

STATE OF VERMONT
PUBLIC SERVICE BOARD

DOCKET NUMBER 7970

PETITION OF VERMONT GAS SYSTEMS, INC. FOR A
CERTIFICATE OF PUBLIC GOOD, PURSUANT TO 30 V.S.A.
SECTION 248, AUTHORIZING THE CONSTRUCTION OF THE
"ADDISON NATURAL GAS PROJECT" CONSISTING OF
APPROXIMATELY 43 MILES OF NEW NATURAL GAS
TRANSMISSION PIPELINE IN CHITTENDEN AND ADDISON
COUNTIES, APPROXIMATELY 5 MILES OF NEW DISTRIBUTION
MAINLINES IN ADDISON COUNTY, TOGETHER WITH THREE NEW
GATE STATIONS IN WILLISTON, NEW HAVEN, AND
MIDDLEBURY, VERMONT.

October 15, 2015
9:30 a.m.

112 State Street
Montpelier, Vermont

Technical Hearing held before the Vermont Public
Service Board, at the Third Floor Conference Room,
People's United Bank Building, 112 State Street,
Montpelier, Vermont, on October 15, 2015, beginning at
9:30 a.m.

P R E S E N T

BOARD MEMBERS: Margaret Cheney
 Sarah Hofmann

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BY: DAVID L. GRAYCK, ESQUIRE

1 BOARD MEMBER CHENEY: Good morning. I'm
2 Margaret Cheney, Board Member of the Public Service
3 Board, and with me are my fellow Board Member Sarah
4 Hofmann and members of the Board staff. Jim Volz,
5 the Chairman of the Public Service Board, is
6 unavoidably absent because of a death in the family.

7 We're together this afternoon -- I mean
8 this morning, feels like afternoon, to conduct a
9 status conference in Docket Number 7970, which is the
10 petition of Vermont Gas Systems Inc. for a
11 Certificate of Public Good pursuant to 30 V.S.A.
12 Section 248 authorizing the construction of the
13 Addison Natural Gas Project consisting of
14 approximately 43 miles of new natural gas
15 transmission pipeline in Chittenden and Addison
16 Counties, approximately five miles of new
17 distribution lines in Addison County, together with
18 three new gate stations in Williston, New Haven, and
19 Middlebury, Vermont.

20 The purpose of this status conference is
21 to ask the parties to comment on recommended next
22 steps for the Board to take, if any, in light of the
23 filing by Vermont Gas Systems on October 7, 2015 of a
24 Memorandum of Understanding between Vermont Gas
25 Systems and the Department of Public Service. We

1 will start this proceeding by asking questions of
2 Vermont Gas Systems and the Department, and then we
3 will take the input of the other parties. The Board
4 will make no rulings today. We are simply seeking
5 your input.

6 So before we begin to hear from you
7 about the MOU I would like to take appearances. So
8 if you could state your name and affiliation for the
9 record.

10 MS. PORTER: Louise Porter and Timothy
11 Duggan for the Department of Public Service, and with
12 us today are Geoff Commons, our Director for Public
13 Advocacy, and our Commissioner Chris Recchia, and I
14 was also asked to represent that the Agency of
15 Natural Resources would not be attending today. They
16 will not be participating in this part of the
17 process, but they are keeping up via contact with the
18 Department.

19 MR. GRAYCK: David Grayck for Nate and
20 Jane Palmer.

21 MR. SAUDEK: Richard Saudek for the
22 Vermont Fuel Dealers Association. With me is Matt
23 Cota, the Executive Director.

24 MS. LEVINE: Sandra Levine with
25 Conservation Law Foundation.

1 MR. DUMONT: James Dumont for AARP, and
2 Ms. Lyons and Ms. Taormina as well.

3 MR. LOUGEE: Adam Lougee for Addison
4 County Regional Planning Commission.

5 MR. ZAMORE: Peter Zamore and Kim Hayden
6 for Vermont Gas Systems, and with us are Don Rendall,
7 Eileen Simollardes, Beth Parent, and Lauren Hammer.

8 BOARD MEMBER CHENEY: So we have this
9 MOU that was delivered to the Public Service Board on
10 October 7th between Vermont Gas Systems and the
11 Department of Public Service, and our question is
12 what do you propose the Board do with this? Are you
13 entering it into evidence, for example?

14 MR. ZAMORE: Perhaps I could address
15 that.

16 BOARD MEMBER HOFMANN: People are asking
17 in the back if you could raise your voices.

18 MR. ZAMORE: Sure.

19 BOARD MEMBER CHENEY: I asked -- can you
20 hear me now? I have here -- we all have the MOU that
21 was delivered to the Board on October 7th, 2015
22 between Vermont Gas Systems and the Department of
23 Public Service, and our first question is what do
24 those signatories propose we do with this document?
25 Do they wish to enter it into evidence, for example?

1 MR. ZAMORE: Yes. Vermont Gas Systems
2 requests that the MOU but not the two filing letters
3 be incorporated into the record, and I would be happy
4 to discuss the reasons for that and why we think it's
5 appropriate.

