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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 Brattleboro Union  
High School, Brattleboro, Vermont, on November 18,  
2015, beginning at 6:40 p.m.

P R E S E N T

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Deputy Commissioner Jon Copans

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1                   MR. COPANS: I am Jon Copans, the Deputy  
2 Commissioner at the Department of Public Service. Nice  
3 to be back on my home turf. My folks still live here  
4 in Brattleboro over on Putney Road. Graduated from  
5 this very high school, although it looked very  
6 different back in 1992, so -- I am still new at the  
7 Public Service Department.

8                   I'm approaching three months at this point, and  
9 but, in those three months, I've had the chance to go  
10 to -- I think this is maybe the sixth public hearing  
11 I've been to, a couple like this one on the role of the  
12 Public Advocate's Office and then a few on our  
13 Comprehensive Energy Plan which we're working on  
14 finalizing, and, in going out to those public hearings,  
15 I have to say I've been very impressed with Vermonters'  
16 sort of informed engagement with our, with our  
17 department. They, they know, they know the work that  
18 we do, and they have both strong and informed opinions  
19 about how we might do it better, and that's a good  
20 thing, actually.

21                   We are, in many ways, particularly with energy but  
22 also very much with telecommunications, we're in a time  
23 of big change. I'm not -- that may have always been  
24 true, but it feels like we're in a big transition, a  
25 transition that this region is really a part of as we

1 lose the energy production from, from Vermont Yankee in  
2 Vernon.

3 MR. SACHS: We lost it on March 22nd 2012,  
4 sir. Just being straight with you. We live down here.

5 MR. COPANS: Yeah, absolutely.

6 Mr. SACHS: Thank you. Don't think that we  
7 just lost it in December. We didn't.

8 MR. COPANS: Okay. So, as we move away from  
9 centralized, massive centralized generation facilities  
10 and towards more distributed generation, what that  
11 means for Vermonters is energy generation that's  
12 closer, closer to their home in a lot of cases, and  
13 there's a real -- we're in a time of change. Let's put  
14 it that way. And that's all the more reason why we  
15 need Vermonters to be engaged both in conversations  
16 about our energy future but also our telecommunications  
17 future as well.

18 So tonight we're here to talk about the role of  
19 the Public Advocate's Office, and what I have, in my  
20 short time at the Public Service Department, come to  
21 appreciate is the job of our Public Advocate, Geoff  
22 Commons and his team of six attorneys, is really to  
23 represent the public interest before the Public Service  
24 Board. And the public interest as we, as I've come to  
25 experience it at the public hearings I was talking

1 about is, it's passionate, and it's also diverse, and  
2 so it can be a challenge to be in the, in the middle of  
3 that conversation where you, where you have real  
4 passions on all sides of issues and to, and really to  
5 try to navigate towards what we believe is in the best  
6 interest of Vermonters.

7 We probably don't always get that right, but I can  
8 assure you that the team of, in the Division of Public  
9 Advocacy works very hard in trying to get it right.

10 Often, those are on matters that people are paying a  
11 lot of attention to. In particular, you know, we talk  
12 about the issues around the shutdown of Vermont Yankee  
13 and the decommissioning. That's an issue that people  
14 are paying a lot of attention to, but the truth is a  
15 lot of what our Public Advocate does are on issues that  
16 Vermonters aren't paying attention to that aren't  
17 showing up in the newspapers. And so, on one hand, I  
18 think they are, you're navigating public opinion,  
19 you're reading about yourself and the role of the  
20 Department in the newspaper, and, on the other hand,  
21 doing a lot of work that people aren't even aware of,  
22 and that's, I think, just the nature of the job.

23 So I really just want to thank you all for coming  
24 out tonight. I very much appreciate your, in advance,  
25 appreciate the feedback. We welcome it. We really

1 need and are striving as a department to be available  
2 and accessible to Vermonters. That's very important to  
3 us as we do our job.

4 The last thing I'll say is this is, as you can see  
5 from the fact that we have a court reporter here, the  
6 purpose of this is really to gather public comments on  
7 this report that we're doing to the legislature which  
8 Wayne will talk a little bit more about. What that  
9 means is this -- you know, I'm giving a few comments,  
10 Wayne will say a few introductory remarks, and then  
11 we're going to turn it over to you to give your public  
12 comments.

13 The nature of that is that it's not interactive.  
14 We're going to sit here and listen, and you're going to  
15 provide your public comments. That can be frustrating,  
16 at times, for folks. It can be a little frustrating  
17 for us because we want to engage in that conversation,  
18 but the truth is, at some point, we, I think, given the  
19 turnout here, will be done with sort of the formal  
20 proceedings, and then I'm certainly available to stick  
21 around to have that more informal conversation  
22 afterwards as well.

23 So thank you again for coming out, and turn it  
24 over to Wayne just to set the context a little bit.  
25 Thanks.

1           MR. JORTNER: Thanks, Jon. So that was a  
2 good description of the environment we're in and  
3 generally why we're here, and I'll just make it a  
4 little bit more specific. I'm the newest attorney at  
5 the Department, and I was asked to write the report  
6 that the commission will eventually submit to the  
7 legislature because the legislature required a report  
8 from us explaining things like how we arrive at our  
9 Public Advocacy positions before the Public Service  
10 Board, before federal agencies, occasionally before  
11 courts, but most of our work is before the Public  
12 Service Board, and how we, how we represent the public  
13 interest and how the structure of our office is such  
14 that it makes us either more or less effective in  
15 representing the public interest.

16           The legislature asked us to compare the structure  
17 of our office to those of other offices around the  
18 country, because just about every state has some  
19 version of a state-funded public advocate, specifically  
20 for utility matters, to represent consumers, because,  
21 in those kinds of proceedings, you have utilities which  
22 are often big businesses with their own lobbyists and  
23 lawyers, and you have special interests. You have  
24 large industrial customers with their own lawyers, and  
25 you have sometimes elements of the state government

1 intervening in proceedings with their own, you know,  
2 fire power and lawyers, but the consumers who really  
3 pay for everything don't really have a voice unless  
4 somebody is designated to be there to represent the  
5 general body of consumers or the public interest.

6 You know, various parts of the statute actually  
7 defines who we're supposed to represent a little bit  
8 differently. So Jon mentioned the public interest.  
9 That's a good general description of what we're  
10 supposed to do, represent the public interest, but  
11 there are a number of statutes that, you know, that  
12 govern public utility regulation, and some of those  
13 refer to the public good. You know, if somebody wants  
14 to put up a solar facility or a wind turbine or even a  
15 big generator, the Public Service Board has to issue a  
16 Certificate of Public Good or a CPG.

17 So what does public good mean? That's, you know,  
18 it sounds like public interest. All these terms are  
19 very similar but somewhat different. When there's a  
20 rate proceeding, the statute refers to the interests of  
21 the consuming public. So is the consuming public  
22 different from the public interest? Maybe a little  
23 bit. Because the consuming public describes  
24 ratepayers, and ratepayers are interested in paying  
25 lower rates as opposed to higher rates.



1           So the Department, when we intervene in rate  
2 proceedings before the Public Service Board, we assume  
3 the people we represent would prefer lower rates to  
4 higher rates at least, at least to the extent it's  
5 consistent with high-quality utility service. We don't  
6 try to starve utilities because then you end up with  
7 bad service, and we have a certain telecom company in  
8 the state where people are complaining about the  
9 service, and that may have something to do with their  
10 financial status. So we want healthy utilities that  
11 get a reasonable rate of return, but not an excessive  
12 rate of return, on their investment, but we want rates  
13 to be as low as possible. So in rate proceedings we  
14 have more of a clear mission to represent ratepayers  
15 and keep rates as low as possible.

16           In other types of proceedings, there is more of a  
17 judgment call. If the issue is whether to allow  
18 Vermont Gas Services to build an extension to its  
19 pipeline, you know, to build a new pipeline addition,  
20 that may be very good for some people, and it may be  
21 very bad for others. So we have a difference of  
22 opinion. The public is not unified on issues like  
23 that.

24           MR. SACHS: Did the Department of Public  
25 Service take any public input before it contracted with

1 Seabrook Nuclear Station for 15 percent of the power  
2 after we got rid of Vermont Yankee's power March, let's  
3 say, 2012?

4 MR. JORTNER: I don't know the answer to that  
5 question. I've only been with the Department a few  
6 months.

7 MR. SACHS: I gathered that. And he's been  
8 there three months. So neither of you can answer that?

9 MR. JORTNER: We're new. That's right. We  
10 can get you an answer, though.

11 MR. SACHS: Please, feel free.

12 MR. JORTNER: And feel free to call us at the  
13 office, and we'll get you an answer.

14 MR. SACHS: Also, you guys need to know about  
15 MOU. MOU is not okay. MOU is against what everything  
16 stands for in the Department. Go for a backroom deal?  
17 That's going to make it all work out. Isn't it a great  
18 idea, guys? Thanks for asking.

19 MR. JORTNER: As Jon said, you know, we  
20 really can't spend tonight, you know, debating because  
21 we want to hear from you. I'm busy writing this  
22 report. MOU's are one of the things I'm writing about  
23 in the report because I know there's a public  
24 perception that they're not good.

25 MR. SACHS: They're a backroom deal. They

1 are in the State's best interest.

2 MR. JORTNER: Okay. Well, I mean, I can't  
3 argue with you tonight. Maybe we can have other public  
4 input hearings and we can have more of a back-and-forth  
5 on other occasions. But, yeah, the Department does  
6 enter into agreements with utilities just as lawyers,  
7 prosecutors settle with defense attorneys.

8 MR. SACHS: The sentence you just said, can  
9 you repeat it?

10 MR. JORTNER: And then we'll use a type of  
11 settlement. Settlements are very common --

12 MR. SACHS: Yes, it's a type of settlement  
13 that goes on while numbers of other parties are  
14 spending big bucks to show up at a Department, at a PSB  
15 hearing while all those big bucks are being spent for  
16 the Department to go off with Entergy or Vermont Gas to  
17 approve a contract. It's so screwed up. It is not  
18 democracy. It is democracy to the highest bidder.  
19 That is very wrong on the part of the Department. Did  
20 you get that clearly? Gary Sachs, Brattleboro,  
21 Vermont.

22 MR. JORTNER: Okay. What I would recommend.  
23 We're going to continue to take written comments from  
24 any member of the public through the end of this month.

25 MR. SACHS: Yeah, but we're members of the

1 public. We don't get paid for this stuff. You know,  
2 we have other jobs that we do. Some of us have some  
3 experience with the Board or the Department.

4 MR. JORTNER: So what I'm suggesting is we're  
5 going to read and listen to anything you have to say,  
6 but for tonight we have to get through everybody's  
7 opportunity to say something.

8 MR. SACHS: That won't be hard.

9 MR. JORTNER: Until the end of month, you'll  
10 be free to add other comments by sending me an email,  
11 and I'll give you my email address. It's also on our  
12 website. This whole project is mentioned on our  
13 website, and it mentions that you can provide  
14 additional comments by sending an email to my email  
15 address at work, and I'll be glad to read them and  
16 consider them as I write this report, okay?

17 So I'm going to try to discuss all of the things  
18 that you've mentioned and many others, including how  
19 the Department sometimes works out agreements with  
20 utilities. Just because we are usually the adversary  
21 of a utility doesn't mean we never have overlapping  
22 interests with the utilities. So sometimes we do  
23 settle with utilities. We admit that.

24 But the reason we're here specifically is because  
25 the legislature asked us to conduct at least two public

1 witness hearings around the state. We're conducting  
2 four. This is the last one, and, you know, as I said,  
3 in the future we may do this more often whether the  
4 legislature directs us to or not. But, as I researched  
5 this issue, I realized this is not the first time the  
6 legislature has asked the Department to explain its  
7 Public Advocacy function, and, in fact, it's not the  
8 second time or the third time. It's probably the  
9 fourth time in the last 20 years or so that this issue  
10 has come up. It seems to come up over and over again,  
11 and that's fine, but I'll just read you two sentences  
12 from the statute that's relevant --

13 MR. SACHS: Which statutes, the 30 V.S.A.  
14 248?

15 MR. JORTNER: It's Act 56. I don't have the  
16 cite with me. You may be right.

17 MR. SACHS: So which statute?

18 MR. JORTNER: It's called Act 56, Section  
19 21(b), and what the legislature asked us to do is to,  
20 under the heading of "Report", "The Commissioner of  
21 Public Service shall evaluate the pros and cons of  
22 various forms of ratepayer advocate offices and report,  
23 on or before December 15th 2015, to the House Committee  
24 on Commerce and Economic Development and the State  
25 Committee, the State Committee on" -- I'm sorry -- "the

1 Senate Committee on Finance with any recommendations on  
2 how to improve the structure and effectiveness of the  
3 Division of Public Advocacy within the Department of  
4 Public Service".

