

STATE OF VERMONT
DEPARTMENT OF PUBLIC SERVICE

IN RE: Various Forms of Ratepayer
Advocate Offices

Public Hearing held before the Vermont
Department of Public Service, at the Rutland
Regional Medical Center, 160 Allen St.,
Rutland, Vermont, on October 20, 2015,
beginning at 6:36 p.m.

PRESENT:

DPS Staff: Wayne Jortner & Jon Copans

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1 MR. WAYNE JORTNER: Good
2 evening everybody. As you probably know, this
3 is a hearing to take public input with respect
4 to a report to be done by the Department of
5 Public Service to two legislative committees
6 regarding the analysis of the structure of the
7 Public Advocacy Division of the Department of
8 Public Service, and in addition to these
9 couple hearings, we're interviewing experts in
10 utility regulation and utilities and consumer
11 advocates, and we're just trying to get as
12 much public input as we can to inform the
13 report that we're going to be drafting to be
14 submitted to the legislature on December 15th.

15 The public advocate, the chief of the
16 Public Advocacy Division of the department was
17 on his way here tonight and got some bad news
18 about an ill family member and had to turn
19 around and go to Dartmouth-Hitchcock Medical
20 Center instead of this medical center. So, he
21 sends his regrets that he couldn't be here
22 tonight. And this is Jon Copans. He is the
23 Deputy Commissioner of the department, and I'm
24 Wayne Jortner. I'm a staff attorney with the
25 department.

1 Is everybody here planning to speak
2 tonight? Everybody? Okay. So, there's a
3 sign-up sheet but, mainly, I just need to know
4 how many so we can allocate the right number
5 of minutes as a limit so we don't -- so we
6 give everybody a chance to speak. So, we have
7 -- this is higher math. We have eight people
8 who are going to speak.

9 MR. JON COPANS: Nine.

10 MR. WAYNE JORTNER: Nine.

11 MR. JON COPANS: Yeah.

12 MR. WAYNE JORTNER: Okay. So that
13 leaves about ten minutes per person. So I ask
14 you to try to limit your comments to about ten
15 minutes per person, and please state your name
16 and speak clearly. And we have a court
17 reporter who is going to be recording
18 everything that's said tonight. And we're
19 going to certainly consider everything that's
20 said tonight and possibly incorporate ideas or
21 thoughts into the report that we draft.

22 Okay. I'll give, I'll give a little bit
23 more of a summary of what this is all about,
24 then we can get started. So, one of the
25 things that makes this a difficult task is

1 that it asks us to compare the structure of
2 the public advocate function in Vermont to
3 that of other states, and there's about 66
4 different models, all of them are different
5 from one another. 42 out of the 50 states
6 have an official public advocate that
7 represents ratepayers before a public service
8 commission or a public utilities commission
9 and federal agencies and courts. So, it is
10 sort of like a lawyer for the general class of
11 ratepayers in each state; in all but about six
12 or seven states there is such a function. A
13 few states don't have that, and ones that
14 don't sometimes have appointed
15 representatives, could be members of the bar;
16 could be the attorney general that intervene
17 in individual cases to represent ratepayers'
18 interests.

19 Vermont is somewhat of an unusual example
20 because we have the Department of Public
21 Service which has a number of functions
22 besides public advocacy. In some states the
23 public advocate is a single-mission,
24 freestanding public advocate with no other
25 concern, but in Vermont the Department

1 represents the public interest in utility
2 cases before the board; before federal
3 agencies; and before the courts, but, in
4 addition, we provide long-range planning for
5 the state's energy and telecommunications
6 needs through the Vermont Electric Plan and
7 the Comprehensive Energy Plan.

8 We ensure that all Vermonters share the
9 benefits of modern communications through the
10 Vermont Telecommunications Plan. We actually
11 get involved in contracting for deployment of
12 fiber optics to promote growth band throughout
13 the state, much more of a hands-on operation
14 than most state public advocates would be
15 engaged in. We promote energy efficiency. We
16 administer federal energy programs. We
17 resolve utility consumer complaints. We
18 inform the public about utility-related
19 matters. And, lastly, we make and administer
20 contracts for the purchase of power on behalf
21 of the state which happens on occasion which
22 is probably one of the more unusual missions
23 of a department like ours.

24 So, comparing that to other states that
25 have very different types of ratepayer

1 advocate offices will be a challenge, but
2 we're going to go through all of the different
3 structures in our report and see if we can
4 draw some conclusions about what works best,
5 what's most effective, where the risks lie
6 with each type of structure.

7 There are certainly positions that this
8 department has taken that some would disagree
9 with, and we're not here tonight, you know, to
10 debate whether we were always taking the
11 correct position. We're here more to analyze
12 if the structure of our department is
13 something that could be improved in order to
14 better represent ratepayers' interest or the
15 public interest.

16 So, obviously, when we represent the
17 public interest we can't interview every
18 member of the public. We have to try to make
19 a decision about what truly is in the, in the
20 interest of ratepayers, and the interest of
21 the public which is a little bit more broad
22 than ratepayers per se. So, one of the
23 questions --

24 COLTON FRANCIS: I have a
25 question. So, I just want to restate that

1 you're here to represent the public, which is
2 us here, and the ratepayers. I don't see any
3 ratepayers in here and we're in Rutland. I'm
4 Colton Francis. I live here in Rutland City.

5 MR. WAYNE JORTNER: Okay. Again,
6 I was going to give everybody a chance to
7 speak on their own.

8 MR. COLTON FRANCIS: Yeah.

9 MR. WAYNE JORTNER: If you want to
10 speak right now, I suppose you could finish.

11 MR. COLTON FRANCIS: No, I was
12 just clarifying some things that you were
13 saying, make sure that everybody --

14 MR. WAYNE JORTNER: Okay. Yeah,
15 just about everybody in the state is a
16 ratepayer because everybody has electric
17 service or telephone service or gas and water.

18 MR. COLTON FRANCIS: Okay.

19 MR. WAYNE JORTNER: Yeah, those
20 are the four things for utilities that make up
21 the bulk of our ratepayer interest that we try
22 to represent.

23 MR. COLTON FRANCIS: Okay.

24 MR. WAYNE JORTNER: But we also
25 represent the public in somewhat broader

1 respects than simply rates and that could
2 include encouraging energy efficiency and
3 renewable energy and long-term benefits versus
4 short-term benefits. I mean, we focus on the
5 lowest possible rates that are consistent with
6 the highest level of service quality and
7 that's sort of a core mission of the public
8 advocate but there is also other issues at
9 stake as well for the more -- for the broader
10 public interest.

11 MR. COLTON FRANCIS: Okay. Thank
12 you.

13 MR. WAYNE JORTNER: Sure. So
14 again, I'm just saying that this hearing isn't
15 about substantive positions that the
16 department has taken. Those can be debated
17 forever. Some, you know, in retrospect, maybe
18 we made the right decision; maybe we could
19 have made a different decision on what
20 position to take in various cases but we're
21 looking, we're looking at -- we're forward
22 looking in terms of this report. We want to
23 know what we could change structurally that
24 might make the public advocacy function more
25 effective or less susceptible to any risks

1 that anybody might identify that would make us
2 less effective.

3 So, we could start now. Again, you know,
4 comments should be ten minutes or less just so
5 everybody has a chance to speak, and we will
6 be recording everything and certainly
7 considering everything that's said tonight.

8 MR. JON COPANS: And can I just
9 say for the board before we get started --

10 MR. WAYNE JORTNER: Yeah, go
11 ahead.

12 MR. JON COPANS: So, my name is
13 Jon Copans. I'm the Deputy Commissioner with
14 the Department of Public Service. I started a
15 couple of months ago, so I'm just still
16 getting my feet under me there. This really
17 is about listening to you all. We're here to
18 gather feedback.

19 So, I'm not going to add much to what
20 Wayne said other than to say, things can be
21 busy with state government. Public Service
22 Department, we have a significant workload,
23 and what this legislative report really
24 provides us an opportunity to do is to step
25 away from that day-to-day work and to think

1 structurally about: What are we doing as a
2 department? How do we do that? And are there
3 ways that we can improve the work that we do?
4 And, really, it's your participation here
5 tonight; it's the conversations that we're
6 having with other Vermonters, other
7 stakeholders that will make us a stronger
8 department moving forward.

9 So, I really just want to thank you for
10 taking time. I know we're all busy, but the
11 fact that you've come out tonight and
12 participated, decided to participate in this
13 conversation is much appreciated. So, I just
14 want to thank you for coming out and look
15 forward to listening here.

16 MR. WAYNE JORTNER: And that was
17 going to be my first comment, to thank you all
18 for coming out tonight, because I know that it
19 is an effort and we really appreciate it as
20 Jon just said. The one, the one -- I might
21 take one more minute just to read exactly what
22 the legislature asked us to do just to get --
23 you'll hear it from the source and -- rather
24 than whatever my summary is.

25 So, there was an energy bill that sort of

1 had a broader purpose but inserted in this
2 energy bill called Act 56 is a section called:
3 "Report: Ratepayer Advocate Office," and it
4 states that the commission of -- the
5 commissioner of public service -- and, by the
6 way, the Commissioner is Chris Recchia. He
7 was not able to be here tonight, but he's the
8 commissioner of public service who is
9 ultimately responsible for this report and
10 everything else that we do at the Department.

11 "The commissioner of public service shall
12 evaluate the pros and cons of various forms of
13 ratepayer advocate offices and report on or
14 before December 15, 2015 to the House
15 Committee on Commerce and Economic Development
16 and the Senate Committee on finance with any
17 recommendations on how to improve the
18 structure and effectiveness of the Division of
19 Public Advocacy within the Department of
20 Public Service."

21 And one other, one additional sentence
22 I'll read is under "Scope." "The commissioner
23 shall study various forms of ratepayer
24 advocacy offices and assess them in terms of,
25 one: Their structure and reporting

1 requirements. Two: Whether and how their
2 independence is ensured through the structure
3 and the budget. Three: Their effectiveness
4 in representing residential ratepayers in
5 regulatory proceedings. And four: How
6 ratepayer benefits and specifically rate
7 savings vary with differing ratepayer advocate
8 structures.

9 Okay. So, that's what we're asked to do
10 and that's what we're asking your help in
11 trying to figure out.

12 MR. CARL SCOTT: Kind of as a
13 preliminary item, could you please describe
14 the structure and the reporting requirements?
15 And if you already did that, I missed it, I'm
16 sorry, but if could you describe the structure
17 of the department and who you report to; who,
18 you know, you answer to.

19 THE REPORTER: Your name, sir?

20 MR. CARL SCOTT: My name is Carl
21 Scott, sorry.

22 THE REPORTER: That's okay.

23 MR. WAYNE JORTNER: Well, we file
24 annual reports. We report to the governor on
25 a continual basis. Do you want to take any of

1 that?

2 MR. JON COPANS: Yeah.

3 Ultimately, the department is made up of five
4 or six divisions. The Public Advocacy
5 Division is headed up by Geoff Commons who is
6 our public advocate, so, that is one division
7 within the Department of Public Service. That
8 public advocate answers to the commissioner,
9 Chris Recchia, and then, ultimately, the
10 commissioner answers to the governor, but I
11 think that's probably the easiest way to
12 explain it.

13 MR. CARL SCOTT: Thank you.

14 MR. WAYNE JORTNER: So,
15 essentially, the commissioner serves at the
16 pleasure of the governor and the chief public
17 advocate, Geoff Commons, serves at the
18 pleasure of the commissioner. So, the
19 governor appoints the commissioner, and the
20 commissioner hires the public advocate.

21 MR. CHARLES LARKIN: If I could
22 throw one point in, Charles Larkin. The whole
23 department is a function of an administrative
24 division. It's not legislative or judicial.
25 It's right under the governor.

1 MR. JON COPANS: The
2 administration, it's absolutely.

3 MR. CARL SCOTT: Under the
4 executive branch.

5 MR. CHARLES LARKIN: Yes, thank
6 you, that's what I was trying to say.

7 MR. JON COPANS: So, if there's no
8 other clarifying questions, what we -- I mean,
9 we could do this two ways; we could go around
10 the room or we could just read off names in
11 order and then people can provide their
12 comments. Does that, does that sound good,
13 folks?

