

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, IN RE:
SECOND REMAND --

December 1, 2015
9:30 a.m.

112 State Street
Montpelier, Vermont

Technical Hearing held before the Vermont
Public Service Board, at the Third Floor Hearing Room,
People's United Bank Building, 112 State Street,
Montpelier, Vermont, on December 1, 2015, beginning at
9:30 a.m.

P R E S E N T

BOARD MEMBERS: James Volz, Chairman
Margaret Cheney
Sarah Hofmann

STAFF: June E. Tierney, General Counsel
Michael Tousley, Staff Attorney
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(Exhibits Palmer 1 - 6 were marked for identification)

CHAIRMAN VOLZ: Great. Good morning everyone. We are here this morning in Docket Number 7970 which is the petition of Vermont Gas Systems, Incorporated requesting 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 five miles of new distribution mainlines in Addison County, together with three new gate stations in Williston, New Haven and Middlebury, Vermont.

I would like to start by taking notices of appearance.

MS. PORTER: Louise Porter and Timothy Duggan for the Department of Public Service. And with us today is Christopher Recchia.

MR. SAUDEK: Richard Saudek for the Vermont Fuel Dealers Association, and with me is Matt Cota, the Executive Director.

MR. GRAYCK: David Grayck, and with me today is Nathan and Jane Palmer.

MS. LEVINE: Sandra Levine for

1 Conservation Law Foundation.

2 MR. ZAMORE: Peter Zamore, Sheehey,
3 Furlong & Behm for Vermont Gas Systems. With me
4 today is Heidi Trimarco of Downs, Rachlin & Martin.
5 With us today are Don Rendall, Eileen Simollardes,
6 Beth Parent and Lauren Hammer.

7 CHAIRMAN VOLZ: Okay. Are there any
8 preliminary issues before we start hearing from
9 witnesses?

10 MR. ZAMORE: I would like to raise an
11 issue, which is that Mr. Grayck has indicated an
12 intention to call me as a witness. And I would like
13 to have that addressed if he is going to do that
14 either now or sometime well before that request is
15 acted on.

16 CHAIRMAN VOLZ: Okay. Any response to
17 that?

18 MR. GRAYCK: Yes. In discovery we
19 received certain E-mails, and amongst the E-mails one
20 of them is from Attorney Zamore to Attorney Porter.
21 So Attorney Zamore is the author of the E-mail. And
22 therefore to the extent that I would want to inquire
23 as to the subject matter and substance of the E-mail,
24 as the author, he would be the witness.

25 CHAIRMAN VOLZ: Okay.

1 MR. ZAMORE: If I could respond.

2 CHAIRMAN VOLZ: Sure.

3 MR. ZAMORE: Mr. Grayck is essentially
4 requesting that the Board order me to appear as a
5 witness. He's moving to compel that result. He
6 certainly can't do it without such a requirement of
7 the Board. He has not made a motion to the Board in
8 a reasonable time as required under Rule 2.206 which
9 indicates that the Board may decline to consider a
10 motion not made within a reasonable time after the
11 issue first arises with respect to the moving party.

12 This particular E-mail was provided in
13 discovery well over a week ago. He has not indicated
14 to me that he was going to seek this result, much
15 less file a motion with the Board to which I could
16 respond.

17 In addition, it's troubling that he did
18 not provide notice, since we have had a lot of
19 discussion back and forth about the order of
20 witnesses, who is going to testify, how much time,
21 and this issue did not arise in connection with that.

22 In addition, under Rule 2.213 parties
23 are supposed to prefile testimony in support of their
24 direct case. He has chosen not to do that. Also he
25 has clearly not laid a foundation for the relevance

1 of my testimony. He has not identified a fact of
2 consequence that may be more or less probable as a
3 result of my testimony.

4 In addition, it would be very
5 challenging for me being a lawyer, being involved in
6 this and providing legal advice, to be able to
7 testify on anything that wouldn't be subject to the
8 attorney/client privilege. And it would be
9 challenging for me to do so since I would be on the
10 witness stand. Although Ms. Trimarco is here today,
11 she was requested to come to deal primarily with
12 discovery issues and wasn't prepared to have the
13 hearing. Simply put, not only is it prejudicial for
14 this to occur, but I would submit that it borders on
15 harassment under Vermont Rule of Evidence 611.

16 CHAIRMAN VOLZ: Mr. Grayck.

17 MR. GRAYCK: Yes. So the discovery
18 that was provided came to me in this envelope. And
19 it's got a postmark of November 23d. So that was --
20 it was mailed what? Last Monday. So I got it either
21 Tuesday or Wednesday. And then of course, Thursday
22 and Friday you were closed. So I really don't think
23 there is a timeliness issue.

24 With respect to the foundation of it,
25 it goes to the circumstances in which the MOU was

1 negotiated and whether or not it's an accurate
2 analysis unto the used and useful requirements. And
3 it seems that DPS gave this E-mail in response to a
4 discovery request by AARP, so I find it hard to
5 understand why it would have been given if it was
6 objectionable or not relevant.

7 So I could have -- I would have
8 expected that DPS or VGS would have, if they thought
9 this was protected by attorney/client privilege, or
10 even work product privilege, they wouldn't have
11 provided it in discovery. But they did. So I'm
12 confused about that. And in terms of the general
13 issue, I believe the Board will recall that when we
14 had the status conference that was what, on October
15 14th? The Board then asked for parties to submit
16 memorandum on what they think the status of this
17 proceeding should be and where things should go. And
18 that memorandum that I filed included statements that
19 VGS and I believe I also said DPS had waived
20 attorney/client privilege through the submissions of
21 the MOU on October 7th, which I believe was also done
22 in violation of the rules. So I really think there
23 is also an equity issue here.

24 It seems odd that Attorney Zamore would
25 be claiming that somehow I'm violating the rules when

1 in fact, the reason we are here is because on October
2 7th VGS and DPS didn't follow your rules. I think
3 the documents are admissible. They are admissions of
4 the party opponents they wrote them. They provided
5 them. They pertain to the MOU which is before you.
6 And I think it really shouldn't be that hard to
7 simply get some brief testimony about what these
8 E-mails were about, and we do have tomorrow, so to
9 the extent that VGS needs to make arrangements to
10 have another attorney present who is ready to act as
11 counsel, I'm sure VGS could arrange for that given
12 that it's got both Downs, Rachlin & Martin and Mr.
13 Zamore's firm on board. I really don't see what the
14 problem is.

15 CHAIRMAN VOLZ: Any other response?

16 MR. ZAMORE: Yeah. If the
17 circumstances of the negotiation is relevant enough
18 to permit testimony, we are going to be here for a
19 month. If that's a foundation that's adequate for
20 demonstrating relevance, it is not.

21 In terms of the accuracy of the
22 analysis of used and useful, that goes to the heart
23 of the attorney/client privilege issue. And the
24 argument that a contract that was filed waives the
25 attorney/client privilege is novel to say the least.

1 MS. HOFMANN: Mr. Grayck, why can't you
2 get the information just, for example, this is
3 labeled Palmer 1 on the copy I was given. It says:
4 "Louise, I'm bringing Eileen to the meeting." Why
5 couldn't you just question Ms. Simollardes?

6 MR. GRAYCK: Well I was going to. But
7 in addition, the author of the E-mail is Attorney
8 Zamore. And he makes a statement to Attorney Porter
9 that says let me know if you have any concerns. And
10 I'd like to know what this is talking about relative
11 to the MOU. This was an E-mail sent on October 5.
12 Then on October 7 we have the MOU filed, and there
13 was obviously an extended negotiation or maybe even
14 short-term negotiation. The MOU was done without my
15 client's knowledge.

16 Now we have some indication that there
17 was discussions, meetings, the other E-mails indicate
18 I think a concern about -- about getting statements
19 by the Governor to Don Rendall ASAP before he starts
20 talking to reporters. I want to know what this is
21 all about.

22 CHAIRMAN VOLZ: Why don't you ask Don
23 Rendall about that?

24 MR. GRAYCK: I'm going to.

25 CHAIRMAN VOLZ: And why don't you ask

1 Eileen Simollardes, and why don't you ask the parties
2 who negotiated the MOU who are witnesses here about
3 it? I don't know why you necessarily need to ask the
4 lawyers.

5 MR. GRAYCK: Because this is Palmer 1,
6 and this is from Attorney Zamore to Attorney Porter,
7 and it's an admission against interest. It's
8 relevant to the issues to the Board here, and I move
9 its admission. I move its admission, and I request
10 the opportunity to cross examine Attorney Zamore and
11 Attorney Porter.

12 CHAIRMAN VOLZ: We haven't heard yet
13 from the Department.

14 MS. PORTER: The first thing that I
15 would like to speak to is the timeliness that Mr.
16 Grayck received these documents. They were sent
17 electronically Wednesday afternoon, the -- what date?
18 It was last week. And the vagaries of the state
19 mailing system, I don't know when this was postmarked
20 or when he got it. I apologize that he didn't have
21 the paper copies earlier. But we sent them
22 electronically the afternoon that they were completed
23 and filed with the Board. And we didn't get any
24 bounce-backs or any indication that Mr. Grayck had
25 not received those.

1 CHAIRMAN VOLZ: I'm sorry. What date
2 did you say you sent them?

3 MS. PORTER: I believe it was
4 Wednesday. Yeah, the 18th.

5 CHAIRMAN VOLZ: Okay. That's a week
6 before Thanksgiving.

7 MS. PORTER: Correct.

8 CHAIRMAN VOLZ: Okay. Thanks.

9 MR. GRAYCK: Well envelope is marked
10 November 23.

11 CHAIRMAN VOLZ: Did you not get the
12 E-mail?

13 MR. GRAYCK: I imagine I got it. But
14 this contained -- a lot of this is double sided.
15 This is close to a two-inch stack of documents. I
16 responded diligently to the receipt of this
17 information. These are documents which they have
18 produced, and honestly I don't know what they are
19 afraid of.

20 CHAIRMAN VOLZ: We will take it under
21 advisement unless anybody else wants to address this
22 issue or has any other comments on the issue.

23 MS. PORTER: I would just like to say
24 that I agree with all of the arguments that Mr.
25 Zamore has made, and I just feel that this truly

1 infringes on my ability to act as counsel to the
2 Department, and no notice, we had no time to prepare
3 for this. And it is wholly objectionable.

4 MR. GRAYCK: This is cross examination,
5 I'm not required to prefile my cross examination. I
6 don't know what their cross examinations are going to
7 be. This is cross examination. I'm allowed to do
8 what I'm asking to do under the Rules of Evidence.

9 CHAIRMAN VOLZ: Of the witnesses;
10 that's correct.

11 MR. GRAYCK: That's right.

12 CHAIRMAN VOLZ: And you'll have the
13 opportunity to do that, and then we will take it
14 under advisement and see where we are. I suggest
15 that you explore the areas of concern that you've
16 identified here with the witnesses who we have here,
17 and then -- so that you don't miss the opportunity to
18 do that. Because we haven't decided whether we will
19 allow you to actually cross the lawyers.

20 So I urge you to be sure and ask the
21 questions you think you need to ask of these parties
22 from the witnesses who are actually here today.

23 MR. GRAYCK: Thank you, I will.

24 CHAIRMAN VOLZ: Great. Yes.

25 MR. ZAMORE: Very briefly, follow up as

1 to relevance, is he wants to know quote: What it's
2 all about. That's the essence of discovery. And we
3 shouldn't be clogging up hearing time with him
4 finding out what something is all about.

5 Secondly, this is direct examination.
6 He's not following on somebody else who has sponsored
7 the witness. He's sponsoring the witness. It's
8 direct examination of a witness he's calling.

9 MR. GRAYCK: I believe we are here for
10 cross examination of witnesses.

11 CHAIRMAN VOLZ: Who prefiled testimony.
12 That's correct.

13 MR. GRAYCK: This is -- but you can't
14 prefile cross examination.

15 CHAIRMAN VOLZ: We will be taking it
16 under advisement. I think we have heard --

17 MR. GRAYCK: That's fine. I'm ready to
18 proceed.

19 CHAIRMAN VOLZ: Okay. So if we could
20 have our first witness.

21 MR. ZAMORE: Sure. Vermont Gas calls
22 Don Rendall. Mr. Rendall, you're still under oath.

23 MS. CHENEY: Yes, thank you. I thought
24 you would ask him to state his name for the record.
25 And may I remind you, you remain under oath in this

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Docket.

THE WITNESS: Don Rendall, and I
understand that I'm under oath.

1 DONALD J. RENDALL, JR.

2 Having been previously duly sworn,
3 testified as follows:

4 MR. ZAMORE: I believe the parties have
5 stipulated to the admission of the prefiled testimony
6 and the exhibits. And in connection with Mr.
7 Rendall's testimony, he has prefiled testimony and
8 Exhibit 11-6-15 DR-1 which is the Memorandum of
9 Understanding. And I move the admission.

10 CHAIRMAN VOLZ: Okay. Any objection?

11 MS. PORTER: No objection.

12 CHAIRMAN VOLZ: It's admitted.

13 (Exhibit 11-6-15 DR-1 was
14 admitted into the record.)

15 (The Prefiled Testimony of Donald J.
16 Rendall, Jr., was admitted into the record.)

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1 MR. ZAMORE: Mr. Rendall is available
2 for cross.

3 CHAIRMAN VOLZ: Okay, Mr. Grayck, I
4 think you're signed up to go first.

5 MR. GRAYCK: If you insist.

6 CHAIRMAN VOLZ: You would rather not go
7 first?

8 MR. GRAYCK: I would rather not go
9 first.

10 CROSS EXAMINATION

11 BY MR. GRAYCK:

12 Q. Good morning, Mr. Rendall. How are you?

13 A. Fine, thank you.

14 Q. Mr. Rendall, you have extensive experience in
15 the field of Vermont utility regulation, yes?

16 A. I have many years of experience.

17 Q. And I assume that you are knowledgeable as to
18 the meaning of used and useful; is that right?

19 A. I have an understanding of the term. And I
20 have a, yeah, and I have -- I have an understanding of the
21 term.

22 Q. And certainly I assume you have an
23 understanding of how the concept applies with respect to
24 utility regulation in Vermont, yes?

25 A. Yes.

1 Q. And certainly you understand how it applies
2 with respect to specifically Vermont Gas Systems, yes?

3 A. I have an understanding of how the concept
4 applies to the rate making process for utilities which
5 would include Vermont Gas Systems.

6 Q. Okay. So the issue of used and useful is not
7 something unfamiliar to you; correct?

8 A. The concept of used and useful is something
9 that is -- that I am familiar with; correct.

10 Q. Okay. And in prior proceedings with this
11 Board did you recall ever sponsoring or working with
12 witnesses who testified about used and useful, either as
13 an attorney or as a consultant for a utility?

14 A. Yes.

15 Q. Okay. And by any chance was one of those
16 witnesses Jonathan Lesser?

17 A. Wow, you're testing my memory. I don't recall
18 specifically.

19 Q. Okay. Mr. Rendall, do you agree that used and
20 useful provides an end run allowing regulators to second
21 guess utility resource decisions? Do you agree with that?

22 A. No.

23 Q. Okay. Could you tell me why?

24 A. I don't view the concept of used and useful as
25 an end run around anything.

1 Q. Okay. Then what is it a concept about?

2 A. It's a concept about having investments or
3 assets in service to serve utility customers.

4 Q. Okay. It would be my understanding that from
5 the utility's perspective you want the used and useful
6 value to be as high as possible because that means you
7 recover more cost through the ratepayers; is that correct?

8 A. No.

9 Q. Why not?

10 A. The used and useful concept isn't about high
11 or low. The used and useful concept is about what an
12 asset is doing on behalf of utility customers.

