



Vermonters for a Clean Environment

November 27, 2018

Cases No. 18-0974-TF, 18-2850-TF, 18-3160-PET, 18-1633-PET

Public Comment in Response to Anonymous Letter to PUC

Vermonters for a Clean Environment submits this public comment in four cases related to Green Mountain Power's rates and regulation plans. VCE appreciates that the PUC posted the letter and set a deadline for parties to comment by the end of business today. VCE is not a party to any of the four cases.

VCE also received the anonymous letter in the mail.¹ If the PUC had not posted it and asked for comments from parties, it was our intention to post it as a public comment in GMP's rate and regulation cases and offer our comments. Though the letter was sent anonymously and the author is unknown, the information it contains is worthy of public discussion.

VCE has no knowledge of the identity of the author and at this time we consider the author's identity to be less important than the issues raised in the letter. Whoever wrote and sent the letter has done a tremendous service to the public by identifying problems that many of us have been observing. We are grateful that someone had the courage to speak up, albeit anonymously. We understand that it is difficult for employees to speak out (whistleblow) for fear of reprisal including the loss of their employment.

Our comments are informed by the responses submitted by GMP, DPS, and Brian Winn. We are especially appreciative of Brian Winn's willingness to respond to the allegations in the letter, given his recent termination of employment by DPS Commissioner Tierney. This is probably the last thing that someone of Mr. Winn's caliber and expertise would choose to do, but he has been forced into this by the unusual circumstances in which he finds himself.

Prior to reading Mr. Winn's comments, VCE was going to recommend that the Public Utility Commission hold an evidentiary hearing and subpoena Brian Winn to testify. However, his letter answers the basic questions, and his recommendation to not delay the cases due to the potential for greater impacts to ratepayers has caused us to abandon the idea of recommending holding another hearing, unless the PUC believes it can be done in a manner that will not cause harm to ratepayers and may result in useful information to inform the rate cases. We defer to the PUC on the need for further hearings.

¹ The documents are posted here:

<https://vermontersforacleanenvironment.wordpress.com/2018/11/20/comment-on-green-mountain-powers-rate-cases-and-how-they-are-being-handled-by-the-vermont-department-of-public-service/>

VCE offers the following comments on other substantive issues in the anonymous letter and Mr. Winn's response comment letter:

Ratepayer Interests and the Office of Public Advocacy

As Mr. Winn points out, one of the problems that has come to light thanks to the anonymous letter is the conflicted nature of the Vermont Department of Public Service. The problem is not specific to any particular administration, but is a systemic problem that VCE has been witnessing under both Democrat and Republican party leadership for nearly two decades.

During the Shumlin administration, we heard that DPS was representing seven interests, only one of which was ratepayer interests. The rest were policy areas. The vacuum left by DPS' lack of focus on ratepayer issues was filled by AARP. Since AARP is absent from these current rate cases, it appears that nobody is focused on protecting ratepayer's interests. In recent years, AARP has shifted its focus to the legislature and has been recommending the creation of an independent Office of Public Advocacy that is separate from the politically-influenced DPS. VCE strongly supports this effort, and we hope that the PUC will join in recommending that the legislature make this change in the next legislative session.

An independent Office of Public Advocacy is long overdue, and is relevant not just to GMP and rate cases, but also to how DPS has engaged on gas, solar and wind cases at the PUC. Many Vermonters who have intervened in cases at the PUC have witnessed a slew of state attorneys, sometimes two or three from DPS, one from ANR, one from Agriculture, sitting at the table for all-day evidentiary hearings who play with their phones and computers and engage in scheduling discussions but do not ask any questions. Again, this is not specific to the current DPS. It has been going on for years. The public interest is not being served and it is a common observation made by members of the Vermont public who find themselves in the PUC hearing room.

The PUC and Ratepayers as Intervenors

VCE has been following two of the four GMP rate cases. We assisted a GMP ratepayer with the process of moving to intervene in one of the cases. The ratepayer's specific interest was opening up the GMP residential battery programs to competition. While the PUC's ruling on the motion to intervene was pending, this ratepayer submitted excellent discovery questions focused on the battery issues. No other party asked similar questions, including DPS.

Surprisingly, the PUC denied the ratepayer's intervention, stating that DPS would address ratepayer interests. No other party adopted the questions asked by the potential intervenor, so GMP did not have to answer them.

By denying a Vermont ratepayer's attempt to intervene on issues affecting rates, especially when that ratepayer has shown expertise by writing their own motion to intervene and submitting high quality discovery questions that no other party is addressing, the PUC is complicit in assuring that certain ratepayer interests will not be represented. In the future, the PUC should welcome ratepayer participation in rate cases.