14 MR. CARL SCOTT: Sure.

15 MR. WAYNE JORTNER: Maybe we
16 should read off each name so we know that
17 everybody that signed in gets a chance to --

18 MR. JON COPANS: All right. I'll
19 do my, I'll do my best to do that. Kathleen
20 Guinness.

21 MS. KATHLEEN GUINNESS: Guinness.

22 MR. JON COPANS: All right.

23 MS. KATHLEEN GUINNESS: Okay.

24 Well, my understanding -- and I appreciate
25 that you are here tonight as well. I think

1 it's great. I think one of my concerns at
2 this point about the advocacy is that I have
3 never been to one of these meetings before. I
4 wouldn't have been to this one tonight except
5 that a friend told me about it via the
6 internet. I didn't see it in the paper.

7 I don't know how these advocacy meetings
8 are advertised. I don't know how locations
9 are targeted. I don't know why you came to
10 Rutland. And I understand you're going to one
11 other town in Vermont, and I don't know how
12 those were chosen, and I don't know if we here
13 and they there are representative of
14 ratepayers.

15 So, those are some of my concerns. It's
16 hard to be a voice when you don't know how to
17 be a voice; when you don't know where to go or
18 who to talk to or, whatnot. So, that's one
19 thing that's on my mind. And accessibility,
20 I'm not certain that this is necessarily an
21 accessible situation; it is for me, but, you
22 know, maybe more people would be here in the
23 afternoon, I don't know. I just think if you
24 come to Rutland, perhaps you need to come
25 twice or, whatever, something like that. I

1 have some concerns about those sorts of
2 things.

3 MR. COLTON FRANCIS: There is a
4 lot of people in Rutland.

5 MS. KATHLEEN GUINNESS: Yeah.
6 And, to me, the whole structure is totally
7 mysterious. It's secretive to me. I -- you
8 know, you're opening up the door to tell us
9 about it which is wonderful, I mean, shoot,
10 but how are other people going to find out
11 about this? So, that's certainly under ten
12 minutes but --

13 MR. WAYNE JORTNER: Yeah, and
14 those --

15 MS. KATHLEEN GUINNESS: And, also,
16 I understand that Chris Recchia has an
17 important job, but he's also has made some
18 statements that I don't -- I personally didn't
19 have any input into that statement, and I
20 don't know how he gets the power or authority
21 to make the statements that he does. I don't
22 know who he's speaking for when he makes these
23 statements. Okay. Thank you.

24 MR. WAYNE JORTNER: Thank you.

25 MR. JON COPANS: You know, one

1 additional point of clarification is, I think
2 this won't really be an interplay, a back and
3 forth. We're really here to gather feedback.
4 So, it can be a little awkward for us, because
5 we're just listening at this point.

6 MS. KATHLEEN GUINNESS: Okay,
7 yeah.

8 MR. COPANS: So, just keep that in
9 mind as you give your comments, --

10 MS. KATHLEEN GUINNESS: Okay.

11 MR. JON COPANS: -- you won't get
12 responses from us because we're really
13 gathering feedback, so --

14 MS. KATHLEEN GUINNESS: Okay.

15 MR. JON COPANS: Thank you.

16 MS. KATHLEEN GUINNESS: Thank you
17 for listening.

18 MR. JON COPANS: Thank you.

19 MR. WAYNE JORTNER: And you can
20 call us any other time, and we'd be glad to
21 take the time to speak to you at length just
22 tonight is probably not the best time to have
23 a lot of back-and-forth discussion.

24 MS. KATHLEEN GUINNESS: Okay.

25 Okay. Great.

1 MR. COLTON FRANCIS: Yeah, can I
2 ask a question to you guys?

3 MR. WAYNE JORTNER: Sure.

4 MR. COLTON FRANCIS: How do we
5 plan to engage each other in the future
6 regarding this utility project?

7 MR. WAYNE JORTNER: Well, you're
8 more than welcome to call us or E-mail us or
9 communicate any way.

10 MR. COLTON FRANCIS: Oh.

11 MR. WAYNE JORTNER: We're -- you
12 know, we're here to serve the public, so we
13 would never decline to speak to any member of
14 the public that wants information.

15 MR. COLTON FRANCIS: Okay.

16 MR. WAYNE JORTNER: Are we --

17 MR. JON COPANS: Well, Colton, I
18 think, is next.

19 MR. WAYNE JORTNER: Okay, yeah.

20 MR. JON COPANS: Yeah.

21 MR. COLTON FRANCIS: Okay. So, I
22 just have a few questions for you guys and the
23 whole room, really. One of those -- and I
24 have some statements. So, the public -- my
25 understanding is that your job is to be truly

1 independent from any utility projects or the
2 public and, so, you guys are supposed to make
3 a decision on your own. And that -- what I
4 understand that also means is, that you're
5 required to abide by certain rules and that
6 these rules -- one of these rules kind of
7 protects the projects that people are blowing
8 the whistle on so that you guys feel safe to
9 voice your concerns. And, so, that's one
10 thing I have.

11 And another question that I have, or the
12 questions that I have are: Why are you guys
13 here in Rutland? There is nothing happening
14 here right now. And how do we plan to engage
15 the majority of the public when there's only
16 -- I don't -- I live here in Rutland but I
17 don't know who else does, and I'm concerned
18 about my neighbors. I'm concerned about the
19 children who live on the streets. I'm
20 concerned about most people. Well, everybody.
21 And I'm just wondering how you guys plan to
22 engage them and how this is going to be
23 benefiting all of us as a whole and as a
24 community. As people and as Vermonters, how
25 is this going to be benefiting us? And not

1 just monetarily, but how is this going to be
2 affecting us ecologically? And how is this
3 going to be affecting us like -- if we're
4 putting such a large impact on the land, how
5 is that affecting us emotionally?

6 And, so, these are all concerns that I
7 have. And -- yeah, and another thing is, if
8 there are groups of people intervening, my
9 understanding is, that we are supposed to all
10 be represented. And you said that fellow,
11 Geoff Commons, you said that he was the
12 public's representative. I'm part of the
13 public here, I've never met this man. And he
14 is speaking, he's my voice, and he is not
15 here, and I'm a bit disappointed in that. So,
16 that's what Colton has to say.

17 MR. WAYNE JORTNER: Thank you.
18 And, as I said, he was literally on his way
19 tonight.

20 MR. COLTON FRANCIS: Oh. Oh,
21 right. I'm sorry, I didn't realize --

22 MR. WAYNE JORTNER: And he had a
23 tragedy in his family and had to go elsewhere.

24 MR. COLTON FRANCIS: Yeah.

25 UNIDENTIFIED SPEAKER: Geoff is

1 coming?

2 MR. WAYNE JORTNER: He was coming
3 but he can't be here.

4 UNIDENTIFIED SPEAKER: What
5 happened?

6 MR. WAYNE JORTNER: He had a
7 medical emergency in his family.

8 MR. JON COPANS: Charles Larkin if
9 I'm getting that correctly.

10 MR. CHARLES LARKIN: Right here.
11 My name is Charles Larkin, Middlesex, Vermont,
12 citizen, right next-door to Montpelier. I
13 worked for the Department of Public Service
14 since 1969 when I joined the department. And,
15 among other things, I handled electrical
16 consumer complaints. In '71 I became the
17 first chief of the Consumer Affairs Division
18 and I handled telephone, cable, gas, water.

19 In '73 I was assigned the duty of
20 telecommunications engineer, and I just
21 handled telephone and cable cases. I created
22 rules and regulations consistent between all
23 of the cable companies. When I first got
24 here, they were just like hitting my miss,
25 whichever cable company dreams up something.

1 I created the first pole assessment rules.

2 The line extension, the cable line
3 extension rule, I wrote that; the original
4 one, not the present one which is an abortion.
5 It ruins -- the consumers have no opportunity
6 to really bid anything. Under my rule the
7 company had to make surveys of all of the
8 territory beyond their system to see if they
9 met certain minimum number of homes per mile.
10 If they did, they had to build the line.
11 Today, they don't do anything unless the
12 consumers gather together and create the
13 pressure. It's never going to happen, hardly
14 ever. And I also functioned as the hearing
15 officer for -- I'll use the word "minor."
16 They weren't minor to the customers, but they
17 were small in size. And I would hear
18 testimony and write proposed findings for the
19 board responses.

20 I'm here to give my view of what I think
21 is the Department of Public Service diminished
22 advocacy role on the public behalf. The role
23 has been blurred since I was there. The last
24 four years they started changing the roles,
25 and I was marginalized for four years and then

1 voluntarily left. But since then it seemed to
2 get more blurry. The problem -- also, those
3 last four years the only thing I did, except
4 to rubber stamp requests for different rate
5 changes and rule changes by the telephone
6 company, was just to sit there and watch.

7 The DPS is now more an advocate of the
8 utilities than of the consumers. I have heard
9 it said that the governor said, and later on
10 it got down to, I guess, the consumer -- the
11 Public Service Department Commissioner, the
12 department was too much leaning toward the
13 consumers and have to give the utilities a
14 fair shot. Well, that's true, but not for the
15 department. The department is defined as the
16 public advocate and ratepayers' money pays
17 their salary.

18 UNIDENTIFIED SPEAKER: Amen.

19 MR. CHARLES LARKIN: The utility
20 gets ratepayers' money, and it hires good
21 attorneys and engineers and, whatever, and the
22 two of them coming in in a biased but not
23 prejudice manner, I hope, before the board,
24 and the board weighs their ideas and thoughts
25 and needs and tries to come up with a balanced

1 role, but it's nothing, nothing to do with the
2 Department of Public Service. They should not
3 be testifying in behalf of a utility and that
4 brings me to all of these agreements that they
5 signed.

6 UNIDENTIFIED SPEAKER: Yes.

7 ATTORNEY CHARLES LARKIN: How can
8 you sign an agreement and go before the board
9 and testify in tandem with the utility? There
10 should be a public advocate, a public advocate
11 attorney assigned on those cases.

12 One of the biggest ways in which they've
13 -- the department has, the Department of
14 Public Service has failed in its duty is not
15 to write a 10-year plan for 11 years, a
16 10-year telecommunications plan for 11 years.
17 The last one was written in 2004, my last year
18 there, and I never was allowed to participate
19 in that. Part of my marginalization and then
20 leaving.

21 They missed the 2007 plan, it wasn't
22 written. They didn't write the 2010 plan or
23 the 2013 plan. So, legislature got a little
24 upset about that and gave them a directive in
25 one of the acts requiring that they write a

1 plan by September the 1st in '15, 2015.

2 MR. STEPHEN WHITAKER: '14.

3 MR. CHARLES LARKIN: 2014. I
4 always miss it. And they didn't make it,
5 until the end of the year before they made it.
6 It wasn't a 10-year telecommunications plan
7 based upon the statute. It was a public
8 comment -- comment draft which had been used
9 earlier, 2002 and 2004 plans. First a public
10 comment plan, and then using the input from
11 that, a final draft and then on the final
12 draft they conformed to what was requested to
13 do which was to have hearings, I believe four
14 around the state and one before the Joint
15 Senate House Committees.

16 In this case they didn't have a final
17 draft. They took the public draft, adopted
18 hardly any of the comments in it about open
19 access. They said: We don't know what that
20 is. How can you define it and how could you
21 set rates for it? The Public Service Board
22 already had three dockets in which they
23 defined public access and set rates.

24 So, I guess it is able to be done, but the
25 department couldn't seem to figure that out.

1 That plan also said that DSL, the method by
2 the telephone company to get out there and
3 serve you, and cable modems, a method for them
4 to get out and serve you, neither one could
5 possibly do 100 megabits up and down required
6 by 2024, but the plan still supported the
7 continuing expenditures on those kind of
8 infrastructures.

9 So, lacking the plan, every agency in the
10 state did the best it could with what it
11 understood and that's like herding cats, each
12 agency went its own way. We're building
13 competitive lines, competitive infrastructure,
14 renting competitive infrastructure resulting
15 in a lot of money wasted. I'm coming near the
16 end.