13 Q. So would it be appropriate then to have
14 assumed that when the project cost was originally
15 projected to be what was it 81, 82 million --

16 A. It was higher than that.

17 Q. -- 86 million, is it reasonable to assume that
18 when the project cost was projected to be 86 million, that
19 the amount of recovery under used and useful would not
20 have exceeded 86 million?

21 A. No. That's not correct.

22 Q. And why not?

23 A. The estimate that the company provided in an
24 earlier time was exactly that, an estimate. And the --
25 the concept of used and useful is not -- it's just not

1 connected to an estimate.

2 Q. So it's connected to an actual cost?

3 A. It's not connected to -- it's connected to
4 what an asset is or an investment is being used for,
5 whether it's being used, and for providing service to
6 customers, and useful in providing service to customers.
7 It's really as simple as that.

8 Q. And at some point there has to be a
9 quantification of what you just described, yes?

10 A. No. I don't think so.

11 Q. Okay. When VGS represented to the Board I
12 believe it would have been on what, September 26, 2014,
13 that the project cost was 121 million, would it have been
14 reasonable to assume that the used and useful amount would
15 not have exceeded 121 million?

16 A. That would not be a reasonable conclusion.

17 Q. Okay. And then the project then was estimated
18 to be at 154 million. Is that the current project
19 estimate?

20 A. That is the current project estimate and
21 budget. Yes.

22 Q. Okay. So I would have assumed that the used
23 and useful amount wouldn't have exceeded 154 million. But
24 you disagree with that?

25 A. I disagree with that.

1 Q. Okay. You've talked about used and useful in
2 the concept of it being in relation to the value of an
3 asset, am I saying that right?

4 A. That's not what I -- that's not what --

5 Q. Help me out. Because I clearly want to hear
6 what you're saying.

7 A. Used and useful is a regulatory concept that
8 relates to how an investment or an asset is being used to
9 serve customers in a regulated utility.

10 Q. And eventually it results in a payment by
11 ratepayers to the utility, yes?

12 A. Not necessarily.

13 Q. Not through the rates?

14 A. It is a -- it is a factor that is used in rate
15 making to determine whether an investment or an asset is
16 appropriately included in a utility cost of service
17 because it is being used to provide service to customers
18 and useful for doing so.

19 Q. Okay. Now VGS presently has a lawsuit against
20 Over and Under Contractors; is that correct?

21 A. We have an action pending in the United States
22 District Court against Over and Under.

23 Q. And I would assume the purpose of that action
24 is to recover money from Over and Under, yes?

25 A. The purpose of that lawsuit is to determine

1 the -- to resolve a dispute regarding Over and Under's
2 work for the company.

3 Q. And the company I assume is seeking monetary
4 damages, yes?

5 A. We -- I don't have the complaint in front of
6 me. I believe we have made a claim for damages in the
7 litigation.

8 Q. I mean that would make sense. It's a breach
9 of contract claim, yes, or it's in the nature of the
10 breach of contract?

11 A. Among others. Yes.

12 Q. Among others. Okay. So suppose VGS recovered
13 millions of dollars, okay, may you be so lucky to recover
14 millions of dollars, would that affect what should be the
15 used and useful cap?

16 A. I don't know what you mean by a used and
17 useful cap.

18 Q. My understanding is that there is an MOU that
19 says there won't -- there is an agreement that the DPS,
20 the state and Vermont Gas agree that the used and useful
21 -- I use the word value -- if that's incorrect please tell
22 me, but the used and useful value is 134 million. And
23 that because of that, if VGS incurs costs in excess of
24 that, it won't seek to recoup those costs from the
25 ratepayers.

1 And I ask you to correct me if I am wrong, I
2 don't claim to -- you're the expert, not me. So I'm just
3 trying to understand how that number relates, and whether
4 if you're successful in the lawsuit against Over and
5 Under, that should be a consideration as to whether 134
6 million is the correct used and useful, I call it a value.

7 A. There are several questions there. And I
8 really don't understand them, so if you can take me
9 through one at a time that would be great.

10 Q. Sure. Okay. Is VGS agreeing that it won't
11 seek to recover costs from the ratepayers in excess of 134
12 million dollars?

13 A. According to the terms of the MOU that is the
14 agreement.

15 Q. Okay.

16 A. That's subject to the specific terms of the
17 MOU.

18 Q. And how was the number of 134 million
19 determined?

20 A. It was negotiated.

21 Q. And what was the basis of the negotiation?

22 MR. ZAMORE: I'm going to object to
23 relevance grounds. The MOU speaks for itself. If
24 Mr. Grayck has some claim that the term is ambiguous,
25 then he should lay a foundation for doing so.

1 Otherwise I object on relevance grounds.

2 CHAIRMAN VOLZ: Mr. Grayck.

3 MR. GRAYCK: It's relevant to the issue
4 because what they are saying is that 134 million has
5 a rational basis in the analysis which is supposed to
6 be undertaken as part of a used and useful
7 determination. To me it seems that they split the
8 difference between 121 million and 154 million and
9 that this is the negotiation which took place between
10 VGS and DPS and is now being submitted to you for the
11 protection of an adjudication.

12 I really think that's what it's all
13 about.

14 MR. ZAMORE: The used and useful
15 principle is wholly different from the rate recovery
16 cap. They are two different issues. And he's trying
17 to confuse them, and they are just two different.

18 But more fundamentally, inquiry into
19 negotiations are not relevant without a foundation
20 that relates to something that will make a fact of
21 consequence more or less probable. And if he wants
22 to demonstrate that there is a term that is ambiguous
23 that requires extrinsic evidence, that's fine. If he
24 lays that foundation, but otherwise, those types of
25 discussions are not relevant.

1 MR. GRAYCK: Well I guess we have to go
2 back to October 7 when Mr. Rendall and Mr. Recchia
3 filed this MOU with the Board. My assumption is that
4 they filed that on October 7 to influence your
5 decision. That we have two pending motions, a Rule
6 60(b)(2) and a Rule 60(b)(3). And that that
7 documentation was filed to influence your decision to
8 affect the outcome of those two pending motions.

9 And I would like to understand why VGS
10 thinks that the MOU is relevant to those two issues,
11 and why it filed those -- why it filed the MOU on
12 October 7 when this matter has been under advisement
13 for months.

14 MR. ZAMORE: If Mr. Grayck wants to ask
15 Mr. Rendall as to why the rate recovery cap is
16 relevant, that's fine. And in fact, Mr. Rendall
17 talks about that in his prefiled testimony. What I'm
18 objecting to is wandering around negotiations before
19 the MOU was executed without a foundation
20 demonstrating relevance.

21 (Pause).

22 MEMBER OF THE PUBLIC: Mr. Zamore,
23 could you use the microphone? I'm having trouble
24 hearing.

25 MR. ZAMORE: Sure. I'll try to

1 remember.

2 CHAIRMAN VOLZ: At this time we are
3 going to sustain the objection. I think you really
4 need to provide a foundation, as Mr. Zamore
5 suggested, if you want to ask the specific question
6 that was objected to.

7 MR. GRAYCK: Okay.

8 BY MR. GRAYCK:

9 Q. So the 134 million is a rate recovery cap?

10 A. Yes.

11 Q. Okay. And what is a rate recovery cap?

12 A. It is the -- it is a cap on the amount of
13 investment in this project that the company can seek to
14 recover in future rate proceedings relating to this
15 project.

16 Q. Okay. Should the amount of investment that
17 can be recovered, should it be diminished by the amount of
18 recovery VGS might obtain in its lawsuit against Over and
19 Under?

20 A. I'm sorry. I'm just not understanding the
21 question. I can't answer it as you've asked it because I
22 don't understand it.

23 Q. What don't you understand?

24 A. Perhaps you could repeat it, and I'll try to
25 decipher it as you restate it.

1 Q. Could you help me out and repeat my question
2 for us?

3 (The record was read as requested)

4 THE WITNESS: It should not affect the
5 amount of the cap in the MOU which is set and stated
6 in the MOU.

7 BY MR. GRAYCK:

8 Q. Okay. Can you please explain to me the basis,
9 the rationale, the reasoning for your answer that you just
10 gave.

11 A. Ultimately the amount of the investment that
12 will be recovered in rates is to be determined in a future
13 rate proceeding. And of course, the Department of Public
14 Service as the MOU provides, has the opportunity to review
15 all of the costs which would include any cost that relates
16 to any resolution of the Over and Under claim as part of
17 that evaluation, and at the end of the day, the amount of
18 cost recovery will be determined in a future rate case
19 based on the amount that's actually spent, based on the --
20 on whatever other relevant evidence there is to cost
21 recovery. And 134 is a cap, it is not a floor.

22 Q. Is it your expectation at this point that the
23 134 will not be reached? I mean my understanding is the
24 project cost is estimated at 154. Is it your expectation
25 that 134, 134 million won't be reached?

1 A. It is my expectation that the project will
2 cost more than 134 million dollars when it is constructed.
3 And as you know, Mr. Grayck, from our filings with the
4 Public Service Board, on the status of the project and on
5 quarterly updates on the budget and the spending, that the
6 project continues to have a budget of 153 point something
7 million dollars, and the -- and point 6, I believe, and
8 that the current forecast to complete the project is
9 approximately 140 million dollars. And that the space
10 between those numbers is the contingency that we have
11 appropriately put into the budget.

12 CHAIRMAN VOLZ: Could you get closer to
13 your microphone?

14 THE WITNESS: I'm sorry.

15 CHAIRMAN VOLZ: Is it on?

16 BY MR. GRAYCK:

17 Q. Is it possible that the amount of damages you
18 are seeking from Over and Under is the contingency amount?

19 A. No.

20 CHAIRMAN VOLZ: Turning it on was
21 helpful.

22 BY MR. GRAYCK:

23 Q. Next question, really low, can you explain to
24 me what the purpose of the filing you made on October 7 of
25 this year with the Board when you submitted -- you

1 submitted a letter under your signature, and it included
2 the MOU. Why did you file that letter in the MOU with the
3 Board?

4 A. We have made a commitment to be direct and
5 open with all of the progress of the project. This was a
6 significant event, and we filed it with the Board just as
7 we have filed other updates with the Board of significant
8 events in the course of the project. That is a commitment
9 that we have made, and that is a commitment that we are
10 doing our best to live up to.

11 Q. Okay. Was it your intent with the filing on
12 October 7 to influence the outcome of the pending Rule
13 60(b)(2) and Rule 60(b)(3) motions?

14 A. It was our intent to assure our customers, to
15 assure our stakeholders, to assure our regulators
16 including the Department and the Board, that we were
17 prepared to take the risk of the cost of this project over
18 the cap for 134 million dollars, with respect to all of
19 those pieces and parts of the project over which we have
20 control; that is the estimating, the construction, the
21 whole -- the whole of the project.

22 Q. Yes. I understand that. But again, my
23 question is specific to Rule 60(b)(2) and Rule 60(b)(3)
24 and the fact that those motions are pending. Was the
25 filing on October 7 intended to influence the outcome of

1 the Board's decision on the pending Rule 60(b) motions?

2 A. The purpose of the filing was to make clear to
3 the Board, among others, that the company was prepared to
4 and had agreed with the Department to cap the amount of
5 costs that it would seek to recover in rates under this
6 project at 134 million. It was also our intent to make
7 clear that it was important that this -- that we have
8 resolution of the pending regulatory proceedings in time
9 to permit us to complete the project on time and on budget
10 under the 153.6 million dollar budget estimate that we had
11 provided to the Board and announced in December of 2014.

12 Q. So in your opinion is the cap of the MOU
13 that's provided in the MOU, the 134 cap, is that relevant
14 to the pending 60(b) motions? I mean I assume it is. But
15 I don't think this is a trick question. But you seem
16 reluctant to just answer yes or no.

17 A. Well to the question is it relevant I think
18 the answer is yes.

19 Q. Okay. Could you please explain to me how?

20 A. You were here, as I was, for the extensive
21 proceedings during June, the evidentiary proceedings where
22 you and others made much of the 153.6 million dollar
23 budget estimate. And this cost cap makes clear that when
24 it comes time for us -- for Vermont Gas to seek recovery
25 of the project in rates, that the amount of that request

1 will be limited in accordance with the cap in the
2 Memorandum of Understanding.

3 Q. Okay. But given your expertise in the utility
4 industry that you testified to this morning, given your
5 sophisticated -- I agree sophisticated -- understanding of
6 used and useful and how it applies in these proceedings,
7 why did you wait until after the June hearings to commence
8 negotiation over the used and useful cap rate and only
9 submit it in October of this year. Why did you wait?

10 A. We didn't wait. We didn't undertake those
11 negotiations until the days before we reached agreement,
12 that was when we began that effort. So I want to be clear
13 that we didn't sit on this. We didn't wait, we did not
14 engage in the negotiation until the period
15 contemporaneously with the filing of the Memorandum of
16 Understanding.

17 Q. To give better understanding to that, if you
18 could just help me out. Are you saying that negotiations
19 didn't commence until days or weeks before?

20 A. Yes.

21 Q. Could you help us understand in a more
22 specific way, are we talking September 15, are we talking
23 September 27, are we talking October 2?

24 A. I don't recall the specific date. It was in
25 the -- in the mid to late September time frame. It was in

1 the -- yes. Late September time frame. Latter half of
2 September.

3 Q. One moment please, if I may.

4 CHAIRMAN VOLZ: Sure.

5 BY MR. GRAYCK:

6 Q. I'm going to show you what's been marked as
7 Palmer 5. And who wants to pass or tiptoe -- it's worse
8 than being on Spirit Airline.

9 Have you ever seen Palmer 5 before?

10 A. I saw it for the first time approximately 20
11 minutes ago.

12 Q. Okay. Who's Ned Farquhar?

13 A. He's our Vice President of Communications and
14 Government at Vermont Gas.

15 Q. Are you his supervisor or supervisor of the
16 supervisor of the supervisor?

17 A. He reports to me.

18 Q. He does report to you?

19 A. Yes.

20 Q. Okay. And who is Scott Coriel?

21 A. I believe Scott Coriel works in the Governor's
22 office.

23 Q. Do you know what he does in the Governor's
24 office?

25 A. I don't know specifically what his title is.

1 Q. Who is John Copans?

2 A. John Copans is employed by the Department of
3 Public Service.

4 Q. And of course Ms. Simollardes is your
5 employee, yes?

6 A. Yes.

7 Q. And Elizabeth Parent is also your employee?

8 A. Yes.

9 Q. I apologize for keeping my right-hand over my
10 eye, but it's the only way I can see. The second to last
11 sentence is: I know they will also want to get any
12 statement by the Governor to Don Rendall ASAP before he
13 starts talking to reporters. What is -- what's that
14 about?

15 A. I don't know..

16 MR. ZAMORE: Objection.

17 MR. GRAYCK: You don't know?

18 MR. ZAMORE: I object on the grounds of
19 relevance. I haven't seen a foundation laid as to
20 how that statement makes any fact or consequence more
21 or less probable.

22 MEMBER OF THE PUBLIC: Microphone
23 please.

24 CHAIRMAN VOLZ: Mr. Grayck?

25 MR. GRAYCK: Well I think the E-mail is

1 discussing the MOU, and it's just been identified
2 that this is an E-mail from a Vermont Gas employee to
3 a member of the Governor's staff, it included
4 employees of Vermont Gas, and it appears that there
5 was concern about he, and I don't know whether he is
6 the Governor or Mr. Rendall, before they start
7 talking to reporters, and it pertains to the MOU.

