

Memorandum

Vermont Department of Public Service

To: Chris Recchia, Commissioner

From: Geoff Commons, Director for Public Advocacy

Subject: Response to AARP Critique of Act 56 Report

Date: March 7, 2016



AARP has provided a report (AARP Critique) highly critical of the advocacy activities of the Department of Public Service, and of the Report submitted by the DPS to the General Assembly pursuant to Act 56, § 21b. AARP concludes that the DPS is "mission-confused" and "mission-conflicted," that there is a vast gulf between the interests of ratepayers and those of the public generally, that the DPS should exclusively represent the interests of a particular subset of ratepayers, and that increasing the number of state-agency parties with partisan, opposing views in PSB proceedings would lead to better outcomes, at least for the particular demographic represented by AARP.

The AARP Critique fails to understand the existing statutory structure created by the Vermont Legislature, generally ignoring clear statutory directives (cited in the DPS Report) and misreading those it does acknowledge. AARP describes what it believes the Department's advocacy role should be, rather than what it is, and takes the Department to task in part for following existing law rather than AARP's narrower vision.

The AARP Critique obliquely recognizes that existing statutory law does not support its position when it recommends that the Legislature change existing law to define ratepayer advocacy as AARP wishes it to be.

One of the most important policy recommendations that can be made to the Legislature in this matter is to clearly and unambiguously identify the RA's mission as being one dedicated to:

- Representing and forcefully advocating for residential and small commercial ratepayer interests.
- Supporting low-income and disadvantaged utility customers.
- Being fuel and technology neutral, focusing on securing the lowest cost, most reliable utility service possible.
- Defending residential and small commercial ratepayers from assuming utility business, financial, and regulatory risk without appropriate and reasonable compensation.

AARP Critique at § 5.1 (p. 56). These recommendations reflect AARP's particular view that a ratepayer advocate should exclusively represent residential and small commercial customers, and should focus exclusively on obtaining the lowest possible rates – not "least-cost" as that term is defined in statute,

but the lowest rates today without regard to any other policy goals or to longer-term costs and benefits.¹ AARP's view is inconsistent with long-standing statutory language and objectives.

Energy efficiency does not fit in the AARP model: efficiency measures often have up-front costs that put upward pressure on rates. In addition to lowering bills and providing environmental benefits, energy efficiency is wildly cost-effective over longer terms. In fact, AARP has at times opposed the Department's efforts to obtain energy efficiency savings, prior to creation of the Efficiency Utility.

Vermont should be rightfully proud of its achievements in energy efficiency, which were accomplished with statutory directives and regulatory structure much as they are now. Energy efficiency benefits all customers by avoiding the need for new power plants and transmission lines, and reducing demand at times when the most expensive generators would otherwise be running. Had AARP's view of ratepayer advocacy been in place, with its focus on lowest cost today for only a subset of ratepayers, these economic and environmental gains would have been opposed or more likely never pursued in the first place – despite the manifest long-term benefits to ratepayers and the public generally.

All of the states identified by AARP as having ratepayer advocacy structures far superior to Vermont's lag far behind Vermont in energy efficiency and in reducing the environmental impact of energy generation. The following table shows points awarded for energy efficiency programs in the annual scorecard for 2015 published by the American Council for an Energy Efficient Economy. It also shows electric greenhouse gas emissions per capita for 2013.