DPS Management under Commissioner Tierney

VCE has been watching the departure of numerous highly qualified attorneys who have chosen to leave DPS to work in other areas of state government or outside of state government. Among them was the attorney at DPS with institutional knowledge of the technical aspects of wind turbine noise, and a highly qualified litigator whose work was exemplary.

VCE has heard, but not seen confirmation until Brian Winn submitted his response comments today, that Commissioner Tierney was requiring attorneys in the legal division to submit their work a week in advance. Having assisted numerous Vermont citizens in the process of participating at the PUC, we are painfully aware of the challenge of meeting deadlines in PUC cases, and cannot imagine having to complete work a week in advance to be reviewed by the Commissioner. Whether or not the Commissioner's review results in better work product, the requirement to submit work seven days in advance of the deadline is an impossible standard that undermines the work of staff attorneys and adds stress to an already stressful workplace.

VCE understood that even though Commissioner Tierney had previously been General Counsel for the PUC, she was not hired to be a lawyer. The departure of five attorneys to date, with at least two more reportedly leaving by the end of 2018, creates serious challenges for DPS to participate effectively in PUC cases with new attorneys being micro-managed by the Commissioner. While this is not an issue that is in the PUC's area of jurisdiction, it is a problem that the PUC could address in the next legislative session where the PUC could bring their experience with the effectiveness of DPS as a public advocate to lawmakers. Again we point to the systemic nature of the problem, and are not singling out Commissioner Tierney exclusively. DPS is conflicted, subject to political pressure, and the public interest is not being served under the current system. The PUC has a role to play in the upcoming legislative session in guiding lawmakers in how best to reform the system.

Larkin & Associates

While it is the DPS Commissioner's rightful choice, VCE is concerned to learn that Larkin & Associates was not used in these rate cases. The Larkin reports, and especially the historical knowledge of the author, are (or should be) of great value to Vermont's regulators because of the perspective they bring to the process. It was clear from reviewing Larkin Reports in both GMP and VGS rate cases during the Shumlin administration that far more savings for ratepayers could have been achieved if more of the recommendations of the Larkin consultant were accepted by DPS. VCE recommends that the PUC hire Larkin & Associates without delay to assist the board in a more neutral evaluation in these cases.

The System of Evaluating Rates

VCE does not have the historical knowledge to understand how Vermont got to the point where rates and the issues surrounding them are negotiated between DPS and the regulated utility, and then brought to the PUC for review and approval. VCE appreciates that the PUC has been investigating alternative regulation and other types of regulation. Especially given the changing technologies and the move from large baseload generators to

locally distributed generation, we understand this is an area that is challenging to everyone concerned. However that is not an excuse to pick “winners” that benefit the public relations efforts of the regulated entity while failing to protect ratepayers from associated risks. We support a more robust rate case that places more authority with the PUC and is more transparent to the public.

Our primary concern is the politicization of the process, where DPS is run by the Governor’s office (regardless of who is governor) and the expertise of staff such as Brian Winn is discounted, overruled or terminated. We do not understand why Vermont’s governors are so beholden to the state’s largest utility, which serves the interests of its shareholders. An independent Office of Public Advocacy is a necessary change that can result in a more thorough evaluation of rates, free of political influence.

The Termination of Brian Winn

Sometime in the last two years, the legislature changed the position most recently held by Brian Winn to be “exempt”. Previously the position was protected as “non-exempt” or “classified”. Classified state employees are protected from political influence under the Vermont State Employees labor contract and cannot be fired without notice, due process and evidence of violations of workplace behavior requirements in contract. It would appear that Mr. Winn was summarily dismissed, which smacks of an effort to silence disagreement from the ranks. We do not know why the legislature changed Mr. Winn’s position to unprotected, exempt status. We recommend that the PUC support the legislature changing the position back to classified with the accompanying protections afforded under the state employees contract.

Conclusion

The author of the anonymous letter has provided the public with an important and necessary opportunity to understand more about how our state government interacts with regulated utilities, and how our state agencies operate to protect the public interest. For many years, VCE has been aware of and frustrated by the systemic problems surrounding energy regulation. We understand that there are limits to the PUC’s ability to address some of the problems identified by the anonymous letter’s author. Where the PUC has no authority but the legislature does, we encourage the PUC to be a force in the next legislative session and take action to bring issues to the committees of jurisdiction to support changing the system where necessary.

Respectfully submitted,



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Executive Director