5 And, by the way, I'll mention that our structure  
6 in Vermont is different from most other states.  
7 They're all different from one another, but Vermont is  
8 different in one particular respect, and that's that  
9 our Division of Public Advocacy is within a much larger  
10 organization. The Department of Public Service is a  
11 much bigger organization than the typical free-standing  
12 public advocate that we find in most other states.

13 I've worked for two other public advocate offices,  
14 Maine and New Hampshire. Both of them had a total  
15 number of employees of between six and eight people,  
16 and the Department has way more because the Department  
17 is charged with doing many other official functions  
18 relating to public utilities. So that's one aspect of  
19 the structure that's relevant to this report, you know,  
20 How is our structure different from others and whether  
21 this structure is effective or could be made more  
22 effective by changing something about it. So it's  
23 really about the structure of our office, and that's  
24 really what we most want to hear about is how we could  
25 be structured differently to be more effective.

1           The other sentence I wanted to read from the  
2 legislature requiring this hearing is that, "The  
3 Commissioner shall study various forms of ratepayer  
4 advocacy offices and assess them in terms of, one,  
5 their structure and reporting requirements; two,  
6 whether and how their independence is ensured through  
7 structure and budget; three, their effectiveness in  
8 representing residential ratepayers in regulatory  
9 proceedings; and, four, how ratepayer benefits,  
10 specifically rate savings, vary with differing  
11 ratepayer advocate structures".

12           And that's a hard one because there's no clear way  
13 to compare. There's about 66 public advocate type  
14 offices around the US. There's really no uniform way  
15 of comparing how much one saved over another and  
16 whether that has anything to do with their structure or  
17 not. It's a very hard comparison that the legislature  
18 is asking us to do, but we're going to do our best to  
19 analyze that and make any other recommendations that we  
20 think might be useful.

21           Okay. And, just to let you know what the  
22 Department does, as I mentioned, Public Advocacy is one  
23 division within the Department. The things we're  
24 charged with include, aside from representing the  
25 public before the Public Service Board, providing

1 long-range planning for the State's energy and  
2 telecommunications needs through Vermont's electric  
3 plan and the Comprehensive Energy Plan. We're supposed  
4 to ensure that all Vermonters share in the benefits of  
5 modern communications through the Vermont  
6 Telecommunications Plan, and that's why our office is  
7 always trying to encourage the expansion of broadband  
8 and other advanced services that people want and need.

9 We promote energy efficiency. We administer  
10 federal energy programs. We resolve utility complaints  
11 by individuals directly. So we have a team of about  
12 five people who answer the phone all day and answer  
13 complaints about utilities and try to get them resolved  
14 as quickly as possible from the customer's point of  
15 view, and we have a customer education function too.  
16 We inform people about utility-related matters. And,  
17 from time to time, we actually administer contracts for  
18 the purchase of power on behalf of the State. We don't  
19 do that very much lately, but the Department, from time  
20 to time, has been actually a market participant in the  
21 power markets.

22 MR. CAMPANY: Can I ask a clarifying  
23 question?

24 MR. JORTNER: Sure.

25 MR. CAMPANY: What you just described, is



1 that just the Public Advocate Division, or is that the  
2 whole Public --

3 MR. JORTNER: No. That's the Public Service  
4 Department. So the Public Advocacy Division is one  
5 division out of five or so within the Department.

6 MR. CAMPANY: Got you.

7 MR. JORTNER: And that's what makes it  
8 somewhat unusual where, you know, Public Advocacy is  
9 part of a bigger organization, and so one of the issues  
10 is, Is that a good thing or a bad thing? Well, most --  
11 I've talked to a lot of experts as part of my public,  
12 you know, not just public input, I've gotten a lot of  
13 input from utility experts, from utilities themselves,  
14 from consumer advocates, and the vast majority of  
15 people I've spoken to think that the fact that the  
16 Public Advocacy Division is mixed in with all of these  
17 expert functions in other divisions is actually a good  
18 thing.

19 It creates synergies because the Public Advocacy  
20 lawyers have access to experts which help them in their  
21 cases before the Public Service Board, and sometimes  
22 they even use those experts to produce evidence before  
23 the Board. Those experts can testify and can enhance  
24 the ability of the Public Advocates to present cases to  
25 the Board. So most of the experts I've spoken to

1 believe that it's, you know, our structure is actually  
2 a good one because there are synergies created by the  
3 various types of diverse experts we have on board.

4 So we'll hand it over to you at this point  
5 because, as Jon said, the real purpose of tonight's  
6 hearing is to hear from you. We're going to carefully  
7 consider what you have to say, and whether we agree  
8 with it or not, public perception is a very big issue  
9 for us, and we want to, we want to address concerns and  
10 consider what you have to say. So, whether we respond  
11 or not tonight, don't take that to mean we didn't hear,  
12 understand, and find value in everything you said.

13 MR. ACKER: My name is David Acker. I'm from  
14 Grafton, Vermont. You talk about public interest. I  
15 just -- sorry. I had a thought that I wanted to share  
16 with you. You know what? Why don't we go on to the  
17 next one? I'm just going to recover my thought. Go on  
18 to another person. I'm going to recover my thought.

19 MR. JORTNER: Oh, sure. Anybody have a  
20 question before we begin? Okay. Well, why don't we  
21 start then with Russell Hodgkins?

22 MR. COPANS: So we've got -- so we've got  
23 eight people signed up, at this point, to speak. I  
24 mean, at this point, I guess I would suggest we limit  
25 comments to about eight minutes a person, and then, if

1 there's time left over afterwards -- some people might  
2 want to leave at that point. If there's time left  
3 over, we'll take additional comments at that point.  
4 Does that work for folks? I don't want to be overly  
5 limiting if that doesn't seem like the right approach,  
6 but does that work for folks?

7 MR. JORTNER: I think we'll have enough time.  
8 You know, unless somebody really wants to speak for,  
9 you know, for 20 minutes or more, I think we'll have  
10 enough time for everybody without worrying about the  
11 limits quite yet. But why don't we start, and, if we  
12 need to, you know, ask you to be briefer, we'll, you  
13 know, we'll have to do that, but I don't think we'll  
14 need to tonight. So the first name on the list is  
15 Russell Hodgkins.

16 MR. HODGKINS: I'm Russell Hodgkins. I'm the  
17 Town Manager and Zoning Administrator for the Town of  
18 Westminster. Our concerns are tenfold. We have worked  
19 very hard with our planning and our zoning bylaws and  
20 our Town Plan. We have issued numerous requests and,  
21 and denials of information that we requested throughout  
22 the process of -- I think it's eight now -- solar  
23 plants, solar arrays in the Town of Westminster, and  
24 the last one that hit the Board of Selectmen the  
25 hardest, I guess, was we had an identified deeryard in

1 a very remote area, and the Public Good Order took no  
2 less than a month to not visit the site, not get a hold  
3 of any board from the Town of Westminster, and they did  
4 it from their offices in Montpelier or wherever the  
5 base is for your board, and our, our requests, our  
6 hopes, everything goes on deaf ears. We get no  
7 response back.

8 We know that, that we had some very good points on  
9 each and every one. We have farmlands that are being  
10 taken. We had our only industrial, slash, commercial  
11 lot maintained of six different commercial lots taken  
12 with solar arrays because we, as a board, as a Town  
13 Manager, as a commission, did not get heard, did not  
14 get to weigh in on any way, shape, or form. We've lost  
15 valuable economic gains for the Town of Westminster,  
16 and we're, we're very distraught about it. That's it  
17 for now.

18 MR. COPANS: Thank you.

19 MR. JORTNER: So can we hear from Lawrence  
20 O'Neil?

21 MR. O'NEIL: You can. Sit here so I can see  
22 you both. Forgive me. I'm working from some notes. I  
23 understand what your goal is and that you were charged  
24 to, the Public Service Department was asked to decide  
25 whether alternate structures of the Public Advocate's

1 Office would be better. As a Vermont consumer that's  
2 directly impacted by the decisions made and executed by  
3 the Public Service Board, I believe an independent  
4 Public Advocate Office is a necessary component of a  
5 fair, balanced, and an effective system.

6 Currently, the Public Service Department is an  
7 agency within the executive branch of Vermont  
8 government. It's charged with representing all the  
9 things you said, energy, telecommunications, water,  
10 wastewater, utility systems. Within that lies the  
11 consumer affairs part of it, public information, and  
12 the Public Advocacy Office. As to the synergies you  
13 spoke of, I think they're negligible. That's my  
14 opinion. I believe the structure does not provide for  
15 effective deliverance of true advocacy for the  
16 ratepayers of Vermont.

17 Having personally dealt with Consumer Affairs  
18 people over a nearly year-long period to try to resolve  
19 an issue I had, I know all too well the limitations of  
20 the office. The conclusion of months of back-and-forth  
21 and research on both parts ended up with a written  
22 statement from Consumer Affairs that said, and I quote,  
23 "The bottom line is that there seems to be no  
24 reasonable explanation for why Green Mountain Power  
25 would", blah, blah, blah, do what they did, and that's

1 it. That's what it ended with after a year.

2 I cannot believe that the Consumer Affairs  
3 Department acted independently or without pressure from  
4 someone to not resolve the issue. When they didn't  
5 resolve it, I was not referred to the Public Advocate's  
6 Office, which I would have thought would have been the  
7 next step. I was referred to the Public Service Board,  
8 to whom I wrote. On August 11th, in writing, sent a  
9 request to them. To date, more than three months  
10 later, I have not heard from them in writing,  
11 automated, personal, anything. I gave them all of my  
12 contacts.

13 So I know that the Consumer Affairs Department is  
14 not effective, unless it's something that's very, very  
15 basic. My issue was not very basic, but it was very  
16 defined, and they still couldn't resolve it.

17 I believe that I'm -- my thought is, Is the Public  
18 Advocate's Office representing the public interests, or  
19 is it representing the interests that the Public  
20 Service Board thinks we should have? There's a big  
21 difference there. You talked about those things.  
22 There's a big difference between the public interest  
23 and what you think we should be interested in. I think  
24 that's something that needs to be really looked at.  
25 They seem to deem the public interest to be whatever

1 Mr. Shumlin's position is, and because we elected him  
2 doesn't mean that we necessarily agree with all of his  
3 positions, political or otherwise, with what goes on in  
4 the State.

5 The Department's tended to sponsor policy  
6 proposals and take public positions promoting statewide  
7 benefits. I'm not a statewide person. I'm a single  
8 consumer. I want you to represent me. I don't care  
9 about statewide benefits. When you're talking about an  
10 issue that's going to affect individuals, they need to  
11 be the first part of the equation. Statewide benefits  
12 need to be the second part of the equation. I think  
13 the Department is not pursuing its mandated mission in  
14 an effective manner since it's failed to distinguish  
15 between the broader public good on one hand and  
16 ratepayer advocacy. That's what we're talking about is  
17 the broader public good and ratepayer advocacy, which  
18 is what your mandate is.

19 Currently, the Public Advocate, as part of the  
20 Public Service Department, answers to Mr. -- I believe  
21 it's Recchia. He's a political appointee collecting a  
22 nice big, fat six-figure salary that I get to pay for.  
23 Who's he going to answer to, me who's paying his salary  
24 or the man who appointed him to that nice job? Not a  
25 real hard stretch to reach the conclusion that he is

1 not nearly as desirous of representing ratepayers as he  
2 is of representing the Governor and his policies and  
3 procedures.

4 We need an independent Public Advocate Office to  
5 follow the facts and measure the rate impacts of energy  
6 and telecommunications policies and procedures before  
7 they go into effect. At this point, the public finds  
8 out about these things when they get a bill or there's  
9 some sort of stink raised about it, but by then these  
10 things are settled, and they've been settled by MOU's  
11 behind closed doors, or they've been settled in some  
12 other manner that no one has heard of.

13 The population of our state is, what, 400,000?  
14 You have a total of maybe 40 people at 4 of these  
15 meetings. How well were these meetings publicized? I  
16 only found out about it because I make a point of  
17 reading the daily paper. I never see a Public Service  
18 announcement. I saw nothing. I'm very glad you came  
19 to the southern part of the state, since all of the  
20 other meetings were in the northern part. The southern  
21 part does exist. We're down here.