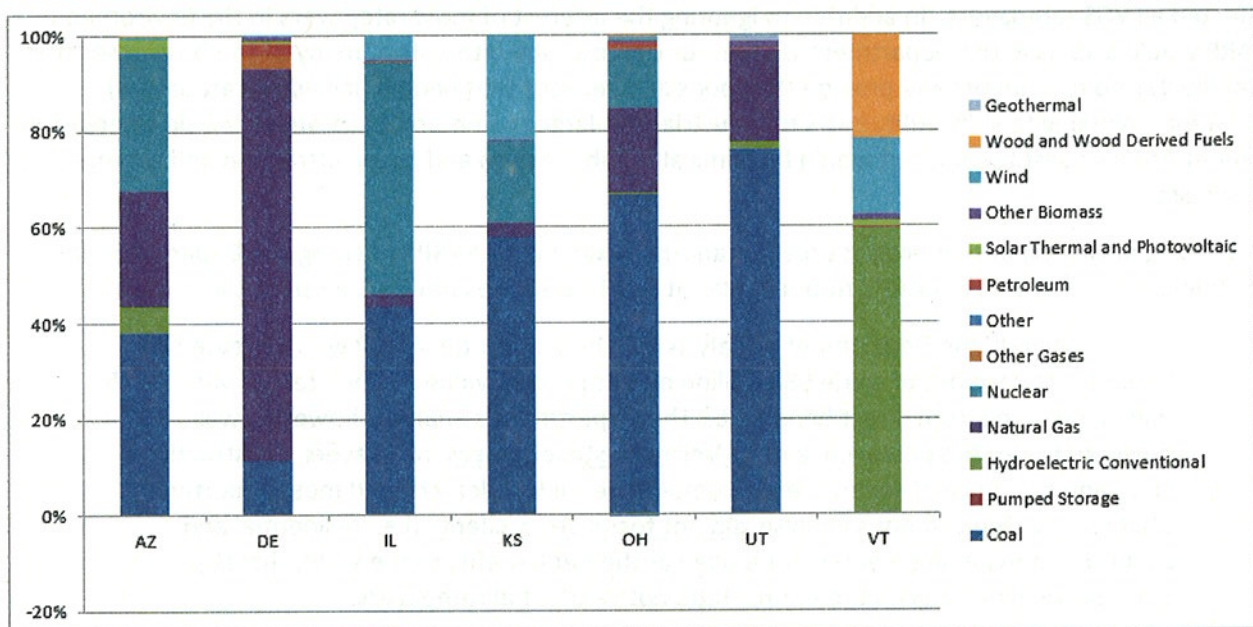
State	ACEEE Scorecard: Points for utility efficiency programs (out of 20)	Electric sector GHG emissions (tons/capita)
Vermont	19	1.4
Arizona	11.5	8.2
Delaware	0	4.4
Illinois	10	6.9
Kansas	0	11.0
New Hampshire	9	2.5
Ohio	7	8.8
Utah	6.5	12.0

Renewable energy also does not fit with AARP's view of ratepayers' interests. If the exclusive goal of a ratepayer advocate is for the lowest rates today, power choices would likely favor coal and nuclear generation. While both of those sources externalize significant long-term costs and risks onto the public and future generations, their power has historically been among the cheapest available. Notably, the

¹ AARP's singular focus on the lowest rates today may reflect its particular constituency of "citizens 50 and older nationwide." AARP Critique at 1, 21.

states identified by AARP as having superior ratepayer advocacy are also heavily dependent on coal and other fossil fuels.

	AZ	DE	IL	KS	OH	UT	VT
Coal	42,665,011	865,384	87,282,390	28,752,282	89,879,052	33,376,688	0
Pumped Storage	13,892	0	0	0	0	0	0
Hydroelectric Conventional	6,118,261	0	132,298	16,214	478,007	632,823	1,175,321
Natural Gas	27,241,879	6,297,458	5,465,425	1,452,523	23,636,445	8,376,420	2,465,000
Nuclear	32,320,917	0	97,857,900	8,558,384	16,284,440	0	0
Other Gases	0	226,379	338,093	0	929,388	117,979	0
Other	0	0	281,632	1	-3,393	24,318	0
Petroleum	56,862	183,282	86,756	44,881	1,246,673	2,235	5,473
Solar Thermal and Photovoltaic	3,141,508	49,530	50,117	0	53,908	72,530	23,536
Other Biomass	61,053	76,499	566,372	59,217	470,881	659,951	23,489
Wind	468,115	5,051	10,082,894	10,844,861	1,153,418	0	311,310
Wood and Wood Derived Fuels	169,690	0	0	0	347,586	0	429,218
Geothermal	0	0	0	0	0	521,582	0



