

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

November 30, 2015

Dear Mr. Jortner,

RE: Town of Brattleboro Comments on the Structure of the Public Advocacy Division

The following comments are in response to the request posted on the Public Service Department (PSD) webpage and should be regarded as an elaboration on verbal comments I provided at the Brattleboro Public Hearing held on November 18.

Before turning to substantive comments it is necessary to explain that these comments are provided by me without the benefit of discussion or review by the Brattleboro Selectboard and Planning Commission for two reasons. First, we were alerted to the scheduling of the Brattleboro hearing via an email from the Windham Regional Commission (WRC) on November 12, 2015. Second, the announcement lacked specificity and there was no draft report or study to respond to (despite the looming legislative deadline). The vagueness of the request, the very limited notice and the proximity of the hearing to holidays prevented meaningful public input directed by me. Therefore I offer these comments based on observation of Section 248 and Section 248(a) proceedings and the development of the Comprehensive Energy Plan (CEP), 2011, and 2015. My expertise is in the field of land-use planning, I have been the Planning Director for Brattleboro since 2008.

At the November 18 Brattleboro Public Hearing you and Mr. Copans provided guidance on the scope of the Legislatures request for a report¹. In representing the PSD you encouraged a more expansive response than the text of Act 56 §21b (a) which references 'ratepayers' as the primary focus of the report. In opening remarks at the hearing you suggested that other state jurisdictions approach the office of public advocate in a variety of ways and that no discernable model(s) were available to guide the report (or the public seeking to comment).

At the hearing I (along with others) identified the potential for conflict of interest between the PSD Public Advocacy Division with respect to the issuance of Certificates of Public Good (CPG) and other permitting processes of the Public Service Board (PSB). The current PSD structure provides for the Governor to appoint the Commissioner and the Public Advocacy Division (which answers directly to the Commissioner) to represent the administration before the PSB in the issuance of a Certificate of Public Good (CPG) and related permitting issues. The presumption appears to be that Executive Branch policy is consistent with the 'public good' and further that this public good is synonymous with ratepayer

¹ No. 56. An act relating to establishing a renewable energy standard. Sec. 21b. REPORT; RATEPAYER ADVOCATE OFFICES (a) Report.

interests, defined as a class of utility consumers, most of whom are now serviced by Green Mountain Power (GMP) for electricity. The putative benefits of this structure are that there are more available staff for public advocacy (as distinct from the work of the Consumer Affairs and Public Information Division) and that there is the potential for *synergy* with close contact between the Public Advocacy Division and other technical areas within the PSD. This depiction of the benefits of proximity illustrates the blurred distinction between public advocacy (understood to include more than simply ratepayer/consumer rights) and executive branch policy implementation within the PSD.

As it currently stands the Public Advocacy Division is required to intervene in the proceedings of the PSB based on the CEP and other policy positions of the Executive Branch. Any internal inconsistencies or circumstances where a Petitioner seeks to exploit a regulatory gap or contradictions in the application process are resolved internally and the public and affected parties (including municipalities) have little ability to influence or monitor PSD deliberations. On a petition by petition basis the interests of those directly impacted may be at odds with the 'public good' as described in the CEP or Section 248. There is only an informal mechanism for identifying such conflicts and there is no path to follow for resolution.

A brief review of the regulatory structure of neighboring states suggests at least one alternative. In Maine the Executive Branch articulates energy policy through the Governor's Energy Office, and then the Maine Public Utilities Commission (MPUC) has staff that support the Commissioners and a Consumer Assistance Division. In New Hampshire the policy-making aspect of energy and utilities is also undertaken within the Office of the Governor under the Office of Energy and Planning. The consumer advocacy function is undertaken by the New Hampshire Public Utilities Commission (NHPUC).

In New York, the Department of Public Service (NYDPS) shares some elements of its structure with Vermont. However, it is more explicit about the comprehensive energy plan as a process of engagement supported by, but separate from the NYDPS and similar to Massachusetts New York has a Board on Electric Generation Siting and the Environment.

There is merit in exploring the costs and benefits of de-linking the CEP and other policy formulation tasks from the entity that represents the *public interest* (not just ratepayers) before the PSB. The public interest in a Distributed Energy Resources (DER) environment is far broader and more complex than the concerns of ratepayers (the public good) in the traditional transmission and distribution (T&D) grid environment that Section 248 was designed for. This structural shift in the utilities market has introduced a wider set of public concerns than simply that of 'consumer' or 'ratepayer'. Alongside these existing narrow definitions must be added a definition of 'public interest' which captures direct impact on abutters and, depending on the facility, impact on community standards.

Many of these issues have been addressed in the Vermont Solar Siting Task Force (VTSSTF). I broadly concur with the Vermont Planners Association (VPA) identification of issues with the current regulatory regime. The benefit of establishing an Electric Generation Siting Board (see above) would make siting issues explicit and address land use concerns directly (including respecting local communities legitimate planning processes).

The land use implications of achieving CEP goals have either been strategically ignored or were not predicted. It would be regrettable if the CEP goals were drawn into disrepute due to a compromised public advocacy function in the PSD.

In my direct interactions I have always found the Public Advocacy Division to be responsive and informative. I offer the above comments not as a criticism of their dedication or ability, or as a rebuke but as an observation on the compromised structure and arguably mislabeled Public Advocacy Division.

Sincerely,

A handwritten signature in black ink, appearing to read "Rod Francis". The signature is stylized with a cursive script.

Rod Francis
Planning Director