6 BOARD MEMBER CHENEY: Does the
7 Department have a comment?

8 MS. PORTER: I would just second what
9 Mr. Zamore said. That was the intent of the parties.

10 MR. ZAMORE: The Vermont Gas Systems
11 entered into and filed the MOU because it believes
12 the MOU's beneficial rate impact is highly relevant
13 to the issue of whether the project continues to be
14 consistent with the general good of the state. The
15 MOU is also intended to support rapid conclusion of
16 the Rule 60 process in order to facilitate timely and
17 on budget construction since the pending proceeding
18 has resulted in the inability to go forward with the
19 eminent domain petitions.

20 Although Vermont Gas will be filing the
21 remaining eminent domain petitions shortly and will
22 be requesting that they will be processed as
23 efficiently as possible, as long as the existing stay
24 continues the pendency of this proceeding creates an
25 increasing risk to project budget, schedule, and to

1 the project itself, and it's for this reason that we
2 request that the MOU be included in the record.

3 The Board has established in this case a
4 process for addressing inclusion of post hearing MOUs
5 into the record. The Chittenden Solid Waste District
6 MOU and Middlebury MOU were filed after the original
7 hearings but before the Board's final order approving
8 the CPG. The Board addressed the process to consider
9 these MOUs in its final order at page 14 notes 9 and
10 10. The Board stated that it generally does not
11 consider material received after the record is
12 closed, but stated that there was good cause to
13 reopen the record and incorporate the MOUs into the
14 record since it will encourage the development of
15 MOUs.

16 The Board provided the parties in that
17 case ten days to object to the entry into the record
18 of the MOUs, but stated that any objection must first
19 clearly state the evidentiary basis for the objection
20 and, second, to articulate how the objecting party's
21 interests are negatively impacted by its entry into
22 the record. We submit that the Board should apply
23 the same process to this post hearing MOU, and in
24 fact AARP and the Palmers have already filed comments
25 addressing the two criteria that the Board

1 established for considering admission into the record
2 of a post hearing MOU, and our response is as
3 follows.

4 In terms of the first category, whether
5 there's a claimed evidentiary basis for objection,
6 AARP claims that the MOU is inadmissible hearsay even
7 though the Palmers argue the opposite, that it is not
8 hearsay because it represents an admission of a party
9 opponent.

10 The MOU is not inadmissible hearsay
11 because it is not an out-of-court statement offered
12 for the truth of any matter asserted. According to
13 the Vermont Rules of Evidence Reporter's Notes among
14 statements that are not offered for the proof of the
15 matter asserted are words spoken to prove so-called
16 verbal acts such as a description of the terms of a
17 contract. Instead of verbal acts offered to approve
18 -- in order to prove the existing -- to describe the
19 terms whether to approve the existence of the
20 contract --

21 MR. DUMONT: Excuse me, Peter. I am
22 going to interrupt. The question from the Chair is
23 what do you propose we do. You are engaging in
24 argument on pending motions. This was not noticed as
25 a motion hearing.

1 MR. GRAYCK: And I want to put an
2 objection on the record. I object to this. He has
3 offered argument as to relevancy. He's argued
4 substantive evidence before this Board and I want it
5 clear on the record that I have not waived any
6 objections. This is an improper attempt to subvert
7 the hearing process.

8 BOARD MEMBER CHENEY: We must agree with
9 that objection and we'll stick to what process that
10 the parties wish to proceed with.

11 MR. DUMONT: Thank you.

12 BOARD MEMBER CHENEY: We'll save that
13 for another part of this process. Okay. I think now
14 what would be the time -- now would be the time for
15 me to take any comment from the Department and any
16 other parties.

17 MS. PORTER: I think I agree with much
18 of what Mr. Zamore said, and I just would like to say
19 that as the Department we felt duty bound to advise
20 the Board of what we saw as a very significant
21 material change in this project. This is a
22 certificated project that's been found to be in the
23 public good, and we felt duty bound to make you aware
24 of it and we attempted to follow the process that had
25 already been followed.

1 What should come next is an invitation
2 as to any additional objections, there may be other
3 parties who would like to object, and then an
4 opportunity to respond.

5 BOARD MEMBER CHENEY: Thank you. Do you
6 contemplate a hearing?

7 MS. PORTER: I had not contemplated a
8 hearing. I'm happy to have a discussion about it.
9 The evidence that's being offered is a contract and
10 the contract speaks for itself, four corners. It's
11 to be effectuated in a future rate proceeding and I'm
12 not sure what we would do at a hearing, but I'm happy
13 to discuss it.

14 BOARD MEMBER CHENEY: Do other parties
15 have comments on the process?

16 MR. DUMONT: I do.

17 BOARD MEMBER CHENEY: Mr. Dumont.

18 MR. DUMONT: Thank you. If the MOU is
19 to be admitted into evidence, we demand a hearing.

20 BOARD MEMBER CHENEY: Thank you.

21 MR. DUMONT: Just as an example Mr.
22 Zamore just referred to a beneficial rate impact.
23 There is zero in the MOU that will allow the Board to
24 make a finding of a beneficial rate impact. We need
25 to have a hearing to straighten that out. Thank you.

1 BOARD MEMBER CHENEY: Any other
2 comments? Mr. Grayck.

3 MR. GRAYCK: Chair, you started out by
4 saying -- I'm trying to remember your question. I
5 believe your question was what do the parties
6 recommend? What do the parties recommend we should
7 do?