22 I, I think the Public Advocate Office should be an  
23 independent office that's removed from the executive  
24 branch and the inherent political pressure to support  
25 utility company projects and rate proposals. The



1 Public Advocate Office needs to be independent, needs  
2 to represent the interests of Vermont energy and  
3 telecommunications ratepayers so that our utility bills  
4 are fair and reasonable. I'm not looking for free  
5 electricity or any other utility. Just, like you said,  
6 the companies should be allowed make a profit to keep  
7 their infrastructure and everything else.

8 I also understand that there is sort of a  
9 revolving door of personnel that moves between the  
10 utilities and the Public Service Board. I think an  
11 effective way of negating that would be some sort of  
12 noncompete agreement between the employees and  
13 management, etc., that you're, that, if you're working  
14 for a utility, you don't turn around and come work for  
15 the Public Service Board, and vice versa, within maybe  
16 a five-year period or something. Because that's not  
17 serving the public interest. It just doesn't do that.

18 The public interest was set -- excuse me. The  
19 Public Advocate was set up to represent taxpayer  
20 interests, whether they differ from or align with, in  
21 some cases, political policy. I mean, it's supposed to  
22 be, in my eyes, the Public Advocate is supposed to be  
23 an adversarial position to the politicians and the  
24 Public Service Board. Not always, but I think that's  
25 what it should be the majority of the time. It should

1 be at least informing the Public Service Board about  
2 the other options to whatever, whatever question is  
3 being asked. It should be not functioning as the  
4 executive implementing agency, you know, as it  
5 currently seems to be the case.

6 In summary, I think the current structure of  
7 placing Consumer Affairs, the Public Advocate Office in  
8 the office of Public Service doesn't allow for the  
9 public advocacy to be free of political pressure from  
10 the executive office. The competing interests of the  
11 Public Service Department do not allow for an  
12 independent or effective consumer advocacy and,  
13 therefore, are detrimental to the Vermont consumer.

14 MR. JORTNER: Thank you. So next we have --  
15 is it Chris Company?

16 MR. CAMPANY: Chris Company, Executive  
17 Director of the Windham Regional Commission. We'll be  
18 submitting written comments. Am I remembering that the  
19 comments are due November 30th?

20 MR. JORTNER: That would be great. I mean,  
21 there's not an absolute. If it was December 1st, we'd  
22 read them too, but we need to finish this up by the end  
23 of November.

24 MR. CAMPANY: So let me go back to kind of  
25 the process by which this was announced. We found out

1 about it through, accidentally, through the press. So  
2 the Regional Planning Commission wasn't notified of  
3 this process, and, seeing as how we have a standing --  
4 that's right.

5 SPEAKER: Yeah, I sent you an email.

6 MR. CAMPANY: Yeah, thank you. And so I  
7 reached out to the other Regional Planning Commissions,  
8 and they hadn't heard about this either, and seeing as  
9 how we're, we have a standing in 248 and 248(a), it  
10 would have been good to have notice. I don't know how  
11 you've reached out to municipalities, if you tried to  
12 reach out through VLCT or not too. We have officials  
13 from two of the towns that are within the Windham  
14 region here. I don't know if you guys found out  
15 through us or through the newspapers or through some  
16 other --

17 MR. FRANCIS: Yours was the first and only, I  
18 should say.

19 MR. CAMPANY: Same with you guys?

20 MR. HODGKINS: Correct.

21 MR. CAMPANY: So that's, that's not  
22 appropriate. So I'll be submitting written comments.  
23 Just to begin with, though, you are -- there is, there  
24 is absolutely a tension there. We represent ourselves,  
25 always have, to the best of my knowledge, pro se in 248

1 dockets before the Public Service Board, and, of  
2 course, 248(a) as well, and our towns frequently rely  
3 on, of course, submitting comments to the Public  
4 Service Department as part of the process, but,  
5 ultimately, when the Public Service Department Public  
6 Advocate Office is participating, you are necessarily,  
7 because of the way it's structured, representing the  
8 position of, presumably, the Governor. Because that's,  
9 that's been the way the structure seems to be, seems to  
10 work.

11 Because we can't, as a public advocate, we cannot  
12 go to the Public Service Department and say, Windham  
13 Regional Plan has X, Y, or Z policy. Would you please  
14 take that to the Public Service Board and make sure  
15 that our policy is known and understood? Just  
16 objectively, not with the public, not with the blessing  
17 of the Public Service Department. You're not really in  
18 a position to do that. And the same for the towns,  
19 where the town plans have standing, it seems that a  
20 public advocate should be able -- we need some kind of  
21 structure where the towns can simply say, This is what  
22 our policies say, and we need this taken before the  
23 Public Service Board.

24 Because not all -- because, again, not, there just  
25 seems like -- and I know that you guys don't control

1 the Public Service Board process, but it just seems  
2 like, given the form of government in Vermont and the  
3 relative small size of our towns and the importance of  
4 many of these issues to them, we need a more effective  
5 and efficient way to get the town policies before the  
6 Public Service Board.

7 We also need an effective and efficient way,  
8 frankly, to make sure that the Public Service Board is  
9 aware of what their staff seem to be saying to whether  
10 it's towns or Regional Planning Commission or  
11 ratepayers or other parties. And I'll use as an  
12 example -- this isn't a case, but it's a -- last  
13 summer, I believe it was, the Public Service Board was  
14 tasked with soliciting comments on the definitions of  
15 "substantial deference" and "good cause" in 248(a).

16 MR. COPANS: Yeah.

17 MR. CAMPANY: The legislature had required  
18 that they form a committee of towns, and it's like  
19 VLCT. I forget who the other members were. Again, the  
20 regional commissions found out about this through a  
21 commissioner in, I think it was, Central Vermont  
22 Regional Planning Commission that this process was even  
23 going on. We have standing in 248(a). When I reached  
24 out to the Public Service Board to say, Can we, can  
25 this process be extended because we weren't, didn't

1 even know it was going on, we were told, No, because  
2 we're not required to give you notice. And, in that  
3 case, I reached out to the Public Advocate Office and  
4 said, This isn't cool. Is there anything that you can  
5 do to communicate to the Public Service Board, not  
6 their staff, that this is going on?

7 Ultimately, all the Regional Planning Commissions  
8 together submitted a letter saying, We would like to  
9 comment on this, and we did the letter together, and  
10 they gave us, I think, a couple days' extension. They  
11 said that they couldn't be late on a report to the  
12 legislature, and, goodness knows, no deadline before  
13 the legislature on a report has ever been missed.

14 MR. COPANS: No, sir, and we won't on this  
15 one, let me assure you.

16 MR. CAMPANY: But we need some kind of way to  
17 communicate to the Board itself. On 248(a),  
18 specifically, I don't know if it's official, I don't  
19 know how we could ask, but it seems that the decision  
20 has been made that town plans and regional plans have  
21 no standing in that process. Regardless of what the  
22 statute says, it seems like internally that seems to be  
23 the function. I don't know how the Board feels about  
24 that or not. Again, it's their, their own -- they're  
25 cloistered.

1           But we, again, we need some way to communicate  
2 with the Board and have issues brought before them, and  
3 we need it, frankly. So I don't know if it's  
4 necessarily an ombudsman role, but it would seem that  
5 some kind of independent, if it's truly a Public  
6 Advocate function, just some kind of, even if it's just  
7 an aggregator where you don't necessarily have to take  
8 the advocacy role, but at least get before the Public  
9 Service Board what the town and regional and other  
10 positions are. It just seems like, in the interest of  
11 fairness, some agency like that should be created.

12           But I'll give you more thoughtful comments. I  
13 guess I would ask, Is it possible to have more time?  
14 Because, given the short notice, I've got our own  
15 commission structure I've got to get through, and next  
16 week is Thanksgiving week. I mean, I'm sure that we're  
17 not going to be convening people next week, but, if  
18 there could be an extension, that would be great.

19           MR. COPANS: Is our deadline December 15th?

20           MR. JORTNER: Yeah, this has to be to the  
21 legislature December 15th, and I've promised internally  
22 to have the report done by me by the end of November.  
23 So it would be helpful to me, if it, if it's going to  
24 be in, you know, in the draft report, to be heard, you  
25 know, to have it in my hands by the end of November.

1           MR. CAMPANY: And it would have been helpful  
2 to us to have had more notice about this so that we  
3 could prepare.

4           MR. COPANS: We can always do better in  
5 notifying folks. We're not going to argue that point.  
6 We have a deadline, and our challenge is we would like  
7 to have your comments reflected in the report, and so,  
8 if you can get it in November 30th, that's great. If  
9 you can't, we certainly have some of the gist of it  
10 just from what you've shared with us, and we'll do our  
11 best after that.

12          MR. CAMPANY: We could always testify.

13          MR. COPANS: At any time, always, of course.

14          MR. CAMPANY: Okay.

15          MR. JORTNER: Thank you. I don't know if  
16 there will be legislative hearings, necessarily. Do  
17 you have any idea?

18          MR. COPANS: I imagine, yeah, there will.

19          MR. JORTNER: So, yeah, if there are  
20 legislative hearings, of course, that's another  
21 opportunity. I can't speak for the legislature, so I  
22 don't know that they'll be holding hearings on this  
23 particular issue. Rod Francis?

24          MR. FRANCIS: It's me, but I'm going to defer  
25 to the gentleman from Grafton. Are you ready to go



1 now?

2 MR. ACKER: Well, no, actually, I'd prefer it  
3 if you go first.

4 MR. FRANCIS: That's fine. I just remembered  
5 that you were waiting to gather your thoughts, so --

6 MR. ACKER: Yeah, thank you.

7 MR. FRANCIS: You're welcome. My name is Rod  
8 Francis. I'm the Planning Director with the Town of  
9 Brattleboro, and I want to underscore the comments made  
10 by Chris Campany here. In general, we share the same  
11 degree of frustration. We will also be filing  
12 comments. On that point in particular, I might engage  
13 in some kind of a trade. If we could get a clearer  
14 understanding of the outline of your draft report, I  
15 feel like we could provide you with more focused and  
16 well-reasoned comments.

17 One of my challenges in this process, along with  
18 Chris, is that, not only did I not know that you were  
19 doing this until I got an email last Thursday, I still  
20 don't really know what it is that you're doing. You've  
21 read sections of the Act which is the, the instruction,  
22 if you'd like, from the legislature to your department,  
23 but it still doesn't make it really clear to me in a  
24 meaningful way what is it that we're actually trying to  
25 weigh here, and so a verbal description of the

1 structure of the Department and the scope of the whole  
2 Department and then some verbal description of the  
3 interface between the Department and the Board is  
4 helpful in this instance. I might add that it's,  
5 parenthetically, that it's at odds with some other  
6 descriptions that I've been provided with in years past  
7 in a different setting from the Public Service  
8 Department.

9 And so my challenge here is, if I'm taking this as  
10 a homework assignment, it would be useful, as if you  
11 were the teacher, to provide written instructions on  
12 what it is that you want us to do, and so, if you could  
13 possibly provide even, like I said, an outline of your  
14 report -- what are the things that you're going to  
15 consider? Are you going to look at other states'  
16 organizational structures? Are you going to look at  
17 other states' resource commitments to the public  
18 advocacy function? Are you going to ignore those  
19 because the comparisons are too hard? Are you going to  
20 look at internal changes in policy and resource  
21 allocation that reflect changing views within the  
22 Department vis-a-vis the public advocacy role and your  
23 relationship with the Public Service Board? Are you  
24 going to explain in a meaningful way what you do in  
25 reaction to the executive branch of the government of

1 Vermont providing directions to the Public Service  
2 Department to achieve policy goals that inevitably  
3 involve you in an internal conflict between  
4 representing the interests of an individual member of  
5 the public against achieving the goals of what is  
6 effectively your boss, however broadly or specifically  
7 those directions are being given to you?

8 So these are all the kinds of things that we're  
9 challenged with as a professional planner trying to  
10 actually establish what it is that your report's going  
11 to contain and how we can make your report better than  
12 it would otherwise be and how we can represent the  
13 interests of the taxpayers of this municipality whose  
14 experience so far with the Public Service Board on the  
15 questions of 248 and 248(a) have been thoroughly  
16 frustrating.

