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STATE OF VERMONT
PUBLIC SERVICE BOARD

PUBLIC HEARING
October 21, 2015
Morrisville, Vermont
6:30 p.m.

1 COMMISSIONER RECCHIA: Hi. I'm Chris
2 Recchia, Commissioner of the Public Service
3 Department. So thanks so much for joining us.
4 We're exploring different options for the Public
5 Service Department in terms of how it can do its
6 business better and continue to serve you all.
7 The Public Service Department really has a
8 responsibility to implement the public good with
9 respect to energy and telecommunications
10 policies, and so we're doing this study and
11 Wayne, who will introduce himself in a second,
12 is really heading up this analysis and
13 interviewing people and using his vast
14 experience in various aspects of public service
15 to figure out what the benefits are of the model
16 we have and how we can improve it. So we want
17 to hear from you this evening. We're trying to
18 write a report that is due to the legislature in
19 December on what we are finding, and so at this
20 stage, we're still gathering information so I
21 appreciate you guys attending, appreciate your
22 interest and look forward to hearing from you.
23 And so Wayne, I turn over to you and you can

1 take over.

2 WAYNE JORTNER: Sure. Thank you all for
3 coming tonight. We're very happy to have your
4 help because we're looking for public input.
5 This is not really for us to tell you a lot
6 about any particular issues, but we're here for
7 public input on how our office could be better
8 structured potentially to represent consumers in
9 the State of Vermont.

10 There's about 45 out of 50 states have an
11 official consumer advocate that represents
12 utility consumers before Public Service
13 Commissions, Public Service Boards, federal
14 agencies, courts and things and they're
15 structured in all different types of ways.
16 Sometimes you have a pretty standard public
17 advocate. That's all they do. Small staff of
18 five attorneys. Court staff. And their job is
19 usually to represent the consumers.

20 Some offices have other missions and goals.
21 They look after other interests, renewable
22 energy or environmental protection. Economic
23 development sometimes. So there's about 65

1 different offices, only 42 out of 50 states have
2 one, but there are also private organizations.
3 Some states have more than one public advocate,
4 and they're all structured differently so it's
5 really hard to compare one to another to
6 determine what's the most effective structure
7 for a public advocate, but that's what we're
8 trying to do. The legislature asked us to try
9 to make that kind of comparison and see what
10 structure would be the most effective for
11 effective representation of the people who pay
12 rates to monopoly essential service providers so
13 electricity, telephone, oil or gas.

14 So we're going to attempt to write a report
15 to the legislature December 15th, and the
16 legislature specifically asked us to gather
17 public input. That's why we're having a couple
18 of public hearings like this one, and we also
19 invite people to submit written comments if they
20 like.

21 On our website on the home page there's a
22 section called Announcements and under that
23 section, you would be directed to submit written

1 comments and turns out to be my email address.
2 So if you don't, if you get home and you realize
3 there's something you wanted to say or you have
4 an idea that you think might be helpful for this
5 project, you could just go on our website, home
6 page, announcements, my email address and we'd
7 be happy to consider any of your comments at any
8 time before we finalize the report.

9 So this won't be your last opportunity, but
10 we're eager to hear what you have to say
11 tonight. There's a signup sheet. Did everybody
12 who wants to speak put their name on the signup
13 sheet?

14 SPEAKER: We signed in.

15 WAYNE JORTNER: Everybody wants to speak
16 has done that. So how many do we have, Angela?

17 ANGELA VALENTINETTI: I've got 8 names on
18 here.

19 SPEAKER: The last two, I just, I thought
20 we were just signing in.

21 COMMISSIONER RECCHIA: Either way, it's a
22 small group so maybe actually, it actually,
23 might be helpful, do you mind if we go around

1 the room and just introduce ourselves so we know
2 who you are and what your interest is. Would
3 you start over here?

4 JORDAN SINGLETON: My name is Jordan
5 Singleton. I'm from Johnson State College.
6 Currently taking microeconomics and our teacher
7 said it would be a great opportunity to come
8 here.

9 COMMISSIONER RECCHIA: Let me get the
10 teacher's name when you're done. Just kidding.
11 I think it is great, and thanks for coming. I
12 appreciate that.

13 NANA ASARE: My name is Nana Asare. I also
14 attend Johnson State College. I also take
15 microeconomics, and the professor said he'll
16 give us 15 extra credit points on our next exam
17 if we attend.

18 COMMISSIONER RECCHIA: Excellent. That's
19 great.

20 BEN HOLL: That's why I'm here, too. My
21 name is Ben.

22 KAYLA FRIEDRICH: I'm Kayla Friedrich.

23 BEN COLLIER: I'm Ben Collier. I'm here

1 with her.

2 SELINA PEYSER: I'm Selina Peyser. I'm a
3 landowner in Monkton, and I'm sensitive to the
4 project. It's very important for me to be very
5 informed about what's going on.

6 COMMISSIONER RECCHIA: Thank you.

7 CLAIRE BROUGHTON: Claire Broughton, and I
8 kind of feel the same way Selina just said.

9 MELANIE PEYSER: I'm Melanie Peyser. I'm
10 Selina's daughter, and I'm here because I'm
11 actually very interested in this topic from a
12 justice standpoint and don't want additional
13 developments.

14 COMMISSIONER RECCHIA: Great. Thanks. You
15 folks?

16 MARK MARSH: My name is Mark Marsh. I'm
17 here to help the stenographer to get home
18 safely.

19 COMMISSIONER RECCHIA: Very good. Thanks.

20 SPEAKER: My name is Mike. I'm a reporter
21 with the Vermont Digger.

22 COMMISSIONER RECCHIA: Okay. And Angela.

23 ANGELA VALENTINETTI: Angela Valentinetti.

1 I'm the Legal Assistant for the Department of
2 Public Service.

3 COMMISSIONER RECCHIA: We've introduced
4 ourselves. So great.

5 WAYNE JORTNER: I'll just tell you a bit
6 more about myself. I've been working in the
7 consumer advocacy arena for about 25 years.
8 Worked as an attorney before that in New York
9 City. Future economists, offices like these
10 across the country hire economists as expert
11 witnesses in the kind of the cases that we
12 pursue as Public Service Commissions, Public
13 Service Boards, so if you're interested in this
14 type of area, utility regulation, monopoly
15 regulation, there's certainly opportunities for
16 working in this kind of regulatory arena.