8 And I don't understand -- I want to
9 know what concerns they had with respect to the MOU,
10 and why something had to be gotten to Don Rendall
11 ASAP before he starts talking to reporters. And
12 ultimately, it goes to how reliable the 134 cap is,
13 and whether or not it is supported by appropriate
14 analysis or whether it's simply a negotiated design
15 number reached in private between VGS, the Department
16 of Public Service, with obvious coordination with the
17 Governor's office, and submitted to you to influence
18 the outcome of the pending Rule 60(b)(2) and 60(b)(3)
19 motions.

20 MR. ZAMORE: Mr. Grayck hasn't said
21 anything that suggests that the number in the MOU is
22 anything different than 134. The number clearly
23 appears in the MOU. And he just hasn't demonstrated
24 any relevance about it.

25 The fact that VGS was preparing for the

1 press in connection with release of the MOU certainly
2 doesn't bear on whether the 134 million dollars is
3 reliable or not. It's a binding contract between the
4 Department and Vermont Gas Systems. It doesn't need
5 Board approval to be enforced by the Department of
6 Public Service. And it speaks for itself.

7 CHAIRMAN VOLZ: Mr. Grayck?

8 MR. GRAYCK: Then I don't know why it's
9 been filed with this Board. But more importantly,
10 you're being asked to decide that the 134 million has
11 a basis in the used and useful analysis. And it's my
12 contention that the 134 million was a negotiated
13 number between DPS, the Governor's office and VGS,
14 which is simply an economic accommodation so that VGS
15 will not abandon the project.

16 And this sentence is relevant to the
17 negotiations, the basis for the MOU, and whether or
18 not 134 million is reliable and an accurate cap. Why
19 else was it submitted to you other than to have you
20 make it part of your adjudication? I don't
21 understand.

22 MS. HOFMANN: Mr. Grayck, maybe you
23 could ask him what he knows about the E-mail itself.
24 You have -- Ms. Simollardes is one of the -- in the
25 to line, but I'm not sure Mr. -- you've established

1 that Mr. Rendall knows anything about this E-mail.

2 BY MR. GRAYCK:

3 Q. Mr. Rendall, do you know anything about this
4 E-mail?

5 A. This is the first time I've seen the E-mail
6 today.

7 Q. Do you know -- were you aware of the plan to
8 bring the MOU and cover letter to Montpelier PSB at around
9 9 or 9:15?

10 A. I was not aware of the specific details. I
11 was aware that we were making an announcement, that the
12 Department of Public Service would also be making an
13 announcement because this was an agreement between the two
14 of us. And that the -- and that our teams were
15 coordinating the announcements as would be appropriate.

16 Q. Okay. What involvement, if any, did Scott
17 Coriel have in the negotiation of the MOU?

18 A. None that I'm aware of.

19 Q. Okay. Thank you. I have nothing further.

20 CHAIRMAN VOLZ: Okay. Mr. Saudek, do
21 you have questions for this witness?

22 MR. SAUDEK: Thank you.

23 CROSS EXAMINATION

24 BY MR. SAUDEK:

25 Q. Morning, Mr. President. What is a Memorandum

1 of Understanding?

2 A. It is an agreement.

3 Q. In other words it's a contract?

4 A. In this case I would characterize it as a
5 contract.

6 Q. Do you believe that it binds future
7 Departments of Public Service? In other words,
8 departments under future Governors, for instance?

9 A. Yes.

10 Q. Why did VGS initiate the negotiation of the
11 Memorandum of Understanding in the first place?

12 MR. ZAMORE: I'm going to object to
13 that on the same grounds. Unless there is a
14 demonstration of relevance, I don't think it is
15 relevant.

16 MEMBER OF THE PUBLIC: Can't hear you.

17 MS. HOFMANN: Is your microphone on,
18 Mr. Zamore?

19 CHAIRMAN VOLZ: Could you just repeat
20 your objection please?

21 MR. ZAMORE: Yeah. I object on
22 relevance grounds. He hasn't laid a foundation as to
23 why who initiated the negotiations is relevant to the
24 MOU.

25 CHAIRMAN VOLZ: Mr. Saudek?

1 MR. SAUDEK: Who negotiated -- who
2 initiated negotiations with the MOU?

3 CHAIRMAN VOLZ: That's what the
4 objection -- that's what he's objecting to. So
5 what's your response to his objection? Why does it
6 matter who negotiated -- who initiated it?

7 MR. SAUDEK: I think it matters. I
8 think that --

9 CHAIRMAN VOLZ: That's what he's asking
10 you to explain. That's what his objection is going
11 to, and that's what he's asking you to explain; why
12 does it matter. Why is it relevant?

13 MR. SAUDEK: It is relevant because I
14 think that if you're going to have at least
15 intelligent inquiry into the MOU, you've got to find
16 out what the basis was, why it was negotiated, why it
17 was necessary, and who thought it was necessary.
18 You've got to get behind it.

19 CHAIRMAN VOLZ: You could ask those
20 questions perhaps.

21 MR. ZAMORE: I'm not sure what
22 intelligent inquiry has to do with the meaning of the
23 MOU or some other basis for this -- if you want to
24 argue that a certain term in the MOU is ambiguous and
25 we need extrinsic evidence, that's fine. But --

1 MR. SAUDEK: It's not a question of
2 ambiguity. It's not a question of ambiguity. I mean
3 it's a question of how this MOU came into effect. I
4 think it's a perfectly legitimate question. I don't
5 know why the Board isn't interested themselves in
6 that.

7 MS. HOFMANN: Why would it change the
8 -- would it change the meaning of the MOU, Mr.
9 Saudek? If we knew who initiated it?

10 MR. SAUDEK: It would change, I
11 believe, the kind of underpinnings, it would change
12 the reasons for it, it would change the rationale for
13 it. If the Board is not interested in how it came
14 into being, after all the testimony that was taken on
15 the rate amounts, after the -- after the concession
16 of 13 percent of the cost, as recovery, if the Board
17 is not interested in any of that, if the Board is not
18 interested after counsel Porter wrote in her
19 submittal on it a plain reading of the MOU
20 demonstrates that it is focused squarely on future
21 rate proceedings, if the Board is not interested in
22 how it came to be, then obviously you can consider my
23 question out of order.

24 I don't think the Board has to take the
25 MOU just on its four corners and just say -- and go

1 mechanically through every word of the MOU unless
2 there is ambiguity in a particular -- in a particular
3 part of it. I think it's -- it is -- I think it's
4 the Board's duty to inquire into it and to inquire
5 into how it came to be.

6 MR. ZAMORE: We are not objecting to
7 the reason for the MOU. In fact, Mr. Rendall talks
8 about it in his testimony. What I'm concerned about
9 is getting into who approached who, who said what to
10 whom, and what could be an extensive amount of
11 hearing time spent on issues that don't have a direct
12 bearing on the MOU. But certainly the reason for the
13 MOU is relevant, and if he wants to ask that
14 question, we have no objection.

15 MR. SAUDEK: I'm not going to spend an
16 extensive amount of hearing time on this thing. I
17 just wanted to know who started the negotiations, and
18 I want to ask some of Mr. Rendall's understanding.

19 CHAIRMAN VOLZ: Why does that matter?
20 Why does it matter who started? That's the question
21 of relevance.

22 MR. SAUDEK: I think it matters because
23 I think the question is ultimately what -- as Mr.
24 Grayck suggestion, what the MOU as to this case, what
25 -- how does it fit in the context of the costs and of

1 the -- ultimately of the economic analysis that the
2 Board has to conduct in order to decide this case.

3 CHAIRMAN VOLZ: Well you could ask
4 that.

5 MR. ZAMORE: We have no objection to
6 that question, if you want Mr. Rendall to answer it.

7 MR. SAUDEK: So your ruling is that my
8 question --

9 CHAIRMAN VOLZ: We haven't ruled yet.
10 We are trying to understand what the different
11 arguments are.

12 (Pause.)

13 CHAIRMAN VOLZ: We are going to
14 overrule the objection.

15 Go ahead, Mr. Saudek. We are
16 overruling the objection, so you can ask the
17 question.

18 MR. SAUDEK: Would you read back the
19 question please? Okay, I'll ask the question.

20 CHAIRMAN VOLZ: I think it was who
21 started the negotiation.

22 MR. SAUDEK: I'm going to change it.

23 CHAIRMAN VOLZ: See now that's -- fine.
24 Go ahead.

25 BY MR. SAUDEK:

1 Q. Did the DPS initiate the negotiations?

2 A. I don't recall exactly how the negotiations
3 began. To be fair given all of the back and forth here,
4 the -- I had concerns about the -- about our ability to
5 complete the project on time with the runway that we had
6 and the runway that was shrinking as we waited for a
7 resolution of the remand proceedings. And I shared that
8 concern with Mr. Recchia, and ultimately, that discussion
9 led to the discussion around the MOU.

10 Q. Thank you. You remarked or I guess Mr. Zamore
11 remarked, and I think it was basically your testimony,
12 that the concept of used and useful is different from the
13 recovery cap. I understand that. But could you please
14 describe whether there is a relationship between the
15 expenditures that are made on this infrastructure, the
16 pipeline, and what the company would expect to recover as
17 a result of those expenditures, and if there is a
18 relationship to the 134. Do you understand my question?

19 A. No.

20 Q. Okay. You describe used and useful as a
21 concept. You also have a rate cap. Is there any
22 relationship between the two as you see it?

23 A. As I see it, no.

24 Q. Used and useful is --

25 CHAIRMAN VOLZ: Maybe I can help here.

1 Under the doctrine of used and useful if it applied
2 to the cost recovery for this case, for this project
3 sometime in the future, the doctrine would say that
4 you can't collect more of your costs for this project
5 than was used and useful, do you agree with that?

6 THE WITNESS: Yes.

7 CHAIRMAN VOLZ: And so if it was
8 determined that the future -- that the used and
9 useful amount was 154 million dollars, wouldn't the
10 cap mean you could only collect 134 million?

11 THE WITNESS: Yes.

12 CHAIRMAN VOLZ: But if the used and
13 useful doctrine said all you can collect is a hundred
14 million, even with the cap of 134 million you could
15 only get a hundred million?

16 THE WITNESS: Yes.

17 CHAIRMAN VOLZ: Okay. Thank you. Does
18 that clear that up?

19 MR. SAUDEK: Thank you.

20 BY MR. SAUDEK:

21 Q. Mr. Rendall, I notice that number seven of the
22 whereas clauses says -- deals with used and useful. Now
23 would you agree with me that normally whereas clauses are
24 not part of a contract. They are not a commitment by a
25 party in a contract?

1 A. They do not constitute the essential terms of
2 the contract which aren't stated in the agreement itself.
3 They are important propositions, statements, that evidence
4 the parties' mutual agreement on matters, that are not
5 contained in the essential terms of the agreement.

6 Q. And when a whereas clause says whereas the
7 parties agree to something, does that change it, does that
8 make it part of the agreement?

9 A. All of the terms that are reflected in the
10 Memorandum of Understanding are part of the agreement.
11 The essential contractual terms are stated in the
12 agreement. There are a set of precatory propositions that
13 are in the so-called whereas clauses, the recitals, and
14 those reflect the parties' common understanding of the
15 matters that are contained in those recitals.

16 Q. Now that particular clause without the whereas
17 jumped up from the agreement to the whereas roughly what;
18 15 hours before the agreement was released?

19 A. I don't know.

20 Q. Was it not the case that the commitment to
21 used and useful was part of the agreement under the term
22 agreement in drafts that were exchanged with less than 24
23 hours before this contract went out?

24 A. The drafts speak for themselves. I don't
25 recall specifically. It wouldn't surprise me if that

1 provision, that statement moved from the body up to the
2 recitals. That is my general recollection, I don't recall
3 when in the sequence that occurred.

4 Q. Nonetheless, you would contend though that
5 regardless of whether it's above or below the term
6 agreement, it will bind the Department, and it will bind
7 future departments, right?

8 A. I don't -- the challenge I have with this, Mr.
9 Saudek, is I don't think this is a difficult or
10 controversial proposition at all.

11 Q. Why is it in there?

12 A. It was important for us to have a common
13 understanding that the project as designed, as permitted
14 by the Public Service Board, and if constructed in
15 accordance with the permit, in accordance with the
16 Certificate of Public Good, would be -- and providing
17 service to customers, would be -- would be that there
18 would be no disagreement about the fact that it was-- that
19 it would be used and useful under those circumstances.

20 Q. Why was it important to you?

21 A. It was important to me because the -- in my
22 experience, there was the risk of misunderstanding about
23 that proposition, and I wanted to be sure that we had that
24 issue out on the table and articulated.

25 Q. Would you agree with me that's irrelevant to

1 the issues in this case?

2 A. Yes.

3 Q. I'd like to talk to you about paragraph three
4 under agreement. Begins on -- at the bottom of page two
5 of the Memorandum of Understanding. It is expected that
6 whatever costs are recoverable shall be included in rates
7 effective November 1, 2016. And then it makes an
8 exception for above rate cap costs.

9 Will the project be used and useful at that
10 time? In November 2016?

11 A. We expect it to be used and useful providing
12 service to customers in the rate year that will be the
13 subject of rate proceedings in 2016. Yes.

14 Q. And does that rate year start in November of
15 2016 and go for a year?

16 A. That is what we contemplate as I'm sitting
17 here.

18 Q. And therefore let's say the project ultimately
19 comes on the following June, well you know, you can't
20 build it in dead of winter, so let's assume it comes in
21 the following June, what is the -- how would this
22 paragraph work? What would this mean?

23 A. Oh, I think that the -- that would be
24 something that would be evaluated during the rate
25 proceeding, that is when the project would go into --

1 would go into service. And that we would make a
2 submission that reflected our expectations, that would be
3 tested in the rate proceeding, and then ultimately the
4 Public Service Board would decide at what point the
5 project should be reflected in rates, and that would find
6 its way into a final cost of service approved by the Board
7 setting rates that are just and reasonable.

8 Q. But the Public Service Department will already
9 have committed in advance to the rate treatment that is
10 suggested in this sentence, wouldn't it?

11 A. No. The Public Service Department has
12 reserved virtually all of its rights with respect to
13 testing the project's recoverability in rates in the rate
14 proceeding in which they are advanced, which we
15 contemplate will be the rate proceeding leading to a rate
16 year starting in November of 2016.

17 Q. So once again, I would like to ask the
18 significant -- I'm sorry to be repetitive. But
19 significance of this sentence as to what commitment it
20 makes by the Public Service Department in your opinion?

21 A. I view this commitment as a commitment to
22 tackle the question what portion of the project's ultimate
23 costs should be included in rates in the coming rate case.

24 Q. And regardless -- does it suggest to you that
25 it has a time -- a time factor here as to the completion

1 of the project or the used and usefulness of the project?

2 A. Well the -- it is expected as the MOU
3 provides, it is expected that costs that are recoverable
4 will be included in the -- in rates that will be effective
5 in that rate year, which is the rate year we contemplate
6 as we plan ahead. That's what it says, and that's what it
7 means.

8 Q. What does that have to do with this case?

9 A. It is a -- it is an agreement between the
10 Department of Public Service and Vermont Gas as to how we
11 are -- how we expect to proceed with respect to rate
12 recovery. It is part and parcel of the Memorandum of
13 Understanding that we reached. It is one of the terms of
14 the agreement.

15 Q. And how does that -- maybe I was unclear in my
16 question.

17 How does this discussion of rates pertain to
18 this 248 proceeding?

19 A. This sentence should not -- I don't see the
20 sentence as being essential to this case.

21 Q. In paragraph five, second sentence, the
22 Department will not oppose the deferral and future
23 amortization of appropriate carrying costs.

24 Now that goes to your toolbox, right? Of ways
25 to -- ways to charge ratepayers? There are various ways

1 to do that in sequential rate cases or whatever; is that
2 correct?