8 BOARD MEMBER CHENEY: Yes.

9 MR. GRAYCK: My request on behalf of my
10 clients is that you please just issue your decision
11 on the pending motions. We don't need more hearings.
12 My clients have been exhausted by this process. If
13 the applicants think the MOU is of such significance,
14 then they can come through the front door, request
15 that the hearing be reopened, offer it, allow for
16 proper process, and we'll go forward.

17 In the alternative to that the answer is
18 please just issue your decision and let's get on with
19 it.

20 BOARD MEMBER CHENEY: Thank you. Mr.
21 Saudek.

22 MR. SAUDEK: This is a breathtaking deal
23 nailing ratepayers for 134 million dollars so that
24 the gas company can expand to new customers and
25 prejudging whether it's used and useful. What they

1 are basically doing is trying to hijack the
2 regulatory system and without any serious proof, and
3 I think -- I think that the Board should do what it
4 has done in deals of this kind over the last 35 years
5 since this regulatory system has been in effect, and
6 that is the Board has a responsibility to make the
7 ultimate decision. Every piece of this kind of MOU
8 -- this MOU should be scrutinized. I have no problem
9 with bringing it into the record as long as the Board
10 looks carefully into every rate implication and every
11 other implication of this.

12 I think the Board has a duty not to
13 allow the regulatory system to be hijacked. I think
14 that the Board has got to assert its ultimate
15 authority. I think the Board should hire its own
16 experts which it's fully able to do under Section 20
17 of Title 30. I think that every transaction with
18 large implications has involved certain agreements.
19 You have reviewed three Hydro Quebec contracts, huge
20 Hydro Quebec contracts. You've reviewed the sale of
21 Vermont Yankee. These are all contracts, MOUs, and
22 so on that have rate implications. The Board has
23 done thorough reviews of these things, and I believe
24 that the Board owes it to the public, if the
25 Department is going to enter an agreement like this,

1 then the Board owes it to the public to take an
2 independent look and really pull it apart and see
3 what its implications are. Thank you.

4 BOARD MEMBER CHENEY: Ms. Levine.

5 MS. LEVINE: Thank you. The MOU as
6 proposed is not currently before the Board. If
7 either of the parties who are signatories to the MOU
8 wish to offer it into evidence, they should provide
9 testimony to support its relevance and to support the
10 substance of the MOU. That has not been provided
11 now.

12 The parties and the Board deserve an
13 opportunity to scrutinize this Memorandum of
14 Understanding if it has some bearing, but as proposed
15 it is just an agreement between two parties. They
16 are not requesting any Board review of the MOU. So
17 on its substance at least as presented it has no
18 particular relevance and should simply be not
19 considered by the Board. The Board should issue a
20 ruling based on the information it has already, and
21 as many parties have pointed out the proposed
22 expansion of the gas pipeline is a bad deal for
23 Vermonters. It's a bad deal at the price in the MOU
24 even though the MOU itself does not provide any
25 guarantees that that will in fact be the budget

1 that's proposed or that will be followed.

2 As offered as a contract between two
3 parties it does not have -- it's not relevant to the
4 Board's consideration unless the Board accepts it
5 into evidence and testimony is offered to support why
6 it is relevant and how it has any bearing on the
7 approval -- on whether the Board should reopen the
8 approval for the gas pipeline.

9 BOARD MEMBER CHENEY: Thank you. Do
10 Board staff have questions? No. Anything else from
11 the parties?

12 MR. ZAMORE: Yes. Could I respond
13 briefly? I just want to make it clear that Vermont
14 Gas is seeking to admit the MOU into evidence. It
15 points to a process the Board has used to determine
16 whether MOUs should be admitted into the record after
17 the hearing. It's not extraordinary. It's been done
18 before, and we would also submit that there's clear
19 evidence in the record already of the impact -- of
20 the rate impact of the MOU.

21 Vermont Gas filed testimony on an
22 alternative scenario of a 132 million dollar project
23 cost. The Board had findings of fact on 132 million
24 dollar project costs. The MOU has a rate cap of 132
25 million dollars. The information -- there's already

1 evidence of that impact. We agree that to the extent
2 --

3 BOARD MEMBER HOFMANN: Mr. Zamore,
4 you're getting more into argument again. We're
5 talking about process.

6 MR. ZAMORE: Then we submit the process
7 should be the process in the final order. That is a
8 round of comments addressing the criteria that the
9 Board identified and we would be permitted to respond
10 and then the Board can consider whether to admit it
11 into evidence.

12 BOARD MEMBER CHENEY: Mr. Grayck.

13 MR. GRAYCK: I'm looking at a one-page
14 cover letter by Vermont Gas. I don't see any legal
15 argument as just offered by Attorney Zamore. All I
16 see is a letter signed by the Chief Executive Officer
17 of Vermont Gas. Now there's legal argument as to why
18 this document should be submitted. I think that's
19 further evidence of the improper process that's going
20 on here and how Vermont Gas is trying to use this --

21 BOARD MEMBER HOFMANN: Mr. Grayck, we
22 are trying to figure out what the process should be.
23 Mr. Grayck, excuse me. We are trying to figure out
24 what the process should be. So if you have a comment
25 on what the process should be, please --

1 MR. GRAYCK: I do have a comment on what
2 the process should be. The process should take into
3 account that the legal argument you just heard was
4 not made part of the submission to this Board. All
5 we received was a cover letter. There was no
6 statement as to why this is admissible or why it
7 should be offered, and now Vermont Gas is using this
8 proceeding to try and influence the outcome in a
9 improper way.