17 So we'll get started. I'll just say one
18 other thing to summarize why we're here. I want
19 to just say something about how many minutes.
20 We only have 8 or 9 speakers all together?

21 ANGELA VALENTINETTI: I don't think
22 everybody on the list was planning on speaking.

23 COMMISSIONER RECCHIA: We can just go

1 around.

2 WAYNE JORTNER: Even a full 10 minutes
3 would not be a problem, and if there's time left
4 over at the end, if somebody still wants to
5 speak, you're more than welcome to speak again
6 if you pause at the beginning. So there should
7 be plenty of time.

8 Just to mention, when you speak to us, no
9 matter how interesting your points are, we're
10 probably not going to be responding much and
11 that's not because we're not interested, and
12 it's not because we don't find it helpful. It's
13 only because the time allowed tonight is for us
14 to hear from you rather than for us to speak to
15 you or to make a point or anything like that.
16 So we're here to listen and don't misinterpret
17 it if we don't respond tonight. The report will
18 indicate certainly any interesting concepts that
19 we hear from you tonight and so we'll take it
20 from there. So would you like to start?

21 JORDAN SINGLETON: I'm actually just
22 learning.

23 COMMISSIONER RECCHIA: Let's take the list

1 and just see. Yeah. So Ben Collier.

2 BEN COLLIER: Yes. I don't have any.

3 COMMISSIONER RECCHIA: Okay. Don't know.
4 Jordan Singleton?

5 JORDAN SINGLETON: That's me.

6 COMMISSIONER RECCHIA: You guys all signed
7 in. Nana.

8 NANA ASARE: Pass.

9 COMMISSIONER RECCHIA: Ben Holl?

10 BEN HOLL: No.

11 COMMISSIONER RECCHIA: So then we're to our
12 folks. Melanie. You're up next.

13 MELANIE PEYSER: I'm planning, I am
14 planning to submit something in writing as well.

15 COMMISSIONER RECCHIA: Great.

16 MELANIE PEYSER: I'd just like to start
17 with the fact that the public advocate office
18 really can't do its job unless there's adequate
19 access to information for the public, and in my
20 mind, the start of the public advocate office
21 begins with the information that you provide to
22 the public, both about projects, about utility
23 issues and rate issues as well as about hearings

1 like the hearing tonight. So I think the
2 information was so inaccessible and the location
3 is so far from the majority of ratepayers in the
4 state that you have nobody here. And, frankly,
5 I think the announcements about these hearings
6 were limited, the audience was limited. In
7 fact, to find it, it was necessary to dig around
8 on the website. So I think until you have
9 accessible information and you are working
10 towards educating the public about the issues
11 and --

12 SELINA PEYSER: Before you go on,
13 particularly for senior citizens like me over
14 80. We are not that savvy to look for these
15 public announcements unless they are better
16 displayed. They could be put on television on
17 Channel 3, 5, 22 as Public Service
18 announcements, and as older people, we watch
19 those channels, and I would believe that that
20 would be a help to great many citizens, and that
21 is never happening.

22 COMMISSIONER RECCHIA: Okay.

23 MELANIE PEYSER: I also just mention that I

1 think because there's so few people here tonight
2 and because the hearings have been scheduled in
3 not a single territory where you have gas
4 ratepayers which makes up 50,000 of the
5 ratepayers in the state, and all, essentially,
6 as I understand it of your home heating
7 ratepayers versus your electricity ratepayers
8 and only about 8 percent of homes in the State
9 are heated with electricity, it seems like it
10 would be appropriate for you to hold a hearing
11 in at least one of the counties where you
12 actually have gas ratepayers. So I hope you'll
13 consider doing that. I know you're only
14 required to have two, but it seems like to give
15 people a fair opportunity to be heard, in a way
16 that is economically and transportation-wise
17 accessible I think that would behoove you.

18 The second thing I just want to say is I
19 think one of the problems, and, again, I know
20 this doesn't go to structure, but I have to be
21 honest with you that oftentimes departments and
22 institutions get restructured over and over and
23 nothing changes because the fundamental

1 principles under which they're operating don't
2 change. An example I always use is if you have
3 a car that's broken down on the street, and you
4 ask the person who's checking the meters to see
5 if they're paid, whether the person will open up
6 the hood and look in your car, that meter
7 checker is not going to fix your car. That
8 meter checker isn't go to fix your car if they
9 have 100 more meter checkers. The meter checker
10 isn't going to fix your car if you reorganize
11 them into departments and say you look at the
12 carburetor, you look at the alternator, you look
13 at the oil pan. The only thing that's going to
14 fix that car is somebody who actually knows what
15 they're doing and has the expertise to do it and
16 the will to actually have the car run.

17 So I worry that even if we don't end up
18 with the status quo and the Department of Public
19 Service gets restructured that without the
20 proper resources, whether those are human,
21 financial, or otherwise, that nothing will
22 actually change.

23 One of those fundamental principles to me

1 is actually believing that ratepayers and the
2 public whose interest you're meant to represent
3 actually know what their interests are. So over
4 and over and over we see the Department deciding
5 that the interest is something that they haven't
6 actually heard from people. Empirically heard.
7 So if you have thousands of people come to
8 public hearings about a gas pipeline, yet you
9 still determine that people want that pipeline
10 even though fewer than one percent of the
11 comments tell you they want the pipeline, then I
12 have to question whether or not you're actually
13 representing the public's interest or you're
14 representing the interests that you think the
15 public ought to have, and, frankly, that's the
16 difference between a power sweep, a total
17 totalitarian regime, an oligarchy and a
18 democracy.

