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October 21, 2015

Wayne Jortner, Esq.
Vermont Department of Public Service
112 State Street, 3rd Floor
Montpelier VT 05620-2601

Re: Act 56

Dear Wayne:

You and Geoff Commons have asked me to comment on the issues raised by Act 56, based upon my experience in this area. However, I have come to the conclusion that I should not submit detailed comments at this time.

I believe it would be inappropriate for me to submit detailed comments at this time because I am currently representing several parties in proceedings before the Board in which the positions taken by the Department, through the Director of Public Advocacy, conflict with the positions of my clients on matters of procedure and matters of substantive law. Comments I would make would overlap with some of the disagreements my clients have with the Department in these pending matters. It is likely that my comments would be construed as advocacy related to the pending cases. Also, I would need to obtain consent from all of my clients to each of my comments before submitting the comments.

I do feel comfortable setting forth my personal response to one component of Act 56. The focus on the Director of Public Advocacy appears to be misplaced. Vermont statutes mandate that the Director must represent the Commissioner. The Commissioner is the client of the lawyers within the Director of Public Advocacy's office. A lawyer must, under our code of ethics, represent the wishes of the client, with limited exceptions not relevant here. Much of the dissatisfaction that I believe the public has had with the regulatory process arises out of the decisions made by the Director of Public Advocacy's client, not by lawyers. I believe it is high time for the legislature to re-examine whether ratepayer advocacy should be directed by a person who is appointed by the Governor, serves at the pleasure of the Governor, and, in my experience over the past 26 years, in some major cases has been ordered or strongly urged to make decisions based on the wishes of the Governor without regard to the expertise and opinions of the professional staff and lawyers within the Department.

The limited comments I have made above are entirely my own. I am not commenting on behalf of anyone or any organization.

Wayne Jortner, Esq., October 21, 2015

Sincerely,

James A. Dumont
James A. Dumont, Esq.