

February 5, 2016

**Reply Comments of AARP-Vermont to the Draft Report, Prepared by the
Department of Public Service, In Response to Act 56, Section 21b**

1) Introduction

AARP Vermont wishes to thank the Department of Public Service (“DPS” or “the Department”) for the opportunity to submit our written comments on the Draft Report it issued on January 15, 2015, in Response to Act 56, Section 21b (hereafter “Draft Report”) of the Vermont Legislature. For the record, AARP is a non-profit, nonpartisan organization, which advocates on behalf of more than 37 million citizens 50 and older nationwide.¹ AARP advances a variety of issues its members find important to them, including the high costs of electric and natural gas utility rates. AARP Vermont represents AARP interests in Vermont, on behalf of the 128,000 members in the State.²

While AARP is appreciative of the effort expended by the Department in preparing its Draft Report, we are disappointed in its analysis and recommendations. Overall, the Draft Report provides no critical self-examination. It does not examine the actions of the Department over the past several years, and how those actions have led to a serious crisis of confidence in the Department’s activities before the Vermont Public Service Board (the “Board”). The fact that the Legislature has requested that a study of this nature be conducted alone suggests there is a problem that needs to be addressed

¹ <http://www.aarp.org/about-aarp/>

² <http://web.vermont.org/Family-Household-Resources/AARP-Vermont-1407>

and remedied. Instead, the Department offers a Draft Report that simply blames these purported problems on “public perception” not on any actions or activities undertaken by the Department over the past several years. In other words, the Draft Report finds that any problems associated with the Department’s actions over the past several years are not attributable to the Department itself, but instead on residential ratepayers that are, presumably, incapable of understanding their own best interests and how those interests should be advocated before the Board.

The Draft goes further by suggesting the organization of the Public Advocacy Division housed at the Department is the most cost-effective, independent and accountable of any other structure in the U.S. The Draft Report effectively concludes that there is nothing, in effect, that can be learned or adopted from the best practices of other states, since, presumably, the Department’s organization and activities represent the model of best practices when it comes to ratepayer advocacy. The Legislature should reject this notion out of hand, as well as the Draft Report’s conclusions that the only problem associated with ratepayer advocacy in Vermont is with a public perception. Instead, the Legislature, in reviewing this Draft Report, should send the Department back to the drawing table, to begin another, more meaningful analysis, conducted by an independent third party, that focuses on identifying the nature and sources of the problems experienced in Vermont over the past several years, and offers an administrative structure for ratepayer advocacy that corrects for these considerable and patent offenses to ratepayer interests.

2) Deficiencies in the Draft Report's Analysis of the Department's Mission

One of the more significant problems with the Draft Report is that it underscores the Department's inability to understand the source of its problems. Namely, that the Department does not serve as the ratepayers advocate. As AARP Vermont noted in its initial Public Comments, one of the Department's primary problems is that it sees its mission as being focused primarily on promoting the "public good" rather than "ratepayer interests," particularly residential and small commercial customer interests. The Draft Report fails to address this issue and, in fact, "doubles down" on the Department's opinion that it should be the paramount of some higher virtue in state regulatory activities, rather than one that brings itself down to earth, to get in the trenches and fight for residential and small commercial ratepayer interests. The Legislature needs to make clear and unequivocal the residential ratepayer advocacy mission of the Department and the best way of doing this, is likely through the development of a new ratepayer advocacy structure that either: (1) clearly disabuses the Department's current administration from this incorrect belief or (2) moves all ratepayer advocacy functions to an independent or alternative agency like the Attorney General.

The Draft Report makes clear that the Department does not see itself, nor believes that it is important to focus primarily on ratepayer interests. There are big differences between promoting the public good and ratepayer interests. In treating them as synonymous, the Department effectively (1) wastes Vermont taxpayer resources and (2) leaves open a ratepayer advocacy void that has to be filled by groups with limited financial resources like AARP Vermont, or goes unfilled altogether. As we noted in our

Public Comments, the Board is the agency and entity in Vermont that is charged with overseeing the broad public interest. The Department, alternatively, needs to be providing a vigorously developed case for how specific residential ratepayer interests fit into that calculus. The Department, however, would rather waste taxpayer resources by attempting to replicate the Board's functions rather than accept the mantle of ratepayer advocate.

The Department's Draft Report, while making a few passing references to the "consuming public," appears frightened to even mention the term "ratepayer interests" much less "residential ratepayer interests," despite the fact Act 56, Section 21(b) requires a survey of other state agencies and their organizational structures and approaches to protecting "residential ratepayer" interests, not the "public interest" or the "public good."

The Department does not recognize that advocating for ratepayer interests requires it to pursue policies that result in the lowest-cost, most reliable utility service possible, not policies that balance interests between regulated utilities and captive ratepayers. A ratepayer advocate is not a neutral arbiter of fact nor of the "public good." Further, promoting a policy that a Governor may find to be in the "public good" may not, and is often not, consistent with what is in residential ratepayers' best interest.

The Draft Report also shows that the Department fails to understand that its "mission failure" is driven, in part, by an organizational structure that is (1) biased against ratepayers and (2) is radically different from any other ratepayer advocacy structure in the U.S. The Department, for instance, has no independent voice dedicated to ratepayer advocacy. While the Draft Report points to the Public Advocacy Division

as being primarily responsible for spearheading ratepayer interests, the Draft Report also clearly notes that this office is one comprised primarily of attorneys that represent their “client” which is the Department and its Commissioner. Again, the Department doesn’t get it – the Ratepayer Advocate’s client should be ratepayers, not the head of an administrative agency, particularly one that has a mission not in line with residential ratepayer interests.

