



Act 91 Report to the General Assembly on Consumer Representation

**Submitted by: Public Service Department
7/1/2014**

Act 91 (S.25) requires a report from the Public Service Department (“Department” or “PSD”) on how it determines the best interest of the consuming public as it performs its duties under 30 V.S.A. §2. The Act specifically focuses this report on residential, low-income, and small business consumers. It asks the Department to discuss how it ensures adequate representation of these consumers in matters before the Public Service Board (“Board”), to evaluate how it has represented these consumers in the past, and to describe how it could improve its representation. It also asks the Department to discuss its integration of the Consumer Affairs and Public Information (“CAPI”) and Public Advocacy (“PA”) divisions, as well as how it assesses and resolves conflicts between ratepayer classes.

The Department recognizes the unique and vital role it plays in representing the interests of the people of the State of Vermont in cases before the Board. It is committed to doing so in a manner that ensures robust assessment of the impacts on the consuming public of any regulatory action and then pursues those outcomes that best serve the public interest as a whole. While the Department does not and cannot represent individual interests before the board, through increased integration of divisions within the Department and growing relationships with consumers and their advocacy groups, the Department is well positioned to expand its efforts and effectiveness with regard to representing the interests of all Vermonters, accounting for different ratepayer classes, and including those whose interests might not otherwise be independently represented in matters before the Board.

The Public Service Department is required by statute (30 V.S.A. §2) to represent the public interest in utility matters. This is variously phrased as representing the “consuming public,” the “interests of the people of the state” or the “interests of the state.” The Department is very involved in proceedings under statutes such as §248 and §231a (approval of utility purchases and facilities) where the PSB must find that the proposal before it “promotes the general good of the state.” All of these require the PSD to make judgments about what is or is not in the public interest or serves the public good, and to advocate accordingly.¹

Past Practices and Principles

¹ An additional report is forthcoming, as required by Act 199, that reports the status of an investigation by the Public Service Department and the Department of Commerce on how best to advance the public good through consideration of the competitiveness of Vermont’s industrial and manufacturing businesses in light of electricity costs.

There are a number of guideposts that inform the Department's judgments regarding the public good. These include state statutes, previous Board orders, comments received at public hearings, and public policies and goals developed within the executive branch. The Department's Comprehensive Energy Plan is an example of the integration of multiple sources of guidance, taken from dozens of meetings around the state and review and comment by stakeholder groups on multiple drafts, resulting in approximately 9000 public comments taken into consideration. In addition, there is a significant body of utility regulatory law developed over many decades and expressed in the rulings of many courts, including the U.S. Supreme Court, as well as in secondary sources such as treatises. These guideposts provide valuable direction on many issues, and, more importantly, set forth principles that guide decision-making on specific cases and questions.² The Department regularly consults these sources in the course of its representation of the public.

The Department is charged with representing all of the consuming public, which includes many different classes of customers as well as a broad diversity of opinion and interests. In most cases before the Public Service Board, the interests of different customer classes (e.g. residential, commercial, industrial) are not in conflict. All classes of customers have a fundamental shared interest in least-cost utility service.³ In rate cases, where the utility's overall revenue requirement is determined, the interests of all consumers are fundamentally the same. Similarly, the interests of different customer classes do not generally differ in facility permitting cases under § 248.⁴

Where the interests of customer classes typically do conflict is in rate design cases, where the basic issue is how much of its authorized revenue a utility should collect from each customer class. It is not unusual to have particular interest groups (e.g. those representing ski areas, businesses, or industrial customers) intervene in those cases to advocate for lower rates for their members. In all such cases, the Department takes seriously its responsibility to represent all classes, but responds to

² The treatise perhaps most often cited is *Principles of Public Utility Rates* by James C. Bonbright. A summary presentation of those principles and their application to ratemaking can be found at <http://www.naruc.org/International/Documents/Tariff%20Development%20II%20Rate%20Design%20final%20draft%20over%201%200.pdf>.

³ "Least-cost" in this context does not mean simply the cheapest rates, but has the meaning given in 30 V.S.A. § 218c – i.e. after considering safety, "the lowest present value life cycle cost, including environmental and economic costs" While this does not necessarily translate to lowest rates, if properly implemented it should result in the lowest utility bills.

⁴ Different groups of customers, such as residents of a particular town, may have specific interests in a facility siting case, but this is not based on membership in a particular class of utility customers.

the participation of other specific classes with heightened vigilance to ensure that the interests of classes without separate representation are not harmed.