Fortunately for the Vermont public – including ratepayers – the General Assembly has followed a different path. Title 30 does not direct the Department to advocate for the lowest possible rates today, but instead requires the pursuit of least-cost service as defined in § 218c.² The Legislature, having been

² § 218c. Least cost integrated planning

(a)(1) A "least cost integrated plan" for a regulated electric or gas utility is a plan for meeting the public's need for energy services, after safety concerns are addressed, at the lowest present value life cycle cost, including environmental and economic costs, through a strategy combining investments and expenditures on energy supply, transmission, and distribution capacity, transmission and distribution efficiency, and comprehensive energy efficiency programs. Economic costs shall be assessed with due regard to:

- (A) the greenhouse gas inventory developed under the provisions of 10 V.S.A. § 582;
- (B) the State's progress in meeting its greenhouse gas reduction goals;
- (C) the value of the financial risks associated with greenhouse gas emissions from various power sources; and
- (D) consistency with section 8001 (renewable energy goals) of this title.

(2) "Comprehensive energy efficiency programs" shall mean a coordinated set of investments or program expenditures made by a regulated electric or gas utility or other entity as approved by the Board pursuant to subsection 209(d) of this title to meet the public's need for energy services through efficiency, conservation or load management in all customer classes and areas of opportunity which is designed to acquire the full amount of cost effective savings from such investments or programs.

elected by the public (including ratepayers), has recognized that ratepayers are not simply wallets, interested only in dollars, but are primarily human beings who breathe, want clean water and healthy forests, are interested in the well-being of future generations – and also pay utility bills. Vermont statutes explicitly include ratepayers' financial interests in a balance that includes other important interests. AARP essentially proposes that each of these differing interests have its own advocate, with the balance being struck through adversarial litigation before the Public Service Board.

AARP's view of ratepayers is also far narrower than that reflected in Vermont statutes. AARP explicitly confines its interest in ratepayers to the residential and small commercial customer classes. No effort is made to explain how the interests of these customer classes necessarily deviate from those of other ratepayers; in fact, in most cases they do not. For example, in its discussion of the SERF, AARP mentions only residential and small commercial ratepayer interests, although creation of the SERF undoubtedly affected all VGS ratepayers. In addition to ignoring the interest of most ratepayers in the environment, AARP would also have the Department ignore – or oppose – the interests of many of the businesses that employ Vermont residents and provide the goods and services that people (including ratepayers) consume. Working to shift utility costs to industrial and larger commercial customers would temporarily benefit AARP's constituency, but would be inimical to job creation and to the attraction and retention of businesses.

The Vermont Gas expansion project provides another example of AARP criticizing the Department for following existing law. The AARP Critique states at p. 22 (footnotes omitted, emphasis in original):

Overall, the Department's analysis concluded that the ANGP would create net benefits for Vermont of some \$80 million on net present value ("NPV") terms, with \$29.5 million resulting from direct benefits.⁶¹ The Department's analysis, however, was presented from the perspective of all Vermont stakeholders: ratepayers, construction companies, municipal governments, competitive fuel oil dealers, and most importantly, utilities. The Department's analysis did not focus on its clients (i.e., residential and small commercial ratepayers), but looked at the net benefits to the state, thereby underscoring its focus on the entire state, not residential ratepayers.

AARP fails to understand that the Department's analysis followed the applicable statute, 30 V.S.A. § 248(b)(4), which requires that a proposed project "will result in an economic benefit to the State and its residents". Moreover, AARP's numbers in their Figure 1, while presented as the "Department's analysis," do not correspond to any analysis that the Department presented at any point in the proceeding. Most particularly, they appear to completely neglect the MOU capping project ratebased cost at \$134 million, which reduced the cost to ratepayers while maintaining the benefits of the project – thus significantly improving the best estimate of the impact of the project on the state's economy and reducing its impact on existing ratepayers. The AARP Critique does mention the MOU, only to misrepresent it on page 24:

In other words, with the Department's MOU, the Department argued that VGS should be allowed rate recovery of an additional \$12.4 million over that already approved by the Board to recover cost overruns caused in part because of VGS' likely mismanagement.

