

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 20-0789-INV

Vermont Public Utility Commission orders and memoranda issued in response to COVID-19 pandemic	
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Order entered: 04/16/2020

**ORDER RE CERTIFICATES OF PUBLIC GOOD AND
GOVERNOR’S EMERGENCY DECLARATION**

Both the State of Vermont and the federal government have declared a state of emergency due to the outbreak of the coronavirus known as COVID-19. The Vermont Public Utility Commission (“Commission”) recognizes the importance of helping to slow the spread of COVID-19 in Vermont.

Consistent with the State’s effort to slow the spread of the COVID-19 virus, in today’s order the Commission is reminding certificate of public good (“CPG”) holders that they may not engage in any action, including construction, that would otherwise be authorized by their CPGs if that action is in violation of any COVID-19-related Executive Order or addenda or agency guidance issued in response to such orders or addenda.

On March 13, 2020, Governor Scott issued an Executive Order declaring a state of emergency in Vermont as a result of COVID-19.¹ On March 24, 2020, Governor Scott issued Addendum 6 to the March 13 Executive Order, the “Stay Home/Stay Safe” order.² Section 3 of Addendum 6 directs that:

[a]ll businesses and not-for-profit entities in the state shall suspend in-person business operations. These businesses and not-for-profit entities are encouraged to develop business strategies, procedures and practices such as using an on-line presence, telephone and web-based service delivery and phone or on-line orders for curbside pick-up and delivery.

¹ See EO 01-20, March 13, 2020, available at <https://governor.vermont.gov/content/declaration-state-emergency-response-covid-19-and-national-guard-call-out-co-01-20>.

²<https://governor.vermont.gov/sites/scott/files/documents/ADDENDUM%206%20TO%20EXECUTIVE%20ORDER%2001-20.pdf>.

The Stay Home/Stay Safe order provides a limited exception to the Section 3 prohibition against in-person business activity for “[b]usinesses and entities providing services or functions deemed critical to public health and safety, as well as economic and national security.”³ Included within the list of services or functions that are deemed critical are critical infrastructure, including utilities and telecommunications infrastructure, and construction necessary to maintain that infrastructure.⁴ A CPG is not a designation by the Commission that a project is critical under this definition. Only a very small subset of Commission-approved projects would qualify under the Stay Home/Stay Safe order exception.

Pursuant to Section 7 of the Stay Home/Stay Safe order, the Agency of Commerce and Community Development (“ACCD”) has issued guidelines to help businesses determine whether their activities are considered critical to public health and safety or economic and national security.⁵ ACCD’s “Sector Specific Guidance” provides the following with respect to the construction and utility business sectors:

Construction Sector

The construction sector must suspend most in-person operations under the Governor’s Executive Order. Only construction needed to support the COVID-19 response, maintain critical infrastructure, or for the safety, sanitation and operations of residences or businesses is allowed. As an example, replacing a failing roof, failed electrical system, or broken waterline would be acceptable.⁶

Energy and Utility Sector

Businesses in the Energy and Utility sectors must suspend most in-person operations under the Governor’s Executive Order. Only activities required to support COVID-19 response, maintain critical infrastructure and construction, or services for safety, sanitation and operations of residences or businesses should occur. As an example, operating or repairing the electrical grid, natural gas systems, water and wastewater systems, primary home heating and cooling systems, and existing solar arrays would be acceptable. Work on grid critical infrastructure including power generation and supply chains of that infrastructure

³ Stay Home/Stay Safe order at Section 5. Businesses that fit within the exemption must still “develop strategies, procedures and practices designed for strict adherence to CDC and [Vermont Department of Health] guidance to ensure recommended social distancing, including, to the extent possible: a. maintaining a distance of 6 feet between persons; b. requiring employees to practice appropriate hygiene measures, including regular, thorough handwashing; c. requiring employees who are sick remain home; and d. regularly cleaning and disinfecting frequently touched objects and surfaces.” Stay Home/Stay Safe order at Section 4.