10 BOARD MEMBER CHENEY: As I said when we
11 started this status conference, this is not the place
12 where we will be issuing a ruling. We'll be going
13 upstairs and issuing an order, and we're focusing
14 right now on what process the parties think we should
15 undertake, and we also were interested in hearing
16 whether this MOU was being sought to be entered into
17 evidence. We heard that that is being asked, but
18 again we're not ruling on any of those issues from
19 the bench. Mr. Dumont.

20 MR. DUMONT: Thank you. Obviously you
21 have made great progress already because we have
22 learned that they do intend to offer it into
23 evidence.

24 In that light I would refer the Board to
25 Board Rule 2.206, which I'm sure Board counsel

1 already has committed to memory, motions not made
2 during the hearing shall be in writing. If there is
3 a substantial issue of law, shall be accompanied by a
4 brief or memorandum of law. I think that's what Mr.
5 Grayck is referring to. The reference to a hearing
6 does not mean a status conference. It means a
7 hearing on the merits. Thank you.

8 BOARD MEMBER CHENEY: Thank you and I
9 think that's it. Thank you very much.

10 (Whereupon, the proceeding was
11 adjourned at 10 a.m.)
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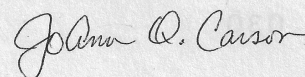
C E R T I F I C A T E

I, JoAnn Q. Carson, do hereby certify that I recorded by stenographic means the status conference re: Docket Number 7970 at the Hearing Room of the Public Service Board, 112 State Street, Montpelier, Vermont, on October 15, 2015, beginning at 9:30 a.m.

I further certify that the foregoing testimony was taken by me stenographically and thereafter reduced to typewriting, and the foregoing 17 pages are a transcript of the stenograph notes taken by me of the evidence and the proceedings, to the best of my ability.

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

Dated at Burlington, Vermont, this 16th day of October, 2015.



