

**STATE OF VERMONT  
PUBLIC SERVICE BOARD**

Docket No. 7466

Investigation in Petition Filed )  
By Vermont Department of Public Service )  
Re: Energy Efficiency Utility Structure )

**SURREBUTTAL TESTIMONY OF JOHN J. PLUNKETT  
ON BEHALF OF  
THE VERMONT ENERGY INVESTMENT CORPORATION**

**SEPTEMBER 9, 2009**

*Summary:* Plunkett replies to surrebuttal testimony submitted by DPS witness Poor opposing the 12-year Order of Appointment and insisting on an Overall Performance Assessment prior to the initial appointment of VEIC and BED as Vermont's Energy Efficiency Utilities. Plunkett's testimony also refutes the Department's arguments against recognizing the favorable results in his performance comparison of VEIC with other efficiency portfolio administrators in the region

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18 **LIST OF EXHIBITS**

19 **Exhibit VEIC JJP-3: Graphical depiction comparing current contract**  
20 **structure with VEIC and DPS proposals**  
21 **Exhibit VEIC JJP-4: Data workbook for Exhibit VEIC JJP-2**

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**I. Introduction**

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- Q. Are you the same John Plunkett who filed rebuttal testimony in this case on July 31, 2009?**
- A. Yes, I am.
- Q. What is the purpose of your surrebuttal testimony?**
- A. My testimony responds to the surrebuttal testimony filed by Walter “TJ” Poor on behalf of the Department of Public Service (DPS) on August 28, 2009. I address Mr. Poor’s characterization of my rebuttal testimony on: (a) the term of appointment for the EEU’s, and (b) the performance of VEIC in delivering energy efficiency savings, compared to the performance of other efficiency portfolio administrators in the Northeast.

## II. Term of Appointment

1  
2 **Q. DPS witness Poor states that you have mischaracterized the Department's**  
3 **proposal for an Order of Appointment (Poor Surrebuttal Page 4, Line 18). Is**  
4 **he correct?**

5 A. No, he is not. The DPS proposal is functionally a 3-year Order of Appointment. I  
6 have prepared Exhibit VEIC JJP-3 to depict graphically the close similarities  
7 between the DPS proposal and the current contract model, and to elucidate the  
8 differences between the DPS proposal and the 12-year Order of Appointment  
9 recommended by VEIC.

10 These images portray the timing of the review cycles of all three scenarios. It is  
11 indisputable that under the DPS proposal, a performance review [Preliminary  
12 Performance Review (PPR) and / or Overall Performance Assessment (OPA)], the  
13 result of which could be replacement of the incumbent appointee, is never more  
14 than three years away – i.e., exactly the same as the status quo. The “rolling” nature  
15 of the DPS proposal makes the second half of the so-called 6-year Order of  
16 Appointment purely fictitious, since every three years a review process is  
17 undertaken that either replaces the incumbent or renews the Order of Appointment.  
18 Under the VEIC proposal, the incumbent has at least six years of certainty at the  
19 outset of the appointment or upon the completion of an OPA.

20 Both the DPS and VEIC proposals allow any party to petition the Board for an  
21 Overall Performance Assessment at any time. Insisting on an automatic triennial  
22 performance assessment in addition to this provision is a tacit admission that the  
23 DPS might not exercise this authority unless “mandated to do so” (Poor Direct  
24 Testimony, Page 17, Line 27). This hesitancy on the part of the DPS to exercise the

1 authority it already possesses does not justify creating what is demonstrably a more  
2 burdensome and costly performance review process that leaves the shortcomings of  
3 the current EEU contract structure in place.

4 **Q. Mr. Poor asserts that a 12-year Order of Appointment “creates a different set**  
5 **of concerns related to oversight and accountability of an incumbent” (Poor**  
6 **Surrebuttal, Page 1, Line 22) that are better addressed by the DPS proposal.**  
7 **Do you agree?**

8 A. No, not at all. Mr. Poor offers no substantiation in his surrebuttal testimony in  
9 support of this claim. The VEIC proposal for a 12-year Order of Appointment in  
10 fact provides for a thorough performance assessment every six years, and confers  
11 on any party the right to petition the Board at any time to open an Overall  
12 Performance Assessment that could result in removal of the incumbent for poor  
13 performance.