19 In a democracy, they actually use numbers
20 and voices to actually make decisions as opposed
21 to deciding for people. So I really encourage
22 the Department to think about structurally or
23 perhaps it's a simple legislative requirement

1 that if empirically the numbers you have
2 received that you can document are in concrete
3 conflict with the position, the policy position
4 of the Department, that that automatically
5 triggers the appointment to an independent
6 public advocate to represent the public or the
7 larger groups of people needing to be
8 represented.

9 I would similarly say that you will
10 probably always find in any utility case that
11 you have three or four primary groups within the
12 public who have differing interests, and one of
13 the easiest ways to structure an office would be
14 to have a landowner representative, a ratepayer
15 representative, a renter's representative.

16 One of the things that concerns me the
17 most, for example, with pipeline issues is that
18 the Department of Public Service has been taking
19 money from ratepayers for years and principal
20 that's meant to be returned if the project isn't
21 built. The fact is is that renters who pay that
22 as part of their rent also didn't get the
23 decrease in the amount that they're paying to

1 their landlord, but because there's an
2 intermediary in between, they will never get
3 that refund. That money will go to the landlord
4 as a windfall because there is actually no way
5 to track it and that interest was never raised.
6 You can look at the transcripts and nobody ever
7 asked that question, knowing full well that a
8 very large proportion of the Burlington area of
9 the primary area where Vermont Gas is actually
10 servicing is actually rental buildings where
11 people are paying, and I can tell you because I
12 actually want to become a ratepayer just so I
13 can file things which I'm sure Chris
14 understands. It's actually not that easy to
15 find a small apartment or a small office where
16 you pay your bill directly.

17 And so these are the types of things that I
18 hope the Department will actually consider
19 fundamentally that people need to be
20 represented, regardless of the structure that
21 you have.

22 In talking about whether or not you believe
23 that people know what their interests are, we've

1 heard multiple times from the head of your
2 Public Advocate Office that the Public Advocate
3 Office deems the public interest to be the
4 Governor's position because the Governor was
5 elected by the populace. If that were the case,
6 there would be no need for a Public Advocate
7 within the Department because the Department's
8 position would simply be everybody's interest.

9 So the question arises, well, then what's
10 the purpose of that structure at all if not to
11 actually represent the public when the interests
12 differ. You could simply have an agency that
13 represents itself. That's the agency's
14 position, that's the executive branch's position
15 on a topic, and that's all. You don't need a
16 Public Advocate's Office. If you have a Public
17 Advocate's Office, it seems to me that when
18 there's a conflict between those two positions
19 that's measurable and concrete and visible and
20 tangible that that office actually ought to
21 represent the interest, whether it conflicts
22 with the Governor's policy or not.

23 In terms of improving the structure, I've

1 also looked at a lot of the models, and I've
2 done a lot around the world on nonutility issues
3 and public advocates on other topics, and one of
4 the issues always comes back to whether or not
5 the legislative structure around conflicts of
6 interest, whistleblower protections, financial
7 disclosures actually facilitates the
8 independence of that office regardless of where
9 it's located in government, and this can't be
10 blamed on the Department in any way. The fact
11 is is that until Vermont really focuses on those
12 fundamentals, it will be very, very difficult
13 for any public advocate to do his or her job.

14 Similarly, I think you find that when a
15 public advocate's office is placed into a
16 nonprofit or wholly independent entity, even if
17 there is a line item in the budget because
18 that's very, it's unlikely to be
19 constitutionally mandated, another legislature
20 can come along and ruin the finding. So that
21 office, they often start out very strong but
22 over time they get political pressure that is
23 attached to their funding and you see their

1 effectiveness in serving ratepayers, essentially
2 getting lower and lower and lower over time or
3 less and less effective. So I think it's very
4 important that Vermont pass legislation that
5 actually if you are going to create this entity
6 separate and outside of government and provide
7 the funding that you also create some sort of
8 protections around that financing.

9 To me, the easiest way to do that is to
10 take it out of the Legislature's hands as an
11 issue simply related to the Department of Public
12 Service and put it in as a required cost to
13 utilities. On an annual basis based on their
14 revenue, it should go into their cost of
15 service, and for a project it should go into the
16 cost of that project so that there is an
17 automatic percentage being paid into the Public
18 Advocate's office and is essentially a service
19 that is provided to the utility for the utility
20 to receive the public's interest and have it
21 represented in a fair way. So it just becomes
22 something that the government doesn't actually
23 have to take out of its budget and you don't

1 have to worry about when the budget gets tight
2 the money disappearing. It also frankly takes
3 to a great extent of influence out of the
4 legislature. Of course, you're going to have
5 the utilities in Vermont lobbying constantly to
6 have that amount taken away, but the fact is is
7 that Vermont is currently externalizing the cost
8 of those projects to citizens who frankly don't
9 have the money to deal with the utility cases,
10 especially in a state where we have a general
11 principle that parties' legal fees are handled
12 by themselves.

13 We've dealt with this in the Department as
14 actually quite effective in getting Vermont Gas
15 to actually provide some funding to landowners
16 so that they could actually negotiate, and,
17 frankly, I think that's helpful on gas to a
18 great extent. If you look at the number of land
19 owners they've gotten to sign, I think that
20 money actually was helpful to the Department's
21 bigger policy perspective as well as to Vermont
22 Gas.

23 Finally, I would just say that,

1 structurally, the human resources, again, this
2 isn't about where it's placed, but the bottom
3 line is that the human resources actually need
4 to have the skill and the education to be able
5 to represent the public's interest in a
6 qualified manner, and utility regulation is an
7 extremely complex issue. I have come home to
8 Vermont to work on this issue. It takes hours
9 and hours and hours for people to get up to
10 speed. There are different ways that you can
11 make sure that such an office or anyone who is
12 representing the public actually has that
13 expertise.

