) provides reasonable incentives for the creation of a modern telecommunications infrastructure and the appropriate implementation of new cost-effective technologies;

(7) reasonably supports economic development in the affected service territory;

(8) adequately protects consumer privacy interests;

(9) supports reasonable competition;

(10) includes adequate safeguards to insure that charges for noncompetitive services do not subsidize competitive services; and

(11) is just and reasonable and would not produce unjust discrimination between users of the public switched network in the pricing, quality, or availability of the network functions or services offered.

(d) Prior to approving, modifying, or renewing an alternative form of regulation with respect to a specific basic exchange telecommunications provider, the board shall establish, and may amend from time to time, standards and procedures by which the effectiveness of the alternative form of regulation can be determined.

(e) In reviewing a petition to approve alternative forms of regulation, the board shall follow procedures substantially similar to those contained in sections 225, 226 and 227 of this title, except that if the board has not acted on the petition within nine months after the board has ordered suspension and investigation, the petition shall be deemed granted. By rule, the board may prescribe the minimum contents of a filing under this section.

(f) Where a petition for alternative forms of regulation has been filed by the department or a basic exchange telecommunications service provider, and the board determines that the proposal does not satisfy the requirements of this section, it may either reject the proposal or issue a proposed order approving alternative regulation with such modifications as the board determines necessary to satisfy the requirements of this section. Within 20 days after issuance of a proposed order under this section, any party may submit comments and may offer to provide additional evidence concerning the proposed order. After review of such comments, and after conducting any additional hearings that the board determines to be necessary, the board shall issue a final order with such modifications as the board determines to be necessary to satisfy the requirements of this section. If the board determines that evidence offered by a party reasonably should have been introduced at hearings prior to the proposed order, the board may exclude such evidence. The board shall issue its final order within 45 days after the proposed order is issued, or within 90 days after the proposed order is issued if further hearings have been held.

(g) Any final order approving or modifying alternative forms of regulation shall, by its terms, take effect not sooner than 30 days following its issuance.

(h) An order establishing an alternative form of regulation may include:

(1) exemption from or reduction of the requirements of subsection 218(a) and sections 225, 226, 227, and 229 of this title, including rate of return requirements;

(2) terms and conditions for establishing new services, withdrawing services, price changes to services, and services by contract to individual customers; and

(3) other rates, terms, and conditions that the board finds to be consistent with the general considerations and standards under subsections (c) and (d) of this section.

(i) While an order approving alternative forms of regulation is in effect, the department of public service and the public service board may conduct investigations into the effectiveness of the alternative forms of regulation, and whether a traditional form of regulation should be restored. Following notice and an opportunity for hearing, the public service board may terminate an order establishing an alternative form of regulation and restore a traditional form of regulation, or it may modify the order approving alternative forms of regulation.

(j) If at any time an order establishing an alternative form of regulation has been in effect for seven years without having been renewed, the order shall be deemed of no further force or effect and the waiver of statutory requirements under this title shall expire. All tariffs then in effect shall remain in effect until further order of the board.

(k) A basic exchange telecommunications service provider operating under an alternative form of regulation, the department of public service, or the public service board may initiate a proceeding to renew an order approving an alternative form of regulation. The provisions of this section shall apply to a proposed renewal of an alternative form of regulation. The board may issue orders approving, denying, or modifying the proposed renewal. In reviewing a proposed renewal of an alternative form of regulation, the board may consider the basic exchange telecommunications service provider's performance for the duration of the alternative form of regulation in effect at the time the renewal is initiated. Nothing in this section shall require the board to conduct cost of service, rate base, or rate of return analyses.

(l) The board shall have the discretionary authority to provide an expedited process under this section for a basic exchange telecommunications provider with less than 10 percent of the access lines in this state. The process shall include notice and opportunity for hearing and may include simplified procedures. Nothing in this section requires the board to conduct a cost of service, rate base, or rate of return

analysis for such companies as a precondition to alternative regulation. (Added 1993, No. 84, § 1; amended 1995, No. 182 (Adj. Sess.), § 3, eff. May 22, 1996; 2003, No. 98 (Adj. Sess.), § 4.)

§ 227. Suspension, refund

(a) If the board orders that a change shall not go into effect until final determination of the proceedings, it shall proceed to hear the matter as promptly as possible and shall make its determination within seven months from the date that the change otherwise would have gone into effect. If a company files for a change in rate design among classes of ratepayers, and the company has a rate case pending before the board, the board shall make its determination on the rate design change within seven months after the rate case is decided by the board. If the board fails to make its determination within the time periods set by this subsection, the changed rate schedules filed by the company shall become effective and final.

(b) The board, on its own motion, may order an investigation and hearing on the justness and reasonableness of existing rates of a company, subject to supervision under this chapter. The board shall proceed to hear the matter as promptly as possible and shall make every effort to make its determination within seven months from the date the proceeding was instituted. If the board does make its determination within such seven months then its final order shall be retroactive to the day that the proceedings were instituted and such final order shall contain a directive that the company, other than a common carrier of passengers by motor vehicle, shall repay to the persons from whom collected between the time the proceedings were instituted and the final order all sums which the board determines are in excess of the rates ultimately found to be just and reasonable. If the board does not make its determination within seven months of the institution of the proceedings then its final order when made shall be retroactive only to a date seven months after the institution of the proceedings and the final order shall contain a directive that the company shall repay to persons from whom collected between the date seven months after the institution of the proceedings and the determination thereof all sums which the board determines are in excess of the rates ultimately found to be just and reasonable. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961; 1961, No. 263, § 4, eff. July 31, 1961; 1981, No. 226 (Adj. Sess.), § 5, eff. May 6, 1982; 1995, No. 182 (Adj. Sess.), § 17, eff. May 22, 1996.)

§ 227a. Pricing of competitive telecommunications services

(a) In addition to the board's authority to reduce or suspend any regulatory requirements as part of a contract negotiated under section 226a of this title, the board may also suspend or reduce such requirements in a competitive market under this section. If, after hearing, the board determines that a competitive market exists for the provision of any telecommunications service offered by a company subject to

its jurisdiction, the board may suspend or reduce any or all of the regulatory requirements otherwise applicable to the provision of such service under subsection 218(a) and sections 225, 226, and 227 of this title. In determining whether a competitive market exists, the board shall find:

(1) that no competitor offering such service has sufficient market power to set prices for the service; taking into consideration whether competitors to any dominant market provider offer a sufficient quantity of similar or equivalent services, whether there is reasonable ease of entry into the market for providers of these services, and any other relevant indicator of market power;

(2) that the competition in the market will afford the public at least as much protection as the applicable regulatory requirements being suspended or reduced;

(3) that adequate safeguards exist to assure that any services provided by a competitor which continue to be regulated are not supporting or subsidizing any services offered in the competitive market, and that no company shall allocate revenues from regulated activities to unregulated activities nor allocate costs from unregulated activities to regulated activities and, upon request, shall provide the board and the department with information including, but not limited to, cost studies indicating whether any regulated services are supporting any services which are deregulated; and

(4) that adequate safeguards exist to assure that access to any regulated basic exchange services or any other regulated services that must be utilized to provide the competitive service is available at the same rates, terms and conditions at which they are provided by the company to its own unregulated affiliates or charged to its own unregulated accounts.

(b) Nothing in this section shall limit the existing authority of the board or department to require provision of or access to information required by this title.

(c) The board shall upon petition of the department, and may upon its own initiative, investigate whether it should reimpose any regulatory requirements which it has suspended or reduced in accordance with subsection (a) of this section; and if the board finds that it is in the public interest to reapply any such regulatory provisions it may do so if it determines that the standards in subsection (a) are no longer met. Pending any final order, the board may reimpose any regulatory requirements on a preliminary basis as it determines is just and reasonable. The board shall rule on any request by the department for a preliminary order within 60 days. The board shall make a final decision on reimposition of regulatory requirements within seven months of the department's request or of the date of commencement of its own investigation. A preliminary or final order shall be after public notice and hearing. (Added 1987, No. 87, § 7.)

§ 227b. Wireless telecommunications

(a)(1) The Secretary of Administration is designated as the exclusive agent for the State of Vermont to contract for the use of State-owned buildings, structures, and land for wireless, two-way interactive telecommunications facilities. The Secretary is granted the power to contract or grant a lease or license of up to 25 years for such buildings, structures, and land for such purposes. The provisions of this section shall apply to all State-owned buildings, structures, and land, including such property owned or managed by the Department of Buildings and General Services, the Agency of Transportation, the Department of Public Safety, and the Agency of Natural Resources.