17 MR. JON COPANS: Got about
18 two-and-a-half minutes left.

19 MR. CHARLES LARKIN: If I could
20 just turn the page. Do I get time off for
21 that? But the 10-year plan lacks any public
22 input. You didn't have it for all of those
23 years, so you have no input. The public
24 became unknowing about these kind of plans and
25 unknowing about the potential showing up.

1 I attended the plan, the 10-year plan
2 hearing before the VIT, and there were three
3 of us, two from Montpelier, the VIT Center,
4 and one from the VIT Center in St. Albans
5 testified on that plan, three people. Without
6 a plan to tell you what your goals are and
7 your responsibilities, then there is no way
8 you can know what it is you should be
9 advocating for. And my point here is not so
10 much that the structure of the department has
11 got a problem; it worked fully well all of my
12 years there from 1969 until 2000 under a
13 number of different commissioners or different
14 ways of thinking about things, and I think it
15 could work again. The problem is not the
16 structure; it's how it's been perverted into
17 this: We'll have to help a utility as well as
18 the public, that's the problem. You got to
19 get back to your original assignments, your
20 original duties.

21 By the way, in response to you people, the
22 Department of Libraries, I'm told, has a
23 complete list of every hearing. Am I correct
24 on that? I've been told that they have a
25 complete list of every hearing of every agency

1 in the state. So, you can go window shopping
2 there any time you want and get all kinds of
3 things to go to.

4 MS. KATHLEEN GUINNESS: Thank you.

5 MR. CHARLES LARKIN: You're
6 welcome. And I have to agree with you, that
7 there's too much lack of independence from the
8 utilities, too mysterious and too secretive,
9 and those are part of the blurring of
10 everything.

11 So, thank you for your listening to me and
12 my comments.

13 MR. WAYNE JORTNER: Thank you,
14 Mr. Larkin.

15 MR. JON COPANS: Robert Amelang,
16 is that --

17 MR. ROBERT AMELANG: Yes, that's
18 me. I'm Bob Amelang, and, first, let me say
19 thank you for the opportunity to provide
20 comments. I live in Rutland. I'm submitting
21 comments tonight and later by E-mail, and I'm
22 compelled to comment because I believe there
23 are serious problems with the DPS structure.
24 It's seriously flawed. It does not serve
25 Vermont electric and gas customers, and I

1 would echo a lot of the points that you made,
2 Mr. Larkin.

3 It's more of an advocate for the utilities
4 than it is for the customers. And I believe
5 I'm a very informed citizen because I have 27
6 years of experience working for CVPS and later
7 by GMP after the merger where I learned about
8 the negative consequences of the structure. I
9 might add in summary also, that the problems I
10 observed got worse more recently.

11 You mentioned the last four years. I take
12 note that Governor Shumlin started in 2011,
13 and there is no secret that GMP's CEO and
14 Governor Shumlin have close political ties, or
15 they had at one point when he ran for
16 governor. So, I think that's right there a
17 blatant example of how GMP has gotten
18 preferential treatment, and I will enumerate
19 that in more detail.

20 My recommendations are written here. I've
21 got something to hand out but, again, I will
22 send, I will send these in by E-mail, but the
23 Public Advocate Office should be an
24 independent office that is removed from the
25 political pressure to support utility company

1 projects and rate proposals. The Public
2 Advocate Office should also be independently
3 representing, representing the interests of
4 Vermont electric and gas customers so that
5 utility bills are fair and reasonable. I'm
6 using "customer" rather than "ratepayer" here.

7 Public advocates for utility customers
8 should also have technical and legal
9 expertise. They should have a strong track
10 record for independent action and advocacy,
11 and these advocates should also have limited
12 ties with the utilities. And, lastly, the
13 Public Advocate Office should provide a
14 critical and unbiased analysis of the economic
15 impact of state renewable energy policy on
16 electric utility customers, and, also, if
17 needed, an ancillary function that I think you
18 referred to, is that the DPS does other
19 activities such as compute avoided costs that
20 are used to pay for qualifying facility
21 generators. The DPS should do that in a
22 timely fashion. In the past they have not.
23 This goes way back to the 1980s.

24 I would like to give my background. I
25 worked from 1987 to 2013 when I retired for

1 CVPS, and, as mentioned, also for GMP after
2 the merger. I've also worked in my career for
3 consultants where I've done a variety of work
4 which included rate design and cost of
5 service. So, the bulk of my CV work
6 experience was as an internal consultant where
7 I supported various departments and functions
8 including legal rates and finance.

9 As an internal consultant, I heard
10 comments periodically about DPS performance
11 from various CV employees who regularly
12 interacted with the DPS, and this included the
13 vice president over our department who worked
14 regularly on rate cases and other matters.
15 And I also had my own direct experience with
16 DPS, several cases. And then after retirement
17 I have provided assistance to AARP Vermont
18 regarding GMP rate matters, and I also
19 testified in the state house committees and at
20 the PSB on energy matters.

21 As mentioned, the DPS serves at the
22 pleasure of the governor and therein lies the
23 problem. DPS is influenced by the governor's
24 goals, namely, support renewable energy to the
25 utmost and also support the gas pipeline

1 extension. And I believe because of this that
2 that's why GMP has gotten the preferential
3 treatment over CVPS that I've noticed over the
4 years.

5 Now, GMP has considerable political power
6 and influence, particularly, with Governor
7 Shumlin, and I believe that GMP's enthusiastic
8 support of renewable energy results in
9 additional support by the governor and
10 favorable treatment compared to CVPS. Another
11 aspect I'm concerned about is the department
12 is not an unbiased and critical source of
13 information regarding renewable energy which
14 is a major goal of Governor Shumlin. As an
15 example of that, the DPS produced a report in
16 October of 2014 entitled: "Evaluation of Net
17 Metering in Vermont Conducted Pursuant to Act
18 99."

19 I reviewed this report, and I found at
20 least two biased assumptions in there which
21 favor and tend to inflate the value of solar
22 energy. And without getting into too much
23 detail, one of them involves the fact that,
24 over time, as more solar energy is added to
25 the grid, it shifts the peak to later in the

1 day. And the department looked at data that
2 was historical over a long period of time when
3 there wasn't very much solar; some cases,
4 practically zero, and if you look at the
5 historical data it overinflates the value of
6 solar energy and it shows that solar generates
7 -- it shows that the peak occurs early in the
8 day when solar is generating quite high, but
9 what's happening -- and you can already see
10 this in the data; I've done the work myself,
11 the peak is moving later, later in the day.
12 This is also happening and has happened in
13 California where the peak occurs after sunset
14 because of so much solar energy, and the
15 department has ignored that. And I have
16 submitted comments to Asa Hopkins on that.
17 They also exaggerate the value of solar energy
18 regarding -- on the need to, to upgrade the
19 subtransmission distribution system.

20 So, let me just highlight some of the
21 things I noticed in my tenure at CVPS when CV
22 and GMP were separate entities. I worked for
23 this department, but we shared a lot of
24 information and I -- and we would have regular
25 staff meetings where I hear about the rate

1 cases. What I heard over time was, that GMP
2 got favorable treatment. I also noticed that
3 GMP supported renewable energy and CV would
4 speak out about the negative economic impacts
5 of that. I heard numerous times that GMP did
6 not apply tariff provisions consistently like
7 CVPS did. Treatment of executive compensation
8 and bonuses was a big deal in a CV rate case I
9 remember, whereas in contrast, the GMP rate
10 cases where that's not considered.

11 The DPS at one time was very aggressive.
12 If you go back to the '90s in a Hydro-Quebec
13 prudency case where both GMP and CV got
14 severely penalized for that, and I won't go
15 into details from that, but the basic story
16 was, there were alternatives to Hydro-Quebec
17 and both utilities could have exited that
18 contract. We didn't and we were penalized
19 because the alternatives resulted in -- would
20 have resulted in lower costs had we not done
21 that -- had we done that. That brings up
22 another point, as part of that settlement
23 there was a provision inserted whereby the
24 owner or the purchaser of CVPS in a takeover
25 deal or a merger would have to pay 21 million

1 dollars to the customers of CVPS. The way GMP
2 got this done through political influence was
3 to take the 21 million dollars and put it into
4 rate base; in other words, they invested it
5 into certain projects like conservation and
6 the investors of GMP, Gaz Metro that is, get a
7 return on any investment. So, in other words,
8 rates went up because there were more money
9 collected on that 21 million dollars sitting
10 in rate base which is investment.

11 So, I guess my time is up here. If I can
12 beg --

13 MR. JON COPANS: It is.

14 MR. ROBERT AMELANG: -- a few more
15 minutes since others have gone under, I would
16 appreciate that.

17 MR. JON COPANS: What if we allow
18 other people to go and then if there is a
19 little bit of time left -- does that work for
20 you?

21 MR. ROBERT AMELANG: That's a
22 good, that's a very good compromise. Thank
23 you very much.

24 MR. JON COPANS: Okay. Let's do
25 that. I think -- this looks like -- is there

1 another Charles Larkin here or did you sign in
2 twice?

3 MR. STEPHEN WHITAKER: No, I put
4 -- I signed Charles and I both in.

5 MR. JON COPANS: Oh, you did.
6 Okay. I was in different -- okay. Stephen
7 Whitaker.

8 MR. STEPHEN WHITAKER: I guess I
9 will speak from sitting next to Charlie. Been
10 doing that for a long time.

11 Good evening. My name is Stephen
12 Whitaker. I've been involved in advocacy my
13 entire adult life, in the '70s on sustainable
14 agriculture walking in the redwoods with
15 Robert Rodeo; in the '80s on energy efficiency
16 and renewables; in the '90s affordable housing
17 in Vermont; in the 2000s in community planning
18 where I went to school in Montpelier and then
19 starting -- as I got to know Charlie, I got
20 involved in '90, '90 -- about '90 on in
21 telecommunications, now more so arts and music
22 and, wouldn't you know it, government
23 accountability.

24 So, as I define advocacy, it's, A:
25 Engagement with the public, and I'll come back

1 and touch on those. B: Information gathering
2 and listening; it's what we're doing here
3 tonight. C: Knowledge of the rules and the
4 systems of government and governance in
5 judicial Public Service Board rule making and
6 decision, litigation, adversarial process. D:
7 Action to accomplish what your
8 responsibilities are. And, E:
9 Self-assessment; again, what we're doing here
10 tonight.

11 I'll point out that the department didn't
12 ask for this obligation and that may speak to
13 why there's only two hearings scheduled in
14 remote parts of the state. Tomorrow night's
15 hearing in Morrisville would have been more
16 convenient but you happened to schedule it on
17 the same night as the Public Service Board's
18 hearing and 11-year renewal of Certificate of
19 Public Good for Comcast. So, I won't infer
20 whether that was intentional or not.

21 MR. CHARLES LARKIN: You just did.

22 MR. STEPHEN LARKIN: I just did,
23 yes. Engagement, Charlie spoke about the
24 telecom plan missing since 2004. It was my
25 returning from work out of state that called

1 it -- in 1992 there was a pending case with
2 New England telephone, a renewal of what was
3 called the Vermont Telecommunications
4 Agreement II. In '89 a bill had passed to --
5 in '88 a bill had passed requiring the first
6 10-year telecommunications plan. Here it was
7 1992 and the department still hadn't written a
8 plan due in '89 and it was -- and I have it
9 noticed that this plan was missing and it had
10 to be found consistent with it. The rate case
11 went down in flames, the legislature -- New
12 England Tel withdrew it. The legislature got
13 involved, formed a joint committee.

14 So, here we are 20 years later, and I
15 return and say: Where are these plans? And
16 your commissioner is like: We didn't write
17 them. We don't have them. I'm like: What?
18 So, I brought it to the attention of the
19 legislature and they said: You will have a
20 plan by September 1st. So, I was one of the
21 two people at the Montpelier VTA telecom plan
22 hearing in February of '14, and we gave a lot
23 of detailed information about public access;
24 interconnect; backup power; right-of-way
25 management; funding for PEG, access media

1 organization, not a bit of it was incorporated
2 into the draft, right? So, you got a real
3 internal problem.