3 A. I wouldn't characterize it that way.

4 Q. How would you characterize it?

5 A. I would say that we have made previous
6 agreements with the Public Service Department not to
7 include project costs in rates until at least the end of
8 November, 2014 or the end of October, the end of the
9 current rate year. We have the opportunity to put the
10 first 11 miles into service, that as I'm sure you know,
11 Mr. Saudek, that has regulatory and other accounting
12 implications.

13 And the purpose of this was to make clear that
14 the -- that we would have the opportunity in a future
15 period to take the costs associated with that first 11
16 miles and the cost associated with putting it into
17 service, and treat them on the same basis on a level
18 playing field, apples to apples with all of the other
19 project costs.

20 Q. In other words, it has to do with rate making;
21 correct?

22 A. It has to do with rate making. Yes.

23 Q. And it has nothing to do with Section 248?

24 A. It has nothing to do with Section 248.

25 Q. What will happen if this case isn't decided

1 before January 8th other than the fact that the MOU will
2 expire?

3 A. We'll make that determination at that time.

4 Q. What's the significance of that date?

5 A. That date is significant for a variety of
6 reasons. We have a great deal of ongoing project
7 management relating to the project that -- that -- where
8 we have -- where we should be making decisions about how
9 to proceed to complete the project on time and on budget
10 in accordance with the estimate that we have provided and
11 in accordance with our -- with the project plan that
12 underlies that estimate.

13 As we have stated many times, the 153.6
14 million dollar budget is founded based on a project plan
15 that has the project completed at the end of 2016. Think
16 of that, Mr. Saudek, as a runway. And the-- and as we --
17 as we go along, that runway gets shorter and shorter. By
18 January, by early January, by January 8th, we have a
19 number of important decisions that we should be making at
20 or about that time regarding contractors, regarding
21 resource availability, regarding ongoing commitment to
22 project management, regarding schedules on when to
23 undertake construction activity. It is exceedingly
24 important to this project that we have certainty with
25 respect to the -- with respect to the Certificate of

1 Public Good and its continuing validity in order for us to
2 make sound decisions about how to proceed.

3 And one specific that I believe we have made
4 clear is that we have a contract with a -- with a
5 significant contractor, what we call our mainline
6 contractor, that has trigger dates in it, that allow us to
7 release them. And we have contracted liquidated amounts
8 to pay to the contractor, depending on when we would, if
9 we were to decide to, not to go forward to terminate their
10 work in 2016, what would be our responsibility under our
11 contract. And the trigger date there is we have a trigger
12 date of January 15th that is hard in the contract. We
13 have a verbal assurance that will take us through January
14 8.

15 Q. Are you building pipe now?

16 A. We are continuing construction activities now.
17 The mainline contractor has completed their work for this
18 construction season. And we are completing the -- in the
19 next day or two we have scheduled to do the pull back on a
20 horizontal directional drill, and then we will do some
21 additional work to connect the pipe and put the first 11
22 miles into service.

23 In addition to that, we have on our schedule
24 some site clearing, site preparation activities that will
25 take us through the next few weeks, and as we move through

1 the winter, we expect to continue with -- specifically
2 with site preparation with horizontal directional drilling
3 activity, with construction activities that are
4 appropriate during the winter months, in order to build as
5 much head room as we can, to complete the project on time
6 by the end of 2016, to maintain the maximum amount of that
7 runway, and to use all of that runway in the most
8 effective way to bring the project in as cost effectively
9 as we can.

10 MS. HOFMANN: Mr. Saudek, may I just
11 inquire one thing? Did you say January 15 was it?

12 THE WITNESS: We have -- we actually
13 had -- I think the way the contract is written, the
14 contract had the -- we agreed that we could terminate
15 the contract without -- without any payment to the
16 contractor for reserving their resources for 2016.
17 Up until December 1. Contract.

18 The next trigger date --

19 CHAIRMAN VOLZ: Which is today.

20 THE WITNESS: December 1 is today.

21 Yes.

22 CHAIRMAN VOLZ: Just wanted to be sure
23 we were talking about the right December.

24 THE WITNESS: Yes. Let me walk you
25 through it. The next trigger date, I believe I have

1 this right, in the contract is January 15. At which
2 point between December 1 and January 15 if we
3 terminate the contract we owe the contractor a sum of
4 money, it's about a million dollars. It's a
5 percentage of the contract price. It's about a
6 million dollars.

7 If we terminate the contract between
8 January 16 and March 1, we owe the contractor a more
9 significant sum for reserving their resources, and
10 that number is I believe approximately 1.7 million
11 dollars.

12 And if we terminate the contract after
13 March 1, we owe the contractor approximately \$3
14 million. Again, all as a percentage of the total
15 contract price target. The contractor has agreed to
16 waive the first penalty period -- has agreed to waive
17 the time between December 1 and January 8.

18 CHAIRMAN VOLZ: Mr. Saudek?

19 BY MR. SAUDEK:

20 Q. Am I not correct that you have halted a good
21 deal of this construction just in general terms, or am I
22 wrong about that?

23 A. We were -- we had a project plan for this year
24 to complete the first 11 miles. And we undertook that in
25 accordance with our internal plans for doing that work.

1 And we have made no secret about that. And that work is
2 winding up now.

3 The mainline contractors were done in, oh
4 gosh, several weeks ago with the principal part of their
5 work. They will come back to help us with the connection
6 of the drills to the mainline pipe to connect all the
7 dots.

8 Q. So you are proceeding, pardon the pun, full
9 bore on this project, as we speak?

10 A. We have proceeded full bore on the first 11
11 miles, yes.

12 Q. And are you now in construction beyond -- and
13 are you continuing full bore construction beyond the 11
14 miles as we speak?

15 A. Not full bore.

16 Q. Why do you say that?

17 A. Because we, as I said, the full bore of
18 construction includes what we call the mainline
19 contracting which is laying the pipe in the ground in the
20 traditional way. That we completed that work through the
21 first 11 miles and then the contractor stopped. We are
22 completing the first 11 miles as we speak, and I expect
23 that in the coming weeks if the weather and other
24 circumstances make it appropriate to do so, that we will
25 do limited work beyond the first 11 miles.

1 We have got a couple of things that we are
2 focused on. We are focused on site preparation for next
3 year, and we are focused on a particular part of the
4 project which crosses a golf course in Williston where we
5 want to complete that work in the wintertime to avoid
6 disruption to the golf course in the spring. And that's
7 something that we have agreed to do. And that's something
8 that we have been very open and direct about presenting to
9 the parties and to the Public Service Board.

10 Q. I don't want to belabor this, perhaps I
11 already have worn out my welcome, but I was of the
12 impression that you had stopped much of your basic
13 construction, that you just weren't doing it. And I take
14 it you're telling me that with all these little items,
15 what you call the mainline contractor has stopped work,
16 but you have all these little items you're doing.

17 My point is, you are asking the Public Service
18 Board to decide this case by a time certain, and what I'm
19 trying to inquire is whether you are doing your part in
20 terms of building this system out as fast and as hard as
21 probable.

22 A. I'm confident we are doing our part to build
23 this in the most cost effective way given the -- all of
24 the circumstances that we are in, including the regulatory
25 uncertainty that we have while the remand proceeding

1 remains unresolved.

2 MR. SAUDEK: I have nothing further. I
3 apologize for taking so much time. I realize I only
4 signed up for 15 minutes.

5 CHAIRMAN VOLZ: Thank you. I think we
6 would like to take a 15-minute break. We will be
7 back in 15 minutes.

8 (Recess was taken.)

9 CHAIRMAN VOLZ: Okay. I think we are
10 ready to continue.

11 MR. ZAMORE: Mr. Rendall I think has
12 two corrections he would like to make to his
13 testimony.

14 CHAIRMAN VOLZ: Okay. Mr. Rendall, go
15 ahead. Is the mic on?

16 THE WITNESS: Yes. Thank you. I want
17 to correct two statements that I made regarding the
18 dates and the penalties on the contract. I was in
19 error when I said December 1 for the first trigger
20 date that's written into the contract. It is
21 December 15, not December 1.

22 CHAIRMAN VOLZ: And that's the one
23 that's been waived?

24 THE WITNESS: That's the one that's
25 been waived. With respect to the second point with

1 respect to the waiver, the contractor has verbally
2 agreed to waive that penalty period through January
3 15.

4 CHAIRMAN VOLZ: Okay. Thank you.

5 Okay. Ms. Levine, I think we are up to you.

6 MS. LEVINE: Thank you.

7 CROSS EXAMINATION

8 BY MS. LEVINE:

9 Q. Good morning, Mr. Rendall.

10 A. Good morning, Ms. Levine.

11 Q. Do you have your testimony and the MOU in
12 front of you?

13 A. Yes.

14 Q. Your testimony on page one answer three makes
15 a statement that the agreement advances the important goal
16 of capping the recoverable costs of the Addison Natural
17 Gas Project; is that correct?

18 A. Yes.

19 Q. Is it fair to say that your assessment in
20 advancing the important goal sort of moves closer to that
21 goal but doesn't necessarily achieve that?

22 A. I think of it as achieving it.

23 Q. Could your testimony be amended to say the
24 agreement caps the recoverable costs of the Addison
25 Natural Gas Project?

1 A. Yes. Subject to the limited exceptions
2 provided in the Memorandum of Understanding.

3 Q. And advancing the important goal is simply a
4 reference to those limitations that are elsewhere
5 identified?

6 A. No. I would characterize the goal as the goal
7 has been -- our goal has been to bring the project to
8 completion inside of the revised budget that we presented
9 in December of 2014, 153.6. That has been our goal. This
10 improves that goal for customers by capping the recovery
11 in rates at 134, and in addition, and importantly, it
12 provides for customers and other stakeholders the
13 confidence that as we undertake this project which is a
14 challenge, that our execution of the project will be risk
15 that is on the company and not on the customer.

16 Q. Going back to the language you used in your
17 testimony, the agreement advances the important goal of
18 capping the recoverable costs. The goal is the capping of
19 the cost.

20 A. The goal is --

21 Q. The goal that you were referring to in this
22 line of your testimony is capping the recoverable costs?

23 A. That is the goal that is stated in my
24 testimony.

25 Q. And the limitation to achieving that goal is

1 simply the limited -- the sole and limited exceptions that
2 are referred to elsewhere in the contract?

3 A. Yes.

4 Q. Okay. This is an agreement between the
5 Department of Public Service and Vermont Gas Systems;
6 correct?

7 A. Yes.

8 Q. And the agreement does not require Public
9 Service Board approval; correct?

10 A. Correct.

11 Q. And the agreement can be modified?

12 A. Hypothetically, yes.

13 Q. There is no provision in the agreement that
14 limits modification of the agreement; is that correct?

15 A. The agreement stands on its own two feet. Any
16 modification of the agreement would require the agreement
17 of both parties as in any contract.

18 Q. But there is no specific provision in the
19 agreement that would limit future modifications?

20 A. I don't believe there is in the agreement.

21 Q. And both Vermont Gas Systems and the Public
22 Service Department offered testimony in support of
23 approval of the proposed project at a higher budget level,
24 the June hearings; correct?

25 A. Yes.

1 Q. I want to take a look for a moment at the
2 exceptions to the cost cap that you identified. I think
3 you make reference to this on page two line five of your
4 testimony.

5 A. I'm there.

6 Q. Lines four and five state: Under the
7 agreement Vermont Gas Systems assumes all the risks
8 associated with completion of the project at a cost of 134
9 million, with the sole limited exceptions noted in the
10 agreement related to extraordinary events outside of VGS's
11 control; is that correct?

12 A. And the following language. Yes.

13 Q. And material delays in obtaining construction
14 rights-of-way, that's the end of that sentence?

15 A. Yes.

16 Q. Okay. And those are the limitations that are
17 specifically referenced in paragraph two of the agreement;
18 is that correct?

19 A. Yes.

20 Q. The next line of paragraph two of the
21 agreement makes reference to the parties' intentions, do
22 you see that?

23 A. Yes.

24 Q. Can you read that sentence?

25 A. Yes. It is the parties' intent that recovery

1 of any above rate cap costs will be limited in scope to
2 such circumstances that Vermont Gas -- circumstances --
3 and that Vermont Gas must clearly identify and support the
4 requested costs and demonstrate that the circumstances
5 caused the cost increase if and when it seeks to recover
6 those costs -- these costs.

7 Q. This sentence you identify refers to the
8 parties' intention but doesn't create any actual
9 requirement or commitment; is that correct?

10 A. I consider it a commitment on the part of
11 Vermont Gas.

12 Q. Would you agree to a modification of the
13 agreement that changes intent to commit?

14 A. I wouldn't agree to any modifications to the
15 agreement as I'm sitting here now. I think the agreement
16 is -- it speaks for itself. It's fully negotiated, it's
17 executed, and there is no need to modify it.

18 Q. And based on the language in the agreement it
19 identifies an intention but not a requirement; correct?

20 A. It states an intention which is a commitment
21 on behalf of Vermont Gas which is not a -- should come as
22 no surprise since I view it as something that we would be
23 required to do in any event.

24 Q. You would not object to an order from the
25 Board that made that a requirement?

1 MR. ZAMORE: Objection. He's already
2 indicated that he is not willing --

3 MEMBER OF THE PUBLIC: Speak up.

4 MR. ZAMORE: He's already indicated
5 he's not willing to negotiate on the stand. We have
6 not submitted this MOU for approval by the Board, and
7 I would argue that the question is irrelevant.

8 CHAIRMAN VOLZ: Ms. Levine?

9 MS. LEVINE: His testimony has already
10 modified what his understanding is of the agreement,
11 and identifying what Mr. Rendall believes he's
12 obligated to do, so I wanted to clarify that he's
13 making that representation on behalf of the company
14 and would be willing to abide by a condition from the
15 Board to that.

16 MR. ZAMORE: We haven't proposed Board
17 approval. So what would it be a condition to?

18 CHAIRMAN VOLZ: Ms. Levine?

19 MS. LEVINE: The Memorandum of
20 Understanding has been provided to the Board to --
21 for it to consider as part of its review of whether
22 to reopen the proceedings or not. If the Board --
23 the Board could reopen, it could be issued with
24 conditions. It has a number of options available
25 under the 60(b) motion that it is currently

1 considering.

2 It's certainly fair as part of the
3 review of the MOU which the Board is considering as
4 part and parcel of its 60(b) motion to consider what
5 it actually means and what commitments it actually
6 provides as far as Vermont Gas Systems.

7 (Pause.)

8 CHAIRMAN VOLZ: We are going to
9 overrule the objection. Give you a little bit of
10 leeway to the extent he's able to answer.

11 BY MS. LEVINE:

12 Q. Do you recall the question?

13 A. Yes. Vermont Gas would of course abide by any
14 conditions or requirements that the Board imposes relating
15 to the project.

16 Q. I have a few questions regarding the reasons
17 for the agreement to terminate if the regulatory
18 proceedings are not completed by January 8. You referred
19 a number of times in responses to questions from Mr.
20 Saudek to completing the project on time and on budget.
21 Do you recall those?

22 A. Generally.

23 Q. And completion of the project on time and on
24 budget is within Vermont Gas's ability to make happen?

25 A. It is -- with respect to parts of the project

1 it is within our control. With respect to other aspects
2 of the project it is not within our control.

3 Q. And the failure to complete the project on
4 time and on budget as of the December 2013 timing and
5 budget or the September 2014 time and budget, that was
6 within Vermont Gas System's control?

7 A. This is the way -- I'm trying to be responsive
8 to your question. The way I think about this is there is
9 a basket of things that are within the company's control;
10 project management, project execution, the work of
11 contractors on the ground in the company's control.