14 **Q. Mr. Poor claims that the DPS proposal for a shorter-term Order of**  
15 **Appointment better addresses the issue of EEU participation in the Forward**  
16 **Capacity Market because it “provides a structure that will not need significant**  
17 **change after an initial appointment and addresses challenges in a flexible but**  
18 **permanent manner” (Poor Surrebuttal, Page 2, Lines 1-3). Is this true?**

19 A. No. Mr. Poor fails to demonstrate why his proposal, as opposed to that of VEIC or  
20 any other party, would either be more or less likely to “need significant change after  
21 an initial appointment.” Any structure that the Board chooses initially to adopt as a  
22 result of this proceeding is equally subject to change or revision through subsequent  
23 Board action. In any case, it is unclear how Mr. Poor’s assertion addresses the  
24 issues of EEU participation in the Forward Capacity Market or EEU participation in  
25 the 20-year planning process. As Mr. Poor notes, “while the concerns pertaining to

1 long term planning and bidding resources into the Forward Capacity Market are  
2 reduced in frequency by a long term appointment, they are not eliminated.” (Poor  
3 Surrebuttal, Page 1, Line 26). Based upon this premise, it is illogical to conclude  
4 that the DPS proposal for more frequent review and reconsideration of appointment  
5 would better address these concerns than would a 12-year Order of Appointment.

6 **Q. Is DPS witness Mr. Poor correct in his assertion that the shorter Order of**  
7 **Appointment he recommends would not result in increased costs to**  
8 **ratepayers? (Poor Surrebuttal, Page 5, Line 11)**

9 A. No. The claim that a PPR might in theory cost “significantly less” than an OPA  
10 ignores the fact that the DPS proposal presumes that an OPA will be conducted  
11 every three years, as opposed to every six years as suggested by VEIC and other  
12 parties. It also ignores the fact that DPS cannot know the cost of a PPR because it  
13 has not defined either its scope or methodology (Mr. Poor himself concedes the  
14 PPR is “defined broadly,” Poor Surrebuttal, Page 9, Line 1), and insists it cannot do  
15 so without the assistance of “expert consultants” (Poor Surrebuttal, Page 9, Line 1).  
16 It is reasonable to conclude that the DPS default presumption of triennial PPRs and  
17 / or OPAs will result in costs that exceed those of VEIC’s proposal, and could be  
18 twice as high or more. Mr. Poor’s defense of these potentially higher costs, that  
19 “For any Overall Performance Assessment that is deemed necessary, all costs would  
20 be reasonable and necessary” (Poor Surrebuttal, Page 5, Lines 12-14) is purely  
21 tautological, suggesting that any review by the DPS provides value for money  
22 spent, no matter how much it costs.

23 **Q. What is wrong with Mr. Poor’s logic in disputing your finding that the DPS**  
24 **proposal could essentially double the cost of performance reviews?**

1 A. Mr. Poor fails to properly characterize the potential outcomes and their relative  
2 probabilities when he explains the different scenarios, with and without a PPR.  
3 Specifically, he dwells on the scenario in which the PPR concludes that no OPA is  
4 necessary. However, there is also the possibility that the PPR will conclude that an  
5 OPA is indeed necessary. From this possible outcome emerge two alternatives: (1)  
6 the OPA finds the incumbent's performance satisfactory and concludes that it  
7 should be retained, after all; and (2) the OPA concludes that a solicitation should be  
8 conducted to seek proposals from potential new providers. Further, that potentiality  
9 begets yet another branch in the decision tree: The solicitation could find that the  
10 incumbent offers superior performance to alternative providers, after all.

11 The inescapable conclusion is that the DPS proposal imposes additional  
12 performance review costs that would surpass those of the current model and far  
13 exceed those of the 12-year appointment model recommended by VEIC. These  
14 additional costs could conceivably be justified if there was a reasonable likelihood  
15 that the DPS proposal would result in a commensurate increase in accountability  
16 and performance by the appointee, and stronger protection for ratepayers. Nowhere  
17 in any of its testimony has the DPS demonstrated this justification, or that there is a  
18 basis for this likelihood to exist.