4 In 2014 they skipped the final draft which
5 is explicitly required by the statute 202d,
6 hearings including the legislative hearing on
7 the final draft. They totally skipped it, and
8 your telecom director Porter says: So what?
9 We adopted it, right? This is who you're
10 working with. I don't envy your job, because
11 you're caught between the commissioner and the
12 governor and the 10-year electric plan that's
13 going to hearings now, but you've missed --
14 it's too little too late. You've missed this
15 disengagement of losing involvement of the
16 public that's supposed to guide your action,
17 has been nonexistent.

18 So, no one knows that they're supposed to
19 be involved on a triannual basis in the
20 telecom plan. You waited until -- you didn't
21 work with the students and teachers and
22 parents to develop an awareness about supply
23 and load and efficiency, so that by the time
24 Yankee went down and we're trying to fill that
25 gap, you've -- the well is poisoned.

1 Everybody doesn't want to hear from the
2 department, doesn't trust the department's
3 decision making. They don't want windmills
4 humming all night long next to them, killing
5 their birds. They don't want solar built out
6 on the ag lands. They don't want ramrod
7 permit processes.

8 Rather than engage and take the
9 opportunity to educate the public in how we're
10 going to collectively reach this goal of
11 energy self-reliance, you waited until it
12 turned into such an adversarial process that
13 I'm not sure we can recover in time to meet
14 those goals. So, you poisoned the well of
15 public trust by lack of action within the
16 department, not you personally, but your
17 predecessors. Tower citing is another one of
18 the ramrod.

19 So, the failed planning; the lacking of
20 acknowledgment that this is what we've done.
21 Jim Porter continues to say: Too bad we don't
22 have a plan. We're going to do it anyway.
23 We're going to try to convince the board to
24 adopt an incentive regulation plan even though
25 it has to be found by statute consistent with

1 a 10-year plan. How do you approve
2 FairPoint's incentive regulation plan that is
3 pending if there is no 10-year plan to measure
4 it against? So, further breaches of trust.

5 Your Jim Porter when he assumed control of
6 VTA assets into the conductivity division said
7 it would cost me four-thousand-some-odd
8 dollars to get copies of the maps from the
9 VTA. Your commissioner has ignored recent
10 public records requests for information on the
11 appointments to the Conductivity and Advisory
12 Board and that I appealed to the head of the
13 agency and he's ignored that. There is a
14 five-day statute on answering those, and when
15 your commissioner is flying in the face of law
16 -- and if the first board meets, you're going
17 to have an open meeting, action on you at the
18 same time.

19 So, since the '90s when the advocacy role
20 of the department was strong, it's atrophied
21 into a bunker mentality. The doors are
22 locked, the telephone extension is right
23 outside the door. You try to hit
24 Telecommunications. It goes to a non-working
25 number. I called the commissioner when that

1 happened and said: How absurd is this? I
2 can't make this stuff up, you know? So, it's
3 an ivory tower. There's an arrogance in the
4 department that we know what's best for
5 everybody. We don't really need to
6 acknowledge our failures, engage with the
7 public.

8 So, reform; autonomy. Autonomy from the
9 fifth floor, other people have mentioned it.
10 It's very clear, there's one document that's
11 identified pursuant to a public records
12 request where they recognized there's a
13 document that says: We realize there's a
14 connection between the lacking 10-year telecom
15 plan and the pending Incentive Regulation Plan
16 and the commissioner claims executive
17 privilege. So, I have to find a supreme court
18 lawyer to challenge that?

19 The commissioner's notes aren't executive
20 privilege, the governor's notes are. So, we
21 need an independent contract advocate in
22 almost any case. The gas pipeline where your
23 -- the department is offering to, without a
24 Public Service Board review, saddle the
25 ratepayers with another 40-some-odd million.

1 These are back-of-the-envelope numbers. If
2 the department -- if the company eats 20
3 million, the ratepayers will get another 40
4 added on to the approved costs, that's just
5 not -- that's a case where an independent
6 advocate needs to be hired, have full access
7 to the full documentation. Similarly with the
8 FairPoint settlement, that FairPoint
9 settlement is not a settlement in the
10 ratepayers' interest. It invests another 50
11 million in obsolete technology when we need to
12 be building fiber in every home to reach the
13 2024 goal.

14 So, this stuff is well documented but
15 there's a level of obstinacy. And, so, the
16 grants, the new conductivity division; you
17 mentioned that in your opening statement, the
18 department proposed the bill to take over the
19 VTA's assets, that puts the Department of
20 Public Service in the role of owning fiber
21 leased to the very customers that it's
22 supposed to regulate. That's a conflict,
23 right?

24 The department is now handing out the
25 conductivity grants. And I've been told

1 directly from the people who are out there
2 building infrastructure that we won't dare
3 risk say what's wrong with the planning
4 because then they won't give us a grant. So,
5 it's hush money. The conductivity grant
6 program should not be in the Department of
7 Public Service. It corrupts the process of
8 engagement and honest feedback on failed
9 planning.

10 MR. JON COPANS: You're at 10
11 minutes.

12 MR. STEPHEN WHITAKER: All right.
13 Well, I'm sure you want to hear more.

14 MR. JON COPANS: We do. Do you
15 mind holding until the end so other people
16 will have the opportunity?

17 MR. STEPHEN WHITAKER: Yeah.
18 Thank you.

19 MR. JON COPANS: Thank you.

20 MR. STEPHEN WHITAKER: I still
21 have hope that you'll get it together.

22 MR. JON COPANS: Rick Hackett.

23 MR. RICK HACKETT: Yes, Rick
24 Hackett, thank you. I'm a, I'm a customer of
25 Green Mountain Power and also Washington

1 Electric Co-Op and a career utility person.
2 I'm here to listen. So, at this point in time
3 I prefer not to provide any feedback. If I
4 can later on, I'm more than happy to, but at
5 this point I'm going to pass, thank you.

6 MR. JON COPANS: Thank you.

7 MR. WAYNE JORTNER: We're going to
8 be here until 9, so to the extent there's time
9 when people are done, the others that want to
10 speak to --

11 MR. RICK HACKETT: Yeah. If I
12 have something meaningful, I would be glad to,
13 but at the moment I don't, thank you.

14 MR. JON COPANS: Carl Scott.

15 MR. CARL SCOTT: That's me. I
16 came over here from Fair Haven, Vermont. I am
17 a, currently, a GMP ratepayer and have been
18 most of my life. I retired from Green
19 Mountain Power in July of 2014 after 29 years
20 of service and, of course, prior to that I
21 worked for Central Vermont Public Service in
22 the role of revenue requirements which is
23 developing and defending the cost of service
24 which is what ultimately goes into customers'
25 rates.

1 So, I understand and know of what expenses
2 and what goes into rate pays and how the
3 tradeoffs are made and how the department and
4 the company's roles in that in terms of
5 advocating for one side or the other. And I
6 -- from where I, from where I sat, I started
7 in 1985 with CVPS, and I have to say honestly
8 that the regulatory body, that the Department
9 of Public Service has lost its way in its
10 mission over the years.

11 When I first started, we had regular
12 litigated cases where we took our sides and
13 the differences were aired in public before a
14 Public Service Board and that has not happened
15 for over 20 years. In the last 20 years we
16 have had a settlement, MOUs, issues of this
17 nature that have been generated based on
18 backroom negotiations between the company and
19 one-off parties, not all parties at the same
20 time, and then they present the settlement or
21 the MOU to the board and the board doesn't
22 have any -- they can't look under the
23 settlement and say, these were the puts and
24 these were the takes and, ultimately, decide:
25 Was this a, was this a good settlement for the

1 company or good settlement for their
2 ratepayers?

3 The board is supposed to look for a
4 balance. I mean, they're not supposed to put
5 the company out of business, but they're
6 supposed to keep the rates as low as possible
7 for the ratepayer and they don't really --
8 their hands are tied when they don't have all
9 of the information and all of the facts and
10 that's been the case, from where I sit, for
11 the last 20 years.

12 GMP has been able to maximize earnings
13 while maintaining a positive corporate image
14 which is what any company strives to do. And
15 GMP has been able to do this with amazing
16 success over the last few years, and it's a
17 company that not only navigates but seems to
18 control the political and the legal playing
19 fields. They do a great job. They are
20 supposed to have an adversary. They are
21 supposed to have a department that steps up to
22 them and says, we are the competition, and the
23 competition of the regulating for this is the
24 department.

25 And the structure of the DPS has evolved

1 into a regulatory organization that paves the
2 way for easy corporate profits at the expense
3 of people that don't have a voice. For
4 example, I'll quote -- please tell me when I
5 have two minutes left -- the Rutland Herald on
6 the Vermont Gas case where they said: We want
7 to go to this settlement that was arranged
8 after all of these hearings and the cost
9 increased 80 percent. Department sits down
10 with Vermont Gas and their people and they
11 say: Oh, let's -- instead of 80 percent,
12 let's make it -- I don't know what it was, 60
13 percent, but we'll skim a little bit off the
14 top. And this quote is -- one of the reasons
15 we wanted to do this was to let the board know
16 that there needs to be a timeline, otherwise,
17 the project is in jeopardy based on time
18 alone.

19 This is a quote not from Vermont Gas or
20 Gaz Metro as you would expect; this is a quote
21 from Chris Recchia, and whose side is he on?
22 If the Vermont Gas needs a fast time, a fast
23 track, let Vermont Gas get the facts out there
24 on day one, have them accurate; defensible;
25 done. We don't have round one, round two,

1 escalation and projectry aside. So, structure
2 gives rise to the process.

3 So, in the case of the current GMP/CV
4 merger, the governor came out loud and clear
5 that he supported Gaz Metro to create a
6 combined company to create savings for the
7 company. So, in this paradigm the executive
8 branch, who the department answers to, sent a
9 clear message to the regulators in answer to
10 him: Do not expose any problems that might
11 arise from this rate case from this merger.
12 So, bad PR for GMP meant bad PR for the
13 governor. Squash it. So, as a result of this
14 merger GMP went and -- remember we went
15 through and one-offed all of the parties.
16 Rutland, the City of Rutland gave it away;
17 Vermont Electric Co-Op, but they were in a
18 vacuum. They didn't see all, all of the whole
19 picture. They were taken aside and said:
20 Hey, let's make a deal. We'll give you
21 \$100,000. You close down two corporate
22 offices downtown and we'll have -- you know,
23 give you a little EIC center in Rutland. And
24 they took away a lot of foot traffic in
25 downtown. They closed -- they took away a lot

1 of property tax and -- well, I'm kind of
2 getting away from where I want to go.

3 Also as a result of the merger, the
4 docket, the docket that settled the merger
5 required a post-merger traditional
6 litigated cost-of-service review. This wasn't
7 done. They had a, they had a
8 quasi-base-going-in review but things that
9 were not reviewed was what made up that base
10 go in. They were -- the base going in was
11 based on 2011 costs that were never validated
12 by the department or the board.

13 The ROE which was set before day one of
14 the alt reg plan in 2007 is at 10 percent,
15 that's never been reviewed again and reset,
16 and it's just been escalating and going up and
17 down based on the T Notes which hasn't moved
18 much at all and that was at a time when it
19 was, essentially, free money.

20 The department and GMP collaborated on a
21 number of MOUs and settlements to avoid public
22 disclosure of issues that may be embarrassing
23 to their party. Hiding the facts is not good
24 public policy. Creation of an excess profits
25 in GMP above and beyond the ROE. What this

1 is, is that if the governor and the company
2 came in and said: Well, we got, we got to pay
3 off for this 19 million dollar breakup fee, so
4 we're going to get that from the savings that
5 are generated from the merger. The governor
6 and the board went back to this. So then they
7 said: Okay, we'll have a shared saving, but
8 the shared saving in years one through three
9 were not 50/50. They should -- they were --
10 GMP got far more than half of the savings in
11 the first three years, and, furthermore, if
12 there was an enthusiastic public advocate,
13 they would say, no, you're return, your profit
14 as a utility is return-on-rate base and
15 recovery of prudently incurred expenses, and
16 they would comb the books and make sure all
17 expenses were prudently incurred.