(2) The Secretary is granted all powers necessary to carry out his or her responsibilities under this section. Notwithstanding any other provision of law, the powers granted to the Secretary under this section relating to wireless telecommunications facilities shall supersede the authority granted to any other State official or agency relating to such facilities. The powers granted by this section shall not affect the Secretary's duty, and any duty of the facility owner, to seek and obtain any applicable gubernatorial, quasi-judicial, or legislative review, approval, or permit required by law, including as necessary permits under 10 V.S.A. chapter 151 (Act 250), local planning and zoning permits, a certificate of public good under section 248a of this title, and legislative approval under 29 V.S.A. § 166 (sale or long-term lease of State lands), 10 V.S.A. § 2606 (exchange or lease of State forests and parks), or 10 V.S.A. § 2606a (State-owned mountaintop use as communications sites). A decision by the Secretary to contract or enter into or renew a lease or license for the use of a State-owned building, structure, or land for a wireless telecommunications facility shall have no presumptive or binding effect with respect to the facility's compliance with the standards or criteria used in determining whether to grant any such required approval or permit.

(3) The Secretary shall consult with all affected State officials and agencies concerning each proposed use of State properties for wireless telecommunications facilities to determine the compatibility of the particular building, structure, or parcel of land to accommodate such facilities, and to determine and give due consideration to the compatibility of the proposed use with the approved long-term management plan for the property under consideration, but the approval of such officials or agencies is not required for the Secretary to exercise his or her powers under this section. In the case of lands managed by the Agency of Natural Resources, the Secretary shall determine that the use is consistent with any management plan to which the lands are subject.

(b) The Secretary of Administration shall develop a standard contract and a standard contracting procedure for the use of State-owned buildings and land for wireless telecommunications facilities. The contract and contracting procedure shall provide for:

(1) criteria and procedures for making a wireless facility development proposal;

(2) final consideration of each completed facility development proposal within 60 days of the proposal's submission in the manner prescribed by the Secretary;

(3) appropriate public benefits as compensation for the use of State properties, including public use of increased telecommunications capacity, direct compensation, or other public benefits;

(4) in the event that a wireless telecommunications facility is abandoned, the restoration of the site to a natural state within 12 months following abandonment. For the purpose of this subdivision, "natural state" does not require the removal of equipment and material buried more than 12 inches below natural grade if the equipment and material do not constitute hazardous material as defined under 10 V.S.A. § 6602(16), and the Secretary concludes that in the context of a particular site, removal of such equipment and material is not necessary to satisfy the purposes of this subsection. Nothing in this subdivision shall constitute authority to dispose of or bury waste or other material in contradiction of applicable law;

(5) encouragement of competition in wireless telecommunications, including requirements for open access for competing providers;

(6) encouragement of the use of advanced technology, and the collocation of facilities whenever feasible, in order that the number of wireless telecommunications facilities can be minimized or reduced;

(7) terms and conditions requiring certification by the owners of wireless telecommunications facilities on State-owned buildings, structures, or land that such facilities have been installed, operated, and maintained in accordance with applicable federal and State safety standards; and

(8) the retaining of a portion of revenues accruing from the lease of State-owned buildings, structures, or lands, as determined by the Secretary of Administration, by departments with management responsibility for such buildings, structures, or lands in order to cover operating and maintenance costs associated with two-way, interactive telecommunications facilities.

(c) By January 15, 2012, and by January 15 in the next succeeding three years, the Secretary of Administration shall report to the Chairs of the House Committee on Commerce and Economic Development and the Senate Committee on Finance concerning the Secretary's activities under this section.

(d) In the event of a conflict between the provisions of this section and any other provision of law relating to the use of State-owned buildings, structures, and land, including the provisions of 29 V.S.A. § 165, and 19 V.S.A. § 26a, the provisions of this section shall control. (Added 1995, No. 168 (Adj. Sess.), § 1; amended 1997, No. 150 (Adj. Sess.), § 21; 2011, No. 53, § 13, eff. May 27, 2011.)

§ 227c. Nondominant carriers

(a) The board may modify, reduce or suspend the requirements under this title as applied to nondominant providers of telecommunications service. The board may act by rule, or, after notice and opportunity for hearing, it may act by order. The modifications, reductions or suspensions may apply to one or more classes of nondominant providers, and may apply differently to each class. The board may modify, suspend or reduce any or all of the regulatory requirements under sections 104, 105, 107-109, 225, 226, subsection 227(a), and sections 229 and 311 of this title.

(b) In determining whether a carrier or class of carriers is nondominant, the board shall consider whether the carriers have sufficient market power to set prices for the market.

(c) In determining whether to modify, reduce or suspend regulatory requirements, the board shall consider whether competition in the market combined with the remaining requirements under this title:

(1) will be sufficient to ensure that the charges, practices, classifications or regulations related to the service are just and reasonable, and are not unjustly or unreasonably discriminatory; and

(2) will afford the public at least as much protection as the applicable regulatory requirements being suspended or reduced.

(d) Upon petition of the department, the board shall, and upon its own initiative the board may, investigate whether it should reimpose any regulatory requirements which it has modified, suspended or reduced under this section. If the board finds, after notice and an opportunity for hearing, and after considering the factors identified in subsection (c) of this section, that the public is not sufficiently protected, the board may reimpose any regulatory provisions that the board deems necessary. Pending any final order, the board may reimpose any regulatory requirements on a temporary basis as it determines is just and reasonable. (Added 1999, No. 67 (Adj. Sess.), § 3.)

§ 227d. Small eligible telecommunications carriers

(a) A carrier which serves fewer than 10 percent of subscriber lines installed in the aggregate statewide and has been designated as an eligible telecommunications carrier in a service area where a competitive eligible telecommunications carrier has

also been designated may, by providing written notice to the public service board and to the department of public service, elect to be exempted from one or more of the regulatory requirements under sections 104, 105, 108, 225, 226, 227, 229, and 230 of this title, except for purposes of E-911 services, for switched or dedicated access to the local exchange by providers of long distance telephone service or for rates for utility pole attachments. For the purposes of this subsection, "eligible telecommunications carrier" means a telecommunications carrier designated eligible pursuant to 47 U.S.C. § 214(e).

(b) For any carrier that elects exemption under subsection (a) of this section:

(1) The carrier shall provide notice of its election to its existing customers within 30 days of its election and to any new customer at the time the new customer requests service from the carrier.

(2) The carrier shall maintain rate schedules and upon request shall provide notice of any change to such rate schedules to the board and the department for informational purposes only.

(A) Notice of increases of rates for services offered by the carrier on or before June 30, 2005, shall be made at least 30 days in advance to the board and department.

(B) The carrier shall not withdraw any service subject to the jurisdiction of the board which it offered on June 30, 2005, without at least 30 days' advance notice to customers, the board, and the department.

(C) Rate schedules which are exempted from approval by the board under this section shall not have the effect of a tariff.

(3) The board shall have continuing regulatory authority over any matter under its jurisdiction for which the authority of the board is not specifically limited by this section.

(4) The carrier shall not condition the purchase of basic exchange telecommunications service upon the purchase or subscription to bundles of or any combination of telecommunication services other than the one access line required for the provision of such service.

(5) The carrier shall limit its prices as follows:

(A) the carrier shall not increase its price for basic exchange telecommunications service during the first year following such election; during the second and third years following the end of the year in which the carrier has made such election, the carrier shall not increase its price for basic exchange telecommunications service by more than nine percent or by $1.50, whichever is less;

and during the fourth and fifth years following the end of the year in which the carrier has made such election, the carrier shall not increase its price for basic exchange telecommunications service by more than 11 percent or by $2.00, whichever is less;

(B) the carrier shall not increase its prices for local measured service during the first two years following such election;

(C) the carrier shall not increase its price for nonbasic telecommunications services by more than nine percent during the first two years following such election; provided that, for the purposes of this section, nonbasic telecommunications services shall mean any optional telecommunications services other than basic exchange telecommunications services and local measured service that were included in the carrier's intrastate tariff at the time of the election;

(D) the carrier shall not increase its intrastate switched access rates for the three years following the end of the year in which the carrier has made such election.