19 **Q. Do you agree with Mr. Poor's assertion that the end of the 12-year Order of**  
20 **Appointment proposal offered by VEIC "has little more stability than under**  
21 **the current three year contract cycle" because it maintains a "presumption"**  
22 **that the Board would initiate a competitive bidding process at the end of the**  
23 **contract cycle? (Poor Surrebuttal, Page 10, Line 5.)**

24 A. Absolutely not. I believe Mr. Poor fails to understand the end-of-cycle provisions  
25 proposed by VEIC for the 12-year Order of Appointment. The 12-year proposal

1 calls for the Board to retain “considerable flexibility to undertake a process that  
2 takes into account the performance of the incumbent contractor and that considers  
3 the costs and benefits of different appointment processes ... that could range from  
4 re-appointment of the incumbent contractor to a solicitation of interest, to a Request  
5 for Qualifications to a full Request for Proposals with a competitive bidding  
6 process” (Hamilton Direct Testimony, Page 28, Lines 17-23). As Mr. Hamilton  
7 notes in his testimony, this reflects the end-of-cycle process suggested in the Draft  
8 of a Recommendation for a New Energy Efficiency Utility Structure (“Draft  
9 Recommendation”): “The Board shall retain the option to defer the implementation  
10 of a competitive solicitation if it finds, after notice and opportunity for comment  
11 and through application of established criteria (to be determined), that the benefits  
12 in performance likely to result from the process are not worth the cost of going to  
13 the market at the specified time” (Hamilton Direct Testimony, Page 28, Line 23 –  
14 Page 29, Line 28). Mr. Poor has incorrectly concluded that there is something about  
15 a 12-year Order of Appointment, compared to the DPS proposal for a shorter-term  
16 appointment, that would increase the likelihood of competitive bidding. The Board  
17 can choose to pursue competitive bidding at any time, regardless of the term of  
18 appointment.

### 19 **III. Overall Performance Assessment Prior** 20 **to Initial Order of Appointment**

21 **Q. Do you agree with Mr. Poor that an initial OPA is required to determine if the**  
22 **incumbent contractors should be granted the initial Orders of Appointment?**

23 A. No. Mr. Poor continues to offer contradictory testimony on this point. On the one  
24 hand, he testifies that an initial OPA is needed to ensure the performance of the

1 incumbents compared to their peers, and to establish a benchmark for future  
2 reviews of the appointee (Poor Surrebuttal, Page 5, Line 29). On the other hand, he  
3 “supports a presumption that they [VEIC and the Burlington Electric Department]  
4 be the initial appointees” (Poor Surrebuttal, Page 6, Line 15). As has been  
5 previously noted in both direct and rebuttal testimony, VEIC has displayed  
6 outstanding performance, both in relation to its goals as negotiated with the Board  
7 and the DPS (Exhibit VEIC BH-2), and in comparison to its peers (Exhibit VEIC  
8 JJP-2, Exhibit CLF-WS-1). Mr. Poor, on behalf of the DPS, rejects my performance  
9 comparisons, as well as independent assessments of VEIC’s performance  
10 benchmarked with other jurisdictions. For example, the *2008 State Energy*  
11 *Efficiency Scorecard* (American Council for an Energy-Efficient Economy,  
12 ACEEE), showed that Vermont topped other leading states by a significant margin  
13 in the performance of “Efficiency Programs.”<sup>1</sup>

14 **Q. Do you agree with Mr. Poor that an initial OPA is a desirable method for**  
15 **evaluating the performance of the incumbent contractors, compared to their**  
16 **peers? (Poor Surrebuttal, Page 7, Line 12.)**

17 A. No. The DPS is provided with an evaluation budget that for 2009 alone totals  
18 \$708,000. Nothing prevents the Department from accessing these resources to  
19 benchmark the performance of the incumbent contractor(s), compared with peer  
20 organizations, now or in the future. Indeed, the DPS could have chosen to  
21 undertake such an evaluation at any time in the past nine years. A Board-led initial  
22 OPA process now would be a time-consuming and expensive distraction and  
23 diversion from more pressing and productive endeavors for all parties involved.

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<sup>1</sup> *The 2008 State Energy Efficiency Scorecard*, American Council for an Energy-Efficient Economy, October 2008. [http://aceee.org/pubs/e086\\_es.pdf](http://aceee.org/pubs/e086_es.pdf).