17 And so I want to move to the next point, and,  
18 again, I'll be trying to elaborate on these points for  
19 you in a written form so that they can hopefully be  
20 more beneficial. You actually got some of my point  
21 earlier, Wayne, when you started talking about the  
22 difference between the public interest on the one hand  
23 and public good on the other and then perhaps what it  
24 might mean to mean to be the consuming public, and you  
25 had a variety of other definitions of what constituted

1 in the interests of some segment of the public up to  
2 and including utility ratepayers, and, I guess, my  
3 challenge here is to actually try and understand.

4 As a professional involved in land use planning,  
5 frequently, we encounter a situation where a project is  
6 proposed under 248 or 248(a). We clearly see the need  
7 for mitigating measures to be implemented in terms of  
8 the immediate impact on the public within some radius  
9 of the proposed project, but the attitude appears to be  
10 of the Public Service Board that, as long as some  
11 nebulous version of the public good is established or  
12 maintained because the project is providing either, A,  
13 telecommunications or, B, renewable energy, then all  
14 other concerns are irrelevant because that public good  
15 has been met.

16 The more we would say from a land use, planning  
17 and land use permitting background is, It still might  
18 benefit the overall public in some broad way, and you  
19 may even be able to quantify that. Nevertheless,  
20 there's a quantifiable and identifiable impact on some  
21 subset of this public, and it is only appropriate that  
22 that impact be mitigated and that the developer or the  
23 applicant or, in your language, the intervenor, has the  
24 ability to establish, with due process and other  
25 appropriate measures in place, how to go about

1 mitigating the impact or whether, in fact, the project  
2 doesn't meet the broad public good balanced against  
3 other interests.

4           And so there have been examples recently from the  
5 Board where we haven't been able to achieve -- the  
6 Board decided against giving substantial deference to  
7 the town plan and to local land use regulations  
8 because, in very broad terms, the public good was met  
9 by the installation of yet another cell phone tower in  
10 an area of Brattleboro that's well-served by other cell  
11 phone towers, and there was no ability on the part of  
12 the Board or the Department to explain the difference  
13 between what would happen for an actual user given the  
14 existence of roaming contracts, for instance, right?

15           So there's a whole series of innocent or naive  
16 applications of competition theory and what it means to  
17 regulate monopolies on the one hand and, on the other  
18 hand, very narrow and very literal interpretations of  
19 what constitutes the public good, and as long as some  
20 broad measure of public good is met, you've relieved  
21 yourself from the responsibility of actually addressing  
22 the impact on local residents, and I think that that's  
23 where our frustration --

24           And I strongly want to echo the comments here, and  
25 I would say that we sit and watch very basic

1 manipulative maneuvers from, from developers and others  
2 in the arena of renewable energy using basically end  
3 runs around the regulations. So large solar projects  
4 with one developer, they own multiple parcels. They  
5 engage in subdivisions and other maneuvers and then try  
6 and stack SPEED contract facilities side by side to get  
7 around the regulatory requirements of what a large  
8 project would be.

9 It's apparent to everybody of who the players are  
10 and what the net effect is going to be, that you're  
11 going to end up with something in the vicinity of 25 or  
12 even 30 acres under solar panels, but the way it's  
13 being pieced out from a regulatory standpoint, they've  
14 avoided the kind of oversight that we, as land use  
15 planners, would reasonably expect the regulating agency  
16 to engage in.

17 And I understand these kinds of conversations may  
18 occur internally in the Department. What we don't see,  
19 what we can't see is the deliberations of the Board or  
20 any kind of recognition on the part of the Public  
21 Service Board that these are legitimate concerns and  
22 that there are legitimate interests to be served here,  
23 and they're just fobbing us off with, The public good  
24 has been met, is ultimately going to undermine people's  
25 commitment to the Comprehensive Energy Plan itself,

1 which sets extremely lofty goals for renewable energy  
2 but does it in a way that repeats past mistakes in  
3 terms of what are the impacts of any kind of land use  
4 development and why it's reasonable to expect that  
5 those impacts need to be mitigated.

6 And so my last comment refers to your -- and there  
7 will be more in a written form, but my last comment  
8 refers to your observation that in some states the  
9 Office of the Public Advocate, it's a sole person or a  
10 small, very small staff. They're isolated. They're  
11 poorly funded, and they don't have access to the  
12 equivalent of the Public Service Department, and so  
13 they lack access to engineering information. They lack  
14 access to important information that would help them  
15 become meaningful public advocates.

16 I think you have to weigh that on the one hand  
17 with the possibility that there's a form of regulatory  
18 capture here where it's a very small group of law firms  
19 that specialize in the 248 and 248(a) process. There's  
20 a very small number of potential applicants, and  
21 there's a very small venue in Montpelier where these  
22 things get played out, and then so what you have is --  
23 and it's not -- I'm not wanting to imply here, and I  
24 don't want you to misunderstand me. I'm not suggesting  
25 that this is untoward, but it's inevitable just as a

1 sort of a social setting that you people work together  
2 and work closely together over long periods of time to  
3 achieve your respective goals and responsibilities, and  
4 from the outside it's inevitable that what we see is a  
5 system that has many unspoken rules, many unspoken  
6 expectations, and many unspoken modes of decision  
7 making that make it extremely difficult, again, for  
8 skilled land use professionals and others who've got  
9 some familiarity with process to actually make sense of  
10 the decision-making process that goes on.

11 And so, again, it's a legitimacy question. As  
12 this goes on, the legitimacy of the Board and its  
13 decision making falls into question, and I think that,  
14 I think that's where we're at on this question, and so  
15 whether you can resolve that conflict of interest and  
16 sort of maintain the benefits of that synergy that you  
17 identify or even weigh that meaningfully against the  
18 disadvantages that potentially come from the same  
19 setting, I think, would be an interesting area of the  
20 report to address.

21 And I think that, in closing, I just want to  
22 emphasize that the inadequate notification that we had  
23 here and the lack of background information that we've  
24 got to take advantage of to formulate our response is,  
25 is regrettably consistent with a longer term experience



1 of the Board and the Department.

2 MR. JORTNER: If I may, could I just ask you  
3 to put a finer point on one thing? Could you briefly  
4 explain to me what is the conflict of interest that you  
5 referred to?

6 MR. FRANCIS: It's unclear to me exactly how  
7 far the public advocacy function can be pursued by a  
8 municipality or another stakeholder in a review process  
9 undertaken by the Board because the Department  
10 necessarily has to represent the interests of the  
11 executive branch, and the whatever those settings are  
12 and whatever those directions are, we are not part of  
13 that process, and so, because they are not formalized  
14 and because it's not a separate office and because we  
15 don't have somebody that's actually going to represent  
16 our interests in that venue, which, as I pointed out,  
17 has very explicit and specific modes of conduct that  
18 even ordinary attorneys have limited exposure to, we're  
19 at a real disadvantage.

20 It, it takes a huge dedication of resources on our  
21 part to actually understand and make, make the process  
22 work for us. And so it would be beneficial if you  
23 thought that the Public Advocacy function was actually  
24 there for us as host communities for, for projects that  
25 are permitted through 248 or 248(a). We don't get the

1 clear sense that the public advocacy function is there  
2 for us in 248 and 248(a) proceedings. In fact, we,  
3 it's the opposite. What we --

4 MR. JORTNER: So I understand your points  
5 about the frustration with the process, but, when you  
6 talk about conflict of interest, can I just ask you a  
7 question? Are you talking -- is the conflict you're  
8 referring to the conflict between what you assume the  
9 executive branch of state government is influencing the  
10 Department with, versus the independent judgment that a  
11 Public Advocate at the Department might exercise on his  
12 own?

13 MR. FRANCIS: Yes. In fact, that's exactly  
14 what I'm getting at, that the directive comes from the  
15 executive branch and, therefore, limits the scope of  
16 the Public Advocate because they're inside, they're  
17 inside the same structure.

18 MR. JORTNER: Okay, thank you. Thank you  
19 very much for those comments. So we're at Leslie  
20 Sullivan Sachs.

21 MS. SACHS: Thank you. I'm actually used to  
22 standing up if you don't mind.

23 MR. JORTNER: That's fine.

24 MS. SACHS: Sorry. Raised in a church.  
25 Yeah. So my name is Leslie Sullivan Sachs. I live in

1 Brattleboro, Vermont. I'm with the Safe and Green  
2 Campaign. I know the Department of Public Service  
3 largely within the context of Vermont Yankee Entergy,  
4 now NDCAP. I, too, you know, I went to your website  
5 when I heard about this, which I heard about from an  
6 activist group working on pipelines. I did not hear  
7 about it in the press. I went to your website and saw  
8 a lovely statement, but didn't really -- and so I  
9 thought, Well, I'll try to learn about what this Office  
10 of Public Advocacy is. So a suggestion would be just  
11 to take what you just -- I know we're the last hearing,  
12 but it would help for those of us who might want to  
13 write public comments if you would just take what you  
14 read tonight and post that on the website linked to the  
15 announcement of these hearings. That would be helpful.  
16 Now, I know that may be difficult.

17 My experience with the Nuclear Decommissioning  
18 Citizen Advisory Panel is that we've been talking -- it  
19 took nine months to get an email address, and there has  
20 been talk for over a year, well over a year, about a  
21 website for NDCAP. Currently, what there is is at the  
22 very end of the nuclear page, and you have to go  
23 through all of this other stuff, there are minutes and  
24 agendas. So I understand that the wheels move  
25 extremely slowly when it comes to websites and the

1 State of Vermont, and that is really an issue.

2 Part of my job in working on Vermont Yankee issues  
3 over the last couple of years was -- and other  
4 advocates have also done this -- was putting on public  
5 workshops to prepare for to make comments to the Public  
6 Service Board and to help people identify the issues  
7 involved and to help them understand the process.

8 It's not a consumer-friendly process in any way, shape,  
9 form, or manner. We never, I never even thought of  
10 asking someone from DPS to come down and participate in  
11 those workshops, even though we, you know, we'd have 60  
12 people at a workshop, and BCTV would come and televise  
13 them, but that was us interpreting your positions and  
14 giving them to the world.

15 I don't think that DPS is -- I never thought that  
16 you would have an education department or that you  
17 would promote yourselves as -- I didn't actually know  
18 that there was an Advocate Department until this, these  
19 series of hearings, and I've been following Vermont  
20 Yankee pretty closely since before the sale and a lot  
21 of Public Service Board stuff, and I worked at Vermont  
22 Law School for 25 years, including at the Environmental  
23 Law Center and the Energy Institute. So I didn't know  
24 about this particular part of DPS.

25 I, too, have to say that it's been really

1 frustrating and mystifying to me over the years to try  
2 to figure out how we take these energy policies, which,  
3 you know, especially the most recent round of energy  
4 policies went through good community-based feedback  
5 and, I think, in many ways they are reflective of  
6 Vermonters' goals, but I don't want to see those policy  
7 goals trampling Vermont's democratic process. That  
8 upsets me very much.

9 I want to see solar. I want to see wind. I want  
10 to see water. I want to see it done well. I want to  
11 see it done with thought. If that takes time, fine.  
12 But to be doing those things while just -- I mean, some  
13 of the stuff I've heard tonight horrifies me that I  
14 didn't know about, but things that I've also, you know,  
15 other stories that I've read in the press.

16 I really want to be proud of Vermont being an  
17 energy leader. I don't want to be embarrassed and  
18 ashamed of how we're getting there, and there's no good  
19 reason for it. We're a small state. We have, you  
20 know, I have boasted to so many people over the years  
21 what great access we have to our government, to our  
22 legislators. We don't have it to the Public Service  
23 Board. We don't have it to you at all, and, you know,  
24 beyond public hearings like this which we hear about  
25 through our friends, I, I, throughout the Vermont

1 Yankee Entergy hearings, it, you know, was obviously  
2 clear that there is no way for a minority opinion  
3 outside of the Governor's office to be expressed before  
4 the Public Service Board. It is definitely a process  
5 that's dominated by the Governor's office and his  
6 appointees, and there is no way for towns or for  
7 individual landowners to be heard.

8 Chris Williams who lives up in Rochester, he  
9 turned me on to the Indiana Public Utility Trust.  
10 Have you folks heard about that? So they took a nice  
11 big, fat settlement that they got from a utility case,  
12 and they created a trust. They have a board for the  
13 trust. Chris is one of the board members of the trust,  
14 and that trust will fund individuals and groups in  
15 utility cases before their Public Utility Commission.  
16 So I would encourage you to look at that as a model,  
17 not obviously to replace what you're doing, but as a  
18 way of hopefully being able to get a citizen's voice in  
19 the process.