(6) The maximum prices established under subdivision (5) of this subsection may be exceeded only when it is necessary for the carrier to address an exogenous event. As used in this subsection, the term "exogenous event" means an event beyond the control of the carrier which is limited to:

(A) changes in tax laws that are unique to the telecommunications industry which materially increase the costs or reduce the revenues of local exchange services in excess of 10 percent in a single year, except if costs or revenue changes are less than 10 percent, then as may be approved by the board;

(B) changes in generally accepted accounting principles that apply specifically to telecommunications carriers or changes in the Federal Communications Commission's Uniform System of Accounts which materially increase the costs or reduce the revenues of local exchange services in excess of 10 percent in a single year, except if costs or revenue changes are less than 10 percent, then as may be approved by the board;

(C) changes in the Federal Communications Commission's rules pertaining to jurisdictional separations which materially increase the costs or reduce the revenues of local exchange services in excess of 10 percent in a single year, except if less than 10 percent, then as may be approved by the board;

(D) regulatory, judicial, or legislative changes affecting telecommunications carriers, including, without limitation, rules and orders that are necessary to implement such changes, including, but not limited to, intercarrier compensation, universal service support, and revenue-neutral restructuring of a regulated intrastate telecommunications product or service which materially increase the costs or reduce

the revenues of local exchange services in excess of 10 percent in a single year, except if costs or revenue changes are less than 10 percent, then as may be approved by the board; or

(E) changes in inflation, changes in the economy, or the effects of competition that produce an increase in costs or a decrease in revenues in excess of 15 percent in a single year.

(7) If the carrier responds to an exogenous event with a price increase that exceeds the maximum prices defined in subdivision (5) of this subsection, the carrier shall provide notice of such change to the public service board and to the public service department. The board, upon its own motion or upon the recommendation of the department, may initiate an investigation. If the board does not initiate an investigation within a 30-day period, the price increase shall take effect. If the board determines to initiate an investigation, it shall give notice of that decision to the carrier and to the department and may suspend the portion of the price that exceeds the cap. The board shall conclude its investigation within 120 days of issuance of its notice of investigation or within such shorter period as it deems appropriate. If the board fails to issue a decision within that 120-day period, the price increase shall become effective upon the 121st day without retroactive rate adjustments.

(8) Regulated intrastate telecommunications products or services that were not offered under the carrier's rate schedules effective at the time of the election for exemption under subsection (a) of this section shall constitute new products and services and, as such, shall not be subject to the caps described in subdivision (5) of this subsection. The carrier shall file rate schedules for new products and services and special contracts with the board and the department of public service, which shall take effect upon filing. New products and services may include, without limitation:

(A) services that were not technologically feasible prior to the carrier's election;

(B) any combination of new or existing products or services;

(C) promotional offerings;

(D) bundles of services, regardless of whether such bundles are comprised of regulated or unregulated services or a combination thereof;

(E) special contracts that are offered to individuals or groups of customers and executed after the carrier elects the exemption provided under subsection (a) of this section.

(c) Upon petition by the department, the board shall and upon its own initiative the board may investigate whether it should impose or reimpose any regulatory requirements which the carrier has elected out of pursuant to subsection (a) of this section. If the board finds, after notice and an opportunity for hearing, and, after considering the factors identified in subsection 227c(c) of this title, that the public is not sufficiently protected, the board may impose or reimpose any of the regulatory provisions listed in subsection (a) of this section. Pending any final order and subject to the provisions of section 12 of this title, the board may impose or reimpose any of the regulatory provisions listed in subsection (a) of this section on a temporary basis as it determines is just and reasonable. Upon petition of the carrier and after notice and opportunity for hearing, the board may modify, reduce, or suspend any regulatory requirement it has reimposed on the carrier. (Added 2005, No. 73, § 1; amended 2007, No. 79, §§ 17a, 17b, eff. June 9, 2007; 2007, No. 95 (Adj. Sess.), § 1, eff. May 24, 2008.)

§ 227e. Leasing or licensing of State land; public notice

(a) Beginning July 1, 2011, State land may not be leased or licensed for the purpose of construction or installation of a wireless telecommunications facility, as defined in subsection 248a(b) of this title, unless authorized by the Secretary of Administration pursuant to the requirements of this section. For purposes of this section, "State land" means land owned in fee or interests in land owned by the Agency of Natural Resources. No initial lease or license, including any renewal thereof, entered into pursuant to this section shall exceed 25 years.

(b) Prior to entering into or renewing a lease or license, the Secretary shall:

(1) publish notice of the proposed telecommunications facility site in one daily newspaper of general circulation in the region of the proposed site and on the website maintained by the Agency of Administration, with appropriate hyperlinks to that website on all relevant, State-maintained websites; and

(2) send by certified mail, return receipt requested, a written notice of the proposed lease or license or renewal to the legislative body of each municipality in which such leased or licensed land is located. The notice shall include a description of the land to be leased or licensed and of the proposed telecommunications facility to be sited on the land, including the facility's height and location. (Added 2011, No. 53, § 12, eff. May 27, 2011.)

§ 228. Copy of schedules

Each company, subject to the provisions of this chapter, shall keep on file in every station or office thereof where payments are made by consumers or users a copy printed in plain type of so much of its schedules as the board shall deem necessary.

Such copy shall be in such form and place as to be readily accessible to inspection by the public. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961.)

§ 229. Rebates; exceptions

A public service company shall not directly or indirectly or by any special rate, rebate, drawback or other device or method make any deviation from the rates, fares, charges or prices for any service rendered by it or in services rendered or to be rendered in connection therewith, as specified in its schedules of charges in effect at the time such service was rendered. No public service company may enter into any contract, agreement or arrangement relating to the furnishing or rendering of any special product or special service not provided for or covered in the schedule without the prior approval of the board. However, nothing herein shall prohibit the giving by any such public service company of free or reduced rate service to its employees, or in case of public emergency, or to the classes defined and provided for in the act of Congress entitled "An act to Regulate Commerce" and acts amendatory thereof. Subject to the approval of the board, it shall be lawful for any public utility to make a contract for a definite term for its product or service. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961; 1961, No. 263, § 5, eff. July 31, 1961.)

§ 230. Special rate or rebate; penalty

Except as provided in section 229 of this title, an officer or employee of such public service company who grants a special rate or rebate or knowingly consents thereto, shall be subject to a civil penalty imposed by the board, after notice and an opportunity for hearing of not less than $100.00 nor more than $1,000.00. In addition, such company granting a special rate or rebate shall be subject to a civil penalty imposed by the board, after notice and opportunity for hearing, of not more than the larger of $10,000.00 or five times the amount of the benefit or rebate. (Amended 1961, No. 263, § 6, eff. July 31, 1961; 1995, No. 99 (Adj. Sess.), § 8.)

§ 231. Certificate of public good; abandonment of service; hearing

(a) A person, partnership, unincorporated association, or previously incorporated association, which desires to own or operate a business over which the public service board has jurisdiction under the provisions of this chapter shall first petition the board to determine whether the operation of such business will promote the general good of the state, and shall at that time file a copy of any such petition with the department. The department, within 12 days, shall review the petition and file a recommendation regarding the petition in the same manner as is set forth in subsection 225(b) of this title. Such recommendation shall set forth reasons why the petition shall be accepted without hearing or shall request that a hearing on the petition be scheduled. If the department requests a hearing on the petition, or, if the board deems a hearing necessary, it shall appoint a time and place in the county

where the proposed corporation is to have its principal office for hearing the petition, and shall make an order for the publication of the substance thereof and the time and place of hearing two weeks successively in a newspaper of general circulation in the county to be served by the petitioner, the last publication to be at least seven days before the day appointed for the hearing. The director for public advocacy shall represent the public at such hearing. If the board finds that the operation of such business will promote the general good of the state, it shall give such person, partnership, unincorporated association or previously incorporated association a certificate of public good specifying the business and territory to be served by such petitioners. For good cause, after opportunity for hearing, the board may amend or revoke any certificate awarded under the provisions of this section. If any such certificate is revoked, the person, partnership, unincorporated association, or previously incorporated association shall no longer have authority to conduct any business which is subject to the jurisdiction of the board whether or not regulation thereunder has been reduced or suspended, under section 226a or 227a of this title.

(b) A company subject to the general supervision of the public service board under section 203 of this title may not abandon or curtail any service subject to the jurisdiction of the board or abandon all or any part of its facilities if it would in doing so effect the abandonment, curtailment or impairment of the service, without first obtaining approval of the public service board, after notice and opportunity for hearing, and upon finding by the board that the abandonment or curtailment is consistent with the public interest; provided, however, this section shall not apply to disconnection of service pursuant to valid tariffs or to rules adopted under section 209(b) and (c) of this title. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961; 1975, No. 212 (Adj. Sess.), § 2; 1979, No. 204 (Adj. Sess.), § 34, eff. Feb. 1, 1981; 1987, No. 87, § 8; 1995, No. 99 (Adj. Sess.), § 9; 1999, No. 157 (Adj. Sess.), § 10.)

§ 231a. Registration of billing aggregators

(a) Definitions. As used in this section, unless the context otherwise indicates:

(1) "Bill" means a direct statement of payments due and any other form of notice soliciting payment.

(2) "Billing agent" means a local exchange carrier or other person offering telecommunications service who includes in a bill it sends to a customer a charge for a product or service offered by a service provider.

(3) "Billing aggregator" means any person, other than a service provider, who forwards the charge for a product or service offered by a service provider to a billing agent.

