



February 5, 2016

Mr. Wayne Jortner
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620

RE: Comments on Draft

Dear Mr. Jortner:

On behalf of the Windham Regional Commission (WRC) I am writing to provide comments on the draft report An Evaluation of Ratepayer Advocate Structures Pursuant to Act 56, Section 21b. We appreciate the opportunity to review the draft and provide comment ahead of its release.

Our primary concern is that the report makes no reference to issues and concerns of municipalities and regional planning commissions. We ask that you please report on the comments you received and how they relate to the structure of the Public Advocacy Division (PAD). While the Public Service Department (PSD) was asked by the Legislature to provide a report analyzing the structure of its PAD and whether alternate structures could result in improved benefits for utility ratepayers, you explained during the public hearing in Brattleboro that you did want to hear from towns and Regional Planning Commissions about their concerns related to the PAD. We raised a number of issues during the hearing about access to Public Service Board (PSB) processes in Section 248 and 248a proceedings. We reiterated those issues again in our written comments submitted November 30th.

In the second paragraph of the report you correctly note the following:

“Given the complexity of such matters, those who participate in related proceedings need to have a high degree of expertise (and frequently, outside expert resources) and experience. Meaningful participation, including litigation related to utility regulatory issues, is often a very expensive and time consuming process. Individual residential and small business consumers, or even groups of consumers, usually lack the time, resources and expertise to participate in complex regulatory proceedings, even where major decisions are being made that affect their costs, their environment, and their access to critical services.”

The same could and should be said for municipalities and regional planning commissions. And as we noted in our written comments, the case manager function proposed by the Governor's Energy Generation Siting Policy Commission could begin to serve the function that some feel the PAD should.

While the recommendations contained within the draft report may, in fact, begin to address the concerns you heard from rate payers, they do not begin to address the concerns of municipalities and regional planning commissions. **The PSD should use this opportunity to propose a solution to improve access to PSB processes while also resolving tension between the actual and perceived role of the PAD in representing the interest of Vermont municipalities and regional planning commissions.**

Access to and meaningful engagement in PSB processes is not only justifiably frustrating for regions and towns, but negates the efficacy of the very plans that regional planning commissions and towns spend years developing and to which the PSB is required by statute to give due consideration (Section 248) or substantial deference (Section 248a). We know the perception exists that the Public Advocacy Division of the Public Service Department is responsible for facilitating access to and meaningful engagement in PSB processes. However, we recognize the PSD is ultimately a statutory party represented by the PAD before the Board and cannot be a neutral advocate for the policies of the WRC or any other intervener.

There would be considerable benefit to both the PSD and the legislature to note in this report that the solution to the problem of expecting the PAD to facilitate access to PSB processes most likely belongs with the Public Service Board rather than the Public Service Department. This issue was discussed at length by the Energy Generation Siting Policy Commission.

We specifically request that the report discuss Recommendation 11 of the Governor's Energy Generation Siting Policy Commission, a remedy that, presumably, the PSD supports.

Recommendation 11: The PSB shall hire a Case Manager to provide guidance on all aspects of the siting application process to all parties.

The Commission recommends that the position of 'Case Manager' be created at the PSB to provide guidance on all aspects of the siting application process to all parties particularly as they relate to timing. In addition, the Case Manager would provide oversight for ensuring that the PSB and/or multiagency improved website remains up to date with appropriate docketing information. The intent is to have a person available to all parties who has more flexibility to deal with the entire range of procedural issues, and communicate freely with all parties, from the beginning of the application process through the final CPG permitting. The Case Manager would provide technical assistance especially to affected communities and intervenors, and facilitate resolution of issues among parties outside the formal proceeding. Moreover, the Case Manager would be able to identify issues early in the process and move cases towards settlement in many topics, leaving only the most difficult to go to the Hearing Officers or the Board. It is recommended that the position be a statutory position.

The Commission recommends that this position be at the PSB rather than the PSD because the latter is a statutory party in siting cases, along with ANR. Most of the relevant parties were clear in requesting procedural guidance from a person who was independent of either ANR or PSD, but who was also well versed in all of the siting requirements.

The Case Manager would, among other responsibilities:

- *oversee and communicate compliance with screening and application checklists for each Tier*
- *work with PSD and ANR to ensure that the public engagement and natural resource assessment requirements are communicated to all parties and are met for an application to be 'deemed complete'*
- *communicate whether statutory timelines (under Recommendation 13) are adhered to by all parties (applicant, PSD, ANR, PSB)*
- *provide oversight for ensuring that the improved website remains up to date with appropriate docketing information*

The Commission understands that the PSB recognizes the need to explicitly encourage Hearing Officers to communicate directly with all parties and the public about timing, filing formats and other procedural issues. This will also allow them to provide all the necessary information directly to the Case Manager to carry out his/her functions effectively.

The WRC supports this Case Manager function and approach and we ask that it be referenced in your report to the legislature.

Concerning the overall recommendations of the report related to the PAD, we support the proposed improvements in communicating how and why the PSD arrives at its positions. These improvements would not only increase transparency, but also contribute to better understanding of the PAD function.

Thank you for your consideration of our recommendations. Please contact me should you have any questions.

Sincerely,



Chris Company,
Executive Director