JoAnn Q. Carson

Registered Merit Reporter

Certified Real Time Reporter

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1:11, 1:16, 18:8</p> <p style="text-align: center;">A</p> <p>a.m [4] - 1:11, 1:16, 17:11, 18:8 AARP [4] - 2:17, 5:1, 7:24, 8:6 ability 18:13 able 12:16 absent 3:6 accepts 14:4 accompanied 17:3 According 8:12 account 16:3 acts [2] - 8:16, 8:17 Adam 5:3 Addison [7] - 1:6, 1:7, 1:8, 3:13, 3:15, 3:17, 5:3 additional 10:2 address 5:14 addressed 7:8 addressing [3] - 7:4, 7:25, 15:8 adjourned 17:11 admissible 16:6 admission [2] - 8:1, 8:8 admit [2] - 14:14, 15:10 admitted [2] - 10:19, 14:16 advise 9:19 Advocacy 4:13 affiliation 4:8 afternoon [2] - 3:7, 3:8 Agency 4:14 agree [3] - 9:8, 9:17, 15:1 agreement [2] - 12:25, 13:15 agreements 12:18 allow [3] - 10:23, 11:15, 12:13 already [7] - 7:24, 9:25, 13:20, 14:19, 14:25, 16:21, 17:1 alternative [2] - 11:17, 14:22 Although 6:20 among 8:13 apart 13:2 appearances 4:7 Appearing [7] - 2:6, 2:8, 2:11, 2:14,</p>	<p>2:17, 2:20, 2:23 applicants 11:13 apply 7:22 appropriate 6:5 approval [2] - 14:7, 14:8 approve [2] - 8:17, 8:19 approving 7:7 approximately [4] - 1:7, 1:8, 3:14, 3:16 argue 8:7 argued 9:3 argument [6] - 8:24, 9:3, 15:4, 15:15, 15:17, 16:3 articulate 7:20 asking [2] - 4:1, 5:16 assert 12:14 asserted [2] - 8:12, 8:15 Association [2] - 2:20, 4:22 attempt 9:6 attempted 9:24 attending 4:15 Attorney [3] - 2:2, 2:2, 15:15 authority 12:15 authorizing [2] - 1:6, 3:12</p> <p style="text-align: center;">B</p> <p>bad [2] - 13:22, 13:23 Bank 1:15 basically 12:1 bearing [2] - 13:14, 14:6 begin 4:6 beginning [2] - 1:16, 18:8 behalf 11:9 BEHM 2:11 believes 6:11 bench 16:19 beneficial [3] - 6:12, 10:22, 10:24 best 18:13 Beth 5:7 Board [69] - 1:1, 1:15, 1:19, 3:1, 3:2, 3:3, 3:3, 3:4, 3:5, 3:22, 4:3, 5:8, 5:9, 5:12, 5:16, 5:19, 5:21, 6:6, 7:3, 7:8, 7:10, 7:16, 7:22, 7:25, 9:4, 9:8, 9:12, 9:20, 10:5, 10:14, 10:17, 10:20, 10:23, 11:1, 11:8, 11:20, 12:3, 12:6, 12:9, 12:12, 12:14, 12:15, 12:22, 12:24, 13:1, 13:4,</p>	<p>13:6, 13:12, 13:16, 13:19, 13:19, 14:4, 14:7, 14:9, 14:10, 14:15, 14:23, 15:3, 15:9, 15:10, 15:12, 15:21, 16:4, 16:10, 16:24, 16:25, 16:25, 17:8, 18:7 Board's [2] - 7:7, 14:4 bound [2] - 9:19, 9:23 Box [6] - 1:23, 2:9, 2:12, 2:18, 2:20, 2:23 breathtaking 11:22 brief 17:4 briefly 14:13 bringing 12:9 Bristol 2:18 budget [3] - 6:17, 6:25, 13:25 Building 1:15 Burlington [4] - 1:24, 2:9, 2:12, 18:17</p> <p style="text-align: center;">C</p> <p>cap 14:24 CAPITOL 1:23 carefully 12:10 Carson [2] - 18:4, 18:23 CARTER 2:22 case [2] - 7:3, 7:17 category 8:4 cause [2] - 7:12, 18:16 certain 12:18 Certificate [2] - 1:5, 3:11 certificated 9:22 Certified 18:25 certify [3] - 18:4, 18:9, 18:14 Chair [2] - 8:22, 11:3 Chairman 3:5 change 9:21 Cheney [20] - 1:19, 3:1, 3:2, 5:8, 5:19, 6:6, 9:8, 9:12, 10:5, 10:14, 10:17, 10:20, 11:1, 11:8, 11:20, 13:4, 14:9, 15:12, 16:10, 17:8 Chief 15:16 Chittenden [3] - 1:7, 3:15, 7:5 Chris 4:13 claimed 8:5 claims 8:6 clear [3] - 9:5, 14:13, 14:18 clearly 7:19 clients [2] - 11:10, 11:12</p>	<p>closed 7:12 comment [5] - 3:21, 6:7, 9:15, 15:24, 16:1 comments [4] - 7:24, 10:15, 11:2, 15:8 Commission 5:4 Commissioner 4:13 committed 17:1 Commons 4:12 company 11:24 conclusion 6:15 conduct 3:8 conference [6] - 1:15, 3:9, 3:20, 16:11, 17:6, 18:5 Conservation [2] - 2:14, 4:25 consider [3] - 7:8, 7:11, 15:10 consideration 14:4 considered 13:19 considering 8:1 consistent 6:14 consisting [2] - 1:6, 3:13 construction [3] - 1:6, 3:12, 6:17 contact 4:17 contemplate 10:6 contemplated 10:7 continues [2] - 6:13, 6:24 contract [5] - 8:17, 8:20, 10:9, 10:10, 14:2 contracts [3] - 12:19, 12:20, 12:21 corners 10:10 cost 14:23 costs 14:24 Cota 4:23 counsel [3] - 2:1, 16:25, 18:15 Counties [2] - 1:8, 3:16 County [3] - 1:8, 3:17, 5:4 COURT 1:23 cover [2] - 15:14, 16:5 CPG 7:8 creates 6:24 criteria [2] - 7:25, 15:8 currently 13:6 customers 11:24</p> <p style="text-align: center;">D</p> <p>Dated 18:17 David [2] - 2:24, 4:19 deal [3] - 11:22, 13:22, 13:23</p>	<p>Dealers [2] - 2:20, 4:22 deals 12:4 death 3:6 decision [3] - 11:10, 11:18, 12:7 delivered [2] - 5:9, 5:21 demand 10:19 Department [11] - 2:6, 3:25, 4:2, 4:11, 4:18, 5:11, 5:22, 6:7, 9:15, 9:19, 12:25 describe 8:18 description 8:16 deserve 13:12 determine 14:15 development 7:14 DIAMOND 2:19 Director [3] - 2:1, 4:12, 4:23 discuss [2] - 6:4, 10:13 discussion 10:8 distribution [2] - 1:8, 3:17 District 7:5 Docket [3] - 1:3, 3:9, 18:6 document [2] - 5:24, 15:18 dollar [2] - 14:22, 14:24 dollars [2] - 11:23, 14:25 domain [2] - 6:19, 6:21 Don 5:6 door 11:14 DOWNS 2:8 Duggan [2] - 2:5, 4:11 Dumont [12] - 2:16, 2:17, 5:1, 5:1, 8:21, 9:11, 10:16, 10:17, 10:18, 10:21, 16:19, 16:20 duty [3] - 9:19, 9:23, 12:12</p> <p style="text-align: center;">E</p> <p>E-mail 1:25 East 2:20 effect 12:5 effectuated 10:11 efficiently 6:23 Eileen 5:7 either 13:7 eminent [2] - 6:19, 6:21 encourage 7:14 engaging 8:23 enter [2] - 5:25, 12:25 entered [2] - 6:11,</p>
--	---	---	---	---	--