(4) "Service provider" means any person, other than the billing agent, that offers a product or service to a customer, the charge for which appears on the bill of a billing agent.

(5) "Telecommunications carrier" means a company subject to the jurisdiction of the public service board under subdivision 203(5) of this title.

(6) "Unauthorized service" means the provision of any service or product by a service provider that a customer has not authorized, and for which a charge appears on the customer's telephone bill. Charges for collect calls shall be exempt from this section.

(b) Registration requirements. Except as provided in this subsection, no billing aggregator may forward charges for a service or product offered by a service provider to a billing agent for presentation to a customer, unless the billing aggregator is registered with the public service board. A registration properly filed with the public service board takes effect 14 days after the filing date, unless the public service department objects to the registration and provides notice of its objection to the registrant within the 14 days. If the public service department objects to the registration, the registration does not become effective, unless expressly approved by the public service board. The public service board shall offer a person whose registration has been rejected an opportunity for a hearing. A registration, once effective, remains effective until revoked by the public service board or surrendered by the holder. A company that provides telecommunications service in this state pursuant to a certificate of public good or equivalent authority under this title is not required to be registered under this subsection.

(c) Revocation of registration; notice.

(1) After opportunity for hearing, the public service board may revoke the registration of a billing aggregator who has:

(A) provided false or deceptive information in registering under this section;

(B) knowingly, negligently or repeatedly forwarded a charge to a billing agent for a product or service that the consumer did not authorize;

(C) failed to provide a notice to customers as required by rule or order of the public service board, or otherwise failed to comply with a rule or order of the public service board; or

(D) engaged in any other false or deceptive practices.

(2) Immediately following a revocation of registration under this subsection, the public service board shall provide notice of the revocation, in a form and manner established by the public service board by rule, to all telecommunications carriers doing business in this state.

(d) Procedure upon complaint. If a customer of a telecommunications carrier claims that a charge for an unauthorized service has been included in the customer's telephone bill, the telecommunications carrier shall immediately suspend collection efforts on that portion of the customer's bill. The telecommunications carrier shall either cease collection efforts entirely with regard to the disputed charge or request evidence from the billing aggregator that the customer authorized the service for which payment is sought. If the telecommunications carrier ceases collection efforts or sufficient evidence of customer authorization is not presented to the telecommunications carrier within a reasonable time, the telecommunications carrier shall immediately remove any charges associated with the unauthorized service from the customer's bill and refund to the customer any amounts paid for the unauthorized service that were billed by the telecommunications carrier during the six months prior to the customer's complaint. If sufficient evidence of customer authorization is provided to the telecommunications carrier, the telecommunications carrier may restore the charges on the customer's bill and reinstitute collection efforts. The customer or the billing aggregator may appeal the telecommunications carrier's determination to the public service board.

(e) Enforcement authority. In addition to any other authority the public service board may have pursuant to other law, the public service board may enforce the provisions of this section in accordance with this subsection:

(1) In an adjudicatory proceeding, the public service board may impose an administrative penalty upon the following entities for the following violations:

(A) a billing aggregator who forwards charges to a billing agent for an unauthorized product or service;

(B) a billing aggregator who is required to be registered under subsection (b) of this section and who is not properly registered pursuant to that subsection and who forwards charges for a product or service that appear on the bill of a billing agent;

(C) a billing agent who knowingly bills on behalf of a billing aggregator who is required to be registered under subsection (b) of this section and who is not properly registered pursuant to that subsection at the time the bill which is to be sent to the customer is generated, except that a billing agent who bills on behalf of a billing aggregator whose registration has been revoked shall not be subject to administrative penalty if the bill which is to be sent to the customer was generated within 14 days of the revocation of the registration and the billing agent did not have actual notice of the revocation;

(D) a telecommunications carrier that, without having first obtained evidence of authorization that the telecommunications carrier believed in good faith to be sufficient, does not remove the charges for any service which is the subject of a

complaint under subsection (d) of this section and does not refund to the customer any amounts paid for the unauthorized service that were billed by the telecommunications carrier during the six months prior to the customer's complaint. For purposes of this section, evidence that a call was dialed from the number that is the subject of the charge shall be considered sufficient evidence of authorization for that call.

(2) The amount of any administrative penalty imposed under subdivision (1) of this subsection may not exceed $1,000.00 per violation arising out of the same incident or complaint, and must be based on:

(A) the severity of the violation, including the intent of the violator, the nature, circumstances, extent and gravity of any prohibited acts;

(B) the history of previous violations; and

(C) the amount necessary to deter future violations.

(f) Rulemaking. The public service board shall adopt such rules as it deems necessary to implement this section. (Added 1999, No. 67 (Adj. Sess.), § 4.)

§ 232. Sales, leases, pledges, bonds, notes; hearings

(a) Except in connection with replacement or exchange, an individual, partnership or unincorporated association conducting such public service business shall not make a sale or lease or series of sales or leases in any one calendar year constituting 10 percent or more of its property located within this state and actually used in or required for public service operations or mortgage or pledge any of its property or issue any bonds, notes or other evidences of indebtedness without the consent of the public service board, given on petition and after opportunity for hearing and a finding that the same will promote the general good of the state. Notice of such hearing shall be given as the board directs.

(b) Notwithstanding subsection (a) of this section, an individual, partnership or unincorporated association may issue evidences of indebtedness payable within one year from date of issue without such consent provided such borrowing is necessary as an emergency to restore service immediately after disaster or provided its total evidences of indebtedness so payable within one year do not exceed 20 percent of its total assets. If such evidences of indebtedness in an amount which would cause its total evidences of indebtedness so payable within one year to exceed 20 percent of its total assets, then it shall give the board notice in writing of its intention so to do at least 10 days before the date of the proposed issue. If the board determines after considering the notice and the said individual, partnership or unincorporated association's report to the board that further inquiry is warranted, it shall order such individual, partnership or unincorporated association not to issue such evidences of indebtedness under this subsection without the consent of the board given after

opportunity for hearing, provided, however, that if the board does not make such an order within 10 days from the time it receives such notice under this subsection then the individual, partnership or unincorporated association may issue such evidences of indebtedness without the consent of the public service board and the board shall so notify such individual, partnership or unincorporated association in writing.

(c) Nothing in this section shall restrict the right of a common carrier by motor vehicle to issue evidences of indebtedness payable within one year from the date of issue without prior notice to or consent by the board. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961; 1993, No. 21, § 9, eff. May 12, 1993.)

§ 233. Repealed. 1995, No. 99 (Adj. Sess.), § 16(1).

§ 234. Appeal

A person, partnership or unincorporated association aggrieved by any act or order of the public service board may transfer such cause to the supreme court under the provisions of section 12 of this title. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961.)

§ 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) The department, subject to the oversight of 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 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.

(5) Promote coordinated program delivery, including coordination with low income weatherization programs, 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) Develop and 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 this section.

(11) Require that any service provider under this section deliver 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, 2011, 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 selected to be a service provider under this section.

(13) Ensure that any energy efficiency program implemented under this section shall be reasonable and cost-effective.

(14) Consider the impact of programs delivered under this section on the amount of fuel used, fuel prices, and fuel 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.

(e) Any disputes under this section shall be resolved by the board. (Added 2007, No. 92 (Adj. Sess.), § 15.)

§§ 236-245. Repealed. 1985, No. 224 (Adj. Sess.), § 8.

§ 246. Temporary siting of meteorological stations

(a) As used in this section, a "meteorological station" consists of one temporary tower, which may include guy wires, and attached instrumentation to collect and record wind speed, wind direction, and atmospheric conditions.

(b) The Public Service Board shall establish by rule or order standards and procedures governing application for, and issuance or revocation of, a certificate of public good for the temporary installation of one or more meteorological stations under the provisions of section 248 of this title. A meteorological station shall be deemed to promote the public good of the State if it is in compliance with the criteria of this section and the Board rules or orders. An applicant for a certificate of public good for a meteorological station shall be exempt from the requirements of subsection 202(f) of this title.

(c) In developing rules or orders, the Board:

(1) Shall develop a simple application form and shall require that completed applications be filed with the Board, the Department of Public Service, the Agency of Natural Resources, the Agency of Transportation, and the municipality in which the meteorological station is proposed to be located.

(2) Shall require that if no objections are filed within 30 days of the Board's receipt of a complete application and the Board determines that the applicant has met all of the requirements of section 248 of this title, the certificate of public good shall be issued for a period that the Board finds reasonable, but in no event for more than five years. Upon request of an applicant, the Board may renew a certificate of public good. Upon expiration of the certificate, the meteorological station and all associated structures and material shall be removed, and the site shall be restored substantially to its preconstruction condition.