12 Our -- the timing of permitting, the timing of
13 regulatory orders that are necessary for us to complete
14 the project, not necessarily within our control. There
15 are other things that affect the -- our ability to
16 complete the project that are not in any of our control,
17 the weather, for example. So there are -- the way I like
18 to think of this is we control all -- we have tried to
19 manage effectively and deliver on those things that are
20 within our control. And we tried to manage against those
21 things that are not completely or at all within our
22 control.

23 Q. And you have been doing construction work
24 during the 2015 construction season?

25 A. Yes, we have.

1 Q. And you have been doing that work without the
2 resolution as to whether you have a valid CPG; correct?

3 A. Yes. We have a valid CPG. It's without the
4 resolution of the pending proceedings.

5 Q. The reference to resolution of whether you
6 have a valid CPG is in your testimony, is it not?

7 A. If you say so. I'm sure it is. Maybe you can
8 help me.

9 Q. Page four lines 15 to 17.

10 A. Yes.

11 Q. You're not changing that testimony, are you?

12 A. No, I'm not changing that testimony.

13 Q. That's all I have. Thank you.

14 THE WITNESS: Thank you.

15 CHAIRMAN VOLZ: Thank you. I think --

16 MR. TOUSLEY: Morning, Mr. Rendall.

17 The Board is going to be asking you some questions
18 now, and I'm going to start.

19 Are you familiar with Mr. Palmer's
20 prefiled testimony for this hearing?

21 THE WITNESS: No.

22 MR. TOUSLEY: Okay. Well at page three
23 of his testimony Mr. Palmer states: We do not
24 understand why the VGS DPS MOU was kept a secret
25 before and during the technical hearings held on June

1 23 -- 22 and 23, 2015.

2 And earlier today you talked about the
3 timing of the MOU negotiations and who participated
4 in those negotiations. On its face the MOU indicates
5 that it was signed by you and Mr. Recchia on October
6 7, 2015. Was that the date the agreement was
7 finalized?

8 THE WITNESS: Yes.

9 MR. TOUSLEY: Was there any other
10 agreement between the parties before that date?

11 THE WITNESS: No.

12 MR. TOUSLEY: Could the terms of the
13 MOU have been reviewed by the other parties in June?

14 THE WITNESS: No.

15 MR. TOUSLEY: Thank you.

16 CHAIRMAN VOLZ: George?

17 MR. YOUNG: Morning, Mr. Rendall. Your
18 testimony in general states that VGS assumes all the
19 risk associated with completion of the project at a
20 cost in excess of 134 million; correct?

21 THE WITNESS: Yes.

22 MR. YOUNG: So I just want to make sure
23 I understand what the nature of the commitment is.
24 At this time the MOU is an agreement with the
25 Department; correct?

1 THE WITNESS: Yes.

2 MR. YOUNG: Is VGS as part of that also
3 committing to the Board not to seek rate recovery for
4 more than 134 million dollars in costs related to the
5 project?

6 THE WITNESS: Yes, to the Board, to our
7 customers, to all of our stakeholders, to the public.
8 Yes.

9 MR. YOUNG: So based upon that, if VGS
10 made a base rate filing next year that could result
11 in the cap being exceeded, the Department obviously
12 could object under the MOU. What you're saying is
13 other parties to that proceeding could also object
14 and say this is in excess of their commitment.

15 THE WITNESS: Yes. Assuming that the
16 MOU continues to be in force, I would expect -- we
17 will -- I would expect us to be held -- we will be
18 held to the terms of the MOU.

19 MR. YOUNG: Well let me pick up on that
20 then. You said assuming it's still in force.

21 Does that mean if you and the
22 Department agreed sometime next March that it would
23 not be 134, it will be 145, that basically nobody
24 would have a basis to object, or the Board wouldn't
25 be able to rely upon the 134 that's in here now?

1 THE WITNESS: I'm sorry. That's not
2 what I meant at all. What I was referring to is the
3 fact that the MOU does have -- it has a time limit on
4 it.

5 MR. YOUNG: Okay. So that assumption
6 is assuming the Board has an order issued by January
7 8 of 2016, in that case the 134 would in your view
8 apply to the next base rate filing.

9 THE WITNESS: Yes.

10 MR. YOUNG: And subsequent ones after
11 that.

12 THE WITNESS: Yes.

13 MR. YOUNG: And that cap could include
14 all costs, I presume, including project development
15 costs, capital costs, costs related to the project
16 that have already been expensed; is that correct? Or
17 that may have been already been expensed. Let me
18 make that conditional.

19 THE WITNESS: Yes.

20 MR. YOUNG: Does VGS plan to seek an
21 amendment to the Alternative Regulation Plan, to
22 include that commitment as a condition?

23 THE WITNESS: I haven't thought about
24 it.

25 MR. YOUNG: Okay. Let me jump to a

1 slightly different topic. I think Ms. Levine was
2 pursuing this a little bit before, which is you had
3 various exceptions to the 134 million dollar cap in
4 here.

5 THE WITNESS: Yes.

6 MR. YOUNG: Is there any agreement
7 amongst the parties as to what constitutes
8 extraordinary events?

9 THE WITNESS: The agreement is as it's
10 reflected here. So beyond what's in the Memorandum
11 of Understanding we have no other side agreement.

12 MR. YOUNG: Okay. Conceivably could it
13 include external events such as changes in interest
14 rates that affect the cost of the project or
15 unforeseen costs -- increases in the costs of
16 materials?

17 THE WITNESS: I can't conceive, as I'm
18 sitting here, of a situation like that that would
19 constitute an extraordinary event. I'm hesitant to
20 say never when I think about the -- about an extreme
21 event that none of us are contemplating as we are
22 sitting here.

23 The fail safe in the agreement is that
24 we have the burden of demonstrating that it's
25 appropriately extraordinary and the Department, of

1 course, reserves the right to challenge that. I
2 can't conceive of an external event that would create
3 an extraordinary event that's beyond -- that's
4 realistic or practical and not simply hypothetical in
5 that context of interest rates or act of war or, you
6 know, something that would be a truly force majeure
7 event.

8 MR. YOUNG: And just to be clear, I'm
9 just trying to understand how solid 134 is. And you
10 know what the -- how far the exceptions go. Is there
11 any materiality component to the extraordinary cost
12 provision? I didn't see one written in there. I'm
13 just asking if --

14 THE WITNESS: As a practical matter,
15 yes. That is the -- when I say that, I say it
16 because we have a burden of demonstrating it, we have
17 a burden of establishing it, we have a burden of --
18 ultimately of litigating it. And that puts a
19 practical materiality provision on it.

20 MR. YOUNG: So if you got held up by
21 two days because of -- you weren't able to access a
22 particular site, that would probably be something
23 that --

24 THE WITNESS: It depends. You know, we
25 have more than -- we will have more than -- we will

1 have approximately 200 people in the field working on
2 this project every day in the 2016 construction
3 season if we proceed as planned. A holdup of some
4 crew would be one thing. A holdup of everybody on
5 the project would be something else. That's a very
6 significant what we call run rate in the cost of the
7 project.

8 So if -- it's incumbent on us to be
9 cognizant of keeping track of costs. It's incumbent
10 on us to be dutiful in measuring the cost of any
11 events that do delay us, and it will be incumbent on
12 us to persuade the Board and the Department that any
13 such costs are appropriately extraordinary if and
14 when they occur.

15 MR. YOUNG: Now there is also an
16 exception in here related to right of way
17 construction access; is that correct?

18 THE WITNESS: Yes.

19 MR. YOUNG: And at the present time I
20 understand that VGS has agreements along the right of
21 way with all but five landowners.

22 THE WITNESS: It's -- we are down to
23 four.

24 MR. YOUNG: You're down to four. Okay.
25 So does that mean there is no potential for obtaining

1 delay in access associated with any of the other 160
2 along the route?

3 THE WITNESS: It means we have
4 agreements that allow us entry in accordance with the
5 terms of those agreements. The obstruction to access
6 could occur in other ways through individuals that
7 are -- there are different ways that access to right
8 of way could conceivably be obstructed, and we've --
9 we've thought about that in making the provisions
10 that we have in the MOU.

11 What we are focused on here is when I
12 think about access to right of way, I think about two
13 things. I think about having agreements with the
14 landowners that will allow us to have access to
15 construct the project in accordance with the permit.
16 And I think about the risk in the field of having,
17 for whatever reason, of having an obstruction occur
18 that would not allow us to have access to right of
19 way in the field in spite of having an agreement.
20 And that would -- and what I have in mind there is
21 the kind of activity that we have seen a little bit
22 of in this construction season. It's what I have in
23 my mind's eye, which is individuals that are seeking
24 to obstruct our ability to proceed.

25 MR. YOUNG: And -- okay. Let me move

1 to a different topic. The overall project includes
2 both the transmission line component and building out
3 of a certain distribution networks; is that correct?

4 THE WITNESS: Yes. The agreement
5 focuses on the portion of the project that is the
6 subject of the 248 which is the transmission line.

7 MR. YOUNG: Thank you. You just
8 answered the next question that was going to follow
9 off of that.

10 On page two of your testimony line 12
11 you mentioned that VGS cannot avoid the cap by
12 deferring rate recognition. Do you see that?

13 THE WITNESS: Yes.

14 MR. YOUNG: So is the expectation that
15 VGS will seek to recover all of its project costs at
16 the next opportunity which I presume would be next
17 year's base rate filing?

18 THE WITNESS: That is our -- that is
19 our expectation and our plan. That we would present
20 it as a -- as a project that will be completed at or
21 about the beginning of the rate year, and accordingly
22 that we would present it for inclusion in rates at
23 that time.

24 MR. YOUNG: And if for some reason
25 there is a portion of the project that's deferred,

1 perhaps because it's not fully complete or for
2 whatever reason, is it VGS's position that any
3 recovery of deferred amounts is still subject to the
4 134 million dollar cap?

5 THE WITNESS: Yes. Yes.

6 MR. YOUNG: On pages three and four you
7 have some description of the construction process.
8 You indicate an expectation that you will complete
9 construction in late 2016.

10 THE WITNESS: Yes.

11 MR. YOUNG: Is this just for the
12 transmission mainline, or does it include some
13 distribution system expansion?

14 THE WITNESS: It is -- it is for the
15 mainline, and we do expect to complete some
16 distribution work on a parallel path in the 2016
17 construction season to begin to -- so that we can
18 begin to offer service to customers promptly after
19 completion of the transmission section.

20 MR. YOUNG: So it will be more than
21 just a few industrial customers in Middlebury who
22 would be able to actually obtain retail service
23 starting at that time.

24 THE WITNESS: Well I don't have in mind
25 the specific plan, the specific schedule for when we

1 will get customers on. It will, of course, depend on
2 getting the transmission done.

3 We expect to have a significant amount
4 of customers online over the course of that rate
5 year, the 20 -- what we call our 2017 rate year
6 beginning in November of 2016. They won't all come
7 on at once.

8 MR. YOUNG: Right.

9 THE WITNESS: We will bring them on as
10 -- as effectively and efficiently as we can, and as
11 they sign up for service.

12 MR. YOUNG: Turning to the MOU
13 paragraph five, and this is the second paragraph
14 five. Paragraph five under Agreement. On page
15 three.

16 Is the purpose of this provision
17 essentially an agreement that even if the Board were
18 to grant the Rule 60(b) motion, the first 11 miles
19 should be permitted to be put into service?

20 THE WITNESS: We expect to be able to
21 put the first 11 miles into service within a matter
22 of the next couple of weeks, depending on when
23 everything gets completed. Our current project plan
24 has that portion coming into service in December.
25 And the team is marking to that -- to that schedule,

1 as I just described that is this month. So we are --
2 we do expect to put the first 11 miles into service.

3 MR. YOUNG: Okay. I think I'll just
4 leave it there. Thank you very much. That answers
5 my questions.

6 MS. CHENEY: Hi, Mr. Rendall. I do
7 have a question. On the contract in the agreement
8 portion, paragraph two we have been talking about
9 vandalism, protests, other unreasonable interference
10 with construction, or force majeure-type events. So
11 the way that's written at least, vandalism, protests
12 and other unreasonable interference are not in the
13 basket of force majeure events.

14 What would be an example in your mind
15 of a force majeure event? And more importantly, is
16 there something that might result in a major cost
17 increase that would -- in your mind in signing this
18 agreement would not constitute a force majeure-type
19 event?

20 THE WITNESS: An example of a force
21 majeure event would be I'm thinking of force majeure
22 clauses in contracts. The most obvious kind of first
23 example would be something like some kind of a civil
24 conflict, an act of war. And a force majeure -- that
25 I would expect us to at least have a discussion about

1 a force majeure event if we had some kind of a
2 cataclysmic storm event. I'm not thinking as I'm
3 sitting here of other examples of force majeure
4 events, but it's events of that kind of nature that I
5 think of when I think of force majeure events, and
6 having not defined them specifically here, it is --
7 we bear the burden of demonstrating that such an
8 event were to qualify if it occurred.

9 And yes, they are separate from -- that
10 is a separate category from the preceding language in
11 that clause which is vandalism, protests or other
12 unreasonable interference with construction, which I
13 don't think of as being specific -- as being --
14 necessarily being force majeure events.

15 MS. CHENEY: And so at least with your
16 examples these are physical events as opposed to, for
17 example, economic or financial changes in
18 circumstances?

19 THE WITNESS: Yes. They are physical
20 events. And the examples are physical events, and
21 the examples I described to you would be --
22 effectively would be physical events and not economic
23 events.

24 MS. CHENEY: Thank you.

25 CHAIRMAN VOLZ: Okay. Would the

1 parties -- we could take -- trying to decide the
2 timing of our lunch break. We could take a lunch
3 break now, or we could have the follow-up questions,
4 if any, for this witness that arose from our
5 questions, if you would like to do that now and get
6 that out of the way.

7 Does anybody have follow-up questions?

8 MR. GRAYCK: I do.

9 CHAIRMAN VOLZ: Okay. Do you want to
10 go now? Ms. Levine, you wanted to break at noon?

11 MS. LEVINE: That's okay.

12 MR. GRAYCK: I'm happy to wait. I
13 think we should --

14 CHAIRMAN VOLZ: Will you be back --
15 will you be available after 1 o'clock?

16 MS. LEVINE: Yes.

17 CHAIRMAN VOLZ: Why don't we take our
18 lunch break now and resume an hour from now.

19 MS. LEVINE: Thank you very much. I
20 appreciate it.

21 (Recess was taken.)

22 CHAIRMAN VOLZ: We are back from lunch.
23 Before we continue with this witness I would just
24 like to clarify something that happened this morning
25 which was when we were admitting testimony and

1 exhibits, I admitted them, but I want to clarify that
2 because Mr. Dumont isn't here, we are admitting them
3 provisionally subject to any objections that he may
4 choose to make when he is here next week. To the
5 extent that they are appropriate and timely at that
6 time, we will take all those issues up if he makes
7 any at that time. So I just wanted to clarify that.
8 Otherwise I guess we are ready to continue where we
9 were.

10 Were there follow-up questions to ours?

11 Yes, Mr. Grayck.

12 MR. GRAYCK: As well as testimony that
13 was elicited through the parties that came after me.

14 CHAIRMAN VOLZ: Sure.

15 CROSS EXAMINATION

16 BY MR. GRAYCK:

17 Q. Good afternoon, Mr. Rendall.

18 A. Good afternoon.

19 Q. Earlier you testified about the runway. And
20 so I just want to explore kind of where we are at on that
21 runway. So when the commercial jetliner pushes the
22 throttles forward, and you're barreling down the runway,
23 the first goal of the airliner is to attain sufficient
24 speed so that it can safely take off. So the first
25 decision that has to be made is does this go forward or

1 does the takeoff get terminated.