14 Another way to handle the issue of
15 financing in office like that would be simply to
16 give every intervenor in a case a block amount
17 of money to participate. This is how the
18 Canadian National Energy Board works.
19 Individuals and organizations apply to the
20 Board. If they are granted status to
21 participate in the case, they get a block amount
22 of money so I think individuals get like 3 or
23 5000 Canadian dollars. Nonprofits get something

1 like 4. The fact is is that that would actually
2 allow people to pool their money in order to be
3 able to hire people external to the government
4 who have the qualifications necessary to
5 represent them. Of course, you are going to end
6 up with cases like the project in Canada where
7 they have tens of thousands of people who have
8 applied for intervenor status, and they're
9 realizing that it would bankrupt the National
10 Energy Board, even with the money paid in by
11 utilities to cover those costs to be able to let
12 them all intervene, and so just recently what
13 they've done is to say you have to reapply and
14 we're only going to give you money for the first
15 instance. We won't provide any money on appeal.
16 So it's actually a huge scandal in Canada right
17 now that they've gone back on their word.

18 COMMISSIONER RECCHIA: Can I ask a question
19 about that because I'm not familiar with that
20 situation. It seems like it would be more,
21 would a class action type structure work better
22 in there where they said apply as a group and
23 we'll fund an appropriate amount for that?

1 MELANIE PEYSER: I think the problem with
2 that is that people have differing interests,
3 and so you want to allow people to be able to
4 participate separately if that's what they want
5 to do, and especially in a small state like
6 Vermont with very serious energy infrastructure
7 issues and a limited amount of land to devote to
8 that, I think it's more difficult to do it that
9 way.

10 COMMISSIONER RECCHIA: Okay.

11 MELANIE PEYSER: The other thing is that
12 frankly unless you provide people with enough
13 information and make the process easy enough,
14 you're not going to get classes. Right? So if
15 somebody doesn't know that a decision is being
16 made to not return 5.2 percent rate reduction to
17 them but instead is going into a fund to build
18 the pipeline, nobody is going to intervene.
19 Right? Unless there's very clear information
20 and there's a very strong mandate, and, frankly,
21 requirement, legislative requirement that
22 information about every hearing be posted, be
23 put into the newspaper, be put into public

1 service announcements, people just don't know.

2 Lastly, I would just say that I think
3 there's a separate issue around monitoring the
4 oversight of utilities that either needs to be
5 separated out or you need to have that be part
6 of the public advocate's role which is that when
7 the utility gives false information to the
8 public, somebody needs to be doing something
9 about it. It is outrageous to me that you could
10 have a Public Advocate's office sit by and hear
11 information going past, and A, not get on top of
12 the utility to stop doing it, but, B, not to
13 provide that information to the Public Service
14 Board in an actual adversarial proceeding.

15 So when you're gotten 498 complaints from
16 ratepayers saying that they don't want to pay
17 for the pipeline, yet in a proceeding on whether
18 or not to reopen the case the Department of
19 Public Service never brings up the evidence,
20 never responds to the evidence when it's brought
21 up by another party, again, you have to ask. If
22 you look back and look at the transcripts, you
23 had 2 or 3 people attend the public hearings on

1 whether or not to not refund the money to build
2 the pipeline. You had almost nobody attend the
3 hearings who said they actually wanted the
4 pipeline expansion. You had no ratepayers
5 writing in and saying we want this pipeline
6 built for Addison County. You had no empirical
7 evidence that any ratepayer actually wanted this
8 to happen.

9 On the other hand, you had 498 complaints
10 saying they didn't want to pay for it, yet that
11 evidence was never brought before the Public
12 Service Board, and so if the Department can't do
13 that and the public advocate can't do it sitting
14 within the Department, then you need to find
15 another way to make absolutely certain that
16 happens.

17 There is a difference between monitoring
18 and oversight and representing the public
19 interest. Again, those things will sometimes
20 come in conflict or sometimes be politically in
21 conflict depending upon who is running our state
22 government. So I hope that you will think about
23 those things and look to other models.

1 Last thing I would say is, and I will
2 probably do some of this research and submit
3 something myself, but I would also look at some
4 models outside of the United States because I
5 think you'll find that particularly where
6 ratepayer and property owner interests conflict,
7 there are some other countries who bumped into
8 these problems much earlier because of many
9 US-based corporations going in and taking
10 indigenous lands. You actually will find that
11 dealing with those differing interests and
12 having them represented equally when they're not
13 listed on another system, you may find that they
14 actually are more useful to Vermont than some of
15 the structures that you have in very large
16 states around the country.

17 So if you look at who has them in the US,
18 most of the places where they have effective
19 Public Advocates are states that have a lot in
20 common with Vermont, but I think you can look to
21 some countries internationally and actually find
22 that because they got lot of international
23 assistance you may find that traditional

1 democracies have better offices handling the
2 types of issues that we have in our state in the
3 US.

4 WAYNE JORTNER: Do you have any countries
5 in mind?

6 MELANIE JORTNER: Outside of the
7 developing, I would say Denmark might be one. I
8 think there are a few Latin American countries,
9 and actually something that I want to do some
10 research on myself and was thinking that I would
11 try to pull together some models with the work
12 that I do when I'm not getting paid for it. So
13 I was thinking that I may just do it because
14 it's interesting for me and, frankly, useful to
15 my work so I'm happy to send you an email and
16 add that.

17 WAYNE JORTNER: I look forward to that, and
18 by the way, you hit on several issues that will
19 definitely be discussed in the report that we
20 submit so one of them, for example, intervenor
21 funding, we're going to mention that. That is
22 something that various states have and the test
23 is usually if a party participates in the case

1 and contributes significantly to the record,
2 according to the Commission, you'd be entitled
3 to funding and California works heavily in that
4 way. There's a ratepayer advocate within the
5 California Public Utilities Commission, but
6 they're not always viewed as the most effective
7 consumer advocate in the state. There's a
8 private organization called the Utility Reform
9 Network, and they are funded almost entirely by
10 intervenor funding. They intervene in cases,
11 they put on a really good case, and they get
12 sometimes hundreds of thousands of dollars to
13 cover their costs, and that allows more people,
14 more parties, to participate in these cases
15 because you can't invest that much without
16 knowing you're going to recover your cost.