(3) May waive the requirements of section 248 of this title that are not applicable to meteorological stations, including criteria that are generally applicable to public service companies as defined in this title. The Board shall not waive review regarding whether construction will have an undue adverse effect on esthetics, historic sites, air and water purity, the natural environment, and the public health and safety.

(4) Shall seek to simplify the application and review process, as appropriate, in conformance with this section.

(d) A proposal for decision shall be issued within five months of when the Board receives a completed application for a certificate of public good for the temporary installation of one or more meteorological stations under the provisions of section 248 of this title. (Added 2007, No. 92 (Adj. Sess.), § 17; amended 2011, No. 62, § 35.)

§ 247. Penalty

In addition to any civil penalty imposed under section 30 and section 230 of this title, any person, partnership, unincorporated association, company or corporation, or the officers of any unincorporated association, company, or corporation who violates

section 230 or section 248 of this title shall be fined not more than $100.00 or imprisoned not more than 60 days, or both. (Amended 1995, No. 99 (Adj. Sess.), § 10.)

§ 248. New gas and electric purchases, investments, and facilities; certificate of public good

(a)(1) No company, as defined in section 201 of this title, 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 subdivision 8002(14) of this title that produces electricity from renewable energy as defined under subdivision 8002(17); or

(ii) for a period exceeding ten years, that represents more than ten percent of its historic peak demand, if the purchase is from a plant as defined in subdivision 8002(14) of this title that produces electricity from renewable energy as defined under subdivision 8002(17); or

(B) invest in an electric generation or transmission facility located outside this State unless the Public Service Board 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 facilities that are operated solely for on-site electricity consumption by the owner of those facilities:

(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 or electric transmission facility within the State which 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 or generation facility, unless the Public Service Board 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 Service Board 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 of the above. 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 Service Board 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, the Public Service Board shall hold a nontechnical public hearing on each 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.

(B) The Public Service Board shall hold technical hearings at locations which it selects.

(C) At the time of filing its application with the Board, copies shall be given by the petitioner to 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 chairperson 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. At the time of filing its application with the Board, the petitioner shall give the Byways Advisory Council notice of the filing.

(D) Notice of the public hearing shall be published and maintained on the Board'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 Board in such a proceeding.

(b) Before the Public Service Board 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, with respect to a natural gas transmission line subject to Board 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 Board 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;

(2) is required to meet the need for present and future demand for service which 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 Board 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 esthetics, 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) 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, 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;

(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 which is 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 which were identified by the Public Service Board 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 Service Board 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 Service Board 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 Service Board issues a certificate of public good under this section. If the General Assembly has not acted under this subsection by July 1, 2008, the Board 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. Such municipal or regional planning commission may hold a public hearing on the proposed plans. Such commissions shall make recommendations, if any, to the Public Service Board and to the petitioner at least seven days prior to filing of the petition with the Public Service Board.

(g) However, notwithstanding the above, 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 Service Board 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 Board conducts proceedings under this subsection, the Department shall give due consideration to the Board'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 Board 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 title, without approval by the Board, after giving notice of such investment, or filing a copy of that contract, with the Board 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 Board shall consider within 30 days whether to investigate the proposed investment or contract.

(3) The Board, upon its own motion, or upon the recommendation of the Department, may determine to initiate an investigation. If the Board does not initiate an investigation within such 30-day period, the contract or investment shall be deemed to be approved. If the Board 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 Board determines are appropriate. The Board shall conclude its investigation within 120 days of issuance of its notice of investigation, or within such shorter period as it deems appropriate. If the Board fails to issue a decision within that 120-day period, the contract or investment shall be deemed to be approved. The Board may hold informal, public, or technical 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 Board'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 Board 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 Board and Department of such notice or proposed contract or pending any investigation under this subsection.

(j)(1) The Board 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 board 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. The Board shall give written notice of the proposed certificate to the parties specified in subdivision (a)(4)(C) of this section, 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 Board to have a substantial interest in the matter. Such notice shall be published on the Board's website and shall request comment within the Board's website and shall request comment within 28 days of the initial publication on the question of whether the petition raises a significant issue with respect to the substantive criteria of this section. If the Board finds that the petition raises a significant issue with respect to the substantive criteria of this section, the Board 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 Board 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 or a generation facility necessary to assure 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 Board and shall provide copies to the Department of Public Service and the Agency of Natural Resources. Upon receiving the petition, the Board shall conduct an expedited preliminary hearing, upon such notice to the governmental bodies listed in subdivision (a)(4)(C) of this section as the Board 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 Board 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 Board 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 Board 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 Board 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 Service Board 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 or a generation facility necessary to assure 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 Board shall require the removal, relocation, or alteration of the facilities, subject to the waiver, as the Board finds will best promote the general good of the State.

(m) In any matter with respect to which the Board 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 Board 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 title 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-metered system, without receiving a certificate of public good from the Public Service Board pursuant to this subsection. The Public Service Board 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 Board rules or orders implementing this section. In developing such rules and orders, the Board:

(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 Board 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 Board shall issue a certificate of public good without a hearing. If the Board fails to issue a final decision or identify a significant issue with regard to a completed petition made under this section within 60 days of its filing with the Clerk of the Board 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 Board 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 board the amount, type, and source of wood acquired to generate energy.

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

(2) Notwithstanding 1 V.S.A. § 214 and Board Rule 5.408, if the Board 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 Board 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 Board'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. (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.)

§ 248a. Certificate of public good for communications facilities

(a) Certificate. Notwithstanding any other provision of law, if the applicant seeks approval for the construction or installation of telecommunications facilities that are to be interconnected with other telecommunications facilities proposed or already in existence, the applicant may obtain a certificate of public good issued by the Public Service Board under this section, which the Board may grant if it finds that the facilities will promote the general good of the State consistent with subsection 202c(b) of this title. A single application may seek approval of one or more telecommunications facilities. An application under this section shall include a copy

of each other State and local permit, certificate, or approval that has been issued for the facility under a statute, ordinance, or bylaw pertaining to the environment or land use.

(b) Definitions. As used in this section:

(1) "Ancillary improvements" means telecommunications equipment and site improvements that are primarily intended to serve a telecommunications facility, including wires or cables and associated poles to connect the facility to an electric or communications grid; fencing; equipment cabinets or shelters; emergency backup generators; and access roads.

(2) "De minimis modification" means the addition, modification, or replacement of telecommunications equipment, antennas, or ancillary improvements on a telecommunications facility or existing support structure, whether or not the structure was constructed as a telecommunications facility, or the reconstruction of such a facility or support structure, provided:

(A) the height and width of the facility or support structure, excluding equipment, antennas, or ancillary improvements, are not increased;

(B) the total amount of impervious surface, including access roads, surrounding the facility or support structure is not increased by more than 300 square feet;

(C) the addition, modification, or replacement of an antenna or any other equipment on a facility or support structure does not extend vertically more than 10 feet above the facility or support structure and does not extend horizontally more than 10 feet from the facility or support structure; and

(D) the additional equipment, antennas, or ancillary improvements on the support structure, excluding cabling, does not increase the aggregate surface area of the faces of the equipment, antennas, or ancillary improvements on the support structure by more than 75 square feet.

(3)(A) "Limited size and scope" means:

(i) A new telecommunications facility, including any ancillary improvements, that does not exceed 140 feet in height; or

(ii) An addition, modification, replacement, or removal of telecommunications equipment at a lawfully constructed telecommunications facility or on an existing support structure, and ancillary improvements, that would result in a facility of a total height of less than 200 feet and does not increase the width of the existing support structure by more than 20 feet.

(B) For construction described in subdivision (3)(A) of this subsection to be of limited size and scope, it shall not disturb more than 10,000 square feet of earth. For purposes of this subdivision, "disturbed earth" means the exposure of soil to the erosive effects of wind, rain, or runoff.

(4) "Telecommunications facility" means a communications facility that transmits and receives signals to and from a local, State, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or State purposes and any associated support structure that is proposed for construction or installation which is primarily for communications purposes, and any ancillary improvements that are proposed for construction or installation and are primarily intended to serve the communications facilities or support structure. An applicant may seek approval of construction or installation of a telecommunications facility whether or not the telecommunications facility is attached to an existing structure.

(5) "Wireless service" means any commercial mobile radio service, wireless service, common carrier wireless exchange service, cellular service, personal communications service (PCS), specialized mobile radio service, paging service, wireless data service, or public or private radio dispatch service.