20 I mean, I don't understand, sitting here tonight,  
21 I don't really understand why we went through the whole  
22 Act 250 process, we went through regional planning, and  
23 we were all so proud of that, and now, like, in the  
24 name of energy progress, we are just casting it to one  
25 side. That's very disturbing.

1 MR. JORTNER: Thank you. Gary Sachs, please.

2 MR. SACHS: Sure. Let's see. Jim Volz, he  
3 was the, the lawyer that, on the part of the Department  
4 of Public Service during the time of the sale that the  
5 State of Vermont and Vermont Yankee Nuclear Power Corp.  
6 sold the nuclear reactor to Entergy, well, he's now  
7 sitting in the Chairperson's seat of the Vermont Public  
8 Service Board, and Sarah Hofmann, who was the directing  
9 attorney at the Department, she's also sitting on the  
10 Public Service Board, the three-person panel. The  
11 third person on the panel, the wife of Peter Welch, our  
12 state, our federal representative. Something's wrong.  
13 Something's wrong with the process.

14 How many people do we have in the State of Vermont  
15 that know public utility rates and commissions? I  
16 can't imagine we know a whole lot of them, but Sarah's  
17 up there on the Board after jumping out of the  
18 Department to go to Netbook. Yeah, we're going to  
19 welcome her back to the state. I'm a little concerned.

20 Now, I know that, for me to show up and want to  
21 be an intervenor if Entergy wants to do something --  
22 no, no. The reactor's gone. Sorry. Let's think.  
23 Gas, Vermont Gas wants to do something with one of  
24 their fancy-ass pipelines, and if I want to go and say,  
25 No, I don't want you to do something with your

1 fancy-ass pipeline, I don't have the amount of money  
2 that's necessary to ante up the hundred thousand  
3 dollars to become an intervenor before the Public  
4 Service Board. That is wrong. The fact that the  
5 Department is the Governor's right hand, I mean, that's  
6 how it's thought of up there. It's the Governor's  
7 agenda. That's why they have that seat at the Board.  
8 It's the Governor's position in front of the Board. It  
9 isn't the ratepayer's position. It's the Governor's  
10 position. I don't believe those are necessarily the  
11 same.

12 MOU, Memorandum of Understanding, that is  
13 something -- my experience with the Department began  
14 with Christine Salemvie who was the head of the --  
15 S-A-L-E-M-V-I-E -- 2001, 2002. Then Douglas won.  
16 David O'Brien, he is a scary individual. He was the --  
17 he honestly didn't know a neutron from a crouton.  
18 That's not my quote. Ray Shadis gets that one. But  
19 he's teaching down in Fairfield. Gosh, am I glad I  
20 don't go down to Fairfield.

21 So, if the Governor's agenda is to shut down an  
22 industry, the Department will do it. If the Governor's  
23 agenda is to keep an industry open, the Department will  
24 do it. We saw that with Douglas. We saw that with the  
25 various approaches before the Board and before the



1 Department saying, This isn't okay.

2 What's wrong with the Department? I don't think  
3 you're trained in negotiations. I don't think you're  
4 trained in negotiations, and I don't think Chris  
5 Recchia, lovely man, is trained in negotiations. He  
6 got his fucking ass handed to him in negotiating with  
7 Entergy when they walked in to him two days before  
8 Christmas 2013 and said, Here, here's our agreement.  
9 If you don't -- this is my assumption. I don't know if  
10 this is true, but I believe it was, If you change a  
11 word of this, we're out of the state, which means we no  
12 longer have the cheap access to decommissioning cheap.

13 No, we no longer have the lack of access -- wait,  
14 wait. We no longer have Entergy to be the cheap  
15 decommissioning agent to decommission their reactor  
16 because they couldn't afford to run it because they  
17 made bad decisions in the year 2000, 2001, 2002 when  
18 they chose to buy it. I was there. Every time when  
19 there's a negotiation in front of the Public Service  
20 Board, this department, you guys, go off into some back  
21 room with whoever it is who's trying to get that pushed  
22 through. You come to whatever price works, and that is  
23 not okay.

24 For the, for the Windham Regional Commission to  
25 pay thousands of dollars to be an intervenor to have

1 that happen, that's not okay. For anybody else to be  
2 an intervenor to pay thousands of dollars to have,  
3 hundreds of thousands of dollars to do the research,  
4 that's not okay.

5 I mean, my involvement in this is for my -- I have  
6 no idea why I do this. I don't like being lied to. I  
7 like to speak truth to power, okay? So the Department  
8 doesn't do its job, okay? I don't believe that Chris  
9 Recchia -- I think the State got its ass handed to it  
10 with the \$10 million over five years and blah, blah,  
11 blah, all the little treats that Entergy handed to the  
12 State.

13 I mean, I actually asked him, you know, Did you  
14 negotiate that, or was that literally, You take this,  
15 or we're out of the state? It really felt like that to  
16 me. It didn't feel like a negotiated settlement. It  
17 felt like an ultimatum, If you don't take it the way  
18 we're offering it, we're out of here. That's an  
19 ultimatum. That is not a negotiation. Therefore, I  
20 see Mr. Recchia having failed for those three months in  
21 2013.

22 I don't think it's appropriate that the  
23 decommissioning of the reactor should be between Chris  
24 Recchia and Twomey or whoever, whatever his name is, at  
25 Entergy, you know, whoever they send in as their site

1 VP or their exempt, no, no, no, their wholesale  
2 commodities guy from New Orleans. What kind of crap is  
3 this? We are Vermont. Nothing Entergy has done in  
4 this state has been according to Vermont way. It's  
5 been, We're going to, we're going to --

6 I mean, I remember the amount of bullshit and pomp  
7 that went about bringing in Jay Thayer to the  
8 Department, to the Public Service Board. They came in  
9 introducing him as the new site VP, and he left the  
10 state in fucking shame in 2007 after lying. 2010. I'm  
11 sorry. He lied in 2009. He was one of the six that  
12 lied. They did not get -- sorry. I'm getting off  
13 base.

14 The Department failed, I believe, in that one, but  
15 I don't think -- to me, it's for the Department to try  
16 to do stuff beyond its reach and outside of the view of  
17 transparency. That's where you fail. If you keep your  
18 actions transparent, if you keep your deliberations  
19 aboveboard, if you don't go into a back room and create  
20 a negotiation that works for the Governor's plan,  
21 believe me, the people, we'd really like that, so we  
22 could look at what you're doing and be proud of you.

23 Every time Entergy went before the Public Service  
24 Board, every time, every time, it ended in an MOU,  
25 every time, not occasionally, every time. Uprate, dry

1 cask, the first time they tried to get a relicensing  
2 when they lied -- I'm sorry -- when they misspoke and  
3 misrepresented the company -- that's how the Attorney  
4 General claimed it -- when they came back and tried to  
5 do it again, and then the third time when they did  
6 this, when they announced they're going to shut down,  
7 Well, we're going to force you to allow to us to  
8 operate until December 29th because, if you don't,  
9 we're out of here, and then who's going to decommission  
10 the reactor?

11 We made a pretty clear statement in this state  
12 about having no gas. We mean it, the people. Not okay  
13 for the Department to get gas moving through the State  
14 of Vermont. We don't care. We don't want it to go --  
15 we don't want it to go over to Weyerhauser. We don't  
16 give a shit about that. Ticonderoga, whatever it is,  
17 that's their problem. Let them bring it down through  
18 New York. We don't need to bring it through Vermont.  
19 If we can bring some more hydro power down, and if we  
20 can help in replacing the 2,500 megawatts they need to  
21 replace Indian Point, let's help them. Thank you.

22 MR. JORTNER: Thank you. So next on the list  
23 is Paul Banik.

24 MR. BANIK: Paul Banik, Westminster Select  
25 Board Vice Chair. Most of what I had in for my

1 statements has been spoken. Mr. Francis did an  
2 absolute perfect job of it, and I appreciate that. So  
3 I'm going to just throw it down the center for you. So  
4 I signed up to speak.

5 Party status, taxpayers, the public, that's what  
6 we deserve, independent advocacy, as you heard, but, in  
7 my belief, party status for the municipalities as well  
8 is as crucial because the landowners come to us first  
9 and scream or support, either way, but we get no  
10 weigh-in. So what's the point in drawing up a Town  
11 Plan? What's the point in working with the Regional  
12 Commission? What's the point in having zoning or  
13 bylaws or any of these other governing aspects of our  
14 communities when the PSB can swoop in and not even look  
15 at them or especially hear from us? So that's, that's  
16 it. Everything else has been said that I added to it.  
17 Good job.

18 MR. JORTNER: Thank you. And David Acker?

19 MR. ACKER: All right. I think I might be  
20 ready. See if I can pull it together. I'm a resident  
21 of Grafton, Vermont. I've lived here with my family  
22 for more than a decade, and now I'm faced with fighting  
23 the battle of my life, okay, one of the battles of my  
24 life, and that is the Public Service Board having the  
25 right to put in an industrial wind turbine within a

1 mile of, not just potentially my residence, but many of  
2 my neighbors' residences.

3         What I heard tonight is about the process. It's,  
4 We the people, and the people have elected officials to  
5 create documents in towns, okay, town plans, amongst  
6 other things, and these town plans reflect the people's  
7 decision on who they wanted as elected officials based  
8 on platforms. Yet here we have communities throughout  
9 Vermont, Irasburg and now Swanton, who have  
10 overwhelmingly outvoted the wind turbine, industrial  
11 wind turbine projects in their town, yet the PSB has  
12 the option to override that and drive that forward,  
13 okay, to the detriment, I believe, to Vermont towns.

14         Industrial wind turbines is an active technology.  
15 The evidence exists out there that it harms people who  
16 live within a certain distance of these turbines. It  
17 is not solar panels. It is not a passive technology.  
18 There is moving machinery. And I happened to sit in  
19 the Grafton Woodlands meeting they had last week where  
20 they invited the Honorable Senator Benning who is, I  
21 think, the House Minority Leader, and he said he  
22 doesn't understand why this state is so -- and don't  
23 take -- this isn't his quote, but why we're so bent on  
24 destroying the mountaintops of something we worked so  
25 hard to preserve, okay, in wind energy particularly,

1 not, I'm not talking solar.

2 So why are we taking off the tops of mountains,  
3 okay, when we have Act 250 and we're trying to preserve  
4 Vermont? So industrial wind turbine operators will  
5 tell you that these wind turbines are, have no human  
6 health impact, and that's why I'm here tonight, because  
7 these wind turbines, which are 500 feet tall that are  
8 putting out 2.5 megawatts that are within a half mile  
9 of residents certainly have a tremendous human health  
10 impact. They put out an infra-sound.

11 There is evidence. These companies will tell you,  
12 We're doing our scientific study. We're waiting for  
13 research. We're waiting for research. But all you  
14 have to do is go on Google and do your own research and  
15 find out human health impact, industrial wind turbines,  
16 and you will see in Canada, in the Netherlands, and in  
17 Australia what is going on with places that were not  
18 sited properly. And that's where I want to thank this  
19 woman over here earlier when she said that, Put some  
20 thought into what we're doing. Don't harm one, single  
21 Vermonter.

22 There's a person, a family in Lowell, the tragedy  
23 of the family in Lowell who live below industrial wind  
24 turbines. Nobody's going to buy a house that has this  
25 problem. Nobody's -- you can't leave. This is their

1 dream, okay? So, when you talk about for the better  
2 good of the majority of the people, for the betterment  
3 of the people, okay, where does the "no man left  
4 behind" fall in? Where is it where we protect every  
5 single one of our residents? You want to put solar up  
6 throughout the State of Vermont? Knock yourselves out,  
7 okay? Fight over that. Don't impact the Vermonter.

8 I've heard stories of solar sites going up where a  
9 woman is now looking out her kitchen window at a solar  
10 site. This is not a Vermonter's dream. We came here  
11 because we have a dream. We have a dream to live  
12 together and work as a community. I think we are a  
13 very strong community-based state. Everybody I've ever  
14 heard from around this country, when they talk about  
15 Vermont, they talk about it's something different.  
16 There's an energy here in Vermont that's very different  
17 than any other state in the Union.

18 I think the Governor has lost sight of that a  
19 little bit, and I'm not sure why, okay, he's lost sight  
20 of Vermonters. Wind turbines, industrial wind  
21 turbines, do not belong in the ridge mountains of  
22 Vermont. You want to put them offshore, you want to  
23 put them out in the prairie lands, knock yourself out.  
24 Do not harm one, single family here over industrial  
25 wind turbines. Thank you.