18 So, the structure allowed for, as Bob kind
19 of hinted on here, windfall sharing of 21
20 million that -- you know, in the paper and
21 what you read in legal -- and layman's terms
22 is, 21 million is given back to the
23 ratepayers. No, the 21 million is given back
24 to GMP just so that they can earn a 10 percent
25 return on that 21 million dollars plus the 21

1 million dollars.

2 In a complicated work structure it just
3 doesn't work when you end up getting a bill
4 that has a paragraph that says: The rates
5 changed, and I read the inserts several times;
6 I don't have time to read it tonight, and I
7 can't tell if it's going up or down. And I
8 looked at my rates.

9 MS. KATHLEEN GUINNESS: I can't.

10 MR. CARL SCOTT: What I see when I
11 looked at my rate the next time through is,
12 the kWh rate went up; the customer service
13 charge went up, but, somehow, some way, my
14 bill went down. The only way it went down is
15 that the overcharge in the beginning for some
16 EAP or some other program that I'm not really
17 -- I don't even know what the heck that is,
18 but they were charging \$3, now they're only
19 going to charge a dollar and I'm going to get
20 back all of the money of the overcharges. Oh,
21 you got a rate decrease. No, I didn't but
22 thanks for trying.

23 MR. JON COPANS: Two minutes.

24 MR. CARL SCOTT: Okay. The
25 department and the board have allowed for

1 non-tariff service provisions, and there is no
2 transparency when you file a rate based on
3 just MOUs. So, my recommendations are, that
4 to replace the department with an independent
5 agency that is immune to political pressures;
6 that represents the ratepayers; that creates
7 an environment for open negotiations;
8 simplifies the billing components so a
9 customer can understand what is going on, what
10 their bill really is, and isn't afraid to
11 challenge a corporate giant.

12 The ratepayer needs to be represented.
13 There doesn't -- and, you know, going next
14 step is, the Public Service Board needs to be
15 replaced with a quasi-judicial agency that is
16 truly looking for customer accompanying
17 balance on all facts, not a summary of MOUs
18 and agreements. Insist on openness,
19 integrity, honesty and completeness for
20 everybody that comes before them. Insist that
21 orders are followed and verify MOUs are
22 honored, in some cases they're not, and verify
23 the tariffs are strictly followed.

24 The department letter that has supported
25 the latest rate increase, the department

1 endorses the fact that GMP is providing
2 non-tariff services and says, yeah, we're okay
3 with it because it's not much and it doesn't
4 hurt. Well, why -- who is the department to
5 determine that it's not much and it doesn't
6 hurt and at what level is that risen to where
7 it does matter and it does hurt?

8 There should be term limits on the DPS
9 auditor. Annually, we come in for all rate
10 cases, and we have a, quote-unquote,
11 "independent" auditor that comes in, that has
12 been here for years and years and he, he comes
13 in with a certain approach and he -- we need
14 to have every once in a while fresh eyes
15 because he's all about known and measurable.
16 Somebody else would come in and they would be
17 about use and useful. And they would be
18 about, you know, documenting certain things
19 being prudent; certain things serving the
20 customer; intergenerational issues and items
21 such as that.

22 And, finally last point, there should be
23 public Minutes for all MOUs and settlement
24 negotiation meetings identifying the issues
25 and what is on the table. Thanks for your

1 time, and I appreciate you being here, and I
2 appreciate you hearing this, and I appreciate
3 the talent that you guys have in your office.

4 MR. JON COPANS: Thank you.
5 George Gross.

6 MR. GEORGE GROSS: Hi. I'm George
7 Gross, and it's been interesting to listen to
8 the perspective of the other participants here
9 this evening. Both my wife and I have been
10 front row in the frontline of the Vermont Gas
11 pipeline fight, first in phase two where it
12 was crossing in the front of our property and,
13 subsequently, in the phase when remanded which
14 was recently the one that got this MOU between
15 DPS and Vermont Gas to salvage their broken
16 project.

17 The stench of backdoor corruption and such
18 is all over this, and I spent a lot of time
19 attempting to illuminate all of the nooks and
20 crannies that we found along the way. Suffice
21 it to say, this summer there were attempts to
22 restructure Vermont Gas' capital structure and
23 do rate case design that, basically, tries to
24 do a shell game around the cost of this
25 project and, basically, sucker the ratepayers

1 into paying full trade of this pipeline.
2 Under any number of circumstances the MOU has
3 loopholes to allow the full cost to be borne
4 by the ratepayers even if it goes up to 160 or
5 180. It doesn't matter what the ultimate cost
6 is.

7 So, let's be clear, DPS has been an active
8 agent in the support of Gaz Metro's profit
9 objectives, and, frankly, there's no trust for
10 them to do what they do as public advocates.
11 So, the only way I can see to do this fairly
12 and serve the public is to divorce that Public
13 Advocate Office from DPS and the governor in
14 its entirety; to have their funding allocated
15 by the legislature independent of the
16 executive branch; to have people who are
17 participants in that office the -- in my view,
18 they'd have to be a political appointment and,
19 therefore, they'd have to be drafted from
20 those people who are best qualified to serve
21 in that role. Not unlike jury duty, I would
22 have a case that attorneys who are members of
23 the bar in Vermont be drafted to serve terms
24 in the Public Advocate's Office. They would
25 be compensated, of course, for this. There

1 would be an -- offer a long training session
2 or training period over which time they would
3 taper off their current obligations and then
4 move to the Public Advocate's Office; serve
5 their term; and when they exited that term,
6 they would then turn around and become mentors
7 for those who are coming in behind them. In
8 this role you get people who are constantly
9 influxed, moving in through -- they get the
10 expertise that this takes as they are trained,
11 moving in fresh eyes and a fresh zeal for
12 doing the right thing by the public.

13 One of the things that has been true in
14 other states, I believe it can be said fairly,
15 that the Public Advocate's Office, when it's
16 first formed, has a lot of institutional
17 momentum in the right direction, over time
18 that can become blunted and the traffic of
19 bureaucracy and political entwined
20 relationships get in the way of their mission.

21 So, I step back from the overall problem
22 that each of these people have testified to
23 and look at the overall structure. It's clear
24 to me that one of the major ways in which
25 these relationships between utilities and DPS

1 becomes a problem is, there is a captiveness,
2 in other words, people move out of one realm.
3 Say they are working for a utility; they can
4 go to DPS or vice versa, and they're also in
5 the political arena doing contributions to the
6 candidates in the legislature and lobbying
7 them in that realm as well.

8 So, unless you can break that triangle
9 between those three realms: Utilities; the
10 executive office; and the legislature with an
11 independent public advocate institution, an
12 office that is funded independent of those
13 other branches of government, you will not be
14 able to break this problem down and then
15 reform what is a broken system.

16 So, I have a number of other talking
17 points, and I guess I could defer to my wife
18 Barbara to go through those.

19 MRS. BARBARA WILSON: You can keep
20 going. You're all right, keep going. I will
21 add my two cents at the end.

22 MR. GEORGE GROSS: Okay. Keep me
23 honest. So, I talked about independence of
24 the Public Advocate's Office. Another aspect
25 or role of Public Advocate's Office is being

1 responsible for the public to understand and
2 participate in utility cases instead of acting
3 as a gatekeeper that keeps the public out of
4 the process, the Section 248 process.

5 (A discussion was held off the
6 record.)

7 MR. GEORGE GROSS: The Public
8 Advocate's Office should be responsible for
9 helping the public understand and participate
10 in utility cases instead of acting as a
11 gatekeeper that keeps the public out of the
12 Section 248 process. The Public Advocate's
13 Office should be required to produce plain
14 language material that explain not only the
15 Section 248 process but also their rate, their
16 rights as ratepayers, landowners and the
17 public; and the rate design and rate-making
18 process.

19 Right now it's nearly impossible for
20 ratepayers to understand or participate in the
21 decisions that affect their wallets, their
22 health, or safety, or the environment.
23 Vermont needs a Public Advocate Office that
24 respects our need for understandable and
25 accessible information and our right to

1 participate and return to exactly what our
2 interests are with respect to a given project
3 or policy.

4 All Vermonters should have equal rights to
5 assistance from a Public Advocate Office, not
6 all public interests are the same for all
7 groups in any society and for different
8 groups, for example, ratepayers and property
9 owners, small businesses have differing
10 interests, then different advocates should be
11 assigned to represent the interests of each
12 such group, and, finally, it should be
13 provided to individual organizations who want
14 to intervene in the Section 248 process.

15 My wife and I are a member of a grassroots
16 organization called Just Power. We intervene
17 vicariously through a landowner, but we
18 testified in the current docket before this
19 Public Service Board on the gas pipeline as
20 citizen experts on the various topics that we
21 had to address in the case of the pipeline
22 remand. That's not the preferred way to go in
23 through the backdoor. The preferred way would
24 have been for Just Power to petition for an
25 advocate to have copiloted with them as their

1 attorney and to be able to have a seat at the
2 table and equal footing with any other player
3 in that docket.

4 The Public Advocate Office should advocate
5 for more than just lower rates. Only
6 ratepayers care about the lowest cost of
7 energy. Many ratepayers would be willing to
8 pay a bit more for clean energy. Vermonters
9 want a Public Advocate Office that's willing
10 to stand up to utility pressure and advocate
11 for our right not to pay for unnecessary
12 fossil fuel infrastructure such as the fat gas
13 pipeline.

14 We want a Public Advocate's Office that
15 has the independence to demand that all
16 utility customers should have a right to opt
17 out of paying for dirty fossil fuel
18 infrastructure. The Public Advocate's Office
19 should be required to share all complaints and
20 communications received for ratepayers and
21 members of the public with the board and other
22 parties during the course of a public service
23 docket.

24 There are nearly 500 Vermont Gas
25 ratepayers who wrote to the public service

1 advocate, excuse me, Public Service Board
2 saying it couldn't afford to pay for the
3 increased rates necessary to pay for the
4 ballooning pipeline's cost. DPS never
5 presented or even acknowledges these concerns
6 during a technical hearing on the gas pipeline
7 this last June, instead, the department
8 supported DPS claims that the current
9 customers would benefit from the project.

10 This should never be allowed to happen
11 again. There should be improvements in the
12 structure and effectiveness of the Public
13 Advocate Office that should start today. For
14 example, starting a reasonable schedule for
15 accessible public hearings and a comment
16 process that makes sense.

17 This proceeding here today, obviously, is
18 well-intended but, nonetheless, it misses the
19 mark. There are many locations in Vermont
20 that need an access to this type of hearing
21 and where people can step forward, as we have
22 tonight, and bring the best reforms possible
23 to this process. And I might add, my
24 intention is to, in parallel, go to
25 legislators that I know are key stakeholders

1 in this process and bring to their attention
2 that there could be a very significant gap
3 between those actually placed on the table
4 here tonight and what actually is received as
5 part of the DPS as their report.

6 So, that needs to be used as a way to
7 audit and in some ways counter sensor the DPS
8 tendency to withhold information and provide
9 an upsided view of what's going on with the
10 public advocacy role because, frankly, DPS is
11 not trustworthy at this point.

12 MR. JON COPANS: You are at 10
13 minutes, sir.

14 MR. GEORGE GROSS: Okay.

15 MRS. BARBARA WILSON: My name is
16 Barbara Wilson, and my husband introduced us.
17 One of the things -- you know, he went through
18 a lot of points, but one of the things I want
19 to reiterate is the fact that DPS truly was
20 advocating for Vermont Gas in everything that
21 we experienced to the point where, when I was
22 sworn in and -- DPS lawyers and even the
23 Department of Public Service as well is almost
24 in cahoots with -- it is really in cahoots
25 with the government. So, as a citizen we have

1 no choice, we have no chance. It was like a
2 total waste of time, really, but we did it.
3 We spent thousands of hours doing DPS's job.

4 I, basically, because of my background --
5 you know, I'm a math major. I worked for
6 Telcordia Technologies, which is involved in
7 providing systems for telecom and all that
8 kind of thing, and, you know, can use
9 spreadsheets, create spreadsheets myself. I
10 literally spent thousands of hours reverse
11 engineering Vermont Gas' spreadsheets, and I
12 found out a whole lot of stuff in there, and
13 at the same time when the department did their
14 spreadsheets they, basically, said: Well, if
15 Vermont Gas said this is true, this is what
16 we're going to use as numbers as the basis.
17 They didn't even go and do their own research
18 and qualify it which was just appalling to me.