(c) Findings. Before the Public Service Board issues a certificate of public good under this section, it shall find that:

(1) The proposed facility will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and the public health and safety, and the public's use and enjoyment of the I-89 and I-91 scenic corridors or of any highway that has been designated as a scenic road pursuant to 19 V.S.A. § 2501 or a scenic byway pursuant to 23 U.S.C. § 162, with due consideration having been given to the relevant criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K). However, with respect to telecommunications facilities of limited size and scope, the Board shall waive all criteria of this subdivision other than 10 V.S.A. § 6086(a)(1)(D)(floodways) and (a)(8)(aesthetics, scenic beauty, historic sites, rare and irreplaceable natural areas; endangered species; necessary wildlife habitat). Such waiver shall be on condition that:

(A) the Board may determine, pursuant to the procedures described in subdivision (j)(2)(A) of this section, that a petition raises a significant issue with respect to any criterion of this subdivision; and

(B) a telecommunications facility of limited size and scope shall comply, at a minimum, with the requirements of the Low Risk Site Handbook for Erosion Prevention and Sediment Control issued by the Department of Environmental Conservation, regardless of any provisions in that handbook that limit its applicability.

(2) Unless there is good cause to find otherwise, substantial deference has been given to the land conservation measures in the plans of the affected municipalities and the recommendations of the municipal legislative bodies and the municipal and regional planning commissions regarding the municipal and regional plans, respectively. Nothing in this section or other provision of law shall prevent a municipal body from basing its recommendations on an ordinance adopted under 24 V.S.A. § 2291(19) or bylaw adopted under 24 V.S.A. chapter 117 by the municipality in which the facility is located. A rebuttable presumption respecting compliance with the applicable plan shall be created by a letter from an affected municipal legislative body or municipal planning commission concerning compliance with the municipal plan and by a letter from a regional planning commission concerning compliance with the regional plan.

(3) If the proposed facility relates to the provision of wireless service, the proposed facility reasonably cannot be collocated on or at an existing telecommunications facility, or such collocation would cause an undue adverse effect on aesthetics.

(d) Existing permits. When issuing a certificate of public good under this section, the Board shall give due consideration to all conditions in an existing State or local permit and shall harmonize the conditions in the certificate of public good with the existing permit conditions to the extent feasible.

(e) Notice. No less than 45 days prior to filing an application for a certificate of public good under this section, the applicant shall serve written notice of an application to be filed with the Board pursuant to this section to the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities; the Secretary of Natural Resources; the Secretary of Transportation; the Division for Historic Preservation; the Commissioner of Public Service and its Director for Public Advocacy; the Natural Resources Board if the application concerns a telecommunications facility for which a permit previously has been issued under 10 V.S.A. chapter 151; and the landowners of record of property adjoining the project sites. In addition, at least one copy of each application shall be filed with each of these municipal and regional planning commissions.

(1) Upon motion or otherwise, the Public Service Board shall direct that further public or personal notice be provided if the Board finds that such further notice will not unduly delay consideration of the merits and that additional notice is necessary for fair consideration of the application.

(2) On the request of the municipal legislative body or the planning commission, the applicant shall attend a public meeting with the municipal legislative body or planning commission, or both, within the 45-day notice period before filing an

application for a certificate of public good. The Department of Public Service shall attend the public meeting on the request of the municipality. The Department shall consider the comments made and information obtained at the meeting in making recommendations to the Board on the application and in determining whether to retain additional personnel under subsection (o) of this section.

(f) Review period. If the Public Service Board determines that an application does not raise a significant issue, the Board shall issue a final determination on an application filed pursuant to this section within 60 days of its filing or, if the original filing did not substantially comply with the Public Service Board's rules, within 60 days of the date on which the Clerk of the Board notifies the applicant that the filing is complete. If the Board rules that an application raises a significant issue, it shall issue a final determination on an application filed pursuant to this section within 180 days of its filing or, if the original filing did not substantially comply with the Public Service Board's rules, within 180 days of the date on which the Clerk of the Board notifies the applicant that the filing is complete.

(g) Letter of intent. Nothing in this section shall be construed to prohibit an applicant 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 obligations under that letter of intent or contract are made subject to compliance with the requirements of this section.

(h) Exemptions from other law. An applicant using the procedures provided in this section shall not be required to obtain a permit or permit amendment or other approval under the provisions of 24 V.S.A. chapter 117 or 10 V.S.A. chapter 151 for the facilities subject to the application or to a certificate of public good issued pursuant to this section. Ordinances adopted pursuant to 24 V.S.A. § 2291(19) or a municipal charter that would otherwise apply to the construction or installation of facilities subject to this section are preempted. Disputes over jurisdiction under this section shall be resolved by the Public Service Board, subject to appeal as provided by section 12 of this title. An applicant that has obtained or been denied a permit or permit amendment under the provisions of Title 24 or 10 V.S.A. chapter 151 for the construction of a telecommunications facility may not apply for approval from the Board for the same or substantially the same facility, except that an applicant may seek approval for a modification to such a facility.

(i) Sunset of Board authority. Effective on July 1, 2017, no new applications for certificates of public good under this section may be considered by the Board.

(j)(1) Telecommunications facilities of limited size and scope. The Board 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 required by any provision other than subdivision (2) of this

subsection if the Board finds that such facilities will be of limited size and scope, and the application does not raise a significant issue with respect to the substantive criteria of this section. The Board may make findings based on the application and the supporting evidence submitted by the applicant. If an applicant requests approval of multiple telecommunications facilities in a single application under this section, the Board may issue a certificate of public good in accordance with the provisions of this subsection for all or some of the telecommunications facilities described in the application.

(2)(A) 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 application, and provide notice and a copy of the application, proposed certificate of public good, and proposed findings of fact to the Commissioner of Public Service and its Director for Public Advocacy, the Secretary of Natural Resources, the Division for Historic Preservation, the Natural Resources Board if the application concerns a telecommunications facility for which a permit previously has been issued under 10 V.S.A. chapter 151, and each of the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities. At the same time the applicant files the documents specified in this subdivision with the Board, the applicant shall give written notice of the proposed certificate to the landowners of record of property adjoining the project site or sites unless the Board has previously determined on request of the applicant that good cause exists to waive or modify the notice requirement with respect to such landowners. Such notice shall request comment to the Board within 21 days of the notice on the question of whether the application raises a significant issue with respect to the substantive criteria of this section. If the Board finds that an application raises a significant issue with respect to the substantive criteria of this section, the Board shall hear evidence on any such issue.

(B) An applicant seeking a waiver or modification of notice to adjoining landowners under this subsection shall file a request for such a waiver or modification with the Public Service Board not later than 30 days prior to serving written notice under subsection (e) of this section, together with a description of the project and its location, the applicant's reasons for seeking a waiver or modification, and the applicant's demonstration that the standard for granting a waiver or modification is met. Any granting of such a waiver or modification shall be based on a determination that the landowners subject to the waiver or modification could not reasonably be affected by one or more of the proposed facilities, and that notice to such landowners would constitute a significant administrative burden without corresponding public benefit. The Board shall rule on a waiver or modification request under this subsection within 21 days of the filing of the request.

(C) If the Board accepts a request to consider an application under the procedures of this subsection, then unless the Public Service Board subsequently determines that an application raises a significant issue, the Board shall issue a final determination on an application filed pursuant to this subsection within 45 days of its filing or, if the original filing did not substantially comply with the Public Service Board's rules, within 45 days of the date on which the Clerk of the Board notifies the applicant that the filing is complete. If, subsequent to acceptance of an application under this subsection, the Board rules that an application raises a significant issue, it shall issue a final determination on an application filed pursuant to this subsection within 90 days of its filing or, if the original filing did not substantially comply with the Public Service Board's rules, within 90 days of the date on which the Clerk of the Board notifies the applicant that the filing is complete.

(D) If the Board denies a request to consider an application under the procedures of this subsection, a filing made under this subsection that the Board has found to be complete shall be deemed to satisfy notice requirements of subsection (e) of this section, and the periods stated under subsection (f) of this section shall run from the date of the Board's denial of such request.

(k) De minimis modifications. An applicant intending to make a de minimis modification of a telecommunications facility shall provide written notice of its intent, including a description of the de minimis modification, its plans for the de minimis modification, and its certification that the project constitutes a de minimis modification under this section, to the following: the landowner of record of the property on which the facility is located; the legislative body of the municipality in which the applicant proposes to undertake such limited modifications to the facility; and the Commissioner of Public Service and his or her Director for Public Advocacy. Unless an objection to the classification of a proposed project as a de minimis modification is filed with the Board within 21 days of this notice, a certificate of public good shall be issued. Objections may be filed only by persons entitled to notice of this proposed project pursuant to this subsection. If an objection of the classification of the proposed project as a de minimis modification is timely filed with the Board, the Board may determine whether the intended project meets the definition of de minimis modification established in subdivision (b)(2) of this section.