1           MR. COPANS: We had someone else. I don't  
2 know, sir, if you want to participate. You came in  
3 after we signed in.

4           SPEAKER: Yeah, I did want to make some  
5 comments. I'm not sure my voice will hold up.

6           MR. COPANS: Can you identify yourself for  
7 the court reporter?

8           SPEAKER: I haven't formulated my thoughts  
9 right this moment, so, if you could continue to anyone  
10 else who wants to speak first.

11          MR. JORTNER: Sure, and, if you decide you're  
12 ready to speak before we are actually done, you're more  
13 than welcome to. Is there anybody else that wants to  
14 speak?

15          MR. CAMPANY: I'm milling on something over  
16 the question you asked Rod about the conflict of  
17 interest. I think it may be not necessarily in the  
18 definition. It's almost more in the title of the  
19 Public Advocate Office, and then -- so I'll just use  
20 this as an example. I get before the Public Service  
21 Board in the Vermont Yankee docket. It was 8300 or  
22 whatever. So there's the Public Advocate with counsel  
23 representing the Department representing ostensibly the  
24 State's position, which is the Governor's position, and  
25 then you have Agency of Natural Resources. I'm just

1 looking -- I'm thinking, going around the table. You  
2 may have another state agency, then the Regional  
3 Planning Commission if we're accepted. We don't have  
4 automatic party status because the towns don't have  
5 automatic party status.

6 You guys are -- so, even though it's the Public  
7 Advocate Office, ultimately, it's the attorneys from  
8 the Public Advocate Office that are representing the  
9 State's position, which and that, so that's where  
10 there's at least the appearance of a conflict of  
11 interest with the, with the title. Because it's not to  
12 say that the Governor's interest is necessarily  
13 contrary to the public interest, but having, there's an  
14 implication there of some kind of equality of voice or  
15 some kind of equality of standing or some kind of, at  
16 least, equality of access to the process which doesn't  
17 exist.

18 And the MOU's are an issue because one of the  
19 comments I'm going to make is that, in the written  
20 comments, is that this function of at least being able  
21 to communicate, knowing and communicating what town  
22 policies are, regional plan policies are, and I'm  
23 talking mainly -- you know, and then there are also the  
24 ratepayer issues -- being able to aggregate that and  
25 present it, again, just objectively as to what it is,

1 you guys aren't in a position to do that under, under  
2 the contested-case format of the Public Service Board  
3 because you have to represent yourselves.

4 And this even came in NDCAP because I was trying  
5 to figure out -- we just, there was going to be a  
6 discussion about the siting of the second ISFSI, and  
7 there's a -- and so we were talking about, like, how a  
8 position on that even gets entered into the Docket 8300  
9 process. Because, ultimately, it would have to be  
10 entered into the technical hearings. Who does that?

11 Because there was a whole discussion about whether  
12 or not -- and, if you go back and look at the tapes,  
13 there was a whole discussion about whether or not there  
14 was a conflict of interest. Because it could be that,  
15 if you leave it to the Public Advocate to enter that,  
16 that position may be contrary to what your own position  
17 is before that docket. So it could be left to some  
18 other party to be willing to enter that position but  
19 perhaps with the admission that there's a conflict of  
20 interest there or it's not consistent with prior  
21 testimony.

22 So, if you go back and look at that whole  
23 discussion from the last NDCAP meeting, it might  
24 actually point you to the fundamental structural  
25 problem that you have. Because there, that is an

1 entity that's created by the State to advise the  
2 Governor, the legislature, your own department, yet we  
3 were struggling to have the conversation about, How  
4 does that get entered into before the Public Service  
5 Board on an advisory opinion about something  
6 fundamentally related to the decommissioning of a  
7 nuclear power plant? And so, to me, if you can go back  
8 and look at that and walk that backwards and see, What  
9 would the structure of a Public Advocate Division look  
10 like to where an advisory opinion from a legislatively  
11 created advisory panel can get entered into the  
12 process, it might give you some, some direction.

13 I will also ask again. One of the reasons why, if  
14 you sensed some hostility when you gave the response  
15 about your time, I have my own time and my own process  
16 within the Commission as far as getting comments to  
17 you. The way this hearing was described about the  
18 ratepayers' interests, that's different than regional  
19 commissions, towns. So I'm not, I'm still not exactly  
20 sure what your report is going to discuss. So, even  
21 if, even if we had known weeks ago, it would have been  
22 difficult to begin to prepare some constructive  
23 thoughts around this because it sounds more like it's  
24 addressing this gentleman's concerns as a ratepayer as  
25 opposed to the larger representation of the broader

1 public interests including the towns and regional  
2 commissions before the Board through the Public Service  
3 Department.

4 And so I guess I would just ask again if we can  
5 have more time, at least, like, through the first week  
6 of December, just to construct some thoughts, and I'll  
7 ask you. I personally have a process. I have multiple  
8 committees and an executive board that I need to go  
9 through. I couldn't do that before. I didn't even  
10 know what was happening, and then the way the end  
11 result was described was somewhat narrower than what --  
12 and we'll take the opening to offer --

13 MR. FRANCIS: Right. I would just like to  
14 clarify. Sorry. I would like clarification. When you  
15 read from the Act, are you, in this report, going to  
16 address the question of ratepayers? Is that the entity  
17 or the, the description of the public that you're going  
18 to work with, or are you going to meaningfully convey  
19 these other concerns from other entities for, you know,  
20 like, municipalities, and regional commissions and  
21 people with other concerns or issues that don't reduce  
22 down to just a question of, I'm a dissatisfied customer  
23 of a utility providing me an essential service?

24 MR. JORTNER: Yeah. The focus of the report  
25 is more the overall issues that you've been talking

1 about. You've all been talking about the key issues  
2 that we're thinking about in terms of drafting this  
3 report. The conflicts you've talked about, those are  
4 very interesting because that has a lot to do with  
5 structure. If there's a conflict of interest because  
6 of the way we're structured, you know, that's key.  
7 That's a key issue that we want to discuss. Everything  
8 you've, all the points you've all made have been highly  
9 relevant and on target. In fact, this gentleman's  
10 story about not being treated as he wished by the  
11 Consumer Affairs people is really the first I've heard  
12 from the public in this process. Because I do, I spend  
13 a fair amount of my time on that, in that with that  
14 group, that public affairs group and --

15 MR. O'NEIL: If I could interject, it wasn't  
16 that I was treated badly. It was just that they were  
17 completely ineffective. They were unable to do -- they  
18 placated me at best. They were neutered because your  
19 next step is to go nowhere. It's off the end of the  
20 plank.

21 MR. JORTNER: Yeah. Well, I would welcome  
22 for you to call me and tell me specifically about that  
23 case because we keep very good records about every  
24 complaint that comes in.

25 MR. O'NEIL: The PSB, they've got it all in

1 writing.

2 MR. JORTNER: I know, but you identified for  
3 me --

4 MR. COPANS: As do we. I mean, we have the  
5 records. The truth is we can go back and look it up.

6 MR. JORTNER: Yeah. In fact, when I came  
7 here, one of the things that impressed me was how much  
8 process goes into documenting and following up every  
9 single consumer complaint that comes in by telephone.  
10 So it's all entered into a system. There's a lot of  
11 details that we have to enter into the system. We  
12 follow them up, and I think that group does a  
13 tremendous job. So I'm very interested to hear about  
14 what went wrong with your matter. So, if you call me,  
15 I'd be happy to look into it and talk to you more  
16 specifically about it.

17 MR. O'NEIL: I will do that.

18 MR. JORTNER: But the larger issues that  
19 you've been all been talking about are certainly  
20 relevant, and the frustration you have is also my  
21 frustration because this is a difficult assignment.  
22 These are not easy answers.

23 MR. COPANS: And not one of our creation. We  
24 are responding to a charge from the legislature.

25 MR. HODGKINS: Right, I understand that.

1                   MR. COPANS:  And, yeah, that's the box we're  
2 working in.

3                   MR. O'NEIL:  Can I ask you exactly what the  
4 verbiage of this mandate is?  My understanding was that  
5 it was to look at alternate structures that could  
6 result in improvement for utility ratepayers.  Not that  
7 these gentlemen don't represent ratepayers, but I  
8 thought the verbiage was actually --

9                   MR. JORTNER:  Well, as I said at the  
10 beginning -- I don't know if you were here at the  
11 outset, but I made a few comments, and one of them is  
12 that the very statutes that govern what we do refer to  
13 the public interest in various ways.  There are four or  
14 five different terms that are used.  They all sound  
15 alike, but they're all a little bit different at the  
16 same time.  So ratepayer or the consuming public, which  
17 I equate to the ratepayer, is only one out of maybe  
18 four.  It depends on the type of case, in some cases,  
19 what the statute says in terms of who we represent.

20                   So the key question is, Who do we represent?  You  
21 know, most lawyers have a client.  The client tells the  
22 lawyer what they want the lawyer to do, and the  
23 lawyer's obligated to pursue the client's wishes.  We  
24 have an amorphous body of the general public or  
25 ratepayers or the State in some cases, and there's a



1 lot of conflict among the group that constitutes the  
2 public.

3 So it's not easy for us to -- you know, it's not  
4 the same as having a client telling us what -- you  
5 know, one of you our or ten of you might tell us you  
6 wish we would take a certain position on a case, but I  
7 don't know if that would be very democratic if the ten  
8 people that happened to show up at a meeting told the  
9 Public Service Department, We want you to do X, Y, or  
10 Z, whereas, there's 500,000 other people that maybe  
11 disagree. It takes a lot of judgment to determine  
12 what's in the public interest, and that's why this  
13 whole issue is very difficult.

14 MR. SACHS: If I might, Gary Sachs again,  
15 Brattleboro. Instead, where 30 V.S.A. 248 refers to  
16 economic good and the decisions are made based on  
17 economic good, I'm wondering if you are looking more  
18 for ratepayers to come in and say, Well, does it have  
19 to be economic good, or can it be economic and  
20 environmental good, or can it be warm, fuzzy good, or  
21 can it be, you know, whatever the other contexts are?  
22 I mean, I think that's what you're looking for, but I  
23 don't know.

24 MR. JORTNER: I can give you -- my personal  
25 answer is that the public interest is more than just

1 rates. So, if the issue involves environmental values  
2 or aesthetic values as well as economic values, I think  
3 that that's all relevant to the public interest and the  
4 Department is obligated to consider all of those  
5 things.

6 MR. SACHS: I do have a suggestion. This is  
7 an aside. Can you please ask your commissioner to  
8 please contact, try to get some money for the State?  
9 Because we have a lot of waste on site. Thank you.

10 MR. JORTNER: Because we have -- I'm sorry.

11 MR. SACHS: A lot of nuclear waste on site in  
12 the State. Why do they get the money and we don't?  
13 It's a question.

14 MR. COPANS: Rod?

15 MR. FRANCIS: Yeah, I'm not sure if Ralph is  
16 ready to go yet or not, so but I just want to have a  
17 follow-up point if it's okay. Might clarify things  
18 even better with Chris's last remarks. So I think what  
19 I observed with 248 and 248(a) decision-making is --  
20 and it's a broader issue, to some extent, with the  
21 Board -- is that, if you like, when they're considering  
22 how you meet some measure of public good, "public" is  
23 defined as the public contained in the boundaries of  
24 the state, and so, once you've demonstrated that you  
25 can achieve that goal, then the question of whatever

1 the local negative impacts may or may not be are just  
2 not necessarily outright dismissed but treated in a, in  
3 a much different way.

4 So there's a way in which there's a sort of  
5 sliding between geographic scales. So the broadest  
6 possible definition of "public good" is used to  
7 determine the validity of an application, and then the  
8 question of whether there's any negative impacts  
9 associated with that development is drawn very, very  
10 tightly, and so you get this weird effect where,  
11 because the Governor is giving you guys, through the  
12 appointment of the commissioner and so forth, the  
13 public good could be understood to mean, you know,  
14 anything that advances the progress towards renewable  
15 energy is achieving the public good because that's the  
16 way public good has been defined at that moment in  
17 terms of the policy setting.