19 They even made errors in their
20 spreadsheet, which was pretty obvious when you
21 start looking at the spreadsheet, that
22 inflated the numbers that made the price of
23 gas high -- the price of oil higher than the
24 price of gas and that was Asa Hopkins'
25 spreadsheets. And it just was so appalling to

1 me as a citizen to have to sit there and,
2 basically, drill down on these numbers and see
3 this data, and as I'm sitting up there being
4 sworn in and lawyers asking questions, that
5 kind of thing, you know, trying to disqualify
6 me to the point where because I worked for
7 Telcordia Technologies one of the guys said:
8 Oh, you know, do you -- did you have anything
9 to do with number assignments? And all of
10 this kind of stuff. We'd sure hate to have
11 your company give us a hard time in the future
12 which, of course, I had nothing to do with.
13 You know, so their goal wasn't to learn the
14 truth of what I had to say. It was: How can
15 we get rid of her because she's a problem and
16 we got to disqualify the information that she
17 is, basically, presenting but -- and the
18 bottom line is, the department should have
19 been doing the analysis that I did. It
20 shouldn't have been me doing the analysis.
21 And, so, even though we've done this analysis,
22 it will be ignored, basically, and the rubber
23 stamp will happen is my feeling. And it's
24 just appalling. It's just appalling.

25 So, you know, does it -- what needs to

1 change? It totally needs to be out of, you
2 know, the current structure that it's in. It
3 can't have any influence whatsoever from the
4 governor because that's a problem, you know,
5 regardless of what the governor is. It's just
6 appalling as a citizen of this state. I am
7 just so disappointed in what I've learned what
8 happens in this whole process over the last
9 couple of years. It just, it just breaks my
10 heart, it really does.

11 And, you know, from the beginning MOUs --
12 we talked about MOUs here. The department
13 signed a MOU with Vermont Gas so that they
14 didn't have to adhere to the statutes for
15 producing an integrated -- what's it called?

16 MR. GEORGE GROSS: Integrated
17 resource plan.

18 MRS. BARBARA WILSON: Right.

19 MR. GEORGE GROSS: That had
20 environmental issues cover the top.

21 MRS. BARBARA WILSON: Right. It's
22 like a statute; they actually got to ignore
23 the statutes, and they're supposed to be
24 producing one now this year. Do you think
25 it's going to come out with what's going on

1 now? No, they'll produce another MOU.

2 So, something has to change totally and I,
3 you know, hope you guys are hearing us, and I
4 really hope that you'll actually reconsider
5 just the limited input that you're getting and
6 go beyond just these couple little meetings.
7 To me, it's lip service. You know, it's like,
8 oh, the legislature wants us to do it, so
9 we'll pick two little places and, you know,
10 nobody will know about it anyway. The only
11 reason I knew about it was because somebody,
12 again, who's diligent; you know, is looking
13 for this kind of stuff, found it and let us
14 know but that shouldn't be the case, that
15 should not be the case.

16 So, thank you, and I look forward to
17 seeing some change here. I really do.

18 MR. JON COPANS: Thank you.

19 MR. WAYNE JORTNER: Can I say just
20 one thing about the public input comments that
21 some people have made? I meant to say this at
22 the beginning, our website has a section
23 called "Announcements" on the home page, and
24 it invites anybody to make further comments.
25 You don't have to be at one of these two

1 hearings. You can make further comments. I
2 think the website directs you to my direct
3 E-mail address at the Vermont Department.

4 MRS. BARBARA WILSON: But how do
5 people know to do that other than --

6 MR. WAYNE JORTNER: Yeah.

7 MRS. BARBARA WILSON: You know, is
8 it our job, you know, to spread the word that,
9 oh, gosh, you know, you have an opportunity to
10 put input out there? It's not our job. I
11 don't know everybody, you know, so how, how do
12 you ensure that there's full ex -- you know, I
13 can't say the word.

14 MR. GEORGE GROSS: Exposure.

15 MRS. BARBARA WILSON: -- exposure
16 to what's going on, who would know? Who would
17 know?

18 MR. WAYNE JORTNER: Well, we did
19 post this in a couple of newspapers for -- we
20 bought ten days' worth of notices about the
21 meeting.

22 MRS. BARBARA WILSON: In Addison
23 Independent I didn't see it or it was just in
24 this paper or --

25 MS. KATHLEEN GUINNESS: It is not

1 in the Rutland Herald.

2 MRS. BARBARA WILSON: Or I didn't
3 see it.

4 MR. JON COPANS: So, at this point
5 everybody on the list has spoken but I want to
6 be sure --

7 MRS. LINDA HURCOMB: May I add my
8 name?

9 MR. JON COPANS: Yeah, absolutely,
10 we'd love it if you would participate. Can
11 you say your name and maybe spell your last
12 name for the court reporter which, sorry, I
13 didn't ask for it --

14 MRS. LINDA HURCOMB: My name is
15 Linda Hurcomb and the spelling is
16 H-U-R-C-O-M-B, Linda with an "I." My
17 background, basically, I worked for Central
18 Vermont Public Service for 3 years and I
19 retired in the early '90s, and I recall also a
20 very strong Public Service Board involvement
21 in all rate issues and energy generation
22 issues. I remember the Public Service Board
23 before there was a Public Service Department
24 and then things got kind of like a little
25 dicey, who was in charge of what, but I recall

1 that. And I recall very -- when Central
2 Vermont Public Service wanted to do something,
3 whether it was a rate case or energy
4 generation, they had to go and provide so much
5 information and response and input. There
6 were hearings. It would take a year or more
7 and there was incredible amount of research
8 and cross-examination and examination of every
9 little tiny thing.

10 I ran the records center and they would
11 call for things that -- copies of invoices,
12 copies of expense reports. You wouldn't
13 believe it. It was unbelievable. But,
14 anyways, now what's happened, I'm here not
15 because of rate issues or gas pipeline issues
16 -- and it is of concern that Gaz Metropolitan
17 kind of owns both Green Mountain Power and
18 Vermont Gas. But, anyhow, that's a Canadian
19 company and I'm not that happy about it, but
20 I'm here because of telecommunications and
21 wireless service in Middletown Springs.
22 Excuse me, I'm not used to testifying, so I'm
23 a little bit nervous.

24 Four years ago AT&T had put up a wireless
25 tower in Middletown Springs after they had

1 gone through and gotten a Certificate of
2 Public Good for the wireless tower. Well,
3 guess what? Four years later we still don't
4 have wireless service in Middletown Springs.
5 There is no cell service. We are fortunate
6 enough in Middletown Springs to -- fortunate
7 and unfortunate -- to be served by Vermont
8 Telephone Company where we have incredible
9 internet. Yes, we do have 100-megabyte bit
10 Wi-Fi and that's fabulous, but they changed
11 our phone system so now it's fiber optics and
12 after ten hours in a power outage situation we
13 have no phone service, absolutely nothing.

14 We've had power outages for four days,
15 nobody cares. You call the Public Service
16 Department and they're like: Oh, Vermont
17 Telecommunications Agency -- it gets into
18 issues over batteries. Basically, what it is,
19 we don't have any 911 service in Middletown
20 Springs, and we have had many power outages,
21 and it really is ridiculous when there is a
22 Certificate of Public Good that has been
23 issued and there is a tower that's there and
24 there is no service and that was built so that
25 they could have at least four wireless

1 providers on it.

2 And you call the Public Service Department
3 and they point to the Vermont
4 Telecommunications Agency and then they say:
5 Well, it's wireless; it is the FCC. We don't
6 have anything to say about it. We're chasing
7 our tail, we are like a dog, trying to find
8 out. Who cares, you know? And there we are
9 freezing for four days with no wireless --
10 with no telephone service whatsoever. Ice
11 storms out there, you can't even drive because
12 it's dangerous. Who would drive out to --
13 drive to Poultney to see if you could call
14 your family and friends across the country,
15 say: Yeah, it's okay, grandma and grandpa are
16 fine, you know, but you just don't know where
17 to go. It is round and round and round. And
18 you get somebody from, you know, the agency of
19 -- the Telecommunication Agency and then they
20 have VTel respond and they'll say: Oh, well,
21 we do everything that the FCC says we have to
22 do. Well, guess what? Vermont has nothing do
23 with the FCC and they know that. So, they
24 just keep pointing you around in circles.

25 So, I'm pretty upset about it, and I'm

1 afraid that I'm a little discouraged in this
2 day that it really takes that and I'm very
3 upset that the tower is actually -- I'm glad
4 there is a tower there but it is kind of
5 upsetting that it was built and it's doing
6 nothing. And there it is on our landscape,
7 and it had to go through a Certificate of
8 Public Good. They did maps; they did
9 everything else, but you make a call and no
10 one cares. We care. And I think that we need
11 someplace where we can go to, an advocate, and
12 say: This is what we should do, and we'll
13 help you get through this because right now
14 it's so fragmented that a consumer doesn't
15 know where to go anymore.

16 You used to know where to go. You could
17 go -- you could call somebody. Charles
18 Larkin, he was involved in everything. I
19 remember seeing the decisions and everything
20 over the years. I remember that name when I
21 was at Central Vermont Public Service because
22 there were lots of consumer things, and we
23 paid attention to them. And it's just -- I'm
24 not getting a sense that that's happening.
25 That's all I have to say.

1 MR. CHARLES LARKIN: Comment on
2 that. We adopted Central Vermont Public
3 Service's rules, this is in the deposits,
4 because -- and billings because it was the
5 best in the state and we modified it to handle
6 all utilities and made it the rule. That came
7 out of CV.

8 MRS. LINDA HURCOMB: CV worked
9 very hard.

10 MR. CHARLES LARKIN: Guy name
11 Miller, Bob Miller.

12 MRS. LINDA HURCOMB: Districts.

13 MR. JON COPANS: Everybody, I
14 think, who has signed in or is present has
15 spoken. At this point I know Mr. Amelang
16 maybe has additional comments, I think.

17 MR. CHARLES LARKIN: I have one
18 comment and I will be finished.

19 MR. JON COPANS: We cut off
20 Mr. Whitaker. Mr. Larkin.

21 MR. CHARLES LARKIN: My comment is
22 very simple. I read this in the state house
23 today. Quotation mark, "That frequent
24 recurrence to fundamental principles and a
25 firm adherence to justice, moderation,

1 temperance, industry and frugality are
2 absolutely necessary to preserve the blessing
3 of liberty and keep government free." I
4 wonder if we couldn't try some of that at the
5 department.

6 MR. WAYNE JORTNER: Let me just
7 ask one question that I would invite anybody
8 who is going to speak again or speak for the
9 first time at this point, may try to address,
10 and it's not an easy one, but we've heard a
11 lot of comments about the need to insulate the
12 department or the ratepayer advocacy function
13 of the department from the political process
14 and the hard part is, how do you do that? You
15 know, how do you avoid the risks that we've
16 all talked about based upon the structure?

17 So, if there is -- let's say there was an
18 independent ratepayer -- well, public
19 advocate. Who would appoint that person and
20 how would you avoid any undue influence from
21 the person who appoints that person? So,
22 that's one of the harder questions. I would
23 love to hear ideas about that if anybody has
24 ideas about it.

25 MR. CHARLES LARKIN: There is one

1 that is already existing. When I first came
2 to the state -- you made the comment that
3 before there was a department; there was
4 always a department, but the person who was
5 chairman of the Public Service Board was the
6 commissioner of the department. He wore two
7 hats, and the department hat was subsumed in
8 the commission. The Public Service Board hat,
9 even though there were only three
10 commissioners and a clerk on the board and the
11 rest of us all worked for the department, we
12 hardly even realized it. And, so, when they
13 had a problem several of the staff would work
14 as a public advocate and several of them would
15 be set aside to work with the board, taking
16 the board's problem. So, we had a separation
17 right within this one body that was ruled by
18 the same man so that we could have advocacy,
19 and these guys didn't falter the ones who were
20 doing the Public Service Board work.