(l) Rules. The Public Service Board may issue rules or orders implementing and interpreting this section. In developing such rules and orders, the Board shall seek to simplify the application and review process as appropriate. Subject to the provisions of subdivision (c)(1) of this section regarding waiver of the substantive criteria set forth in that subdivision, the Board may by rule or order waive the requirements of this section that the Board determines are not applicable to telecommunications facilities of limited size or scope. Determination by the Board that an application raises a

substantial issue with regard to one or more substantive criteria of this section shall not prevent the Board from waiving other substantive criteria that it has determined are not applicable to such a telecommunications facility.

(m) Municipal bodies; participation. The legislative body and the planning commission for the municipality in which a telecommunications facility is located shall have the right to appear and participate on any application under this section seeking a certificate of public good for the facility.

(n) Municipal recommendations. The Board shall consider the comments and recommendations submitted by the municipal legislative body and planning commission. The Board's decision to issue or deny a certificate of public good shall include a detailed written response to each recommendation of the municipal legislative body and planning commission.

(o) Retention; experts. The Department of Public Service may retain experts and other personnel as identified in section 20 of this title to provide information essential to a full consideration of an application for a certificate of public good under this section. The Department may allocate the expenses incurred in retaining these personnel to the applicant in accordance with section 21 of this title. The Department may commence retention of these personnel once the applicant has filed the 45-day notice under subsection (e) of this section. A municipal legislative body or planning commission may request that the Department retain these personnel. Granting such a request shall not oblige the Department or the personnel it retains to agree with the position of the municipality.

(p) Review process; guide. The Department of Public Service, in consultation with the Board, shall create, maintain, and make available to the public a guide to the process of reviewing telecommunications facilities under this section for use by local governments and regional planning commissions and members of the public who seek to participate in the process. On or before September 1, 2014, the Department shall complete the creation of this guide and make it publicly available. (Added 2007, No. 79, § 17, eff. June 9, 2007; amended 2009, No. 54, § 44, eff. June 1, 2009; 2011, No. 53, § 2, eff. May 27, 2011; 2013, No. 167 (Adj. Sess.), § 31; 2013, No. 190 (Adj. Sess.), § 17, eff. June 16, 2014; 2013, No. 199 (Adj. Sess.), § 27.)

§ 249. Service territories; board jurisdiction

(a) The public service board shall have jurisdiction to establish service territories for companies subject to its supervision which are engaged in the distribution of electrical energy in the state and to alter those territories from time to time as conditions warrant. In establishing or in altering service territories, the board shall give consideration to:

(1) Existing service areas;

(2) Any voluntary agreements between or among two or more such companies filed with the board which define service territories of the companies;

(3) Consistency with the orderly development of the region;

(4) Natural geographical boundaries;

(5) Compatibility with the interests of all consumers; and

(6) All other relevant factors.

(b) The board shall have power to exercise the jurisdiction conferred in this section only after due notice to all interested parties and hearing, and after making findings that the service territories established or altered are consistent with the general good of Vermont.

(c) In establishing service territories, the board may declare that specified areas are not within the service territory of any company, and may leave the assignment of such areas for later determination. (Added 1969, No. 257 (Adj. Sess.), § 3.)

§ 249a. Campground submetering

Notwithstanding the provisions of section 249 of this title or any other provision of this title, a person operating a recreational campground may provide submetered electric service to campground users on a nonprofit basis, if such service is provided in accordance with rules adopted by the board, including rules relating to notice of rates and charges, accuracy of electrical submeters, and reasonable billing and complaint procedures. (Added 1995, No. 182 (Adj. Sess.), § 18, eff. May 22, 1996.)

§ 250. Application; maps

Within six months after July 1, 1970, or at such later date as the public service board may establish, each company engaged in the distribution of electrical energy in the state shall apply to the board for a service territory consisting of the distribution area served by it on July 1, 1970, and any areas not presently served by it or any other electric utility company which it believes it is entitled to serve. After consideration of the factors set forth in section 249 of this title the board shall establish the service territory of each company. The service territory thus established shall be defined on a map or maps approved by the board. In the event applications under this section are filed by more than one electric company for an area, the board shall, after notice and hearing, determine what part of the area as to which competing claims are filed should be awarded to the respective applicants. In the event the distribution facilities of the competing applicants are so intertwined or commingled as to make establishment of exclusive service territories impracticable, the board may authorize two or more companies which have filed competing applications to serve the area in conflict, subject to the provisions of section 251 of this title. (Added 1969, No. 257 (Adj. Sess.), § 4.)

§ 251. Areas served by several companies

(a) In any area which two or more companies distributing electrical energy are authorized to serve, a company shall not construct or extend its facilities, or furnish or offer to furnish its service to any person or property presently served by another public utility, without the written consent of the other public utility, or unless the public service board, after notice and hearing, finds and determines that the service rendered by the serving public utility is inadequate and is not likely to be made adequate.

(b) In the event service is requested for premises in an area which two or more companies distributing electrical energy are authorized to serve and have facilities available for service to the property, the public utility company the existing service facilities of which are nearest the metering point on the premises to be served shall, subject to the other applicable provisions of this section, be entitled to serve the premise.

(c) In the event that service is requested for premises not within the service territory of any company, and if more than one other public utility is available for service to the property, the public utility whose existing service facilities are nearest the metering point on the premises to be served shall, subject to the other applicable provisions of this section, be entitled to serve said premises.

(d) A company shall not construct or extend its facilities or furnish or offer to furnish its services to premises within the service territory of another company without being requested to do so by the company in whose territory the premises are located, or unless the public service board, upon petition of the person served or to be served, after notice and hearing, finds and determines that the service rendered by such public utility in whose territory and premises are located is inadequate and will not be likely to be made adequate.

(e) In resolving any dispute under subsections (b), (c) and (d) of this section the board shall consider the factors set forth in section 249 of this title. (Added 1969, No. 257 (Adj. Sess.), § 5.)

§ 252. Experts, payment of expense

The public service board may employ technical and professional assistance as may be required in making the service territory determinations under sections 249-251 of this title and may allocate equitably that portion of the expense to the company or companies involved. (Added 1969, No. 257 (Adj. Sess.), § 6.)

§ 253. National Environmental Policy Act review

The governor may authorize a state agency, including the public service board, to participate as a lead agency or a cooperating agency in any environmental review pursuant to the provisions of the National Environmental Policy Act of 1969, as amended, of any natural gas facility, as defined in subdivision 248(a)(3) of this title, which is to be located in Vermont and which requires a federal approval pursuant to the Natural Gas Act. (Added 1987, No. 273 (Adj. Sess.), § 3, eff. June 21, 1988.)

§ 254. Construction or extended operation of nuclear plant; public engagement process

(a) Time lines for approval.

(1) Any petition for approval of construction of a nuclear energy generating plant within the state, or any petition for approval of the operation of a nuclear energy generating plant beyond the date established in a certificate of public good issued under this title, must be submitted to the public service board no later than four years before the date upon which the approval may take effect.

(2) Upon receipt of a petition for approval of construction or operation as provided under this section, the public service board shall notify the general assembly of that fact. The public service department, with the review of the joint energy committee, is authorized and directed to arrange for studies to be conducted as appropriate to support the general assembly in the fact finding and public engagement process established in subsection (b) of this section.

(3) Upon completion of the studies, the public service department shall provide the studies to the public service board and to the committees on natural resources and energy, the house committee on commerce, and the senate committee on finance, together with other information requested by the general assembly.

(b) Public engagement and fact-finding.

(1) The objectives of the studies to be arranged by the public service department with the review of the joint energy committee and the objectives of the public engagement process as a whole shall be:

(A) to facilitate public discussion of long-term economic and environmental issues relating to the operation of any nuclear facility in the state;

(B) to identify and assess the potential need for the operation of the facility and its long-term economic and environmental benefits, risks, and costs; and

(C) to assess all practical alternatives to those set forth in the applicant's petition that may be more cost-effective or that otherwise may better promote the general welfare.

(2) The studies arranged by the department in consultation with the joint energy committee and the public engagement process, in general, shall:

(A) identify, collect information on, and provide analysis of long-term accountability and financial responsibility issues, such as:

(i) funding plans for guardianship of nuclear waste after licensure but before removal of nuclear waste from the site;

(ii) closure obligations, dates of completion, and assurance of funds to secure fulfillment of those closure obligations;

(iii) federal obligations and assurance of funds to provide for any undischarged federal responsibilities;

(iv) funding for emergency management requirements and evacuation plans before and after plant closure; and

(v) any other financial responsibility related to any periods in which the facility is out of service.

(B) identify, collect information on, and provide analysis of long-term environmental, economic, and public health issues, including issues relating to dry cask storage of nuclear waste and decommissioning options.