17 MELANIE PEYSER: I was just going to say I
18 think the issue in Vermont is that we don't have
19 a consumer nonprofit that represents the
20 broadest part of the public. So AARP, which is
21 who I'm most familiar with, but even they will
22 tell that they represent seniors and low income
23 individuals and not ratepayers as a whole, and I

1 talked to them about helping to represent
2 seniors at the very beginning of the process
3 when I got back to Vermont and realized that
4 there were many seniors in communities who had
5 already signed easements that had very onerous
6 terms, but they simply couldn't afford to put up
7 the money to get an attorney. So I think in
8 Vermont you may have to address the issue of
9 barriers to entry to our reimbursement system
10 may just not be workable just because of the
11 nature of the state and whether or not an
12 adequate cash flow of reimbursements would
13 actually fund a nonprofit. So the fixed cost of
14 establishing in writing just keeping the lights
15 on, the overhead of the nonprofit in Vermont is
16 going to be very similar to California outside
17 of a place like San Francisco or L.A. They're
18 not going to get the hundreds of thousands of
19 dollars because they're not going to be
20 representing cases that are as large.

21 COMMISSIONER RECCHIA: And they like them
22 to be spread out such that, you're right, the
23 institutional costs of like maintaining that so

1 that when an issue comes up, you're able to
2 address it could be a challenge. You're right.

3 MELANIE PEYSER: So you may want to have a
4 two-step process so you could have a block
5 amount based upon the budget of the project that
6 goes to anybody who intervenes and then a
7 reimbursement above and beyond that at the end
8 of the case, but I think unless you do it in a
9 way that would actually fund an organization to
10 exist and, again, to hire people who are
11 adequately trained, in order to be able to
12 represent the issues, I think you'll have
13 trouble actually having it happen effectively in
14 a way that can actually help Vermont.

15 WAYNE JORTNER: Even large organizations
16 like AARP have only limited budgets that they
17 allocate towards things like the utility cases,
18 representing consumers, and that's why --

19 MELANIE PEYSER: In this case, they
20 actually, I think, got a grant from their
21 Washington office for the pipeline so they
22 didn't have enough money. That's what paid for
23 their expert. It wasn't money that was

1 generated by Vermont memberships.

2 WAYNE JORTNER: What I'm getting to is
3 that's why most states do have statutorily
4 authorized Public Advocate funded by the
5 legislature, although the money doesn't actually
6 come from the general fund, taxes, the way most
7 operations of government do. Almost every
8 Public Utility Commission and Public Advocate
9 across the county is actually funded, as you
10 suggested, by utility assessments where the
11 utilities are required to contribute to fund the
12 Commission and the advocate both, and so if the
13 legislature is trying to cut back to save or
14 lower the tax rates, for example, they're not
15 going to gain much by depriving the Department
16 or the Public Service Board of their financing
17 or their funding because those things do come
18 from the utilities.

19 MELANIE PEYSER: Right.

20 COMMISSIONER RECCHIA: Thank you. You're
21 going to submit stuff in comment form as well?
22 So Wayne, how long do people have to put
23 comments in?

1 WAYNE JORTNER: Hope to have them by
2 October 30th, but there's no firm deadline so if
3 you have comments to just submit them.

4 COMMISSIONER RECCHIA: We're still working
5 on this until December at least so let us know.

6 MELANIE PEYSER: That's good to know since
7 there are other deadlines the 30th and the 4th.

8 WAYNE JORTNER: Because we're writing it
9 now, the sooner the better, but any time through
10 early December we'd still read it and consider
11 it and use if it we could.

12 MELANIE PEYSER: Okay.

13 WAYNE JORTNER: Just one thing I meant to
14 do at the beginning and neglected to, I can tell
15 you exactly what the legislation says that asked
16 us to do this report and hold these hearings,
17 and it might be good for background for the rest
18 of the speakers to just see exactly right from
19 the legislature's words what this is really
20 about.

21 So it's a section of an energy bill
22 entitled Report Ratepayer Advocate Office, and
23 it says that the Commissioner of Public Service

1 shall evaluate the pros and cons of various
2 forms of ratepayer advocate offices and report
3 on or before December 15th, 2015, to the House
4 Committee on Commerce and Economic Development
5 and the Senate Committee on Finance with any
6 recommendations on how to improve the structure
7 and effectiveness of the Division of Public
8 Advocacy within the Department of Public
9 Service.

10 And one more sentence. The scope is that
11 the Commissioner shall study various forms of
12 ratepayer advocate offices and assess them in
13 terms of, number one, their structure and
14 reporting requirements; two, whether and how
15 their independence is assured through the
16 structure in the budget; three, their
17 effectiveness representing residential
18 ratepayers in regulatory proceedings; and four,
19 how ratepayer benefits, specifically rate
20 savings, vary with different ratepayer advocate
21 structures.

22 So that's the idea and that may be a
23 difficult thing to compare effectiveness and

1 results based upon structure. Structure, all
2 structures may have some risks in common and
3 some benefits in common, but that's what they
4 told us to do and I'll read one more thing.
5 Just because we're doing this from the vantage
6 point of comparing Vermont to every place else
7 that we can find, and Vermont is a little bit
8 unusual because it houses a number of functions
9 within the Department of Public Service, and the
10 ratepayer advocacy function is, may be the prime
11 one in some people's opinion, but it's one out
12 of like ten.

13 So certainly we're charged with
14 representing the public interests in utility
15 cases before the Public Service Board, federal
16 regulatory agencies and state and federal
17 courts. That's one, and that's really what
18 we're talking about here. In addition, we
19 provide long range planning to the State's
20 energy and telecommunications needs through the
21 Vermont Electric Plan and the comprehensive
22 energy plans. Number 3, we ensure that all
23 Vermonters share in the benefits of modern

1 communications through the Vermont
2 Telecommunications Plan. We promote energy
3 efficiency, we administer federal energy
4 programs, we receive utility customer complaints
5 directly and try to address them individually
6 with the utilities. We inform the public about
7 utility-related matters, and, finally, we make
8 and administer contracts for the purchase of
9 power on behalf of the State, and that's
10 something we don't do continuously but from time
11 to time.

