

**STATE OF VERMONT  
PUBLIC UTILITY COMMISSION**

Case No. 17-3550-INV

Investigation pursuant to 30 V.S.A. §§ 30 and 209 regarding the alleged failure of Vermont Gas Systems, Inc. to comply with the certificate of public good in Docket 7970 by burying the pipeline at less than required depth in New Haven, Vermont	
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Case No. 18-0395-PET

Notice of Probable Violations of Vermont Gas Systems, Inc. for certain aspects of the construction of the Addison natural gas pipeline	
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**VERMONT GAS SYSTEMS, INC.’S MOTION TO STRIKE PREFILED  
TESTIMONY OF GREGORY LIEBERT AND NATHAN PALMER**

By this filing, Vermont Gas Systems, Inc. (“VGS”) moves, pursuant to PUC Rule 2.216(C), to strike the September 10, 2021 Prefiled Testimony of Gregory Liebert as well as the “corrected” version of Mr. Liebert’s testimony filed on October 4, 2021. For the reasons set forth below, Mr. Liebert is not qualified to offer expert testimony pursuant to V.R.E. 702. VGS also moves to strike the Prefiled Testimony of Nathan Palmer, filed September 10, 2021, which relies on Mr. Liebert’s testimony.

On September 10, 2021, Mr. Liebert filed testimony purporting to rebut evidence that the Addison Natural Gas Pipeline (“ANGP”) meets a HS20+15% loading standard, claiming that Mott MacDonald’s loading calculations were wrong. Mr. Liebert asserted that (1) the design factor set forth in 49 C.F.R. Part 192 was not followed, (2) Mott MacDonald had not used an appropriate axle-load representing a HS20+15% load, (3) Mott MacDonald relied on improper “bedding angle” inputs, and (4) inappropriate values were used for soil modulus assumptions.

On October 4, 2021, Mr. Liebert filed a “corrected” version of his testimony. Review of the October 4 version, however, demonstrates that Mr. Liebert did not just make minor

corrections to his testimony, he substantially changed his testimony because he learned that it was inaccurate. More than three pages of substantive material was deleted from Mr. Liebert's September 10 testimony without explanation, and other portions were significantly revised to change the rationale for Mr. Liebert's opinions.

Also on October, 4, 2021, counsel for the Intervenor's Attorney Jim Dumont provided an explanation regarding the basis for Mr. Liebert's "corrected" testimony. Attorney Dumont explained via e-mail that in the process of reviewing VGS's discovery requests, Mr. Liebert (1) "realized that his PFT was wrong in stating that the .50 Design Factor was required by the CFR," (2) "realized that Mott MacDonald was correct in using only one half the axle weight," and (3) "found that when re-calculating the load bearing, it made no difference what the bedding degree was or the soil E was." See Attachment A (October 4 e-mail from Atty Dumont).

On October 8, 2021, Intervenor's responded to VGS's discovery requests. Mr. Liebert's responses to VGS's requests to admit included Mr. Liebert's admission that he (1) has "never performed any work as a licensed engineer on a natural gas pipeline," (2) is "is not qualified to design an AC mitigation plan," and (3) has "never conducted any surface loading calculations for a natural gas pipeline prior to preparing the [September 10, 2021] Liebert Testimony in this case," and that (4) "the design formula set forth in 49 C.F.R. § 192.105," which Mr. Liebert cited as the basis for a 0.5 design factor, "is not a design formula for calculating the surface loading on a natural gas pipeline." See Attachment B (Intervenor's' discovery admissions).

The Commission follows the Vermont Rules of Evidence. In particular, the Commission requires that expert opinion testimony comport with V.R.E. Rule 702, which provides that a witness may only offer opinion testimony if he or she is "qualified as an expert by knowledge, skill, experience, training, or education" and "(1) the testimony is based upon sufficient facts or

data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.” *Pet. of Dairy Air Wind, LLC*, Docket No. 8887, 2018 WL 1805913, at \*3 (Vt.P.S.B. Apr. 12, 2018)(quoting V.R.E. 702).

Mr. Liebert’s September 10 and October 4 testimony clearly falls well below this standard. Mr. Liebert has no experience as an engineer on natural gas pipelines, has never performed surface loading calculations before, and, as a result, his testimony about surface loading calculations was wrong. Moreover, Mr. Liebert’s “corrected” testimony continues to misapprehend relevant standards regarding Class 3 design factors. His new testimony does not explain why his first attempt was misguided or even acknowledge that his first try analyzing the loading calculations was wrong. Mr. Liebert’s new testimony further does not explain the distinction between relying on the design formula in 49 C.F.R. Part 192 versus ASME B31.8— even though he has admitted in discovery that the design formula he previously relied upon does not apply to loading calculations. Testimony from a witness with no experience or prior knowledge about the subject of his testimony—and no explanation regarding the basis for his opinions—is impermissible expert testimony. *In re Mirena IUD Prod. Liab. Litig.*, 169 F. Supp. 3d 396, 486–87 (S.D.N.Y. 2016) (“[The witness] is not qualified to opine on—nor does she purport to use—FDA or any other objective standards, and we are left with a vague notion that in her personal opinion Bayer’s conduct was inadequate. This is impermissible expert testimony.”).

For the foregoing reasons, the Commission should strike Mr. Liebert’s September 10 and October 4 testimony because Mr. Liebert is not a qualified expert and his testimony does not comport with the requirements of V.R.E. 702. Likewise, the Commission should strike the September 10, 2021 testimony of Nathan Palmer because Mr. Palmer relies entirely on Mr. Liebert’s impermissible—and inaccurate—expert testimony. In fact, most of the testimony Mr.

Palmer relies upon was subsequently retracted by Mr. Liebert himself. *See State v. Blair*, 155 Vt. 271, 276, 583 A.2d 591, 593 (1990) (“[T]he court has discretion under V.R.E. 403 and 602 to exclude . . . opinion evidence if ‘the witness lacks sufficient information to have formed a reliable opinion.’” (citation omitted)); *State v. Hughes*, 158 Vt. 398, 402, 610 A.2d 559, 561 (1992) (“[T]he defense failed to show that the witness possessed sufficient information regarding the victim’s reputation to warrant admitting the evidence.”).

DATED at Burlington, Vermont, on this 11th day of October, 2021.

**VERMONT GAS SYSTEMS, INC.**

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