This is simply false – the Department has never argued that VGS should be allowed rate recovery of any amount attributable to the ANGP. As AARP is or should be aware, the level of costs that Vermont Gas

will be allowed to recover will be determined in an upcoming rate case, and the Department has stated that it will not take a position on rate recovery until it has completed its review in that case. The \$134 million figure in the DPS/VGS MOU is a ceiling, not a floor.

AARP's misunderstanding of Title 30 permeates its critique. The AARP Critique refers repeatedly to residential and small business ratepayers as the Department's only clients. For example, the AARP Critique excoriates the Department in part as follows: "The Department's analysis did not focus on its clients (i.e., residential and small commercial ratepayers), but looked at the net benefits to the state, thereby underscoring its focus on the entire state, not residential ratepayers." AARP Critique at 22 (emphasis in original). The basis for the outlandish assertion that the Department exclusively represents residential and small commercial customers appears to be AARP's misreading of 30 V.S.A. § 2(f), which it refers to as a "legislatively-directed mission change . . ." AARP Critique at ii.³ Section 2(f) is not a "mission change" nor does it change the identity of the Department's clients. It requires the Department to give "heightened consideration" to any customer class that is not independently represented in proceedings before the Board, "including residential, low income, and small business consumers, as well as other consumers" who might not be adequately represented. None of the existing statutory directives that guide the Department were similarly altered or repealed; notably, the very next subsection, § 2(g), specifically directs the Department to heed a number of "public interest" type statutes in its regional advocacy. See DPS Act 56 Report at 9-10.

AARP further misconstrues the identity of the Public Advocate's client, asserting that the Department's attorneys "represent its client: the Commissioner . . ." AARP Critique at 31.⁴ The attorneys in the Division of Public Advocacy are not confused on this point. Their client, by statute, is the "consuming public" in rate cases, or the "people of the State, unless otherwise specified by law" in other cases. 30 V.S.A. § 2(a)(6) & (2)(b). The people of the State elect individuals to represent them in the legislature and the governor's office. Those elected individuals, and their appointees as provided by law, function in this context as *representatives* of the Public Advocate's clients, writing and directing the execution of laws. Lawyers are accustomed to the notion of taking direction from a client's representative, such as the management of a corporation. The managers are not the client, the corporation is. Given the impracticability of consulting with hundreds of thousands of citizen clients, direction by elected officials and their authorized appointees is the only way a government attorney can operate.

Fundamentally, the Department – including the Director for Public Advocacy – disagrees with AARP's narrow view of ratepayer interests as being confined to the interests of two particular customer classes, and also disagrees with the notion that there is a yawning gap between the interests of the public and the interests of ratepayers (which AARP views as mutually exclusive, AARP Critique at 33). While AARP's ire is mainly directed at the DPS, it also criticizes the Legislature: "One of the primary problems with the Department's actions rests with the confusing and sometimes conflicting statutory language that defines the Department's ratepayer advocacy responsibilities." AARP Critique at i (Executive Summary). While there are occasional inconsistent provisions in statute, the Department does not find the statutes directing its activities particularly confusing. It seems more likely that AARP is confused by its own vision of what it believes the Department should be doing, which is distinctly at odds with what the Vermont

³ Section 2(f) states: (f) In performing its duties under this section, the Department shall give heightened consideration to the interests of ratepayer classes who are not independently represented parties in proceedings before the Board, including residential, low-income, and small business consumers, as well as other consumers whose interests might otherwise not be adequately represented but for the Department's advocacy.

⁴ AARP also asserts that the Public Advocate's "term [is] coincident with that of the Commissioner." The statute does not say this, and in fact it is not true. There is no defined term for the Public Advocate.

General Assembly has enacted. My view is that AARP has failed to provide any reliable or convincing basis for the drastic changes it seeks to a regulatory structure that has achieved significant benefits for Vermonters – in their capacities as utility ratepayers, and in their capacities as living, breathing citizens of Vermont and the world.