Again, there are well-established principles of rate design that provide useful guidance. In this context, perhaps the most prominent is that the “cost causer pays.” Studies are undertaken to determine which classes of customers require which investments or expenditures by the utility, in order to assign those costs – or an appropriate part of them – to those classes. For example, significant costs result from customer demand for service at peak times, when the most expensive electric generators are called upon to run. Analysis of loads and customer behavior can show which classes of customers demand the most service at peak times. Peak loads at mid-day could include demand from all classes, but a peak in the early evening would most likely be driven by residential demand, indicating that costs associated with this peak (such as required reserves of generating capacity to ensure reliable service) should be largely assigned to the residential class. For non-residential customers, time-of-day rates may be found appropriate to directly relate costs to a specific customer’s usage pattern. While it is true that rate design includes some judgment as well as science, objective studies and load data provide a solid basis for assigning costs based on causation. The Department’s philosophy in such cases is to follow the data, and support a rate design that assigns rates fairly, according to costs of usage. Departure from this philosophy is generally due to statutory or policy direction, also developed through public processes.

Current Practices and Changes Going Forward

The Department recognizes that not all ratepayer classes or stakeholder groups are equally able to retain counsel and experts to participate as parties in cases before the Board. Residential, low-income, and small business consumers may especially find full participation in Board dockets to be infeasible. However, in its determination of the public interest, the Department ensures that it gives due consideration of the needs of these classes and groups. Without losing any of the principles or long-standing practices noted in the previous section, the Department has adjusted its organization and approach to give heightened consideration to these groups. To support its efforts, the Department listens to the needs of consumers by attending all public hearings held by the Board (many of which are statutorily required). To support involvement by stakeholder groups, the Department provides procedural information and assistance to those with questions. The Department also relies on long-

standing relationships with advocacy organizations that speak to the needs of stakeholder groups, and is regularly contacted by representatives from such groups to express concerns on utility matters. The American Association of Retired Persons (“AARP”), the Vermont Grocers Association, and the Vermont Farm Bureau are just a few examples of the groups from which the Department receives input. In each case, the Department has taken seriously the input it received and incorporated their perspectives into its position on a particular matter.

Cases before the Board typically affect multiple ratepayer classes or constituency groups. These include general rate cases, as discussed above, or a §248 petition for approval of a proposed power contract. A tariff for net-metered solar systems can also affect multiple ratepayer classes due to the fixed infrastructure costs that utilities have historically charged customers based on their usage of the utility system. In addition, a Service Quality and Reliability Plan address a utility’s performance on matters of import to all of its customers.

Other cases have a narrower scope of impact. A renewal of a Certificate of Public Good for a cable television operator mostly affects residential customers, with educational, governmental, and other public entities taking an interest as well. Further, cases addressing service disconnection practices or a tariff change to clarify costs of residential service work limits the field of impact to residential customers, but most significantly affects low-income consumers.

As was outlined above, the Department establishes its position on a case before the Board after careful review of the proposed action in light of long-standing principles of utility regulation and consumer protection, state policies, and PSB precedents. This process includes internal dialogue across divisions, as well as the growing practice of seeking consultation from outside advocates. This past spring, the Board reviewed the Electric Assistance Program run by Green Mountain Power. The Department worked collaboratively with AARP to review what was learned from the first year of the program and to determine what, if any, changes were needed to best respond to the needs that the program was designed to address. Several divisions within the Department, including CAPI, PA, and Finance & Economics participated in these discussions and worked together to develop recommendations to the Board.

Another recent filing to the Board was for a company's Terms and Conditions tariff. Upon receipt of the filing, the Department began its own review, including CAPI in the process. CAPI, then, brought to bear the awareness it has developed through its direct relationship with consumers as it reviewed the document. In this case, the utility had proposed removing language from its previous tariff that alerted customers to the fee charged for work done by the utility, should the need for the work be attributable to the customer and not to the utility. CAPI, having received complaints about service work resulting in fees about which they claimed to be unaware, worked closely with the PA division to develop a response to the filing that would protect the consumer from receiving unexpected bills. Specifically, one of its recommendations was that the utility be required to provide to the consumer an estimated cost of work to be performed. The utility agreed with the recommendations of the Department and revised their tariff filing.