21 So, there is a possibility of simply
22 separating members of your staff if you can
23 have at least one of -- two of each type that
24 you need: Two of an engineer; two of a lawyer
25 and, whatever. You can separate them and they

1 don't talk to each other when it comes to a
2 certain docket, that would be one approach.

3 MR. STEPHEN WHITAKER: I would say
4 let the Judiciary Committee sort that out,
5 that's where it's ultimately going to be
6 decided.

7 MR. GEORGE GROSS: George Gross.
8 So, the way to avoid pressure from a political
9 appointee is to run it like a jury selection
10 process where you have attorneys who were
11 qualified for the bar here in Vermont, a pool
12 of participants and attorneys all for the
13 public advocate. Obviously, jury duty is no
14 one's favorite. You have to offer some form
15 of compensation that requires a sustained
16 period of time in this case to train up to be
17 competent in the Public Service Board arena.
18 Having done that as a citizen, I can tell you
19 it is probably on the order of six to twelve
20 months just for someone who is unfamiliar with
21 the legal process. I am reasonably strong
22 skilled in terms of writing, and I have this
23 experience in the Act 250 proceeding.

24 So, what I take away from that process is,
25 that attorneys do have special skills in order

1 to participate. In the Public Service Board
2 arena you have an additional layer of skills
3 needed that are technical and in the
4 engineering realm and the energy policy and
5 are also, unfortunately, very political
6 because there is a lot of money involved. So,
7 unfortunately, this places a lot of unusual
8 requirements on how you select the persons
9 that participate in the public advocate's
10 role. There is simple separation of the
11 department into two pieces where one is Public
12 Advocate's Office and another is not. It is
13 not sufficient, I think, given what we've seen
14 and witnessed. The possibility of ex parte
15 communications is too realistic. It is just
16 too chummy of an atmosphere in the Montpelier
17 region to be able to do that.

18 The people you draft into the Public
19 Advocate's Office would be from all over the
20 state, and they would come from all walks or
21 all varieties of law practice and all
22 varieties of experience, and you would get
23 fresh blood on a regular basis in this role.
24 Maybe you do it on the basis of each docket
25 needs to be serviced and requires a public

1 advocate. There are still other parts of it
2 like Linda's example where you needed a public
3 advocate to intervene on something that wasn't
4 a new docket, that has to create a docket and
5 that role, I think, now that I think about it,
6 is also important.

7 You have this rotating staff at any given
8 time who is available to step into the role of
9 creating an intervention where the corporation
10 has not done their role of serving the public
11 well and needs to be, in effect, an
12 enforcement action brought in this case. 911
13 service has to be brought forward and made
14 available on the basis because 911 service is
15 an essential service and neglect of that could
16 lose lives.

17 Funding is the other aspect of this. I've
18 seen an example in the Act 250 and RB role
19 where a regulator, an attorney, was part of
20 the most recent downsizing of a staff in part,
21 we think, because that person was too strong a
22 regulator and prosecuted too much of the --
23 some of the more vocal developers in the area,
24 in the state, and, as a consequence, they had
25 an audience with the governor and the budget

1 was running short of money and people were let
2 go and it was not a random choice.

3 So, again, this argues for altogether
4 independent funding for the office of public
5 advocates so that there is no ability to
6 manipulate their funding.

7 MR. CARL SCOTT: I think when you
8 look at the department it requires an
9 incredible amount of expertise, and it
10 requires an incredible amount of knowing of
11 the history. So, there is a lot to be said
12 for continuity and experience, and I know that
13 the current department has the talent. I've
14 worked with them. I know their -- you know,
15 to the person, you're very talented and
16 dedicated organization. The problem is, from
17 where I sit, is that it's misguided and the
18 fact that the department has to, has to bend
19 to political pressures; that the department is
20 so cozy with GMP and Vermont Gas, that's the
21 problem.

22 So, if you could take those panel of
23 people and peel them away and realign their
24 allegiance from those organizations to the
25 public, I think you'd have the right fix.

1 What happened, what's going on is, the
2 department can't do its job because it's in,
3 it's in the political system and the structure
4 of the way that they have to answer to people
5 and Chris has to answer to the governor and
6 Geoff Commons has to answer to Chris and --
7 you know, so it's kind of top-down management
8 as opposed to: These are the experts that are
9 in the field, boots on the ground, they know
10 what's going on and they can filter it up, and
11 they can put together a rate case, and they
12 know how to look for things that aren't right.

13 And, so, you know, I don't have the
14 answer. You know, you brought up a really
15 good question. My mind is spinning here
16 trying to think of things, but, you know,
17 perhaps maybe have, as you suggested, maybe,
18 or started to, is have a public review board
19 to make sure that they answer to a public
20 review board that ensures that the MOUs have
21 -- you know, you can identify the puts and
22 takes and then you can verify that the
23 department is really advocating for the
24 customer.

25 I think you mentioned that it's not all

1 about rates all of the time. And sometimes,
2 you know, there are other issues that the
3 public is interested in. You know, from where
4 I sit the problem is not the people in the
5 organization. It's the way the organization
6 sits inside the government.

7 MR. CHARLES LARKIN: There is one
8 more thing about the advocacy of different
9 types for different points of view. The board
10 used to have -- appoint a public advocate.
11 They didn't have their own attorneys in the
12 early days when I came up, and they'd appoint
13 these different people and then other groups
14 -- and this guy would be testifying saying
15 he's going to work for the public as a whole
16 and to him that meant the basic ratepayer.
17 The rest of them can go lump it.

18 So, hotel; motel association was granted
19 party status and it could come in and present
20 its case and the local labor unions have a
21 party status and they represented their case
22 and the tri-union three ladies who were all in
23 charitable-organization types who represented
24 the public, they were the fourth party.

25 So, you had attorneys. The only thing

1 wrong with that is, you had to find somebody
2 to pay for them.

3 MR. CARL SCOTT: I'm glad you
4 brought that up --

5 MRS. BARBARA WILSON: Right.

6 MR. CARL SCOTT: -- because that's
7 one real key issue in terms of restructuring
8 today. The board needs to kind of step up to
9 this, too. The board is kind of laying back
10 and letting, letting these agreements and MOUs
11 and just blessing them as they come by, and
12 the board needs to kind of hear both sides of
13 the story fully vetted, and they need to have
14 more times when the department comes before
15 and says, here is an issue we disagree on.

16 In some cases, I know I was sitting there
17 a few times, there where genuinely differences
18 in the way that you think something should be
19 done, and the board has got to put an end to
20 it and say: This is the way it should be
21 done. You know, a case in point, technical
22 but how working capital is administered. You
23 know, you have a formula method versus a
24 lead-and-lag analysis. And that's one of the
25 many, many differences but that could be

1 brought before the board, the two differences;
2 we don't agree on this. It doesn't get into
3 an MOU but then the board hears everything and
4 the board settles for something that is fair
5 to both the company and the customers, the
6 ratepayers.

7 So, I'm not advocating putting the company
8 out of business either. We need to have an
9 electric company.

10 MR. ROBERT AMELANG: I would like
11 to strongly agree, Bob Amelang, strongly agree
12 with Carl's comments and the need for
13 expertise and continued continuity for the new
14 regulatory -- the public advocate. Even with
15 the attorneys, because my experience is, you
16 need an attorney who is experienced in energy
17 utility law. So, it kind of lend -- that
18 places a lot of limits on what we're talking
19 about.

20 I would also like to expand again on the
21 renewable energy aspect because that's a big
22 part of the department's role now. And when
23 we have GMP being a very strong renewable
24 proponent -- in fact, they have joint venture,
25 at least one agreement with a solar company

1 where they commingled funds to make
2 investments in solar projects. So, Green
3 Mountain Power is not going to say anything
4 bad about solar and wind.

5 The department is an unbiased source and
6 Chris Recchia has made some outlandishly wrong
7 statements about net metering not having an
8 impact on rates, and it does. There is no
9 question about it, it does. He even suggested
10 that it led to the most recent rate decrease,
11 the slight decrease from GMP which is not
12 true. It's due to the merger savings and some
13 other things that have lowered in cost, and
14 he's out there in public making these wrong
15 statements. I think that's wrong.

16 I think the problem is, is we're moving
17 too fast on renewable energy policy in the
18 state and we're not -- it's a complex issue.
19 Another thing that hasn't been really looked
20 at -- in fact, I tried to make some comments
21 at a recent solar task force citing committee
22 meeting and I was given a very short period of
23 time by Chris Recchia. Admittedly, I was --
24 happened by bad luck as the last person to
25 talk about that, provide comments, but the

1 comment I was trying to make is, let's look at
2 the interconnection costs as a whole. As you
3 add a lot more solar projects to distribution
4 circuits, the costs go way up, and we are a
5 not looking at that. We're moving too fast.

6 The department is also doing a sloppy job
7 on keeping records of how many solar projects
8 are being installed. I actually talked to
9 department staff on this. There's conflicting
10 manual processes that are used. So, we don't
11 even know exactly how many of these projects
12 are being installed. Are they operating or
13 not? We don't have good operating data. And
14 the prime thing we need to know is: Are these
15 projects operating? How much are they doing
16 hour by hour?

17 I understand GMP is now finally putting in
18 the processes to do that. VELCO has also
19 mentioned at another DPS proceeding or working
20 group, and it's one of your documents posted
21 on-line, where VELCO said: We need more
22 visibility. Basically, they need to know
23 what's happening with all of these net-metered
24 solar projects, that the utility and the
25 system operators don't know hour to hour what

1 they're generating and that's exactly their
2 value is, is what are they generating at the
3 time of peak? And we don't have that kind of
4 data, and the department's job is to keep at
5 least a list of how many megawatts are being
6 installed and it's sloppy.

7 There is a lot of improvement that could
8 be made there, and I'm just concerned, you can
9 actually do -- give renewable energy a bad
10 name by moving too fast without the proper
11 analysis, and it's a shame because we should
12 be promoting renewable energy, but I think
13 we're moving too fast, particularly with net
14 metering. Thank you.

15 MR. WAYNE JORTNER: Thank you.

16 MR. STEPHEN WHITAKER: I would
17 like to mention one thing. There was a
18 comment from the lady about knowing about the
19 meetings and how many there should be, and I
20 want to tie a few threads together here. The
21 missing 10-year plan would have included an
22 entire chapter on video conferencing.

23 So, Vermont Interactive Television was
24 left with no guidance or mission or purpose.
25 The legislature zeroed it out. So, VIT is

1 scheduled to go dark next month or December,
2 and there's zero budget for January. State
3 colleges is doing their own thing, medical
4 centers are doing their own thing. There will
5 be no public hearing facilitated conferencing
6 technology for conducting these kinds of
7 meetings. There shouldn't be just 14 sites;
8 there should be 30 sites around the state that
9 could be used for facilitated conferencing to
10 hold these kind of meetings on a regular
11 basis, right? So that's a fallout of no
12 10-year plan is no VIT and, therefore, no
13 public engagement on your power planning,
14 advocacy planning, telecommunications
15 planning.

16 Similar with 911. This was a great
17 example of there was no engineering review of
18 the 911 system that was just purchased for 11
19 million dollars over five years with 2 million
20 going for GIS work that the state has already
21 done and paid for. So, those are elements of
22 the 10-year plan, and you're seeing very
23 expensive cascading losses from that.

24 So, I'll leave it at that and say we need
25 to keep VIT, probably merge VIT into the

1 access media organizations, the public access
2 channels, because similar techs could staff
3 both, put broadband connections, fiber-base
4 broadband connections into them all. There is
5 a way to do this that makes sense and it
6 builds efficiencies.

7 Oh, one more thing. On the advocacy role,
8 look at 226a, 30 V.S.A. 226a, that's contract
9 regulation. The example I used for the VTA II
10 contract in '92, that's where, as soon as the
11 department and the company enter into a
12 contract, it immediately triggers the attorney
13 general to a point of public contract advocate
14 and all of the supporting documentation is
15 made available to the public.