2 Is it -- I'm trying to understand where we are
3 on that runway, and what meaning we should give to the
4 January 8 date. Is it decision by January 8, otherwise we
5 terminate this project? Or is it just decision by January
6 8 to help us contain cost?

7 A. This is the risk of using an analogy that I
8 suspect you may know more about than I do. Let me see if
9 I can answer it.

10 The risk around January 8 is the risk around
11 our ability to complete the project on the schedule that
12 we have laid out, which is the schedule that is the
13 foundation of the budget. So when we look at our
14 schedule, our schedule is to have the opportunity to
15 complete the project by the end of the construction season
16 of 2016. The risk around January 8 is the risk around
17 having the -- the ability to make the appropriate
18 decisions that will allow us to achieve that goal. It's
19 not a -- it's not a turnoff as I sit here today. We will
20 have to assess the situation on January 8, wherever we
21 find ourselves.

22 The important thing to understand is that we
23 have -- we have an imperative to have resolution of the
24 pending regulatory proceeding, and then the follow-on
25 imperative of resolving the access to right of way, and

1 the specifically project-related imperatives of making
2 sound decisions about how to proceed for the construction
3 season in that early winter period, in early January,
4 essentially right after the holidays.

5 Q. Okay. Back in October the Palmers requested
6 that the Board essentially just simply decide the case. I
7 mean there was a status conference, and then the Palmers
8 said there is a -- we made a filing, and we said just
9 either say that you'll deal with the MOU issue later or
10 make a ruling and go forward. And in all sincerity I
11 would like to know, if the Board made a commitment that it
12 would issue a decision on or before January 8, what other
13 relevance does the MOU have to the pending motions?

14 A. The MOU certainly informs the Board, it
15 informs all of you, it informs other stakeholders, our
16 customers, what our commitment is around the cost of the
17 project and how the cost of the project will be applied in
18 the rate making process down the road.

19 Q. I mean the inference I take to not meeting the
20 January 8 date is that it will cause a reassessment of the
21 economics of the project where the outcome at this point
22 is uncertain, is that an incorrect inference?

23 A. It would cause a reassessment of the project
24 for a variety of reasons including the economics of the
25 project, depending on where we are on January 8. But the

1 -- including what you just described which is the
2 economics of the project. Yes.

3 Q. Okay. You had made reference to, I gather,
4 people opposing to have the pipeline built on their
5 property obstruct our ability to proceed. Do you recall
6 saying that?

7 A. I don't recall the specific words.

8 Q. You use the word obstruct, and I was wondering
9 whether -- I didn't think you meant to characterize
10 someone's concern about impacts to their property as in a
11 pejorative way as obstructionism.

12 A. Oh no, of course not. What I meant to say --
13 what I intended to communicate is that the -- is that we
14 -- is a circumstance in which parties are, in spite of our
15 right to be on property doing work, were taking action
16 that prevented that work from continuing in accordance
17 with our right to be there and to perform the work that we
18 are doing.

19 Q. Okay. And are you aware that last Wednesday,
20 I guess it was the 23d, last Wednesday in any event, I
21 apologize, before the deadline, when maybe I wasn't
22 reading the discovery that came over the E-mail, the
23 Palmers filed a response to the request for non-
24 substantial change determination wherein they included an
25 affidavit from their hydrogeologist, Mr. Heindel, and that

1 there is a request for further cooperation with VGS to
2 resolve pending issues relative to my clients' property.
3 Is that -- does that obstruct VGS from doing what it needs
4 to do?

5 A. That's not what I was referring to when I was
6 -- when I was referring to individuals that were
7 unreasonably interfering with our right to proceed.

8 MR. GRAYCK: Thank you. I have nothing
9 further.

10 CHAIRMAN VOLZ: Thank you. Going to
11 follow up, who else has follow up on the questions?
12 Any other follow up? Any redirect?

13 MR. ZAMORE: No redirect.

14 CHAIRMAN VOLZ: Thank you, Mr. Rendall.

15 THE WITNESS: Thank you.

16 CHAIRMAN VOLZ: Ready for the next
17 witness.

18 MR. ZAMORE: Yes. Vermont Gas calls
19 Eileen Simollardes.

20 MS. CHENEY: Good afternoon, Ms.
21 Simollardes.

22 THE WITNESS: Good afternoon.

23 MS. CHENEY: I would just like to
24 remind you that you remain under oath in this Docket.

25 THE WITNESS: Thank you.

1 EILEEN SIMOLLARDES

2 Having been previously duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. ZAMORE:

6 Q. Please restate your name for the record.

7 A. Eileen Simollardes.

8 MR. ZAMORE: The parties have
9 stipulated subject to Mr. Dumont's objection the
10 admission into evidence of the prefiled MOU testimony
11 of Eileen Simollardes, and on that basis I move its
12 admission.

13 CHAIRMAN VOLZ: Any objections? They
14 are admitted.

15 (The Prefiled Testimony of Eileen
16 Simollardes was admitted into the record.)
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19
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25

1 MR. ZAMORE: Witness is available for
2 cross.

3 CHAIRMAN VOLZ: Mr. Grayck?

4 CROSS EXAMINATION

5 BY MR. GRAYCK:

6 Q. Good afternoon, Ms. Simollardes. How are you?

7 A. Good afternoon. I'm fine, thank you.

8 Q. So you have been working on this project for
9 quite sometime now, haven't you?

10 A. Yes, I have.

11 Q. I believe Palmer 5 is still up there. I'm
12 going to hand up Palmer 1 through 4 and then Palmer 6 if
13 the witness could have them in front of her.

14 A. I have everything but Palmer 5.

15 CHAIRMAN VOLZ: I'm sorry. You don't
16 have --

17 THE WITNESS: Palmer 5 is the only one
18 I'm missing in this stack.

19 (Handing document.)

20 THE WITNESS: Thank you.

21 BY MR. GRAYCK:

22 Q. So looking at Palmer 1 there is reference to a
23 meeting, and I assume -- it says: I'm bringing Eileen, is
24 that you?

25 A. Yes, it is.

1 Q. Okay. And did you go to the meeting?

2 A. I did.

3 Q. And did the meeting pertain to the MOU?

4 A. It did.

5 Q. And you were at the meeting, yes?

6 A. Yes.

7 Q. And Mr. Zamore was at the meeting?

8 A. Yes.

9 Q. And Ms. Porter was at the meeting?

10 A. Yes.

11 Q. Okay. Was Mr. Duggan -- Duggan at the
12 meeting?

13 A. Yes.

14 Q. And who is he?

15 MR. GRAYCK: Right there. I'm telling
16 you. I apologize.

17 BY MR. GRAYCK:

18 Q. Was anyone else at the meeting?

19 A. No, I don't believe so.

20 Q. Okay.

21 MR. GRAYCK: I move the admission of
22 Palmer 1.

23 CHAIRMAN VOLZ: Any objection?

24 MR. ZAMORE: Objection, relevance.

25 MR. GRAYCK: I'm going to have more

1 questions about it. She testified that there was a
2 meeting, that it pertained to the MOU, it was
3 attended by the parties. And I would like to have in
4 the record this -- and then I think really the issue
5 is going to be me asking her questions about what was
6 discussed at the meeting.

7 I really can't imagine why this is
8 objectionable given its authentication and that it's
9 an admission by a party opponent.

10 MR. ZAMORE: The issue is not hearsay.
11 The issue is not best evidence rule. The issue is
12 relevance. And we don't believe an adequate
13 foundation has been made to demonstrate that this
14 exhibit or what was discussed is likely to make a
15 fact of consequence more or less probable.

16 Again, there is an MOU that was signed
17 that supersedes all negotiations, all communications
18 prior to that. And unless Mr. Grayck can identify a
19 basis for relevance such as demonstrating that a term
20 of the MOU is ambiguous and that this is relevant to
21 interpreting the MOU, we don't believe that the
22 exhibit or testimony relating to the negotiations are
23 relevant.

24 MR. GRAYCK: Well I think it raises an
25 interesting point. Attorney Zamore's use of the

1 phrase fact of consequence. My understanding is that
2 what we have in front of the Board are two pending
3 Rule 60(b) motions; 60(b)(2) and 60(b)(3). I assume
4 that this MOU -- the motion to admit the MOU is being
5 offered as being relevant to the two pending motions.
6 In particular, my client raised Rule 60(b)(3) which
7 is a consideration of whether there was fraud,
8 misrepresentation or other misconduct.

9 So I think I am entitled to inquire
10 regarding the meetings held and that E-mails in
11 connection with meetings as well as discussions in
12 furtherance of ascertaining whether there was fraud,
13 misrepresentation or other misconduct relative to the
14 pending motions for which the MOU evidently is being
15 offered.

16 MR. ZAMORE: That may have been
17 appropriate discovery, but it certainly doesn't lay a
18 foundation for relevance relating to the MOU.

19 MR. GRAYCK: This is cross examination.
20 I'm entitled to elicit from the witness testimony
21 that pertains and is relevant to its offer in
22 connection with my clients' pending Rule 60(b)(3)
23 motion. And it also goes to credibility of the
24 witness.

25 (Pause.)

1 CHAIRMAN VOLZ: Mr. Grayck, I'm still
2 having trouble understanding when I read the
3 substance of what's in that E-mail, how does the
4 statements in that E-mail in any way elucidate
5 anything in this case? What do they show? What are
6 you arguing that they might show?

7 MR. GRAYCK: I'm arguing that it might
8 show fraud, misconduct or other misrepresentation
9 relative to my clients' rule pending 60(b)(3) motion
10 and I intend to ask --

11 CHAIRMAN VOLZ: Articulate that. It
12 says: Louise, I'm bringing Eileen to the meeting.
13 Let me know if you have any concerns. Peter.

14 MR. GRAYCK: Yeah.

15 CHAIRMAN VOLZ: So how could those
16 statements have any -- provide any insight into the
17 issues you just identified?

18 MR. GRAYCK: Because I want to know
19 what the concerns are.

20 CHAIRMAN VOLZ: Well ask him that.

21 MR. GRAYCK: What are the concerns?

22 CHAIRMAN VOLZ: Why do we have to admit
23 that into evidence in order to ask that? There may
24 be other objections to those questions, but as far as
25 putting this in evidence, I'm still having trouble

1 understanding what this actually accomplishes in
2 terms of --

3 MR. GRAYCK: I will accept the Chair's
4 ruling.

5 CHAIRMAN VOLZ: In other words, I have
6 trouble understanding how it's relevant.

7 MR. GRAYCK: I'll accept the Chair's
8 ruling. I've made my offer of relevancy. I'm
9 satisfied with what's on the record.

10 CHAIRMAN VOLZ: Okay.

11 MS. HOFMANN: But you certainly could
12 ask Ms. Simollardes if she knows what those concerns
13 are --

14 MR. GRAYCK: That's what I'm going to
15 do.

16 CHAIRMAN VOLZ: -- subject to
17 objection.

18 MR. ZAMORE: Subject to objection.

19 MS. HOFMANN: Thank you, Mr. Zamore.

20 BY MR. GRAYCK:

21 Q. So Ms. Simollardes, what concerns -- what
22 concerns, if any, were there to your presence at the
23 meeting?

24 MR. ZAMORE: Same objection.

25 CHAIRMAN VOLZ: Articulate it again

1 please.

2 MR. ZAMORE: What fact of consequence
3 does a request as to whether there are any concerns
4 have with respect to interpreting the MOU?

5 CHAIRMAN VOLZ: I imagine that when
6 they negotiated the MOU there were lots of different
7 concerns on either side. The question is what
8 survived those concerns and what did they agree to.

9 So again, I still have trouble
10 understanding what you're trying to get at.

11 MR. GRAYCK: Well again, what I'm
12 trying to do is to pursue a line of questioning in
13 furtherance of my clients' pending Rule 60(b)(3)
14 motion, and I think I'm entitled to ask these
15 questions to further explore whether there was fraud.

16 CHAIRMAN VOLZ: I think you have to be
17 able to articulate how they are relevant.

18 MR. GRAYCK: And to do that, I'm simply
19 asking --

20 CHAIRMAN VOLZ: Maybe you should have
21 done that in discovery.

22 MR. GRAYCK: No, I don't think I'm
23 required to do it in discovery. If you want to make
24 that formal ruling, that's fine. But this is cross
25 examination, and I believe I'm entitled to ask these

1 questions on cross examination.

2 CHAIRMAN VOLZ: So the pending question
3 that was objected to was what?

4 MS. HOFMANN: Could you read back the
5 last question?

6 (The record was read as requested)

7 MR. ZAMORE: I maintain my objection.

8 CHAIRMAN VOLZ: Which is to relevance.

9 MR. ZAMORE: Relevance. As to her
10 presence or absence at the meeting. What relevance
11 does that have to this MOU?

12 MR. GRAYCK: I said it relates to the
13 pending Rule 60(b)(3) motion. I'm satisfied I've
14 made an appropriate record.

15 CHAIRMAN VOLZ: What is the fact of
16 consequence that this line of questioning is going to
17 demonstrate in your view?

18 MR. GRAYCK: Well I think the fact of
19 consequence that it may demonstrate depending upon
20 what the witness's answer is, that my clients'
21 opportunity to fully and fairly litigate his
22 interests were improperly deprived under the analysis
23 that we have put forth and will again put forth under
24 Rule 60(b)(3). They filed that motion, that motion
25 is pending. I continue to believe that this

1 proceeding includes a consideration of the open
2 motions, and that the MOU is somehow being offered as
3 relevant to those open motions.

4 MS. HOFMANN: Is there a basis for
5 that, Mr. Grayck?

6 MR. GRAYCK: Basis for what?

7 MS. HOFMANN: For your assertion that
8 this is somehow going to get to the fraud -- your
9 60(b) motion?

10 MR. GRAYCK: My basis is just that I'm
11 trying to understand why there would have been
12 concerns and what they may have been.

13 CHAIRMAN VOLZ: That gets into the puts
14 and takes of the MOU I would think.

15 MR. GRAYCK: I don't know. I'm trying
16 to find out.

17 CHAIRMAN VOLZ: Did you ask these
18 questions in discovery?

19 MR. GRAYCK: No. I didn't do any
20 discovery. I don't believe I'm required to. I'm
21 trying to conduct cross examination. This was given
22 to me in discovery. I assume it was provided by DPS
23 because they believed it was relevant to a discovery
24 request, that my understanding was made by Mr.
25 Dumont.

1 MS. HOFMANN: Being relevant to
2 discovery request is very different than whether it's
3 admissible.

4 CHAIRMAN VOLZ: I still don't
5 understand your basis for saying that this is somehow
6 relevant. Just keep asserting that somehow you're
7 compromised, but you seem unable to articulate how
8 you would be compromised.

9 MR. GRAYCK: My clients are being
10 compromised because they are not able to fully
11 inquire as to whether there was any fraud, misconduct
12 or other misrepresentation relative to the
13 formulation and submission of this MOU and their
14 pending Rule 60(b)(3) motion. That's what I
15 understand we are here for, is to further take
16 further evidence on the pending motions.

17 CHAIRMAN VOLZ: Well did you pursue the
18 issue of fraud, misrepresentation in your discovery
19 requests?

20 MR. GRAYCK: I didn't make any
21 discovery requests. I'm not obligated to make any
22 discovery requests. I'm waiting -- I'm just simply
23 --

24 CHAIRMAN VOLZ: Generally speaking it
25 isn't appropriate to do discovery here in the hearing

1 room.