12 So in most examples across the US, we look
13 at the offices called the public advocate or
14 ratepayer advocate or the consumer council in
15 utility matters, they don't do all of these
16 things. They're more focused on just rate
17 setting as a primary mission. So this in some
18 ways creates greater challenges for Vermont and
19 in some ways creates maybe synergies for Vermont
20 because we have a lot of smart in-house experts
21 in various fields within the Department, and in
22 a rate case, you might need a telecommunications
23 engineer to give you advice or an economist or

1 gas facilities expert so there's opportunities
2 for synergies, and also risk, I guess, of
3 conflicts of interest when you have different
4 missions to perform at once. That's part of
5 what we're trying to discuss.

6 COMMISSIONER RECCHIA: So anyone else wish
7 to speak? Claire, you're on the list as well.
8 Did you want to say anything?

9 CLAIRE BROUGHTON: No. I guess not.

10 SELINA PEYSER: I think my daughter very
11 well explained.

12 COMMISSIONER RECCHIA: She did great. She
13 did great, as she always does. And sir, you
14 came in afterwards. We kind of all introduced
15 ourselves, but you want to introduce yourself or
16 do you have any comments?

17 WILL BENNINGTON: I've got some comments.

18 COMMISSIONER Okay.

19 WILL BENNINGTON: Are there other folks?

20 COMMISSIONER: No. We've kind of been
21 through, most of these guys are from the
22 colleges, and they have been told they'll get
23 grade credit if they participate in this meeting

1 so feel free.

2 WILL BENNINGTON: Sure. My name is Will
3 Bennington. I'm from Plainfield, and I guess I
4 mean, I think Melanie really summed up a lot of
5 the specific things that I think DPS could do to
6 better advocate ratepayers, and I mean,
7 obviously, there's a much bigger question to
8 deal with which is like how does DPS play more
9 of a role in helping us through this massive
10 energy transition that we have to go through
11 right now, I think, while advocating for
12 ratepayers in whatever utility cases come across
13 your desk is really important.

14 You also have a role to play in kind of
15 helping us as we're supposed to lead the nation
16 in this energy transition, and I'm going to
17 submit comments electronically more about that,
18 and that's not really the purpose of this
19 hearing.

20 COMMISSIONER RECCHIA: That's helpful.
21 Thank you.

22 WILL BENNINGTON: One thing I would say,
23 specifically, I do think holding more public

1 hearings, I know the Public Service Board has
2 their public hearings they have to hold for any
3 utility case, but we, I mean everyone I know
4 who's been involved in going to those has no
5 faith in that process at all. Board even says
6 that what they hear at those hearings doesn't
7 actually have to influence them at all. And so
8 that's a little disheartening, right? The one
9 opportunity the public has that, the one
10 opportunity ratepayers have to weigh in and give
11 input on a case, they are told what you say here
12 has no impact whatsoever or doesn't have to have
13 an impact.

14 COMMISSIONER RECCHIA: Doesn't have to.

15 WILL BENNINGTON: It can lead to a line of
16 questioning, but it doesn't have to, and so
17 that's basically, I call it a sham of democracy.
18 It's the institution saying, basically setting a
19 stone wall that you can't get through. And I
20 think that DPS has a great opportunity to break
21 that down and to really create a new way forward
22 that involves rigorous public participation and
23 having meetings, hearings during the weekdays is

1 great, having them on weekends would be awesome
2 as well. I'm sure you don't want to work on the
3 weekends. Probably all work insane hours
4 already, but certainly be easier for me and
5 working folks to come on weekends.

6 So yeah, I think just having more hearings.
7 I find it a little amazing sometimes that
8 looking back three years ago when Vermont Gas
9 announced they were going to build the pipeline
10 was basically like a ragtag group of
11 20-year-olds and a really unlikely alliance with
12 some landowners in Monkton that ratepayers
13 learned that this pipeline was going to possibly
14 cause their rates to increase. They didn't hear
15 it from Vermont Gas. They didn't hear it from
16 you. They heard it from me knocking on their
17 door, and I wasn't getting paid to do that work.
18 I'm doing it happily, and it's great. So that's
19 a little disheartening, but where is the line of
20 communication and how has it opened up.

21 And with that, like saying there needs to
22 be more process or more public hearings where
23 there's actually some sort of agreement that

1 what's said there will matter. Will have some
2 sort of impact. I also know that well over now
3 at this point, well over 500 comments from
4 ratepayers have been submitted to DPS. Your
5 position hasn't changed. So I don't, I think
6 it's more of a technocratic stance you take of
7 how to advocate for what is good for ratepayers,
8 and I know you're not just representing Vermont
9 Gas ratepayers necessarily. May be representing
10 future ratepayers and this whole complex
11 ecosystem in the energy regulatory market, but
12 it's still like if you're not listening to those
13 over 500 people who are submitting comments, who
14 are you listening to. Where are you deciding
15 that ratepayers want this.

16 And I guess a final thing to say is if you
17 take that task to really increase the amount of
18 public input your office is getting, I think
19 face to face is always the best way. To really
20 like to take it very seriously and to actually
21 be excited about it and be disappointed that
22 this is how many people showed up to this
23 meeting tonight and maybe you are and no fault

1 of your own. It's hard to get people to come to
2 stuff. Short of a phone call, you're probably
3 not to get people actually to show up here.
4 Something I've learned as a community organizer,
5 but I think really saying like if we don't have
6 a large amount of public input we are not doing
7 our job right and we need to slow down and fix
8 how we can get more public input. I mean, this
9 is what you have for public input, I mean, I've
10 got strong opinions, I'm glad I'm here to say
11 them, but there's 600,000 people in this State
12 who all have way different opinions than me, and
13 I think you ought to be hearing from those folks
14 as well and be doing that messy job of trying to
15 forge some kind of consensus out of that because
16 as Melanie said, assuming that what the Governor
17 wants is in the public interest, I think we've
18 seen the failure of enacting the universal
19 health care law after overwhelming support with
20 that, and for this gas line pipeline that old
21 Shummy wasn't always in line with the public,
22 and that's not his fault. That's just, when
23 you're an elected official like that, it's hard

1 to be representing what you think the public
2 wants so, yeah, more people. More voices.