<p>16:16 entering 5:13 entry [2] - 7:17, 7:21 ESQUIRE [8] - 2:5, 2:5, 2:10, 2:13, 2:14, 2:16, 2:21, 2:24 established [2] - 7:3, 8:1 evidence [16] - 5:13, 5:25, 8:13, 9:4, 10:9, 10:19, 13:8, 14:5, 14:14, 14:19, 15:1, 15:11, 15:19, 16:17, 16:23, 18:13 evidentiary [2] - 7:19, 8:5 example [3] - 5:13, 5:25, 10:21 excuse [2] - 8:21, 15:23 Executive [2] - 4:23, 15:16 exhausted 11:12 existence 8:19 existing [2] - 6:23, 8:18 expand 11:24 expansion 13:22 experts 12:16 extent 15:1 extraordinary 14:17</p>	<p>fully 12:16 FURLONG 2:11 future 10:11</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>gas [24] - 1:5, 1:6, 1:7, 3:10, 3:13, 3:14, 3:23, 3:24, 4:2, 5:6, 5:10, 5:22, 6:1, 6:10, 6:20, 11:24, 13:22, 14:8, 14:14, 14:21, 15:14, 15:17, 15:20, 16:7 gate [2] - 1:9, 3:18 general [2] - 2:1, 6:14 generally 7:10 Geoff 4:12 George 2:1 Grayck [13] - 2:24, 4:19, 4:19, 9:1, 11:2, 11:3, 11:9, 15:12, 15:13, 15:21, 15:23, 16:1, 17:5 guarantees 13:25</p>	<hr/> <p style="text-align: center;">I</p> <hr/> <p>identified 15:9 impact [6] - 6:12, 10:22, 10:24, 14:19, 14:20, 15:1 impacted 7:21 implication [2] - 12:10, 12:11 implications [3] - 12:18, 12:22, 13:3 improper [3] - 9:6, 15:19, 16:9 inability 6:18 inadmissible [2] - 8:6, 8:10 included 7:2 inclusion 7:4 incorporate 7:13 incorporated 6:3 increasing 6:25 independent 13:2 influence 16:8 info@capitolcour 1:25 information [2] - 13:20, 14:25 input [2] - 4:3, 4:5 Instead 8:17 intend 16:22 intended 6:15 intent 6:9 interested [2] - 16:15, 18:16 interests 7:21 interrupt 8:22 invitation 10:1 involved 12:18 issue [5] - 6:13, 11:10, 11:18, 13:19, 17:3 issues 16:18 issuing [2] - 16:12, 16:13 itself [3] - 7:1, 10:10, 13:24</p>	<hr/> <p style="text-align: center;">L</p> <hr/> <p>Lauren 5:7 law [5] - 2:14, 2:17, 4:25, 17:3, 17:4 learned 16:22 least 13:17 legal [3] - 15:14, 15:17, 16:3 let's 11:18 letter [3] - 15:14, 15:16, 16:5 letters 6:2 Levine [5] - 2:14, 4:24, 4:24, 13:4, 13:5 lines 3:17 looking 15:13 looks 12:10 Lougee [2] - 5:3, 5:3 Louise [2] - 2:5, 4:10 Lyons [2] - 2:17, 5:2</p>	<p>1:13, 1:16, 2:7, 2:15, 2:21, 18:7 morning [2] - 3:1, 3:8 motion 8:25 motions [3] - 8:24, 11:11, 17:1 MOU [28] - 4:7, 5:9, 5:20, 6:2, 6:11, 6:15, 7:2, 7:6, 7:6, 7:23, 8:2, 8:6, 8:10, 10:18, 10:23, 11:13, 12:7, 12:8, 13:5, 13:7, 13:10, 13:16, 13:23, 13:24, 14:14, 14:20, 14:24, 16:16 MOU's 6:12 MOUs [7] - 7:4, 7:9, 7:13, 7:15, 7:18, 12:21, 14:16</p>	<hr/> <p style="text-align: center;">P</p> <hr/> <p>P.C [3] - 2:11, 2:19, 2:22 P.O [6] - 1:23, 2:9, 2:12, 2:18, 2:20, 2:23 pages 18:11 Palmer [2] - 2:23, 4:20 Palmer's [2] - 7:24, 8:7 Parent 5:7 participating 4:16 particular 13:18 parties [18] - 3:21, 4:3, 6:9, 7:16, 9:10, 9:16, 10:3, 10:14, 11:5, 11:6, 13:7, 13:12, 13:15, 13:21, 14:3, 14:11, 16:14, 18:15 party 8:8 party's 7:20 PC 2:17 pendency 6:24 pending [3] - 6:17, 8:24, 11:11 People's 1:15 Perhaps 5:14 permitted 15:9 Peter [3] - 2:13, 5:5, 8:21 petition [2] - 1:5, 3:10 Petitioner [2] - 2:8, 2:11 petitions [2] - 6:19, 6:21 piece 12:7 pipeline [4] - 1:7, 3:15, 13:22, 14:8 Planning 5:4 please [3] - 11:10, 11:18, 15:25 PLLC 2:8 pointed 13:21 points 14:15 Policy 2:1 Porter [6] - 2:5, 4:10, 4:10, 6:8, 9:17, 10:7 possible 6:23 post [3] - 7:4, 7:23, 8:2 prejudging 11:25 presented 13:17 price 13:23 problem 12:8 proceed 9:10 proceeding [6] - 4:1, 6:17, 6:24, 10:11, 16:8, 17:10</p>