The Draft Report also states that organization of ratepayer advocacy in the Department is actually a benefit to Vermont ratepayers: a finding in stark contradiction with what many residential ratepayers have observed over the past several years. The Department’s planning function clearly conflicts with effective ratepayer advocacy. The Department cannot, on the one hand, promote large projects that allow utilities to expend millions, if not hundreds of millions, in an almost risk-free fashion, and then, on the other hand, convince the public that it has ratepayers’ best interest at hand once the time to review those costs comes before the Board. The Department has, and continues, to serve as a partner with regulated utilities in developing large capital intensive projects: the Department does not serve as a check on utility projects, the need for such projects, whether or not such projects could be provided by the competitive marketplace, and how the costs associated with these projects are recovered through residential rates.

3) Draft Report’s False Choices

The Draft Report also asserts that the Department’s organizational structure is preferable to the structure of any other ratepayer advocacy agency around the country. This is an amazing conclusion. The appendix to the Draft Report shows that state

agencies dedicated to ratepayer advocacy around the U.S. are primarily organized in one of two different fashions: (1) they are independent stand-alone agencies or (2) they are offices within an Attorney General's office.

The Draft Report defends its recommendations for maintaining the organizational status quo by presenting the Legislature and other stakeholders with a series of false choices regarding the costs, independence and accountability of a revised ratepayer advocacy structure for Vermont. The Draft Report's only support for this set of false choices is a rather meaningless, and blatantly biased, civics lesson in how one set of state agencies report to one set of elected officials versus another. The Draft Report suggests that somehow, any structures that were to answer to the Legislature or to an Attorney General (like most all other ratepayer advocacy agencies in the U.S.), would have a lower degree of accountability and independence. Such a conclusion presumes: (1) that the Vermont Legislature is incapable of developing a non-Department-based office of ratepayer advocacy that has an extensive set of checks and balances; (2) that the Vermont Legislature and any Vermont Attorney General, somehow, are less accountable to Vermont citizens than the Governor; and (3) every other state in the U.S. that has an independent ratepayer advocacy office, or one housed with the office of an Attorney General, is not independent, and has no accountability to its clients (i.e., residential ratepayers). The Legislature should summarily dismiss such an unsubstantiated claim.

The Legislature, in reviewing this Draft Report, should also keep in mind that issues associated with the cost, independence, and accountability of ratepayer advocacy are all relative, and in this instance, they are relative to the Department's

current costs and the actions it has taken in purportedly representing ratepayers before the Board. As the Draft Report admits in repeated places, the Department has not advocated for residential ratepayer interests before the Board since the Department believes that its mission is to represent the public good, not residential ratepayers. The Draft Report fails to show (1) the return on investment that ratepayers have earned from funding the Department's efforts before the Board; (2) the degree to which the Department has been accountable to ratepayers for executing, repeatedly, a variety of controversial and questionable settlements, compromises and memoranda of understanding that preference regulated utility shareholders at ratepayers' expense; and (3) the degree to which the Department has vigorously litigated and advocated for ratepayer interest against the state's utilities. There is simple reason this analysis has not been provided: if the analysis had been provided, it would show that the Department's actions have been entirely unresponsive and unaccountable to ratepayer interests and that its ratepayer advocacy functions need to be removed and placed just about anywhere but its current place of administrative residence.

4) Conclusions

AARP Vermont appreciates the opportunity to provide these written comments on the Department's Draft Report. However, analysis and recommendations included in the Draft Report are both disappointing and unresponsive to ratepayers' interests, and their concern about the Department's past actions. If the final report looks anything like the analysis and conclusions reached in the Draft Report, then the final report will likely be unhelpful to the Legislature in developing any solutions to the crises in confidence that has arisen with respect to the Department's ratepayer advocacy actions.

On a positive note, the deficiencies and biases in the Draft Report's analysis and recommendations does serve one useful purpose: they clearly articulate that the ratepayer advocacy process in Vermont is broken and desperately needs to be fixed. AARP Vermont is highly doubtful that any meaningful corrective actions can be taken to modify the current structure which would leave these functions within the Department, particularly given the nature, analysis and results of this current Draft Report.

The Draft Report's analysis and recommendations are also very disappointing since it does not represent a good faith effort at critical self-examination of the Department's ratepayer advocacy performance. Instead, it is a defensive document, prepared by a state agency that believes it is beyond reproach when, in fact, everyone knows otherwise. The Legislature would have been better served if the Department contracted with an independent third party to conduct such an analysis since the bottom line conclusion in this report is that "nothing is wrong." Clearly, something is wrong, and it needs to be fixed, but the Department appears incapable of acknowledging that there are problems and unwilling to offer any meaningful solutions to these problems. AARP Vermont hopes that the Legislature and other policy makers see these problems, the short comings of this Draft Report, and directs the Department to seek out independence expert guidance, analysis, and input on this important and timely Vermont public policy issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Marchildon". The signature is fluid and cursive, with a large initial "G" and "M".

Greg Marchildon, AARP VT, State Director