2 MR. GRAYCK: I'm not doing discovery.

3 CHAIRMAN VOLZ: You had the opportunity
4 to look into this stuff ahead of time.

5 MR. GRAYCK: I'm not doing discovery.
6 I'm trying to do cross examination.

7 CHAIRMAN VOLZ: And there is an
8 objection -- I'm going to allow you some leeway. Go
9 ahead and articulate your question again. We will
10 see how it goes. Or have it repeated back.

11 MR. GRAYCK: No. I will tell you what.
12 I simply want in the record that there was a meeting;
13 that Ms. Simollardes went to it. And that evidently
14 it was on October 5.

15 CHAIRMAN VOLZ: I think that's already
16 in the record, isn't it? She already testified to
17 that in answer to your question.

18 MR. GRAYCK: Okay.

19 CHAIRMAN VOLZ: What date was the
20 meeting? Which you actually said that?

21 THE WITNESS: I'm not sure of the date
22 of the meeting. The E-mail is dated October 5 and
23 it's at 6:13 a.m. and it says 10:30 meeting today.
24 So I believe -- I could check my calendar, but I
25 believe it was on the fifth.

1 CHAIRMAN VOLZ: Okay.

2 BY MR. GRAYCK:

3 Q. And it pertained to the then being negotiated
4 MOU?

5 A. Correct.

6 Q. Okay. Can you please look at Palmer 2.

7 A. I have that in front of me.

8 Q. Okay. So did you send this E-mail?

9 A. I did.

10 Q. And could you tell me who is DJR? I mean I
11 think I know, but for the record.

12 A. Don Rendall.

13 Q. Thank you. And its attachments were the draft
14 MOU at that point?

15 A. No.

16 Q. What were the attachments? It says 15/10,
17 MOU, cover letter, draft.

18 A. It was the cover letter that was going to
19 accompany the filing of the MOU.

20 Q. So there was back and forth about the cover
21 letter?

22 A. Just this exchange. We shared our cover
23 letter with the Department prior to filing.

24 Q. And what cover letter was filed?

25 A. The cover letter that accompanied the MOU.

1 Q. Bad question. As a result of this E-mail and
2 the draft, were there changes made to the cover letter?

3 A. Vermont Gas made substantive edits to the
4 cover letter but not as a result of this E-mail.

5 Q. Okay.

6 MR. GRAYCK: I move the admission of
7 Palmer 2.

8 CHAIRMAN VOLZ: Any objections?

9 MR. ZAMORE: I'm not going to object to
10 this.

11 CHAIRMAN VOLZ: I'm sorry. You're not
12 going to?

13 MR. ZAMORE: I'm not going to.

14 CHAIRMAN VOLZ: All right. It's
15 admitted.

16 (Exhibit Palmer 2 was
17 admitted into the record.)

18 BY MR. GRAYCK:

19 Q. Now looking at Palmer 3, do you recognize this
20 E-mail?

21 A. Yes.

22 Q. And did you send it to the people identified?

23 A. Yes.

24 Q. Okay. And it says: Please note that the red
25 line is not picking up a change regarding the Board in

1 investigation.

2 What does that reference Board in
3 investigation referring to or mean?

4 A. I don't know.

5 Q. You wrote the E-mail?

6 A. I wrote the E-mail, but without looking at the
7 document, I don't know what specific red line that is
8 referring to.

9 Q. But without looking -- even without that --
10 just the phrase the Board in investigation has no meaning
11 to you?

12 A. It doesn't. I don't know what that --

13 MR. GRAYCK: I move the admission of
14 Palmer 3.

15 MR. ZAMORE: I'm going to object again.
16 This is before the MOU was executed. And it's our
17 position that the negotiations and drafts are not
18 relevant absent some kind of foundation that has not
19 been made.

20 CHAIRMAN VOLZ: Mr. Grayck.

21 MR. GRAYCK: I think we have already
22 said it, heard testimony. It's an admission, she's
23 identified it. I just think it would be easier if we
24 just admit it.

25 CHAIRMAN VOLZ: I don't think that's

1 the basis for making a decision.

2 MR. GRAYCK: I know. I mean I'll ask
3 more questions then.

4 CHAIRMAN VOLZ: I mean -- we are going
5 to admit it, but I want to be clear that -- we will
6 admit it.

7 (Exhibit Palmer 3 was
8 admitted into the record.)

9 MR. GRAYCK: I'm already ready to move
10 on from it.

11 CHAIRMAN VOLZ: Go ahead.

12 BY MR. GRAYCK:

13 Q. Okay. Can you look at Palmer 4?

14 A. Yes.

15 Q. Is that the attachment to Palmer 3?

16 A. I have no idea.

17 Q. Okay. And then turning to Palmer 5, did you
18 receive this E-mail?

19 A. I did.

20 Q. Okay. And it sounds like there was a
21 coordinated plan to bring the MOU to Montpelier. It was
22 coordinated with the Governor. And then it was made
23 public; is that correct?

24 A. Based on the content of this E-mail, that's
25 roughly what happened. My involvement with the events on

1 this E-mail was really the logistics of getting the MOU
2 filed.

3 Q. Okay. And Mr. Farquhar, he's a colleague of
4 yours?

5 A. He is.

6 Q. And what are his job responsibilities?

7 A. I don't have his job description, I'm sorry.
8 He's in charge of government affairs and communication.

9 Q. Okay. And Mr. Coriel, he's with the
10 Governor's office?

11 A. I believe so.

12 MR. GRAYCK: I move the admission of
13 Palmer 5.

14 MR. ZAMORE: No objection.

15 CHAIRMAN VOLZ: It's admitted.

16 (Exhibit Palmer 5 was
17 admitted into the record.)

18 MR. GRAYCK: Thank you, I'm all set.

19 CHAIRMAN VOLZ: Mr. Saudek, do you have
20 questions for this witness?

21 MR. SAUDEK: A couple.

22 CROSS EXAMINATION

23 BY MR. SAUDEK:

24 Q. I take it that there are two -- would you say
25 -- would you agree with me that there are basically two

1 messages that the MOU is trying to deliver to this Board
2 in this proceeding? Number one, finish it by January 8.
3 And number two, do all your analysis on the assumption
4 that it's 134 million dollars. The rest of them are
5 rates; correct?

6 A. I think the MOU speaks for itself. Those two
7 components that you listed are in fact in the MOU. It
8 terminates on January 8, 2016, if this proceeding is not
9 concluded, and it proposes a cap on the recovery of cost
10 -- capital costs related to the project at 134.

11 Q. And who is going to -- let's assume for the
12 moment that the 154 million dollars is going to be the
13 actual cost, what treatment do you give to the other 20
14 million?

15 A. It's absorbed by the company.

16 Q. It's absorbed by the company and passed
17 through to shareholders, is that the way it works?

18 A. Yes.

19 Q. And how do they trace the 134 million in rate
20 cases going forward? They put a little sum in red about
21 what everybody is saving in each rate case, or let's say
22 you have half a dozen rate cases that involve costs
23 stemming from this project. How are you going to -- how
24 are you going to make sure that's capped at 134?

25 A. There is a variety of ways you could do that.

1 And I don't think how it's been -- going to be done has
2 been determined. But off the top of my head if you have
3 ever looked at a Vermont Gas rate case, we have very
4 detailed schedules of plant in service, and there will be
5 a line item plant in service at 134 million dollars.

6 Q. Okay. And that will carry on to future rate
7 cases over the next --

8 A. Yes.

9 Q. -- decades or something?

10 A. For the life of the project.

11 Q. And you are confident I take it that there is
12 -- there will be no departure -- no attempt to collect a
13 little eensy weensy bit more perhaps for this project?

14 A. The MOU is very clear that the project is
15 capped at 134 with very limited exceptions. And Vermont
16 Gas is committed to that, and the Department has -- is
17 certainly going to be looking at that very closely as is
18 the Board, and we have been very public about that
19 commitment. So everybody in this room will be looking at
20 that as well.

21 Q. 20 million dollars isn't very much, it's only
22 about 13 percent of this project; isn't it?

23 A. 20 million dollars is a lot of money for a
24 company Vermont Gas's size, particularly when you compare
25 it to our net income.

1 Q. And how about compared to 134 million?

2 A. Is there a question? I'm sorry.

3 Q. It's not much compared to 134 or 154 million,
4 is it? It's 13 percent of 154 million, right?

5 A. In my world, 20 million dollars is a lot of
6 money almost regardless of what you compare it to. I
7 disagree with that characterization.

8 Q. Okay. What's the contingency on this project?

9 A. Right now I believe the contingency's about 14
10 million.

11 Q. So aside from the contingency, you're taking
12 -- if you don't count the contingency you're taking a six
13 million dollar hit?

14 A. Under the project budget as it currently
15 stands, if we were to -- if we were able to construct it
16 exactly at the estimated cost to complete which has been
17 on the quarterly reports that everybody here has seen, and
18 it was about 140 million, it would be a six million dollar
19 hit.

20 But we filed financial statements yesterday
21 that we have already taken a hit of I believe it was \$10.3
22 million. And more importantly, we are taking all of the
23 risk going forward above the 134 million dollars.

24 Q. But you haven't -- you're nowhere near
25 complete the projects?

1 A. No, we still haven't -- you're correct.

2 Q. You don't know whether it's going to be plus
3 or minus?

4 A. No. I don't.

5 Q. We have been going around on used and useful
6 and 134 million and so on, is there -- are there any
7 interplay in your mind as a person who does -- has done
8 rates for many years, is there any interplay between used
9 and useful and 134 million in this MOU?

10 A. No.

11 Q. No relationship whatsoever?

12 A. No.

13 Q. Okay. Is there -- never mind. When -- you
14 agree with Dr. Hopkins that the cross subsidy is in --
15 from existing ratepayers to build this thing is in the
16 range of 32 to 33 years if you assume the 134 million?

17 A. Yes.

18 Q. What do you tell your existing customers when
19 they ask you that, or what would you advise the company to
20 say when they say for the rest of my life I'm going to be
21 paying so that you can pick up new customers. What do you
22 tell them? You say maybe your life will be beyond 32 or
23 33 years, is that the answer?

24 A. The way utility projects are funded in Vermont
25 is generally on a rolled-in basis, and if I look -- if all

1 we were ever going to serve was an area that was fully
2 going to cover its own weight year one, we probably
3 wouldn't be serving anything except maybe the City of
4 Burlington. And this treatment of new customers being
5 supported by old customers for some period of time is
6 perfectly consistent with how infrastructure projects have
7 been funded in this state over time. And the benefit of
8 the Memorandum of Understanding is it reduces the amount
9 of that crossover that otherwise would have been absent
10 the MOU.

11 Q. By up to two years, right?

12 A. At the 153 versus the 134, yes.

13 Q. It goes down 34 years to 32 years?

14 A. Thereabouts.

15 Q. Or thereabouts. And do you tell these
16 customers -- supposing a customer says well, 32 years
17 seems like a long time to me to be, you know, subsidizing
18 somebody else's service, you know, like cheese companies.
19 I like all these people down the line, but it's kind of a
20 long time since I'll probably be dead by that time. What
21 do you tell them? You're doing the right thing for the
22 state now? What -- or this is in the general good of the
23 state, is that the basic answer?

24 A. That is actually the basic answer, is that
25 this is in the general good of the state. And there are

1 benefits associated with this project beyond the crossover
2 and potential rate impact that our customers today will in
3 fact realize. There is reduced greenhouse gases, there is
4 additional reliability from the first 11 miles. There is
5 the increased economic benefit that will accrue to having
6 major employers in Addison County have access to a
7 competitively priced fuel. So yes, I think that is.

8 Q. They should feel good about all that?

9 A. I'm not going to tell our customers how they
10 should feel. But you asked my answer.

11 Q. Don't you think it's more fair to have these
12 wonderful big customers down there in Addison County pick
13 this up?

14 A. Excuse me?

15 Q. Don't you think it is fairer to have these
16 wonderful big customers and all the 3,000 customers pick
17 up the -- what \$45,000 per new customer that you're going
18 to incur here?

19 A. I'm not clear on your math. And I'm not sure
20 I have an opinion on that. I think the project as
21 designed is in the benefit of the state. And it is
22 appropriate to have all of our customers help fund that.

23 Q. Have you ever, ever known of a utility to
24 build out and have it paid for by current customers on a
25 cross subsidy that lasts for 32 years?

1 A. I don't have exhaustive -- exhaustive
2 knowledge of utility infrastructure projects in Vermont,
3 nor do I know what the crossover period was when Vermont
4 Gas was first founded in 1965. We ran a pipe from the
5 border down to Burlington and got 6,000 customers. And I
6 have no idea what the expected payback period at that time
7 was. But that infrastructure was paid for by then current
8 customers, and it's sitting here 50 years later still
9 being used.

10 Q. That's right. And they paid for it, and it
11 was extended to them, right?

12 A. Just like the customers that were paying -- in
13 Addison County will be paying for this. They will be
14 contributing to the cost of that project.

15 Q. My point is are you not asking the Board to
16 stick present customers for 32 years for this project,
17 right? By stick I mean make them pay more than they would
18 otherwise pay.

19 A. Actually that's not what this proceeding is
20 about. This proceeding is about whether or not the
21 project should have a Certificate of Public Good, who pays
22 for it is in the subject of a subsequent proceeding.

23 Q. Then why are you bringing 134 million into
24 this proceeding?

25 A. Because this proceeding -- first of all, the

1 company said that we were going to keep the Board informed
2 of what was happening. This was a significant event, a
3 significant agreement between Vermont Gas and the
4 Department. And every other MOU that we have entered into
5 in this case, and we have had several of them, have been
6 submitted to the Public Service Board. So we gave it to
7 the Board as a piece of information that they should be
8 informed about.

9 Q. Okay. So let me get it straight. All right.
10 Sorry to keep dwelling on this, but you know, your
11 learning curve is way ahead of mine on this. You've never
12 -- put another way, you have no knowledge that a company
13 has ever charged a cross subsidy from existing customers
14 to build out to future customers that lasted over 30
15 years, you have no knowledge?

16 A. I have no knowledge of that.

17 Q. Right. Okay. You do know that when the
18 pipeline was first extended down, the customers who signed
19 onto it helped finance the extension, right?

20 A. You just used the word helped finance the
21 extension.

22 Q. Did finance it?

23 A. I don't know how that was paid for.

24 Q. I thought you said --

25 A. No, I was using it as an example of a piece of

1 infrastructure that was put in the ground in 1965 that
2 benefited customers for 50 years forward. I was using it
3 as an example as a long-lived infrastructure.

4 Q. But that has nothing to do with existing
5 customers cross subsidizing new customers, right?

6 A. I don't understand your question. Sorry.

7 Q. Those customers became the existing customers,
8 right?

9 A. Correct.

10 Q. And they benefited immediately from the
11 extension of the pipeline to them.

12 A. Correct.

13 Q. This is a different situation; correct?

14 A. I'm sorry. I'm not following -- I just don't
15 understand the point.

16 Q. Never mind. Used and useful. You were the
17 one who wanted to keep it in the agreement part, and in
18 the final -- that was a few hours before the final, and
19 then they put it up in the whereas, right?

20 A. The used and useful ended up in the whereas in
21 the final version of the MOU.

22 Q. Exactly. And that was about 15 hours after
23 you said it should be in the agreement part, right? 20
24 hours? 16?

25 A. I'm not quibbling with your time. I'm trying

1 to recollect when -- you're putting that on me. And the
2 E-mails came from me.

3 Q. Okay. You conveyed to the Department that you
4 wanted it in the agreement part of the MOU instead of the
5 whereas part; correct?

6 MR. ZAMORE: I'm going to object on the
7 same grounds; as to relevance, foundation as to how
8 this bears on a fact of consequence.