The rate case of a different utility serves as another example of the link between consumer experiences, the relationship between the CAPI and PA divisions, and the Department's position on a case. In this example, consumer complaints brought to the CAPI division's attention brought to light actions by the utility that did not comply with Board Rules. Specifically, in one area of noncompliance, the utility would not allow customers to establish payment arrangements on overdue balances without physically visiting their office. CAPI brought this and other concerns to the PA division and the Department then negotiated, as part of the utility's rate case, specific steps the utility would be required to take to address the areas of noncompliance.

Recently, on a rate case affecting Vermont's largest utility, Green Mountain Power, the department investigated all aspects of the cost of service, advocating for the ratepayers, and arriving at a rate decrease more aggressive than any in the last decade. In determining its position, the department actively consulted with consumer groups, notably AARP in this instance.

A final recent example of a case to which the Department responded came to its attention prior to Board involvement. A couple of utilities, joining together in their work, proposed to

begin offering customers the opportunity to pay their bill with a credit or debit card, without having to pay a fee, as had been the practice. While on the surface, this may seem like a clear beneficial service to the bill payers wishing to use credit cards, a key concern was what, if any, burden the utility would pass on to ratepayers, generally, by socializing the credit and debit card transaction fees charged by the third party processor. In the department's opinion, the original transaction fees proposed were too high, even though spread out over all ratepayers the cost would have been extremely small. The department engaged with the utilities to investigate other more cost-effective options. The PA, CAPI, and Finance & Economics divisions then worked closely to review any legal, consumer, and economic concerns the proposal stimulated. The Department required the utility to provide it with data that it could use to make this determination. The utilities revised their proposal and presented it to the Department for its feedback. The Department provided its final positive response to the utilities only after each of the divisions' questions had been answered and concerns satisfied.

As the examples above show, the Department is in an ongoing process of strengthening its external relationships with representatives of residential, low-income, and small business stakeholders. It has identified key contacts with whom to consult and will engage them as a "working group" on an as-needed basis. For example, Community Action agencies, Vermont Legal Aid, and Agencies on Aging may each provide valuable input into the needs of the low-income population. Likewise, the Vermont Women's Business Center, the Vermont Small Business Development Center, and the Vermont Chamber of Commerce have a keen awareness of the needs of small businesses in the State. The Department recognizes the expertise of such organizations and is committed to learning from them as it develops its positions.

The Department is also leveraging a strengthened internal capacity to attend to the needs of ratepayer classes that may not have separate representation. For six years, the CAPI division operated without its own director. The division focused its work on responding to consumer complaints, mediating resolutions to thousands of cases where a consumer and utility were at odds, and returning to, or saving consumers hundreds of thousands of dollars in the process. Without a director, though, the division had a limited capacity to participate in Board cases, work with PA division, and advocate, generally, for the consumer needs that it had identified. It was, thus, a significant step

towards bolstering its attention to the needs of consumers when the Department hired a director for the division last fall.

As this is a new position within the Department (though it did exist in the past, with various areas of emphasis), the full realization of the potential of this resource continues to emerge. Some achievements can already be noted, however. The division has gone through some reorganization, with the creation of two coordinator positions: one to focus internally on utility regulation issues and one to focus externally on information sharing and gathering with the public. These re-designed positions further strengthen the capacity of the Department to review utility rules and practices and to engage with the consuming public. For example, utilities routinely file with the Board for modifications to their tariff conditions. Now, with the personnel resources available in CAPI, the PA division consistently includes CAPI in the Department's review of proposed tariffs, and, as outlined in the example above, such collaboration allows for a direct link between the experience of consumers, as reported in complaints filed with the CAPI division, and the positions advocated by the Department.

The Department intends to continue to build on the important steps it has already accomplished to support an inclusive, robust assessment of the best interest of consumers across ratepayer and stakeholder groups. As referenced earlier, it will engage with advocates for residential, small business, and low-income consumers as an ad hoc working group to support the Department's efforts to ensure "heightened consideration" of the needs of these populations, as required by Act 91. Wherever possible, it will consult with residential, small business, and low-income advocates in advance of formulating its position about what is in the public interest or the good of the state. It will also continue to strengthen the close communication and coordination between the PA and CAPI divisions as it represents the consumer interest before the Board. The Department recognizes the importance of systemic practices, such as the automatic inclusion of the CAPI division in tariff reviews, and will look for additional such practices to implement.