18 And when, in question, when you actually look at  
19 the implementation of that policy at the local level  
20 with an individual project, whatever the potential  
21 negative impacts are, are regarded as small and  
22 irrelevant up against this continued progress towards  
23 this well-identified public good set at the level of  
24 the State, and, I guess, from where I sit, that seems  
25 to me to be a very rough process of implementation, and

1 that, I guess, what we're asking for is what, What kind  
2 of adjustments to the Public Advocacy Office could  
3 reasonably address that problem?

4 MR. JORTNER: Well, my personal response  
5 would be that it may be a statutory problem. Because  
6 the statutes determine what the Public Service Board  
7 considers when it decides to issue a Certificate of  
8 Public Good.

9 MR. FRANCIS: Right, right.

10 MR. JORTNER: And there's no secret that  
11 Vermont has a strong policy toward renewable sources of  
12 electrical generation.

13 MR. FRANCIS: Right.

14 MR. JORTNER: So maybe what you're saying,  
15 and tell me if I'm right, is that there's a conflict  
16 between observing a State policy toward renewables  
17 which the Department is charged with pursuing that  
18 policy -- there's no question about it --

19 MR. FRANCIS: Right.

20 MR. JORTNER: -- versus the environmental or  
21 aesthetic impacts that these small generation projects  
22 might cause, and you're saying the balance is off? The  
23 Board needs to shift the balance a little bit away from  
24 the pursuance of the renewable energy policy and a  
25 little bit toward the impact on local people?

1           MR. FRANCIS: Yes, and the mechanism that  
2 there is -- in other parts of the statute, just to  
3 follow up on that, the town plan and land use  
4 regulations are identified as appropriate local  
5 mechanisms for determining how best to address those  
6 impacts, and there's case law that goes along with it.  
7 So it's not like you're just asking for some kind of  
8 rough rearrangement of these powers. There's actually,  
9 in the rest of the statute, very clearly laid-out  
10 mechanisms that establish the validity of the regional,  
11 town and town plans and local land use regulations to  
12 achieve that end, and then you have the mechanism of  
13 the case law, you know, individual's abilities to, to  
14 take action around those questions to support that.

15           And so it's not, it's not that a municipality can  
16 just unilaterally decide that they're not going to  
17 participate in the State's renewable energy goals.  
18 They're going to have to respond to the State's  
19 commitment to achieving renewable energy through a set  
20 of preestablished mechanisms, but that should be well  
21 enough established to incorporate and allow for them to  
22 articulate things in the town plan and land use  
23 regulations that meaningfully speak to the local  
24 impact, and I feel that's, that's a function or a role  
25 of the public advocacy part of the Public Service

1 Department that, that we would like to see addressed.

2 And, if it means that you go back with your report  
3 saying -- which is never a really good idea when you're  
4 a student -- that you, actually, what you need to do is  
5 ask us a different question which is, Amend the  
6 statute, we've got some language for you. It's always  
7 a quick way to get to the parking lot. But, you know,  
8 it's, you know, one possibility, I guess.

9 MR. COPANS: Just a couple points. I should  
10 mention that we have a solar siting task force  
11 underway.

12 MR. FRANCIS: Yes.

13 MR. COPANS: You're probably aware of that.  
14 I imagine you are. I don't know if you folks in  
15 Westminster are. Some of these questions are very much  
16 before that group as well in terms of navigating that  
17 tension, and the next meeting is December 3rd.  
18 Certainly, accepting public comments there as well. In  
19 fact, there's now on the website for the task force,  
20 people have, the participants on that task force have  
21 put in their suggested -- it's very initial at this  
22 point -- but their suggested recommendations,  
23 essentially, for how to address some of these issues,  
24 so --

25 MR. HODGKINS: We even had an application

1 come in, completely involved. The neighborhood was  
2 swallowing it. The Public Service Board put their  
3 order down and removed the, the screening that would  
4 have made that, that array at least a little more  
5 palatable for the neighborhood, and they removed it in  
6 their Public Good Order. So this, this group that we  
7 have heard about is, is that link. We need to link to  
8 make these, these arrays go with the town plan and the  
9 town residents and zoning.

10 MR. COPANS: Right. Karen Horn is certainly  
11 on the group, and encourage you to engage with her. As  
12 you know, Adam is as well. So the other thing I would  
13 just mention is Representative Tony Klein, Chairman of  
14 the House Natural Resources Committee, actually penned  
15 a letter to the Board recently reminding them about the  
16 discretion they have. It might be worth trying to get  
17 your hands on that letter because it also fits right  
18 into this question of sort of, Is this the legislature,  
19 or is this the Public Service Board?

20 MR. ACKER: Is there an industrial wind  
21 turbine task force?

22 MR. COPANS: There's not. There was the  
23 Energy Siting Task Force of 2012 that dealt very much  
24 with sort of all technologies, not limited to solar.  
25 At this point, this was created by the legislature in

1 Act 56 to really focus on solar siting at this point.  
2 So that's, that's where the group is focused.

3 MR. CAMPANY: And I'll just suggest, I hope  
4 you're looking at that commissioned report, too, as you  
5 formulate your report. Because, like, I know, for  
6 instance, one of the recommendations that came out of  
7 there was the change of standing for site -- suggested  
8 changing more robust standing for town plans but also  
9 where regions, where the regional planning commissions  
10 engaged in comprehensive energy planning, that those  
11 would have a greater standing.

12 Now, how do they have greater standing? Because I  
13 know the Commissioner Recchia and Secretary Markowitz  
14 both talked about the pilots that are being done with  
15 the three regions doing this planning, but then still,  
16 when you get to the process, how do you engage, and  
17 what real meaning does that have? Because, unless the  
18 -- and this is, again, goes back to what the Public  
19 Advocacy Division -- how do you even get that into the  
20 evidence within the docket in a meaningful way, and  
21 will the Public Service Department say, This is what  
22 the, this is what we recommended. This is what the  
23 policy is. The region has done this work. Therefore,  
24 this is the position of the State because we've said  
25 this is a desirable thing.



1           If, if PSD can't do that, then some other entity  
2 probably should because another issue is towns and  
3 regions. We can't bill back our time to engage in  
4 these dockets, and towns, at least -- I mean, I'm not  
5 saying it's easy for them because, ultimately, the cost  
6 comes out of your taxpayers, but for us, regional  
7 commissions, we have nobody else we can go to. It  
8 comes out of -- we can't borrow. We can't -- but it  
9 comes out of our core funding from the State. We have  
10 no bill-back authority.

11           We tried to ask for it three times in Yankee  
12 dockets. We got it once, and that was when they  
13 misrepresented the leaking, the absence of leaking  
14 pipes, I guess, and but, otherwise, I mean, this cost  
15 us over, in the Yankee dockets, about, just in terms of  
16 time, about \$90,000, and that's funding we don't have.  
17 So, again, in your report I would just encourage you,  
18 even representing the commission's own position about  
19 the value of regional energy planning, how on earth  
20 does that work under the current rubric, and what would  
21 the statutory changes need to be to make that work?

22           MR. JORTNER: I'll just very quickly respond  
23 to a couple things. I hope there will be some things  
24 in this report that you think are valuable. Two things  
25 I'll respond to right now: One is the last thing you

1 mentioned about funding to be able to introduce  
2 evidence or expert testimony into a board proceeding.  
3 Some states have what's call intervenor funding. I  
4 don't know if anybody's familiar with that, but,  
5 usually, it's on the back end where, once you've shown  
6 that you've contributed something to the record.

7 In some states you have to have actually  
8 influenced a decision to a substantial amount, and the  
9 board gets to make these judgments, you know, Was it a  
10 substantial contribution to the record or toward the  
11 ultimate decision? Then they will, at the end of the  
12 case, allow you to collect funding to cover your costs  
13 through a funding mechanism which may be a fund that  
14 the board controls, or it may be a bill-back to the  
15 utility who then has to fund it. There's, those kinds  
16 of mechanisms exist, and I think the -- I would hope  
17 the report will at least mention that as a possibility  
18 to encourage more opportunities for nontraditional  
19 parties to participate meaningfully in board  
20 proceedings.

21 The other thing I'll respond to that hopefully  
22 could be positive is the idea that MOU's are backroom  
23 deals. I worked in Maine, as I said, for quite a few  
24 years, and Maine had a rule which you might think of as  
25 the anti-backroom deal rule which is that the

1 commission, the commission won't consider any  
2 settlements unless every party was invited to take, to  
3 participate in any negotiations from the very beginning  
4 of those negotiations leading to a settlement. So it  
5 kind of democratizes the settlement process, and  
6 there's no backroom between a utility and one party.  
7 Everybody has to be invited and participate. Now,  
8 someone can say, I don't want to participate, and then  
9 that's their option, but that's the rule in Maine, and  
10 maybe that would be a good rule for Vermont.

11 MR. SACHS: Is Maine deregulated?

12 MR. JORTNER: Maine, well, sure. It depends  
13 on what matter, but yeah.

14 MR. SACHS: Well, apparently, there's a lot  
15 of nonregulated utility systems now, so I'm --

16 MR. JORTNER: Some states have deregulated  
17 telecom, and one of the problems we have in Vermont and  
18 most, just about every state is that broadband is not  
19 regulated, wireless is not regulated, and that's  
20 because the FCC preempts states from doing that type of  
21 regulation. Cable is regulated in some respects, but  
22 largely not regulated, and it's a classic conflict of  
23 laws. You know, you have the federal government that  
24 could preempt the states, and most of you have been  
25 talking about the State kind of preempting the

1 municipal prerogatives given town plans and town  
2 preferences about renewable facilities.

3         So that's -- there are pros and cons to that, but,  
4 you know, the State, in order to effectuate policies,  
5 can't always allow towns to indiscriminately or even  
6 indiscriminately frustrate state policies. So, if every  
7 town said, We don't want any more solar, that would  
8 frustrate the State's policy of encouraging renewable  
9 energy. If every state started regulating broadband,  
10 then it would contravene various policies of the FCC,  
11 and that's why the FCC preempts the states from doing  
12 that. So I'm not saying it's good or bad, but that's a  
13 classic problem in the law in this country because of  
14 our federal structure.

15             MR. ACKER: But, if the ratepayers are saying  
16 they don't want this project, they're willing to pay  
17 more for their energy, okay, is, in essence, what  
18 they're saying. They're saying, Hey, we don't want  
19 that solar installation. We're willing to pay more,  
20 okay? And, just to comment on the task force, I think  
21 it's pretty misguided that this government, the state  
22 government, has a task force for solar panels which  
23 isn't having a health impact on people. They're  
24 siting, worried about siting solar panels, and I  
25 understand that it's very important that solar panels

1 are sited properly, okay, that people aren't hurt by  
2 them, but here we have a human health impact with wind  
3 energy, industrial wind turbines, and there's no siting  
4 task force.

5 MR. COPANS: And, yeah, just to be clear,  
6 that was the creation of the legislature in Act 56,  
7 right. They, yeah, yeah --

8 MR. ACKER: No. I just think it's misguided.

9 MR. CAMPANY: I'm going to say, that was the  
10 motivation, really, behind the Energy Siting  
11 Commission. Was it 2012?

12 MR. COPANS: Really 2012, that's right, yes.

13 MR. CAMPANY: So go back, and you may hate  
14 what it says, but I'm just saying that was the genesis  
15 of it. It wasn't -- you know, I guess -- I mean, I was  
16 at every meeting, and we pushed hard when, and when  
17 they were first presenting the met towers for Windham,  
18 just trying to even get the PSB to make sure that they  
19 saw what the Windham Town Plan said just to make sure  
20 that it was in the process.

21 MR. ACKER: And that's just it. There is, in  
22 the Windham Town Plan, it's very clear about industrial  
23 wind turbines, yet many people in Windham are going to  
24 get harmed by this site which they're not going to see  
25 the energy from.

1           MR. CAMPANY: So that's an interesting story  
2 there which is that, down to the solar process which is  
3 a much more truncated process, you know, we can --  
4 again, the way it's set up is we have to be careful  
5 because, ultimately, we have to wear our own hats, the  
6 Town has to wear their own hats, but we can at least  
7 always say, Hey, by the way, the Town has a plan that  
8 has these policies. This is what they say. But, for  
9 instance, on -- I think, if you were to go back and  
10 look at the met towers in Windham, it seemed, I do  
11 believe, if you go back and interview your staff, there  
12 was a struggle about representing what the Windham Town  
13 Plan said. There shouldn't have been a struggle. It  
14 should have been easy for them to say, just to simply,  
15 objectively say, Public Service Board, this is what the  
16 Windham Town Plan says. This is what statute says.