1 Given the overwhelming evidence of VEIC's superior performance, judged both in  
2 terms of successfully meeting past contract goals and in comparison to its regional  
3 peers, it is highly unlikely that the initial OPA recommended by the Department  
4 would result in a decision to award the initial appointment to any entities other than  
5 VEIC and BED.

6 **Q. Is there any merit to Mr. Poor's testimony that your peer-to-peer comparison**  
7 **of Vermont's EEU performance and costs with neighboring states, "rather**  
8 **than supporting VEIC's position, demonstrates why the Department is correct**  
9 **in asserting that an independent performance review is necessary prior to an**  
10 **initial appointment"? (Poor Surrebuttal, Page 9, Lines 11-13)?**

11 **A.** None whatsoever. First, the data sources from which I drew my conclusions were  
12 also available to the DPS and any other party at any time, upon request, as an  
13 electronic Microsoft Excel workbook. I attach that information now to my  
14 testimony here (Exhibit VEIC JJP-4). The underlying data were collected,  
15 reviewed, and applied consistently in the calculations under my direction, and are  
16 cross-referenced to the source documents.

17 Second, Mr. Poor's assertions regarding discrepancies between Vermont's and  
18 NSTAR's programs are irrelevant and baffling. The inclusion of fuel-oil efficiency  
19 measures in NSTAR programs, contrary to Mr. Poor's testimony, in no way  
20 invalidates their comparability with Vermont's. In fact, NSTAR's electric and  
21 natural gas efficiency programs are well integrated, a practice that is widely  
22 considered to be most effective and which is the same approach being pursued more  
23 aggressively in Vermont. Moreover, NSTAR's annual reports on its spending for  
24 NSTAR Electric records electric savings, not fuel savings. The reports do not  
25 reflect any evidence that NSTAR pays incentives for fuel oil efficiency. Even if the

1 cost differences Mr. Poor is so concerned about did exist, they would be  
2 insignificant, compared to the variance in other characteristics of the two  
3 jurisdictions.

4 Third, Mr. Poor's assertions regarding different budget-setting approaches in  
5 Vermont and Massachusetts have no bearing either on the data or their applicability  
6 to or comparability with Vermont's. NSTAR's budgets are set by Massachusetts  
7 regulators, subject to legislative requirements. The same is true of Vermont's  
8 budget. The fact that Vermont's budget is a larger share of electric revenues is  
9 simply a consequence of decisions by the Vermont Legislature and regulators to  
10 pursue deeper savings than what their counterparts chose to do in Massachusetts.

11 Finally, Mr. Poor is wrong to claim that depth of savings is an invalid indicator of  
12 portfolio administrator performance. That indicator compares the amount of annual  
13 incremental efficiency savings with the annual electric energy sales. It is, in fact,  
14 an unambiguous indicator of how much efficiency programs save: the higher, the  
15 better. The correlation between efficiency spending and savings levels achieved is  
16 also clear-cut: the lower, the better—all else being equal. What Mr. Poor's  
17 testimony fails to acknowledge is that the two indicators need to be examined  
18 simultaneously in order to draw conclusions about relative performance among  
19 program administrators.

20 It is inappropriate for the DPS not to recognize what is obvious from Exhibit  
21 VEIC JJP-2: VEIC is the unequivocal regional leader in achieving deep savings—  
22 savings that have been verified by the DPS. This exhibit also establishes that  
23 Vermont's cost per annual kWh saved was in line with the utilities whose savings  
24 depths were closest to those of Vermont. This is conclusive evidence that VEIC can  
25 be counted on to continue to surpass the performance of neighboring energy

1 efficiency portfolio administrators. These data satisfy the two purposes Mr. Poor  
2 asserts an initial OPA would perform. They: (1) “ensure that the performance of the  
3 incumbent is excellent in relation to its peers,” and “(2) provide a benchmark for  
4 future reviews of the appointee” (Poor Surrebuttal, Page 5, Line 29 – Page 6, Line  
5 1). Consequently, this evidence proves that the pre-appointment initial OPA  
6 recommended by the DPS is unnecessary.

7 **Q. Does this conclude your reply testimony?**

8 A. Yes, it does.