3 COMMISSIONER RECCHIA: Okay. Great. Thank
4 you very much. Good comments.

5 MELANIE PEYSER: Can I add one thing?

6 COMMISSIONER RECCHIA: No, I'm sorry.
7 We're out of time. No, just kidding. Of
8 course. We have plenty of time.

9 MELANIE PEYSER: When you talk about this
10 bigger structure and the fact that the
11 Department of Public Service has all of these
12 different roles, and that there's synergies, et
13 cetera, I think ideally whether or not this
14 Department is located within or without, part of
15 its role ought to be, again, to be collecting
16 the public's position and providing that
17 position to the other departments as opposed to
18 having the other departments set the policy or
19 the legal position of the public advocate's
20 office. Seems to me that the influence might be
21 flowing in the wrong direction.

22 An example that I would give is that, of
23 course, you have to deliver to the legislature

1 what they ask for. Seems to me there's an
2 element that is looming here which is that
3 ratepayers interests are transforming in the
4 United States and around the world to
5 incorporate more than just the economics of
6 their rates. I think in Vermont in particular,
7 ratepayers actually have an interest also in the
8 climate property of decisions. If the CEP were
9 to say that representatives, for example, that
10 those interests ought to be incorporated into
11 our energy plan and that the economics, the
12 price people are going to pay for regulated
13 utility service may not be any more the number
14 one issue on people's minds and perhaps you need
15 to do an annual or every three years you should
16 be doing a survey among ratepayers of what their
17 priorities are. Ask them. What do they want
18 you to be representing. Not necessarily on a
19 specific pipeline, but asking them the basket of
20 issues that they as ratepayers face, how would
21 they rank their priority? Is number one price?
22 I think for economics guys, right? You would
23 find that there are lots of things that people

1 will trade off for price. People buy I-Phones
2 not because they're the cheapest phone
3 available, but because they kept offering them
4 all sorts of other characteristics and qualities
5 and functionalities that they want.

6 I think you'll find that the same with
7 utility regulation in Vermont. I think you will
8 find a lot of ratepayers who would prefer to pay
9 somebody like Green Mountain Power more to
10 deliver renewable energy to them about which
11 they can feel good and know that they are
12 actually contributing to the earth surviving for
13 their children and grandchildren and will be
14 willing to pay a little more. I think you've
15 already seen that in the market happen, but that
16 hasn't come into the Department of Public
17 Service's sort of group of responsibilities
18 around the ratepayer advocate, and I think if
19 you don't take that opportunity in this report
20 to put that before these committees, then it
21 would be a real disservice to Vermont.

22 COMMISSIONER RECCHIA: Okay.

23 MELANIE PEYSER: I would just want to say

1 about the public hearings, one other thing,
2 which is that I know there have always been
3 representatives of the Department there. You
4 could look at this the way that we look at
5 exculpatory evidence in criminal cases, right?
6 Prosecutors are obligated to actually present
7 exculpatory evidence and share it with the other
8 side before trial. It ought to be the same
9 thing, right? If there is evidence that is
10 countervailing to the Department's policy
11 position or legal position in an utility case,
12 that evidence ought to be required to be
13 presented by the Department. Whether that is
14 done from the standpoint of the Department
15 simply provides it to the other side or you are
16 appointing somebody to actually deliver it, but
17 it really ought not to be the case that the
18 Public Service Board doesn't get information in
19 the litigation of a case simply because the
20 Department has taken a policy that's not aligned
21 with the only ratepayers who have actually
22 expressed their opinion.

23 WAYNE JORTNER: Anybody else would that

1 like to speak?

2 COMMISSIONER RECCHIA: Okay. Well, we
3 probably appreciate you guys coming out. What's
4 going to happen, should I just tell what's going
5 to happen first? So we're going to continue to
6 gather information. Wayne is doing interviews
7 with individuals who are a wide range of people
8 associated with regulatory work and is going to
9 be compiling that in addition to the comments
10 we've gotten here today, and we'll be drafting a
11 report and we'll have that out for comment as
12 well so comments, as Wayne says, if you can get
13 them in, sooner is better because you can help
14 us formulate this, but end of November at the
15 latest would be great, and we really appreciate
16 you guys coming out. I know how far you guys
17 went today to get here, and I appreciate that.
18 So yes, back to you, sir.

19 WILL BENNINGTON: Just a quick thing that I
20 was thinking of in terms of like a public
21 advocate. I think like the public hearings are
22 awesome and actually taking the community
23 organizing model might be an interesting thing.

1 Melanie was talking about in some models the
2 public advocate is filled by a nonprofit role so
3 I don't know what the benefit of that is, but
4 this would obviously require tremendous
5 resources and probably be a little bit different
6 than how you've done things in the past, but
7 actually having, let's take the pipeline because
8 I'm sure you're not sick of hearing about it
9 yet.

10 So you know that there's a body of people
11 who might be impacted by this who could stand to
12 benefit or stand to lose. Everyone from current
13 ratepayers to landowners along the existing
14 route to the potential future businesses and
15 residents who would benefit from this service or
16 not benefit, however you want to look at it, and
17 actually go out and canvas those neighborhoods.
18 Get a team of college interns to go out and
19 knock on people's doors and survey them and ask
20 them, maybe some have already said this or maybe
21 you thought about doing this before.

22 COMMISSIONER RECCHIA: No. That's a great
23 idea.

1 WILL BENNINGTON: This is the best way to
2 actually get information. Get people while
3 they're at home because they might not come to
4 your hearings, but they'll probably come to the
5 front door, and they'll either slam the door in
6 your face and that's fine, that happens. It
7 hurts your feelings, you'll get over it, or
8 they'll actually talk to you and you'll find out
9 why, and it doesn't even have to be like some
10 kind of survey that's going to result in
11 objective information. Could be a more
12 subjective thing, just kind of we talked to a
13 lot of people who are really excited or a lot of
14 people aren't or it could be actually seeking
15 some kind of objective like semi-empirical
16 evidence. So I don't know. Just like the
17 community organizing model is a thing to look
18 at, I think, and is how democracy would function
19 a lot better.