<hr/> <p style="text-align: center;">F</p> <hr/> <p>facilitate 6:16 family 3:6 feels 3:8 fellow 3:3 felt [2] - 9:19, 9:23 figure [2] - 15:22, 15:23 filed [4] - 6:11, 7:6, 7:24, 14:21 filing [3] - 3:23, 6:2, 6:20 final [3] - 7:7, 7:9, 15:7 finding 10:24 findings 14:23 five 3:16 Floor 1:15 focusing 16:13 follow 9:24 followed [2] - 9:25, 14:1 follows 8:3 foregoing [2] - 18:9, 18:11 forward [2] - 6:18, 11:16 Foundation [2] - 2:14, 4:25 front 11:14 Fuel [2] - 2:20, 4:22</p>	<hr/> <p style="text-align: center;">H</p> <hr/> <p>Hammer 5:7 happy [3] - 6:3, 10:8, 10:12 Haven [2] - 1:9, 3:18 Hayden [2] - 2:10, 5:5 He's 9:3 hear [2] - 4:6, 5:20 heard [2] - 16:3, 16:17 hearing [18] - 1:14, 7:4, 7:23, 8:2, 8:25, 9:7, 10:6, 10:8, 10:12, 10:19, 10:25, 11:15, 14:17, 16:15, 17:2, 17:5, 17:7, 18:6 hearings [2] - 7:7, 11:11 hearsay [3] - 8:6, 8:8, 8:10 held 1:14 hereby 18:4 HERSHENSON 2:22 highjack 12:1 highly 6:12 hijacked 12:13 hire 12:15 Hofmann [5] - 1:20, 3:4, 5:16, 15:3, 15:21 huge 12:19 Hydro [2] - 12:19, 12:20</p>	<hr/> <p style="text-align: center;">J</p> <hr/> <p>Jake 2:2 James [3] - 2:16, 2:17, 5:1 Jane [2] - 2:23, 4:20 Jim 3:4 JoAnn [2] - 18:4, 18:23 June 2:1</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>keeping 4:17 Kim 5:5 KIMBERLY 2:10 Kristin 2:17</p>	<hr/> <p style="text-align: center;">M</p> <hr/> <p>Main [3] - 2:9, 2:12, 2:18 MAINLINES 1:8 Margaret [2] - 1:19, 3:2 Marren 2:2 MARTIN 2:8 material [2] - 7:11, 9:21 Matt 4:22 matter [2] - 8:12, 8:15 McGEE 2:22 means [2] - 17:6, 18:5 Member [23] - 3:1, 3:2, 3:3, 5:8, 5:16, 5:19, 6:6, 9:8, 9:12, 10:5, 10:14, 10:17, 10:20, 11:1, 11:8, 11:20, 13:4, 14:9, 15:3, 15:12, 15:21, 16:10, 17:8 members [2] - 1:19, 3:4 memorandum [3] - 3:24, 13:13, 17:4 memory 17:1 Merit 18:24 merits 17:7 Michael 2:2 Middlebury [3] - 1:9, 3:19, 7:6 miles [4] - 1:7, 1:8, 3:14, 3:16 million [4] - 11:23, 14:22, 14:23, 14:25 Montpelier [6] -</p>	<hr/> <p style="text-align: center;">N</p> <hr/> <p>nailing 11:23 Nate 4:19 Nathan 2:23 natural [5] - 1:6, 1:7, 3:13, 3:14, 4:15 negatively 7:21 Norwich 2:24 notes [3] - 7:9, 8:13, 18:12 noticed 8:24</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>object [3] - 7:17, 9:2, 10:3 objecting 7:20 objection [5] - 7:18, 7:19, 8:5, 9:2, 9:9 objections [2] - 9:6, 10:2 Obviously 16:20 October [7] - 1:11, 1:16, 3:23, 5:10, 5:21, 18:8, 18:18 offer [3] - 11:15, 13:8, 16:22 offered [9] - 8:11, 8:14, 8:17, 9:3, 10:9, 14:2, 14:5, 15:15, 16:7 Office 2:17 Officer 15:16 one-page 15:13 opponent 8:9 opportunity [2] - 10:4, 13:13 opposite 8:7 order [6] - 6:16, 7:7, 7:9, 8:18, 15:7, 16:13 original 7:6 out-of-court 8:11</p>	