⁴ Stay Home/Stay Safe order at Section 6.d. and e.

⁵ <https://accd.vermont.gov/content/stay-home-stay-safe-sector-specific-guidance>.

⁶ Sector Specific Guidance at “Construction.”

should continue. Businesses providing services to COVID-19 responders and businesses related to the response may continue. Activities related to the processing, transport, storage and distribution of fuel (wood, oil, natural gas, gasoline, etc.) is also acceptable. **The Agency directs that all other non-essential, in-person business operations cease, to include new commercial and residential solar** and the installation of new commercial or residential heating, ventilation, and cooling systems in new construction.⁷

As a result of the March 13 Executive Order, the March 24 Addendum 6, and the Sector Specific Guidance issued by ACCD, some activities that might otherwise be authorized under a CPG are now prohibited until further notice from the Governor's office. For example, if you hold a CPG for a residential or commercial solar electric generation system and have not yet completed construction, the Executive Order and Addendum 6, as applied by ACCD, prohibit the site preparation for and installation of the system using in-person business operations.

ACCD provides the following information with respect to in-person business operations:

In-person business operations refer to both employees and customers. A business should not operate, unless exempted within the order, if its operation requires one person to come into contact with another person. This may occur because people share a workspace, must interact with a customer, or have incidental close contact outside of the CDC recommended social distancing.⁸

A certificate of public good does not authorize any activities that are not in compliance with the Executive Order and Addendum 6. Compliance with the Executive Order and Addendum 6 is not voluntary, and the Attorney General's Office has issued an enforcement directive to municipal leaders and law enforcement executives that details an enforcement mechanism for non-compliance with the Executive Order.⁹

If you have any questions about whether activities covered by your CPG are prohibited by the Executive Order and Addendum 6, please review ACCD's Sector Specific Guidance carefully. ACCD has also established a Frequently Asked Questions page that may prove informative in helping you make this determination.¹⁰

The guidance in this order applies to all CPGs issued by the Commission, but the Commission places special emphasis in this order on CPGs that were issued before this order.

⁷ Sector Specific Guidance at "Energy and Utilities" (emphasis added).

⁸ <https://accd.vermont.gov/covid-19/business/stay-home-stay-safe-business-faqs> at "What is the definition of 'in-person business operations'?"


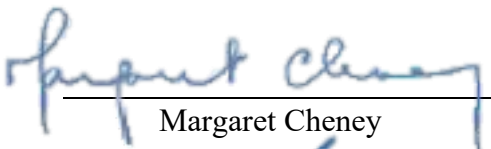
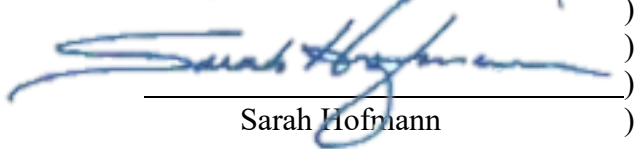
⁹ See <https://ago.vermont.gov/wp-content/uploads/2020/04/AGO-EO-Enforcement-Directive-4.3.20.pdf>.

¹⁰ <https://accd.vermont.gov/covid-19/business/stay-home-stay-safe-business-faqs>.

Certificates of public good issued after the date of this order will contain restrictions on activities that are inconsistent with the Executive Order and any related addenda, including Addendum 6.

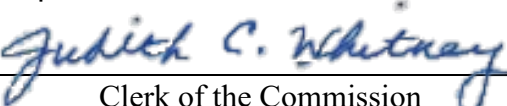
SO ORDERED.

Dated at Montpelier, Vermont this 16th day of April, 2020.

 _____)) PUBLIC UTILITY
Anthony Z. Roisman)	
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 _____)) COMMISSION
Margaret Cheney)	
))) OF VERMONT
 _____)	
Sarah Hofmann)	

OFFICE OF THE CLERK

Filed: April 16, 2020

Attest: 
Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)