16 So, that same concept should be extended
17 to 226b, which is incentive regulation, and
18 any time an MOU or a settlement agreement is
19 entered into by the department it immediately
20 severs the advocacy role and puts an
21 independent advocate on the case, that's a
22 short-term solution.

23 I think some of the solutions you've heard
24 here tonight are going to take a few years to
25 percolate through the legislative process,

1 that's an immediate fix for the FairPoint --
2 instead of regulation plan, the FairPoint
3 service quality docket; the gas, Vermont
4 pipeline gas overcharge, on and on. There is
5 a lot of things that need an independent
6 public advocate right now, and by doing so,
7 hiring half a dozen of them, you would begin
8 to qualify the people who will ultimately
9 serve on your independent public contract
10 board that you're talking about.

11 MRS. LINDA HURCOMB: I have a
12 suggestion, or just an idea for brainstorming,
13 and that would be to set up a commission,
14 consumer advocacy commission, and it would be
15 probably a dozen people. I think that around
16 the state there is plenty of talented people
17 that have time that are actually willing to
18 volunteer to be on such a commission and it
19 should be a commission that has wide -- a wide
20 variety of talents. And it could be something
21 where -- like where people apply to become on
22 the Public Service Board. They apply for
23 openings on the Consumer Advocacy Commission,
24 and they could be of engineering expertise;
25 they could have environmental expertise;

1 energy, you know, it could be like a human
2 rights -- we have a Human Rights Commission,
3 but it could be like just for consumer issues
4 and it would be a very broad span of energy
5 and, you know, all kinds of things. I
6 wouldn't want to get into health insurance; I
7 think that we got enough on that, but
8 everything except for that because there is
9 enough stress on that. But, basically, it
10 could be a commission of people that could
11 represent the elderly; AARP; or people that
12 are low income, all different aspects, just a
13 wide variety of the population but also
14 include people with background and some
15 expertise in maybe social services and things
16 like this where they've done some, some time
17 on the ground, not just a consumer, but it
18 also should have consumers, too, that don't
19 have -- kind of like colleges, they'll have
20 students on their trustees to have a
21 sprinkling of those included, too, that just
22 are generally there just to represent the
23 general public. And I think that that would
24 be really great.

25 MR. ROBERT AMELANG: I have some

1 more comments if I could. See what time it
2 is, 8:22. Thank you. What Barbara said
3 triggered something that I remembered hearing
4 from a gentleman who works for Energize
5 Vermont. This is -- again, this goes into the
6 spreadsheet issue. The department had done
7 some work in support of H.40 which became --
8 before it became a law. I believe that is now
9 Act 56; is that correct?

10 MR. JON COPANS: That's correct.

11 MR. ROBERT AMELANG: Okay. Again,
12 the department was being a renewal advocate
13 and this gentleman's name is Mark Whitworth.
14 I don't think he would mind me saying this:
15 He works for Energize Vermont, and they were
16 an advocacy group that was looking critically
17 at some wind projects going into Vermont, and
18 he was concerned about H.40 being passed, and
19 he told me personally that he looked at
20 spreadsheets that were done by Mr. Hopkins
21 and, vastly complicated, he did the reverse
22 engineering and followed the formulas through
23 and he found, lo and behold, an assumption for
24 oil being really high which made it really
25 look good. What they were -- when I say "it,"

1 I meant what the department was trying to
2 prove.

3 MRS. BARBARA WILSON: Right.

4 MR. ROBERT AMELANG: And, so, this
5 is another -- this is a common function that I
6 see here, is that, that the department does
7 this behind closed doors. He gave some other
8 comments that I can't get into because of the
9 details but it, it was very unfortunate,
10 undesirable situation for the department to be
11 doing this. And I guess I, I would just want
12 to echo this and I also want to talk about
13 political influence a little bit more and
14 going back to how GMP gets favorable treatment
15 based upon political influence.

16 Other people have made statements about
17 the revolving door where, where an executive
18 who was -- might be a regulator. Well, this
19 particular case, I want to talk about the alt
20 reg, which is alternative rate regulation.
21 This is where rates go up and down
22 automatically. You folks know that very well,
23 and it's a way of protecting utilities, so if
24 costs go up, they can automatically get -- the
25 rates will go up, and they will get the return

1 on their money. It's a way of protecting
2 utility investors because utilities normally
3 have this problem. It's a risk. You know,
4 if, if you -- instead of returning equity,
5 say, 9; 10 percent, it's subject to costs
6 going up or down. If it turns out you did
7 wrong and you estimated your pipeline costs
8 way too high, well, tough luck, you know, your
9 rates are set based upon what you said they
10 were going to cost. And, lo and behold, they
11 are too high. Under alt reg that doesn't
12 work.

13 Now, it's a very complicated system, and
14 some costs are automatically recovered, others
15 aren't. There's bands within which costs can
16 go up and down and there's no impact and so
17 forth, but I want to emphasize this fact,
18 Robert Dostis is a current Vice President of
19 GMP. He was on the committee, which I believe
20 was the House Energy and Natural Resources
21 Committee, that first proposed the alt reg
22 legislation in the legislature. He was, he
23 was, I believe, a legislator at that point. I
24 think he was like a Tony Klein, has -- his
25 position is now, that was his, that's what I

1 understand, that's what I'm told and it is
2 subject to check, but I know he was on the
3 committee that dealt with that alt reg
4 legislation and introduced it, and now he is a
5 vice president at GMP. He was at that most
6 recent solar task force hearing that I
7 attended.

8 So, one other point I'll make from
9 personal experience, I worked with a GMP vice
10 president concerning how the alt rate worked,
11 and we were dealing in a particular problem
12 where we were saying, where are we going to
13 put -- classify this cost, where are we going
14 to put this cost? And he asked me questions
15 about: Well, is it this or is it that? And I
16 was trying to understand, what are you, what
17 are you getting at? Well, I found out what he
18 was talking about. The alt reg plan is very
19 complicated and certain GMP executives and
20 others know how it works very well, others
21 don't and probably, I would venture to say, a
22 lot of the department doesn't really fully
23 understand it that well. And that's how
24 utilities can gain the system when you have a
25 complicated set of rules, that's exactly how

1 Enron did it in California many years ago when
2 the deregulation started. You have a small
3 group of smart people, and these are smart
4 people at GMP. They know how the alt reg plan
5 works. They help -- in fact, they promoted
6 it. It wasn't CVPS that pushed it through.

7 We watched them on the sidelines at CVPS.
8 This alt reg was passed and put forth in a
9 process and this vice president, I found out,
10 I found out what he was getting at, is that by
11 classifying this particular cost we were
12 dealing with, and this is relatively small, it
13 got more favorable treatment under alt reg
14 because it could be automatically recovered
15 from customers. And that said to me -- now,
16 it was just one anecdotal piece of data. It
17 said to me that, all right, they know what
18 they're talking about. And I've heard other
19 cases where my compatriot would be talking
20 about power supply cost and I would say: Why
21 are you doing it this way?

22 It had to do with timing of Hydro-Quebec
23 schedules. And the issue there was, well, we
24 want to lower costs or raise costs because of
25 alt reg in this particular court, so we're

1 purposely doing this. And I said: Why would
2 you do that? You should be delivering the
3 power when it's the coldest, when the prices
4 are higher. He said: Oh, no, no, no. It's
5 because of our alt reg plan, that's why we did
6 it. And who is minding the ship on that
7 particular issue?

8 And, again, that also makes the point
9 that, when a company has a lot of political
10 power, it's not just with the governor. It's
11 also with how laws are written that affect --
12 and the department needs to do -- well, the
13 entity, luckily, or, hopefully, that replaces
14 the department will be independent enough to
15 advocate for the customer so that we don't get
16 screwed for these things we all talked about
17 here tonight. Thank you.

18 MR. STEPHEN WHITAKER: Can I
19 piggyback one small comment on what he said?
20 This revolving door. You may have been around
21 -- you weren't around when Karen Marshall left
22 as the broadband czar to work for VTel and
23 there's, there's a problem. I went to the
24 Comcast hearing and who's the attorney
25 representing Comcast with Downs Rachlin

1 Martin? The former DPS attorney.

2 So, I get the feeling the only reason that
3 I can comprehend that your telecom director is
4 behaving the way he is, neglecting the public
5 advocacy, is he's feathering his nest to jump
6 into the industry. There needs to be like a
7 five-year prohibition on entering the service
8 and in a regulated environment if you are
9 leaving the department. You can't have this,
10 even this appearance of conflict, of favors
11 being granted. I don't know the
12 constitutionality of that type of -- but I
13 think that you got a reputation to rebuild.
14 You got some fence-mending to do and some
15 trust building to redo. And even if you can't
16 get -- the chair and vice chair of the
17 Commerce Committee both take money from
18 Comcast. The governor takes big money from
19 Comcast and FairPoint. I mean, that stuff has
20 to stop.

21 MRS. BARBARA WILSON: Right.

22 MR. CHARLES LARKIN: This attorney
23 business, I remember the other side of the
24 picture. The department played hell keeping
25 an attorney. As soon as they had their three

1 to four years in and had been trained up
2 properly, they went right into the industry
3 and the department is saying: Oh, you were
4 working for us; you did a pretty good job; you
5 learned well, but now we've got you over on
6 the other side of the table there using all of
7 the things you learned to beat down on the new
8 attorney that we're just training up to do the
9 work.

10 So, it was kind of a tough -- that's the
11 other side of the picture, the department has
12 a problem trying to maintain it's staff when
13 they -- they think three years because if they
14 don't do three, they are called feather
15 merchants or something. They generally leave
16 before three years. Butterflies, that was it.
17 Thank you for your patience.

18 MR. STEPHEN WHITAKER: And
19 tolerance.

20 MRS. BARBARA WILSON: Yes.

21 MR. STEPHEN WHITAKER: You need
22 some arnica for your bruises?

23 MR. WAYNE JORTNER: Any, --

24 MR. JON COPANS: Any --

25 MR. WAYNE JORTNER: -- any other

1 comments? Mr. Whitaker.

2 MR. STEPHEN WHITAKER: To repeat
3 everything you all said, transparency, it's
4 just not transparent.

5 MR. WAYNE JORTNER: All right.
6 Well, I thank you all very much. I was
7 personally very impressed with how informed
8 and intelligent these comments were. Please
9 don't, don't interpret our silence as not
10 being interested in everything you had to say.
11 It's just not our role here tonight to respond
12 or to debate or defend or anything like that.

13 So, with that being understood, I really
14 appreciate the input. I find it very
15 valuable. I'm going to be doing the first
16 draft of this report, although, I'm a low man
17 on the totem pole at the department, so I'm
18 not the one who gets to say exactly what gets
19 submitted to the legislature in the end but I
20 definitely --

21 MR. STEPHEN WHITAKER: You won't
22 recognize it.

23 (A discussion was held off the
24 record.)

25 MRS. LINDA HURCOMB: Will that be

1 on your website or something, the
2 recommendation to the legislature? Will there
3 be a document that goes forward to a report?

4 MR. WAYNE JORTNER: It will be a
5 public report, sure. Yeah.

6 MR. STEPHEN WHITAKER: Can I ask
7 that you forward the request to Chris Recchia
8 that he expand the number of meetings? I know
9 the statute only required you to have two, but
10 you would be well served, as you would be well
11 serving the public, to expand this discussion
12 in a dozen cities around the state.

13 MR. CHARLES LARKIN: Use VIT
14 before the year is up.

15 MR. STEPHEN WHITAKER: Yeah, you
16 could also get in on VIT and publish that.

17 MR. JON COPANS: We'll pass that
18 along. Thank you all for coming out tonight.

19 MR. COLTON FRANCIS: Thank you,
20 guys.

21 THE AUDIENCE: Thank you.

22 MR. WAYNE JORTNER: Okay. Thank
23 you very much.

24 (HEARING WAS CONCLUDED AT 8:34
25 P.M.)

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C E R T I F I C A T E.

I, Lisa M. Hindes-Moody, Court
Reporter and Notary Public, do hereby certify
that the foregoing pages, numbered 1 through
102, inclusive, are a true and accurate
transcription of my stenographic notes of the
hearing taken before me on October 20, 2015.

Commission Expires: 2/10/19

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