20 COMMISSIONER RECCHIA: Great. Anything
21 else?

22 WAYNE JORTNER: I guess not. The only
23 thing I'll throw out there is maybe these

1 structures were built in a simpler time before
2 we had all these competing things that we've
3 been talking about today, and the presumption I
4 think originally when Public Advocates were
5 appointed in most states were the presumption
6 that people would rather have lower rates than
7 higher rates. People would want to make sure
8 the gas is there when they need the gas for
9 their furnace. They want to make sure the
10 electricity is there when they need electricity.
11 So the highest quality service and lowest
12 possible price was really the mission of public
13 advocates across the country, and I think you've
14 all pointed out very well that things are a
15 little more complicated today than they used to
16 be and that creates more difficult position
17 making in terms of what positions to take on
18 certain cases, but speaking for the Department,
19 and all the other offices that I've been
20 familiar with, I think there's always a
21 well-intentioned public advocate trying to
22 figure out what the public interest really is
23 and people are fallible. It's human beings

1 making decisions, and it's never going to be
2 perfect, but the people I've met in this
3 industry over 25 years have all been very
4 well-meaning people who are dedicated towards
5 helping the general body of consumers that
6 they've been hired to help protect.

7 So with that, I think that's a given, and
8 then how do we make decisions today with all of
9 the controversial issues that are before us, and
10 the other difficult thing is who does the public
11 advocate answer to. Many of you have put forth
12 an interesting idea which probably I haven't
13 thought about enough which is direct public
14 input much more than we've had in the past, but
15 if you don't have a public input, you have a
16 couple of choices. Do you just figure out
17 yourself what the public interest is and what
18 ratepayers really want. That's one model. The
19 other model is do you answer to elected
20 officials, and some people will say without any
21 hesitation that people elect the Governor and
22 the Governor represents the public interest so
23 if the Governor wants, for example, the Public

1 Service Department to do something, that's the
2 public interest, that's what the Governor is
3 there for. He was elected to serve the public.

4 But another idea and maybe something that
5 will be discussed in this report is whether
6 legislation could be drafted to make, without
7 changing the structures and doing something that
8 costs a lot of money to reinvent, have
9 legislature that's very clear about who the
10 public advocate answers to. So it could say
11 it's not the Governor, could say it's to
12 ratepayers, and then you have to figure out how
13 to figure out what's good for ratepayers. But
14 you could separate the State from the body of
15 consumers, and that's something the legislature
16 could consider. You have a mission that's
17 different than representing the State. The
18 Attorney General generally represents the state.
19 The consumer advocates might have a different
20 focus. So that's just another thing that we'll
21 be discussing. There's no easy answers to any
22 of it.

23 MELANIE PEYSER: I think, again, I would go

1 back to what other protections there are. So I
2 agree with you I think all of the people working
3 in the Department, I think all of them came into
4 this in order to do good work. I think you
5 would find that probably among any agency around
6 the country. Vermont is unique in the lack of
7 protections that we have for our government
8 employees and appointees in terms of
9 whistleblower protections, clear conflict of
10 interest in ethics standards, financial
11 disclosure requirements when they're working at
12 any -- most agencies that work with utilities
13 actually have quite a lot of financial
14 disclosure because it's an area that is
15 particularly at risk for corruption. I'm not
16 suggesting there's any corruption happening, but
17 I would come back to the same thing with the
18 Governor and whether or not the Governor is
19 representative of the public interest. With
20 weak financial disclosure rules for campaign
21 finance and even weaker financial disclosure
22 rules for generally elected officials after
23 they've come into office, it's very hard for the

1 public to actually determine whether the
2 government is representing the public interests.
3 People need to have information in order to be
4 able to do a litmus test for themselves.

5 The second thing that I would say is if the
6 basis for thinking that the Governor represents
7 the public interest because he was elected, then
8 maybe you should be looking at his performance
9 ratings from the public because the fact is he
10 is only representing the public until he is
11 vulnerable not to be reelected. Right? So it's
12 not a question of when he's not reelected and
13 somebody else is. That person suddenly on a
14 time range now is representative of the public
15 interest. There is an arc during the term where
16 that person no longer has the public's backing.
17 That will often result if it's not a final term
18 based on limits, right? Will result in the
19 public electing somebody else, but the lack of
20 adequate representation happens a lot earlier
21 than that. So it's something to really think
22 about, but it seems like the biggest issue is
23 separating policy from advocacy. Those are

1 genuinely two different issues. The policy
2 issue and what represents the overall policy of
3 the state as a public interest is one thing.
4 Public interest is not what the Public Advocate
5 offices were set up to do as a policy point.
6 They were set up to represent the public's
7 interest as it differs from or in some cases
8 aligned with the policy of the government, but
9 they were set up to be advocates. They weren't
10 set up to be executive implementing agencies.
11 There's a huge difference there.

12 COMMISSIONER RECCHIA: All right. Anyone
13 else have anything they want to add? All right.
14 Again, thank you all very much, appreciate the
15 time, and look forward to any written comments
16 you have, but this was very helpful. Thank you.

17 MELANIE PEYSER: And please, please, set up
18 a hearing in Chittenden or Franklin County.

19 COMMISSIONER RECCHIA: Okay. We'll
20 consider that. Yes, we'll consider that.

21 MELANIE PEYSER: So the ratepayers have a
22 choice.

23 COMMISSIONER RECCHIA: Okay.

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(Hearing ended at 7:31 p.m.)

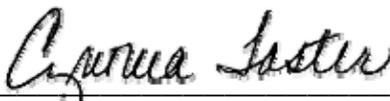
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C E R T I F I C A T E

I, Cynthia Foster, Registered Professional Reporter and Registered Professional Reporter, hereby certify that I reported in machine shorthand the above-entitled Public Hearing held on October 21, 2015, Vermont Public Service Department and that the foregoing is a true, complete, and accurate transcript of public comments as appears from my stenographic notes so taken to the best of my ability and transcribed by me.

I further certify that I am a disinterested person in the event or outcome of this cause of action.

IN WITNESS WHEREOF, I subscribe my hand this 27th day of October, 2015.


CYNTHIA FOSTER, RPR



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