17           And, now, in the met towers statute, it's a little  
18 different because it actually does not -- I don't think  
19 it actually gives much deference or much or any, any  
20 standing at all to the town or regional plan. So  
21 that's what the Public Service Board said, but,  
22 interestingly, internally, it seemed like there was a  
23 struggle about, Oh gosh, what do we say about the  
24 Windham Town Plan? I mean, ideally, to me,  
25 objectively, a Public Advocate function, whether it was

1 within the PSD or it's stand-alone, could say, This is  
2 what this town plan says. This is what the regional  
3 plan says. This is what the concerns of these abutters  
4 are. This is the concern of the ratepayers, and kind  
5 of even package all of that up so at least we know it  
6 gets before them in some meaningful way.

7 MR. BANIK: So maybe not, No solar or no  
8 wind, but, Not here. At least recognize our current  
9 zoning wishes as far as the town plan.

10 MR. ACKER: Well, Windham encourages personal  
11 use for wind and stuff, which is fine. If you want to  
12 put up a wind tower on your property, knock yourself  
13 out. But, to put up a 500-foot tower and impact an  
14 entire community, particularly the health impacts for  
15 those who live nearby, I think, is misguided.

16 MR. COPANS: Other comments? You haven't  
17 participated yet. Please.

18 MS. TROWBRIDGE: No. I'm sorry I was late to  
19 come to the meeting. I'll stand up too. I know most  
20 of you guys.

21 MR. COPANS: Can you identify yourself?  
22 Yeah.

23 MS. TROWBRIDGE: Yeah. My name is Cor  
24 Trowbridge, C-O-R, is the first name, and  
25 T-R-O-W-bridge is the last name, and I'm the Executive

1 Director of Brattleboro Community Television, which is  
2 the public access TV station here in southern Windham  
3 County, and I just have a comment, a recent interaction  
4 with the DPS that, you know, again, like many people  
5 here, am not sure if it fits within the purview of what  
6 you're talking about because it's hard to say what that  
7 is, but I'll just go ahead and say it, and you can keep  
8 it in or throw it out.

9 MR. COPANS: Thank you.

10 MS. TROWBRIDGE: Which is, as part of a  
11 Comcast CPG renewal, which, as you know, is coming  
12 before the Board, and that's Docket 8031, the  
13 Department has said it's doing a community needs  
14 assessment, as is the Public Service Board, to try and  
15 determine what the community needs are for public  
16 access or for the cable-related community needs, and,  
17 as part of that process, there were some hearings  
18 conducted in the counties throughout the state, and one  
19 of which was in September, September 9th, was held here  
20 in Brattleboro.

21 MR. COPANS: Yeah?

22 MS. TROWBRIDGE: And that was called a focus  
23 group meeting, and it was hosted by the Department, and  
24 I think there were members of both the Public Advocacy  
25 and the Consumer Affairs staff there along with



1 representatives from BCTV, from Comcast, and we were  
2 instructed to give the names of community leaders to  
3 the Department to be invited to this focus group where  
4 then those leaders alone would be able to answer the  
5 focus group questions or to give input to the  
6 Department.

7 And, at the time, we were told at that meeting the  
8 BCTV staff cannot speak and Comcast can't speak.  
9 That's fine. So it was the community leaders in the  
10 room, and so we had the Superintendent of Schools, the  
11 head of the library, Windham Regional Commission,  
12 churches, nonprofits, legislators. It was really a  
13 great showing, but the structure of the focus group  
14 meeting was, just was strangely constructed to get  
15 input, to get feedback. It wasn't like this where it  
16 was just like, State your name and give your feedback,  
17 and these people had a lot to say.

18 Instead, it was put, put charts up around the room  
19 with questions, write things, go around the room  
20 writing answers to questions for a few minutes, and  
21 then, I want you to answer these specific questions.  
22 There was no open-ended input taken, and people were  
23 watching, as the notes were taken on the board, to what  
24 they were saying, and they really weren't very  
25 reflective of what the comment was, necessarily.

1           So I left, me personally, frustrated because I  
2           didn't know what input had been received. As far as I  
3           was concerned, there was this overwhelming show of  
4           support by extremely articulate people in the room for  
5           public access television and how it's relied upon in  
6           this part of the state, and but I wasn't sure what the  
7           takeaway from the Department was from what -- and, you  
8           know, one of the sheets was left behind, and they  
9           didn't allow us to record it. Nobody took an audio  
10          recording. And, like I said, the questions were really  
11          constrained, like, Answer this question, Answer that  
12          question, and sort of weirdly specific. I know weird's  
13          not a good word for this, but it's coming out.

14                 MR. JORTNER: Were you unable to provide  
15          whatever input you wanted to provide?

16                 MS. TROWBRIDGE: No, we were not able to. We  
17          were able to be there as an observer.

18                 MR. CAMPANY: As a participant, it was odd.  
19          It was not what I was expecting. It was not -- I mean,  
20          I know it was a focus group, but I wasn't expecting --  
21          again, I was expecting more of a, almost more of a  
22          hearing-type format. It was a little odd.

23                 MR. JORTNER: Well, you solved a mystery for  
24          me, because two doors down from me at work is Christine  
25          Peterson who is the Coordinator of the Consumer Affairs

1 Group, and I assume she was there, and I saw all these  
2 large pieces of paper on her floor, and I wasn't quite  
3 sure what it was, and that probably answers that  
4 question.

5 MS. TROWBRIDGE: Yeah. So there was that,  
6 and, anyway, so not -- I mean, I, whatever was  
7 captured, I want it to be counted, so I'm not saying  
8 throw it out. I'm just saying, I don't know what was  
9 captured, and I really, I felt like it was a lost  
10 opportunity to get input to the State from people who  
11 really care and who are articulate and who know what  
12 they're talking about. That wasn't activists. Those  
13 weren't my producers. They weren't me. They weren't  
14 -- you know, these were just people who rely on this  
15 service. So it was a legitimate source that may have  
16 been a bit squandered.

17 The second opportunity for input that we had was  
18 for the Public Service Department held a hearing  
19 through Vermont Interactive TV on October 21st, and 125  
20 people showed up around the state, and we had a number  
21 of people here in this very high school a couple of  
22 doors down at VIT, and I had -- there were, again, the  
23 Board and staff. Nobody was participating. We were  
24 there just to support and observe, but people that I  
25 wanted to speak in our hearing did not get to speak

1 because nobody kept time.

2 They just let people from all of the stations --  
3 and there were 13 stations, so it took an  
4 hour-and-a-half. Two people could go, and then we  
5 waited literally an hour-and-a-half for the next two  
6 people to be able to go, and so we didn't get through  
7 the people in our room, and that was because the  
8 Chairman of the Board decided not to keep time. So,  
9 again, I think people said, Oh, there was 125 people.  
10 That's a lot of people, but those individual comments,  
11 again, an opportunity for public input to the State  
12 where people are making an effort, coming out at night,  
13 showing up ready to testify, and it's not heard. Some  
14 of it was heard, and that was great.

15 But, but the process, and I think you're talking  
16 about process here, but I'm not sure -- if there had  
17 been more attention to process in both of those  
18 instances, the people who showed up to testify would  
19 have been heard, and, you know, if you ask people and  
20 say, Here's an opportunity for you to talk to the  
21 State, and you don't get very many opportunities, and  
22 this is the, you know, once in eleven years you get to  
23 say something about this CPG renewal, then to have them  
24 show up and give their time and all their thought and  
25 then have them not be heard, that's, it's a shame,

1 process-wise.

2 MR. JORTNER: I hear you. Thank you.

3 MR. COPANS: Thank you.

4 MR. O'NEIL: I would just like to make a  
5 comment. With regard to this focus group, I don't know  
6 what other people's definitions are, but I've  
7 facilitated in industrial focus groups as well as  
8 participated in them. Whatever that was, that was not  
9 a focus group. Someone had an agenda. That was not  
10 what a focus group is about. Like I said, I have  
11 facilitated them. I've done comprehensive reports  
12 about them, etc. But "weird" is a good word because I  
13 don't know why you would call that a focus group.  
14 Someone obviously had a predetermined set of questions  
15 they wanted answered, which, again, is precluding input  
16 from the ratepayers and the interested parties.

17 MR. CAMPANY: And it could be -- I mean, it  
18 was different. It was odd, but it could have been that  
19 the questions they were asking are relevant to whatever  
20 it is, you know, whatever information it was that they  
21 needed to collect, and so but, and, if that was  
22 explained, I may have -- I will own that I could have  
23 missed that description, but what would have also been  
24 great would have been, again, even if we had been given  
25 the questions before. Because I don't think there was,

1 like -- you know, again there, we're not being coached,  
2 or we're not -- you know, it's, it's just our own  
3 opinions being offered.

4 Had we kind of known, Here's what we're going to  
5 ask you to respond to, then I could have, not only  
6 could I, as an Executive Director, given perhaps more  
7 thoughtful comments. I could have also solicited them  
8 from our Community Development Committee, which is kind  
9 of tasked with the telecommunications stuff, to kind of  
10 say, Okay -- and this is, you know, comprised, our  
11 commissioner is appointed by towns -- to say, What  
12 would you give me to respond to on your behalf and the  
13 towns that you represent as part of this process? And  
14 so, hopefully, they got out of it what they needed.

15 Like you, Cor, I paid mostly what comes out in the  
16 final report. I don't know how comprehensive  
17 everything was that was gathered.

18 MS. TROWBRIDGE: But I, I know you're saying  
19 hopefully they got out what they needed. Yeah, there's  
20 an aspect where they have to check the boxes of what  
21 you're looking for in that process, but you're also  
22 supposed to be listening for the community needs.

23 MR. CAMPANY: Sure.

24 MS. TROWBRIDGE: Right? That's what the  
25 whole definition of the process is you're not supposed

1 to be creating something out of the blue in your office  
2 in Montpelier. You're supposed to be saying -- you  
3 know, it's supposed to come from the people, and if  
4 you've got a source coming from the people, you know,  
5 open up and hear it.

6 MR. JORTNER: Thanks. I mean, what you're --  
7 that all makes perfect sense. We're at a loss somewhat  
8 because we're not directly involved in all of the  
9 processes that you're talking about, so but we could  
10 look into any of that, and we'd be happy to, and, if  
11 you want to contact us, I'll always follow up on  
12 anything that anybody would like me to pursue and talk  
13 to the right people about it. So I can talk to  
14 Christine about it. If you want to add anything to  
15 that process, I could ask her if there's still an  
16 opportunity for you to submit some comments if you'd  
17 like.

18 MS. TROWBRIDGE: I, you know, the whole  
19 process was to not have comments from me. Not that  
20 people don't like me. That's not --

21 MR. FRANCIS: Didn't they say that?

22 MS. TROWBRIDGE: No. I'm just saying I'm  
23 sure there's no, no input from me that she wants. It's  
24 a comment on the process that I don't know where it  
25 could go, but I came to this hearing because I thought

1 it could go to you.

2 MR. COPANS: Great.

3 MR. JORTNER: We'll take that back.

4 MR. COPANS: Much appreciated, yeah,  
5 absolutely.

6 MR. JORTNER: Would anybody else like to say  
7 anything?

8 MR. COPANS: Thank you, everybody, again, for  
9 participating tonight. We really appreciate you coming  
10 down to help us.

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14 (Whereupon at 8:37 p.m. the hearing was adjourned.)

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C E R T I F I C A T E



1 I, Sunnie Donath, do hereby certify that I  
2 recorded by stenographic means the Public Hearing Re:  
3 Various Forms of Ratepayer Advocate Offices at the  
4 Brattleboro Union High School, Brattleboro, Vermont, on  
5 November 18, 2015, beginning at 6:30 p.m.

6 I further certify that the foregoing testimony was  
7 taken by me stenographically and thereafter reduced to  
8 typewriting and the foregoing 89 pages are a transcript  
9 of the stenographic notes taken by me of the evidence  
10 and the proceedings to the best of my ability.

11 I further certify that I am not related to any of  
12 the parties thereto or their counsel, and I am in no  
13 way interested in the outcome of said cause.

14 Dated at Westminster, Vermont, this 30th day of  
15 November, 2015.

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**10** [1] 50:10  
**11th** [1] 22:8  
**125** [2] 83:19;  
84:9  
**13** [1] 84:3  
**15** [1] 10:1  
**15th** [3] 13:23;  
31:19, 21  
**18** [2] 1:9; 89:5  
**19** [1] 2:3  
**1992** [1] 3:6  
**1st** [1] 26:21

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