

October 30, 2015

Public Comments of AARP-Vermont

1) Introduction

AARP Vermont wishes to thank the Department of Public Service (“DPS” or “the Department”) for the opportunity to submit our written comments. 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

AARP Vermont believes that the public advocacy process of utility regulation is one of the most, if not *the* most important aspect of the utility regulatory process. Utilities are regulated for two reasons: first, they have cost and operating characteristics that make them a “natural monopoly,” and second, the services offered by utilities are “imbued in the public interest.” While tempering a natural monopoly’s tendency to set prices above costs is an important part of the regulatory process, ensuring that utilities are regulated in the best public interests of their customers (i.e., utility “ratepayers”), given the importance of the services they provide, is at least as an important, if not a

¹ <http://www.aarp.org/about-aarp/>

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

more important, part of utility regulation. This is why AARP Vermont believes that the role of the public advocate is so important.

The public advocate, as its name suggests, should be in a position to not only represent the ratepayers in regulatory proceedings, but to actively and aggressively advocate for these ratepayers' best interest, particularly for residential and small commercial classes of utility customers. AARP Vermont believes that the statutorily-created public advocate in Vermont, the DPS, is not living up to this ideal and is in need of significant and immediate change and reform in four separate areas: (1) the Department's independence; (2) its focus and orientation; (3) the degree to which it has resources to conduct its mission; and (4) its leadership.

2) Reform of Department Independence

AARP Vermont suggests that the current Department reporting structure does not lead to complete independence of action as it relates to strong and aggressive ratepayer advocacy. Right now, the Department is organized in a fashion that distinguishes itself very little from any other state executive agency. That is not a "bad" thing *per se*, but it is an organizational structure that does not facilitate independent decision making or action. The Department, like many other state executive agencies, is comprised of a department head (or Commissioner) that is appointed by the Governor and serves at the pleasure of the Governor, not at the pleasure of residential and small commercial utility ratepayers. If there is a public issue that is perceived to have broad public benefits, but one that will cost ratepayers dearly, the Commissioner will pursue strategies that promote the broader interests of the state, rather than ratepayers'.

A simple and poignant example of this conflict has been consistently underscored by the Department's position in the Vermont Gas Systems (VGS) Addison Pipeline Project. This project is one that has been shown to have, even by VGS' own analysis, significant ratepayer impacts, with questionable benefits, and yet has drawn virtually no critical comment or action from the Department.

AARP Vermont does not have a concrete example of the "best" way of structuring the Department at this time, but we do intend to continue to provide our input into this review process, and ultimately offer a variety of potential remedies after we have had a chance to review the final report that will be developed by the Department in this agency review process. Suffice it to say that, at a minimum, AARP Vermont would like to see the Department realigned to eliminate any direct reporting requirement to the Office of the Governor, and towards some type of reporting structure that leads to direct accountability to ratepayers, as opposed to the political whims of a sitting governor.

3) Reform of Department Orientation and Emphasis

AARP Vermont believes that the Department's current mission emphasis needs to be explicitly clarified to one that focuses on advocating for residential and small commercial customers. While Vermont statutes were modified over the past few years to make such an emphasis explicit, the Department has not embraced new practices to adequately advocate on behalf of ratepayers.

To date, the Department has tended to sponsor policy proposals, and take public positions, promoting "state-wide benefits" as opposed to "ratepayer benefits." The Department is not pursuing its mandated mission in an effective manner since it fails to distinguish between the broader public good, on the one hand, and ratepayer

advocacy, on the other: the two, contrary to the Department's beliefs and practices, are not synonymous. 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.

The Department, by pursuing regulatory policy strategies that are in the public good, rather than ratepayer interests, effectively duplicates the mission of the Vermont Public Service Board (the "Board") and as such, wastes valuable Vermont taxpayer resources. It is the Board's responsibility to sit in a quasi-judicial, quasi-legislative position of evaluating proposals, evidence, and other material, and rendering decisions that are in the broad public good, balance the decisions and their impacts on major stakeholder groups such as the utilities and ratepayers. Vermont cannot afford to have a separate state agency pursuing similar strategies.

Further, in pursuing what is often a more neutral, less advocacy-oriented agenda, the Department deprives the Board of valuable input that it needs to make effective policy. Over the past several years, the Board has been unable to rely upon an active and aggressive consumer advocacy voice (with the exception of AARP Vermont and other non-profit groups). This silence leaves a lopsided "record" of evidence. To compound matters, the Department regularly enters into settlement discussions and other back-door discussions with utilities to arrive at "memoranda of understanding" and other settlements that tend to (1) adopt regulated utility proposals at almost their face value and with no public transparency and (2) shift a considerable amount of financial

and other business risk away from regulated utilities and their shareholders, onto the backs of ratepayers.

Unfortunately, groups like AARP Vermont, and other non-profit consumer and public interest organizations are being required to fill in a vacuum left by the Department's failure to serve as an active consumer advocacy voice at the Board. AARP Vermont, among other groups, repeatedly finds itself in positions where it effectively has to defend itself against the collective action of the utilities and the Department rather than having the Department as a partner in forcing utilities to deliver more efficient and cost-effective utilities services for ratepayers and other non-profit public interest groups. There is something entirely wrong with an outcome where non-profit consumer groups are consistently and collectively expending resources to fight the Department just as hard as they are required to monitor and challenge regulated utilities.

4) Reform of the Department's Advocacy Resources

AARP Vermont believes that structural reform of the Department's mission alone will not suffice if the financial resources the Department needs to successfully accomplish its mission are not available. Utilities often spend hundreds of thousands of dollars, if not millions of dollars on litigated proceedings before the Board. While it is unreasonable to expect the Department to be funded at levels comparable to the utilities, it does need an appropriate and independent source of funding that allows it to conduct its advocacy mission without undue interference from political pressures both within and external to state government.

AARP Vermont recommends that as the legislature reviews the overall structure and governance of the Department, it also consider how those changes will be financially accommodated and supported on an ongoing basis. Structural reform without a corresponding and matching degree of financial support will, otherwise, prove to be futile.

5) Reform of the Department's Leadership

Good organizations and institutions, in both private and public sectors, are usually driven by strong and effective leadership. AARP Vermont requests that any reform of the Department also include some degree of reform on how the leader of this important state agency is selected. An effective ratepayer advocate needs to be selected in a fashion that: (1) meets an effective set of professional qualifications in fields that are critical to public utility regulation (i.e., law, engineering, economics, finance); (2) is based upon an a well-recognized and well-respected level of professional experience that is directly related to consumer protection and/or advocacy; and (3) is independent and encourages and actively seeks ratepayer input.

6) Conclusions

AARP Vermont would again like to thank the Department for the opportunity to submit comments on this exceptionally timely and important issue. Vermont has faced, and will continue to face, a variety of important and timely public utility-related issues over the next several years. The State needs a ratepayer advocacy agency that is independent, has adequate resources, strong leadership, and most importantly, is directly accountable to its clients which are the ratepayers of the state's regulated utilities. AARP Vermont believes the current structure is flawed, and needs

considerable and immediate reforms. AARP Vermont looks forward to continuing to work with the Department, the legislature, and other stakeholders to this process in developing an office of public utility advocacy that is more effective for Vermont and more accountable to the utility customers of this state.

Sincerely,

Greg Marchildon, AARP-VT State Director