(C) identify, collect information on, and provide analysis of current economic issues, in light of the fact that the operation of the nuclear energy generating plant beyond the date permitted in any previous certificate of public good is to be evaluated under present day cost-benefit assumptions and analyses and not as 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.

(3) In conducting its part of the public engagement process, the department shall conduct no less than three public meetings. The meetings shall be at separate locations within the state, in proximity to the nuclear energy generating facilities involved as well as in other locations as determined by the department, and each shall be noticed by at least two advertisements, each occurring between one and three weeks prior to the meetings, in newspapers having general circulation within the state and within the municipalities in which the meetings are to be held. Copies of the notices shall be provided to the public service board, the general assembly, the agency of natural resources, the department of health, the agency of transportation, the attorney general, and each retail electricity provider within the state. During this public engagement and fact finding process the department shall have authority to retain expert witnesses, counsel, advisors, stenographic and other research assistance it may require. The department may compensate the same and allocate related costs, as well as the costs of procuring the studies, to the owner of the Vermont Yankee nuclear power station, in the same manner authorized for personnel in particular proceedings under sections 20 and 21 of this title. The department shall prepare a report of the proceedings containing a discussion of the

principal contentions made by members of the public, analyses by any expert witnesses or consultants retained by the department, presentations by any state agency, and by any utility, and shall provide the same to the members of the committees on natural resources and energy, the house committee on commerce, and the senate committee on finance, and to the public.

(4) The public engagement and fact finding process set forth in this section may be held in conjunction with or separately from the statewide public engagement process on energy planning to be conducted by the department pursuant to the energy security and reliability act.

(5) The general assembly shall conduct proceedings it deems appropriate in order to complete the fact finding and public engagement process.

(c) Public service board action. In acting on a petition subject to this section, the board shall consider the objectives of the studies to be arranged by the department, the objectives of the public engagement process as a whole, and the general and specific issues that the studies are required to address, as specified in subsection (b) of this section. (Added 2005, No. 160 (Adj. Sess.), § 4.)

§ 254a. Joint Fiscal Committee; nuclear energy analysis

(a) The Joint Fiscal Committee may authorize or retain services or resources to assist the General Assembly:

(1) in any legislative proceeding under or related to subsection 248(e) of this title or 10 V.S.A. chapter 157; or

(2) with respect to any proceedings before any State or federal court concerning a nuclear generating plant in the State and related issues.

(b) Persons retained pursuant to subsection (a) of this section shall work under the direction of a special committee consisting of the Chairs of the House and Senate Committees on Natural Resources and Energy and the Joint Fiscal Committee.

(c) The Public Service Board shall allocate expenses incurred pursuant to subsection (a) of this section to the applicant or the company or companies involved and such allocation and expense may be reviewed by the Public Service Board pursuant to section 21 of this title. (Added 2011, No. 47, §§ 20p, 20q, eff. May 25, 2011.)

§ 255. Regional coordination to reduce greenhouse gases

(a) Legislative findings. The General Assembly finds:

(1) There is a growing scientific consensus that the increased anthropogenic emissions of greenhouse gases are enhancing the natural greenhouse effect, resulting in changes in the earth's climate.

(2) Climate change poses serious potential risks to human health and terrestrial and aquatic ecosystems globally, regionally, and in Vermont.

(3) A carbon constraint on fossil fuel-fired electricity generation and the development of a CO2 allowance trading mechanism will create a strong incentive for the creation and deployment of more efficient fuel-burning technologies, renewable resources, and end-use efficiency resources and will lead to lower dependence on imported fossil fuels.

(4) Absent federal action, a number of states are taking actions to work regionally to reduce power sector carbon emissions.

(5) Vermont has joined with at least six other states to design the Regional Greenhouse Gas Initiative (RGGI), and, in 2005, Vermont's Governor signed a memorandum of understanding (MOU) signaling Vermont's intention to develop rules and programs to participate in RGGI.

(6) It is crucial to manage Vermont's implementation of RGGI and its consumption of fossil fuels for residential and commercial heating, and industrial processes, so as to maximize the State's contribution to lowering carbon emissions while:

(A) minimizing impacts on electric system reliability and unnecessary costs to Vermont energy consumers; and

(B) minimizing the costs and the emissions resulting from the use of petroleum-based fuels for space heating and process heating for residential, commercial, and industrial purposes.

(7) The accelerated deployment of low-cost process, thermal, and electrical energy efficiency, the strategic use of low- and zero-carbon generation, and the selective use of switching fuel sources are the best means to achieve these goals.

(8) It is crucial that funds made available from operation of a regional carbon credits cap and trade system be devoted to the benefit of Vermont energy consumers through investments in a strategic portfolio of energy efficiency, weatherization, and low-carbon generation resources.

(b) Cap and trade program creation.

(1) The Agency of Natural Resources and the Public Service Board shall, through appropriate rules and orders, establish a carbon cap and trade program that will limit and then reduce the total carbon emissions released by major electric generating stations that provide electric power to Vermont utilities and end-use customers.

(2) Vermont rules and orders establishing a carbon cap and trade program shall be designed so as to permit the holders of carbon credits to trade them in a regional market proposed to be established through the RGGI.

(c) Allocation of tradable carbon credits.

(1) The Secretary of Natural Resources, by rule, shall establish a set of annual carbon budgets for emissions associated with the electric power sector in Vermont that are consistent with the 2005 RGGI MOU, including any amendments to that MOU and any reduced carbon cap resulting from a subsequent program review by RGGI, and that are on a reciprocal basis with the other states participating in the RGGI process.

(2) In order to provide the maximum long-term benefit to Vermont consumers, particularly benefits that will result from accelerated and sustained investments in energy efficiency and other low-cost, low-carbon power system, building envelope, and other investments, the public service board, by rule or order, shall establish a process to allocate 100 percent of the Vermont statewide budget of tradable power sector carbon credits to one or more trustees acting on behalf of consumers in accordance with the following principles. To the extent feasible, the allocation plan shall accomplish the following goals:

(A) minimize windfall financial gains to power generators as a result of the operation of the cap and trade program, considering both the costs that generators may incur to participate in the program and any power revenue increases they are likely to receive as a result of changes in regional power markets;

(B) employ an administrative structure that will enable program managers to perform any combination of holding, banking, and selling carbon credits in regional, national, and international carbon credit markets in a financially responsible and market-sensitive fashion, and provide funds to defray the reasonable costs of the program trustee or trustees and Vermont's pro-rata share of the costs of the RGGI regional organization;

(C) optimize the revenues received from the management and sale of carbon credits for the benefit of Vermont energy consumers and the Vermont economy;

(D) minimize any incentives from operation of the cap and trade program for Vermont utilities to increase the overall carbon emissions associated with serving their customers;

(E) build upon existing regulatory and administrative structures and programs that lower power and heating costs, improve efficiency, and lower the State's carbon profile while minimizing adverse impacts on electric system reliability and unnecessary costs to Vermont energy consumers, and minimizing the costs and the emissions resulting from the use of petroleum-based fuels for space heating and process heating for residential, commercial, and industrial purposes;

(F) ensure that carbon credits allocated under this program and revenues associated with their sale remain public assets managed for the benefit of the State's consumers, particularly benefits that will result from accelerated and sustained investments in energy efficiency and other low-cost, low-carbon power, or heating system or building envelope investments;

(G) where practicable, support efforts recommended by the Agency of Natural Resources or the Department of Public Service to stimulate or support investment in the development of innovative carbon emissions abatement technologies that have significant carbon reduction potential.

(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.

(e) Reports. By January 15 of each year, commencing in 2007, the Department of Public Service in consultation with the Agency of Natural Resources and the Public Service Board shall provide to the House and Senate Committees on Natural Resources and Energy, the Senate Committee on Finance, and the House Committee on Commerce and Economic Development a report detailing the implementation and operation of RGGI and the revenues collected and the expenditures made under this section, together with recommended principles to be followed in the allocation of funds. 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.

(f) State action off-sets. The State's negotiators to RGGI shall advocate for and negotiate to adjust the rules of the program, as needed, so that greenhouse gas reductions resulting from State investments and other public investments and investments required by State law will not be prohibited from being eligible for off-sets under the program. (Added 2005, No. 123 (Adj. Sess.), § 1; amended 2007, No. 92 (Adj. Sess.), § 18; 2007, No. 209 (Adj. Sess.), § 13b; 2009, No. 54, § 105, eff. June 1,

2009; 2009, No. 1 (Sp. Sess.), § E.235.2, eff. June 2, 2009; 2011, No. 47, § 20c, eff. May 25, 2011; 2013, No. 50, § E.700; 2013, No. 89, § 4; 2013, No. 142 (Adj. Sess.), § 50.)

Subchapter 2: Emergency Public Motor Bus Transportation

§§ 271-273. [Expired].