<p>proceedings 18:13 process [23] - 4:17, 6:16, 7:4, 7:8, 7:23, 9:7, 9:9, 9:13, 9:24, 10:15, 11:12, 11:16, 14:15, 15:5, 15:6, 15:7, 15:19, 15:22, 15:24, 15:25, 16:2, 16:2, 16:14 processed 6:22 progress 16:21 project [9] - 1:6, 3:13, 6:13, 6:25, 7:1, 9:21, 9:22, 14:22, 14:24 proof [2] - 8:14, 12:2 proper 11:16 propose [3] - 5:12, 5:24, 8:23 proposed [4] - 13:6, 13:14, 13:21, 14:1 prove [2] - 8:15, 8:18 provide [2] - 13:8, 13:24 provided [2] - 7:16, 13:10 public [17] - 1:1, 1:5, 1:14, 2:6, 3:2, 3:5, 3:11, 3:25, 4:11, 4:12, 5:9, 5:11, 5:23, 9:23, 12:24, 13:1, 18:6 pull 13:2 purpose 3:20 pursuant [2] - 1:5, 3:11</p>	<p>record [15] - 4:9, 6:3, 7:2, 7:5, 7:11, 7:13, 7:14, 7:17, 7:22, 8:1, 9:2, 9:5, 12:9, 14:16, 14:19 recorded 18:5 reduced 18:11 refer 16:24 reference 17:5 referred 10:22 referring 17:5 Regional 5:4 Registered 18:24 regulatory [3] - 12:2, 12:5, 12:13 related 18:14 relevance [2] - 13:9, 13:18 relevancy 9:3 relevant [3] - 6:12, 14:3, 14:6 remaining 6:21 Rendall 5:6 reopen [2] - 7:13, 14:7 reopened 11:15 Reporter [2] - 18:24, 18:25 Reporter's 8:13 REPORTERS 1:23 represent 4:14 represents 8:8 request [3] - 7:2, 11:9, 11:14 requesting [2] - 6:22, 13:16 requests 6:2 Resources 4:15 respond [3] - 10:4, 14:12, 15:9 response 8:2 responsibility 12:6 resulted 6:18 review 13:16 reviewed [2] - 12:19, 12:20 reviews 12:23 Richard [2] - 2:21, 4:21 risk 6:25 ROBINSON 2:19 Room [2] - 1:15, 18:6 round 15:8 Rule [2] - 6:16, 16:25 Rules 8:13 ruling [3] - 13:20, 16:12, 16:18 rulings 4:4</p>	<p>Saudek [5] - 2:21, 4:21, 4:21, 11:21, 11:22 save 9:12 saying 11:4 scenario 14:22 schedule 6:25 SCOTT 2:22 scrutinize 13:13 scrutinized 12:8 Section [3] - 1:6, 3:12, 12:16 seeking [2] - 4:4, 14:14 serious 12:2 Service [11] - 1:1, 1:15, 2:6, 3:2, 3:5, 3:25, 4:11, 5:9, 5:11, 5:23, 18:7 shall [2] - 17:2, 17:3 SHEEHEY 2:11 shortly 6:21 signatories [2] - 5:24, 13:7 signed 15:16 significance 11:13 significant 9:20 Simollardes 5:7 simply [2] - 4:4, 13:18 so-called 8:15 Solid 7:5 sought 16:16 speaks 10:10 spoken 8:15 staff [5] - 2:1, 2:2, 2:2, 3:4, 14:10 start 4:1 started [2] - 11:3, 16:11 state [10] - 1:1, 1:12, 1:15, 2:6, 2:15, 2:20, 4:8, 6:14, 7:19, 18:7 stated [3] - 7:10, 7:12, 7:18 statement [2] - 8:11, 16:6 statements 8:14 stations [2] - 1:9, 3:18 status [5] - 3:9, 3:20, 16:11, 17:6, 18:5 stay 6:23 stenograph 18:12 stenographic 18:5 stenographically 18:10 steps 3:22 stick 9:9 straighten 10:25 Street [9] - 1:12, 1:15, 2:6, 2:9, 2:12, 2:15, 2:18, 2:20, 18:7 submission 16:4</p>	<p>submit [3] - 7:22, 14:18, 15:6 submitted 15:18 substance [2] - 13:10, 13:17 substantial 17:3 substantive 9:4 subvert 9:6 Suite 2:15 support [4] - 6:15, 13:9, 13:9, 14:5 system [3] - 12:2, 12:5, 12:13 Systems [10] - 1:5, 3:10, 3:23, 3:25, 4:2, 5:6, 5:10, 5:22, 6:1, 6:10</p>	<p>unless 14:4 upstairs 16:13 useful 11:25 using 16:7</p>
V				
<p>V.S.A [2] - 1:5, 3:11 verbal [2] - 8:16, 8:17 Vermont [30] - 1:1, 1:5, 1:9, 1:13, 1:14, 1:16, 1:24, 2:20, 3:10, 3:19, 3:23, 3:24, 4:2, 4:22, 5:6, 5:10, 5:22, 6:1, 6:10, 6:20, 8:13, 12:21, 14:13, 14:21, 15:14, 15:17, 15:20, 16:7, 18:7, 18:17 Vermonters 13:23 via 4:17 voices 5:17 Volz 3:4 VT [8] - 2:6, 2:7, 2:9, 2:12, 2:15, 2:18, 2:21, 2:24</p>				
W				
<p>waived 9:5 Waste 7:5 we'll [4] - 9:9, 9:12, 11:16, 16:12 we're [4] - 3:7, 15:4, 16:13, 16:18 Whereupon 17:10 whether [8] - 6:13, 8:4, 8:19, 11:25, 14:7, 14:16, 15:10, 16:16 Williston [2] - 1:9, 3:18 wish [3] - 5:25, 9:10, 13:8 writing 17:2</p>				
Y				
<p>Yankee 12:21 Young 2:1</p>				
Z				
<p>Zamore [14] - 2:13, 5:5, 5:5, 5:14, 5:18, 6:1, 6:9, 6:10, 9:18, 10:22, 14:12, 15:3, 15:6, 15:15 zero 10:23</p>				
U				
<p>ultimate [2] - 12:7, 12:14 unavoidably 3:6 Understanding [2] - 3:24, 13:14 undertake 16:15 United 1:15</p>				