9 CHAIRMAN VOLZ: Mr. Saudek?

10 MR. SAUDEK: I have the same -- if
11 these people are going to put something like this
12 into the Board, tell the Board to decide, which
13 impliedly tells the Board -- pretty strong
14 implication tells the Board to decide this thing by
15 January 8, and to somehow base its decision on the
16 terms of this MOU, I think it's the Board's -- it's
17 an absolute obligation of the people in this room to
18 find out what's behind it and why.

19 Now if you, Mr. Chairman, feel that the
20 -- that all of us parties are limited to the exact
21 wording of that final agreement, then so be it. But
22 it seems to me that what goes into this agreement is
23 important here.

24 CHAIRMAN VOLZ: You had a question. He
25 raised an objection. I'm trying to understand how I

1 should rule on the objection. So --

2 MR. SAUDEK: I think you should not
3 sustain the objection.

4 CHAIRMAN VOLZ: You need to explain to
5 me why his objection isn't valid. And I'm not sure
6 you've actually addressed that yet.

7 MR. SAUDEK: I've tried to say, I'm not
8 -- I'm not suggesting -- I believe that when these
9 two parties negotiate something like this, and in
10 effect want it to be troweled into your decision, the
11 134 million, they want you to say the total cost is
12 going to be 134 million, and they want you to decide
13 on January 8. It seems to me that it is perfectly
14 legitimate to find out how these various factors went
15 into the MOU. I think it's part of the Board's
16 inquiry in this.

17 CHAIRMAN VOLZ: How is finding out how
18 they went into the MOU affect --

19 MS. HOFMANN: The consequence.

20 CHAIRMAN VOLZ: The MOU says what it
21 says, and the question is how much weight should be
22 given to it I would say. But --

23 MR. ZAMORE: We have no objection to
24 Mr. Saudek asking the witness about how she
25 interprets the MOU, and certainly there has been

1 ample examination of Mr. Rendall on the same issue.

2 CHAIRMAN VOLZ: Exactly.

3 MR. ZAMORE: We have no problem with
4 that whatsoever. It's going into the negotiation and
5 the drafts that were superseded by the actual signed
6 MOU. That's the basis of the objection.

7 CHAIRMAN VOLZ: And you know, Mr.
8 Saudek, as a lawyer, that parties can have
9 disagreements before they reach an agreement, and the
10 whole idea is they get resolved into the final
11 agreement. It's the final agreement that matters,
12 not earlier drafts necessarily. So because they get
13 superseded. So I think --

14 MR. SAUDEK: Well Mr. Chairman, that
15 would be -- I don't want to delay this whole thing on
16 this point, but you know, that would be true if all
17 they were doing were laying this out and that somehow
18 this agreement didn't really affect this case or have
19 anything to do with it.

20 But what they are trying to do is ask
21 the Public Service Board to take into consideration
22 the terms of this agreement in your decision. And if
23 you do, and if you assume that this agreement is
24 going to be -- is going to be enforced and can be
25 enforced, then it will significantly, I think, change

1 both the timing and the analysis that you ultimately
2 do.

3 MS. HOFMANN: Kim, could you read back
4 what was the original question Mr. Saudek asked?

5 (The record was read as requested)

6 MS. HOFMANN: Thank you.

7 CHAIRMAN VOLZ: All right. We have
8 decided we will allow the question. So you can
9 answer it.

10 THE WITNESS: Could it be repeated
11 please? Sorry.

12 (The record was read as requested)

13 THE WITNESS: Vermont Gas want --
14 originally had that language in the body of the
15 agreement and not in the whereas clause. Correct.

16 BY MR. SAUDEK:

17 Q. What difference does it make?

18 A. I'm not sure -- I'm not an attorney, so I'm
19 not sure I am qualified to answer that question.

20 CHAIRMAN VOLZ: I think Mr. Rendall
21 already answered that question.

22 MR. SAUDEK: Yeah, he basically did, I
23 think.

24 CHAIRMAN VOLZ: And I think so.

25 MR. SAUDEK: Yeah. Okay. I'm going to

1 stop there. Thank you.

2 CHAIRMAN VOLZ: Okay. Ms. Levine.

3 MS. LEVINE: Thank you.

4 CROSS EXAMINATION

5 BY MS. LEVINE:

6 Q. Good afternoon, Ms. Simollardes.

7 A. Good afternoon.

8 Q. Am I correct that your evaluation in your
9 testimony on the economic benefits was based only on the
10 change in cost from about 154 million to 134 million?

11 A. Correct.

12 Q. And you did not provide any update of other
13 environmental costs; is that correct?

14 A. Correct.

15 Q. So there is no evaluation of the increased
16 availability of non-fossil-fuel energy supplies on the
17 overall economic viability of the project; correct?

18 A. Not as it pertains to the MOU.

19 Q. Thank you.

20 CHAIRMAN VOLZ: That's all you have?

21 MS. LEVINE: That's all I have.

22 CHAIRMAN VOLZ: I think we have some
23 questions.

24 MR. YOUNG: Afternoon, Ms. Simollardes.

25 THE WITNESS: Good afternoon.

1 MR. YOUNG: A few questions just
2 following up on the analysis you did. Did you
3 attempt to do a broader reanalysis of the overall
4 benefits of the project, or you were simply
5 reflecting essentially a -- 20 million dollars in
6 ratepayer costs?

7 THE WITNESS: The latter. We simply
8 took the analysis we had done before, some of which
9 had been done in response to Board questions, and
10 reflected the cost recovery cap of 134 million in
11 there in lieu of the 153.6.

12 MR. YOUNG: Now when we were here in
13 June there had been a number of criticisms of your
14 economic benefit analysis, including not factoring in
15 things like job losses or the secondary impacts of
16 higher rates on existing customers.

17 I take it you did not attempt to modify
18 your analysis to address any of those issues.

19 THE WITNESS: That's correct.

20 MR. YOUNG: Have you seen Dr. Dismukes'
21 testimony?

22 THE WITNESS: I have.

23 MR. YOUNG: He raises comments again on
24 the various oil price assumptions. Did you look at
25 those comments?

1 THE WITNESS: I did. I looked at -- I
2 reviewed Dr. Dismukes' testimony, and the bottom line
3 is he shows the MOU improves the economic benefit of
4 the project.

5 MR. YOUNG: Right. I understand that.
6 It improves it except he's still reaching a
7 conclusion that it's negative; correct?

8 THE WITNESS: Correct. A conclusion
9 obviously Vermont Gas disagreed with.

10 MR. YOUNG: Right. So everybody is
11 moving in the same direction, but one of you is
12 negative and the Department and VGS are in the
13 positive; correct?

14 THE WITNESS: Correct.

15 MR. YOUNG: I was trying to hone in on
16 just the oil price assumptions. As part of the
17 differences that had occurred in the models before,
18 or the different analyses where oil price
19 assumptions, did you look at his to see whether gee
20 maybe he's correct, that the lower oil prices that he
21 had reflected should have been taken into account?

22 THE WITNESS: I'm not going to opine on
23 whether they should or should not. He used oil
24 prices as of November. However, he did not use
25 natural gas prices as of November. He used natural

1 gas prices as of August. So the analysis did not
2 reflect the decrease in natural gas prices. They are
3 not on a level playing field.

4 MR. YOUNG: And on his analysis can you
5 just remind me what the primary reasons were that his
6 conclusion is very different from yours?

7 THE WITNESS: This goes back to the
8 matters that were discussed in June, and I didn't go
9 back and reread his June testimony, so working from
10 memory, the two biggest areas of disagreement were he
11 had significant impact associated with fuel oil
12 dealers that were -- seemed grossly disproportionate
13 to the size of the fuel oil market, was issue number
14 one.

15 And issue number two was he had
16 accounted for rate impact associated with the
17 project, and the Board had said in its order last
18 October, and I believe maybe even in the December
19 2013 order, that this is not a rate impact
20 proceeding. That it was the economic benefits, and
21 it was the change in the project cost, so economic
22 benefits minus project cost which is how Vermont Gas
23 approached it. And Dr. Dismukes used a rate impact
24 analysis and brought it forward, and I think the
25 Board had been clear that we don't know what the rate

1 impact will be other than Vermont Gas's statements
2 that, you know, we are committed to keeping rates
3 competitive and reasonable.

4 MR. YOUNG: Now just to confirm, VGS
5 estimates that the potential rate impact of the
6 project with the 134 million dollar cap is what?

7 THE WITNESS: I believe it was about --
8 over 10 years about 1.1 to 1.2 percent lower than
9 what the 153 was. I believe I can look it up, and
10 just to be clear, we never said that that is the rate
11 impact. That was a very mechanical analysis given a
12 specific set of assumptions. It is not a rate
13 proposal.

14 MR. YOUNG: I understand. That's one
15 of the reasons that the word potential was used in my
16 question.

17 THE WITNESS: I believe the 10-year
18 impact was nine percent. So it was a first year
19 increase and then a decrease 10 years later.

20 MR. YOUNG: So the initial increase
21 would be approximately what? Is that 12.2 percent,
22 am I correct on that?

23 THE WITNESS: Correct. Again with the
24 understanding it's not a proposal.

25 MR. YOUNG: Right. And then what

1 you're saying is that in year 10 you would see a
2 decrease.

3 THE WITNESS: Correct. And we went
4 through this, I believe, in the June hearing, but the
5 reason for a decrease in year 10 was to put
6 everything on an equal playing field so you could
7 compare scenarios from the original filing to -- the
8 121 to this one. And we put in place a presumed rate
9 decrease in year 10 that would allow the fund balance
10 at the end of the fund life to be on a comparable
11 amount.

12 MR. YOUNG: Right.

13 THE WITNESS: It was a default
14 calculation.

15 MR. YOUNG: And the reason I'm asking
16 is I just want to be clear in terms of -- so at the
17 121 million we had approximately a 10.1 percent rate
18 effect, I believe.

19 THE WITNESS: In year one, there was a
20 rate decrease thereafter.

21 MR. YOUNG: You also had the rate year.

22 THE WITNESS: Correct.

23 MR. YOUNG: And year one at this level
24 is about a 12.2 percent --

25 THE WITNESS: Correct.

1 MR. YOUNG: And as I recall, in with
2 the 153.6 million dollar cost the rate impact was
3 about 15.1 percent.

4 THE WITNESS: Correct.

5 MR. YOUNG: So that's the range we are
6 looking at here.

7 THE WITNESS: Correct. All of which
8 are year one numbers.

9 MR. YOUNG: They are all year one
10 numbers, and you have the rate decrease that's going
11 to occur in year 10 under the scenarios.

12 THE WITNESS: Correct.

13 MR. YOUNG: And those are all forecast
14 based upon those costs, not actually what the rate
15 making proposals are going to be.

16 THE WITNESS: Correct.

17 MR. YOUNG: I have no further
18 questions. Thank you.

19 CHAIRMAN VOLZ: Any follow up to our
20 questions? Mr. Grayck.

21 MR. GRAYCK: I just have a follow up to
22 Mr. Saudek's question.

23 CHAIRMAN VOLZ: Okay.

24 CROSS EXAMINATION

25 BY MR. GRAYCK:

1 Q. So Ms. Simollardes, in some of your answers to
2 Mr. Saudek's questions I think the phrase "taking a hit"
3 was used. Can you just explain to me what you meant by
4 that? I gather that's not a commonly -- that's probably
5 not something we see in like accounting reports or
6 something?

7 A. Correct. And if I used that term it was
8 probably not the best choice of words. It would be
9 project, for example, if the project comes in at 153.6 and
10 we have a cost recovery cap of 134, so let's use round
11 numbers 154, there is 20 million dollars that the company
12 will absorb. And that would be a hit.

13 Q. So for purposes of reading the transcript
14 later on, I can use the explanation you just gave to
15 understand your prior references to taking a hit?

16 A. Yes.

17 Q. Thank you. That's all.

18 CHAIRMAN VOLZ: Okay. Any redirect?

19 MR. ZAMORE: Yes. I do. I have brief
20 redirect.

21 REDIRECT EXAMINATION

22 BY MR. ZAMORE:

23 Q. Ms. Simollardes you just indicated that the --
24 for year one rate increase difference between 121 million
25 and 134 million was 10.1 percent to 12.2 percent.

1 Correct?

2 A. Correct.

3 Q. And but you also said that there was a
4 decrease in year 10 under each scenario; correct?

5 A. Correct.

6 Q. In your testimony on page two at the bottom
7 you refer to a 1.2 percent incremental rate increase above
8 the 121.6 million. Correct?

9 A. Correct.

10 Q. And that 1.2 percent is less than the
11 indicated 2.1 percent in the first year number; correct?

12 A. Correct.

13 Q. Could you explain why there is a difference?

14 A. Because in the 121.6, the year 10 rate
15 decrease was, I believe, 2.3 percent, and in the 134 it's
16 3.2.

17 MR. ZAMORE: Thank you. That's all I
18 have.

19 CHAIRMAN VOLZ: Okay. Thank you.

20 THE WITNESS: Thank you.

21 CHAIRMAN VOLZ: We are a few minutes
22 early. Is Mr. Hopkins -- Dr. Hopkins available?

23 MS. PORTER: They are both at the same
24 meeting. I expect them very shortly.

25 CHAIRMAN VOLZ: I guess we can take our

1 afternoon break.

2 MS. PORTER: Or if the Board has any
3 questions of Mr. Palmer. I don't know.

4 CHAIRMAN VOLZ: We could start with Mr.
5 Palmer.

6 MS. PORTER: Just a suggestion.

7 CHAIRMAN VOLZ: Any objection to
8 starting with Mr. Palmer?

9 MR. GRAYCK: None from me. Maybe from
10 Mr. Palmer, but none from me.

11 CHAIRMAN VOLZ: Why don't we do that
12 then.

13 MS. CHENEY: I'll just remind you that
14 you remain under oath from the last time in this
15 Docket.

16 THE WITNESS: Okay.

17 MS. CHENEY: Thank you.

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1 NATHAN PALMER

2 Having been duly sworn, testified
3 as follows:

4 DIRECT EXAMINATION

5 BY MR. GRAYCK:

6 Q. So Mr. Palmer, you've provided prefiled
7 testimony with attached exhibits -- I assume have already
8 been admitted, yes? Stipulated to? No objection?

9 CHAIRMAN VOLZ: That's correct.

10 Subject to Mr. Dumont's opportunity to respond to the
11 question of whether he had an objection or not.

12 MR. GRAYCK: If it hasn't already been
13 done, I'll move the admission of testimony dated
14 November 23, 2015 with attachments.

15 CHAIRMAN VOLZ: Okay. It's admitted.

16 (The Prefiled Testimony and attachments
17 of Nathan Palmer were admitted into the
18 record.)
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1 CHAIRMAN VOLZ: Subject to Mr. Dumont's
2 -- what I said earlier. Great. He's available for
3 cross examination.

4 MR. GRAYCK: Yes.

5 CHAIRMAN VOLZ: Does anybody have cross
6 examination for him?

7 MR. ZAMORE: No questions.

8 MS. PORTER: No questions.

9 CHAIRMAN VOLZ: All right. Okay. I
10 think we have some.

11 MR. TOUSLEY: We have a couple. Mr.
12 Palmer, were you here in the room this morning when
13 Mr. Rendall testified regarding when the MOU was
14 negotiated and entered into and whether it was
15 available for review at the time of the June
16 technical hearings?

17 THE WITNESS: Yes, I was.

18 MR. TOUSLEY: How should the Board
19 understand your testimony now in light of Mr.
20 Rendall's testimony this morning regarding the timing
21 of the MOU?

22 THE WITNESS: Sounds like he answered
23 that part of the question. I mean I really have no
24 backup way of knowing, you know, whether it's right
25 or wrong. But we are not privy to all of this

1 information.

2 MS. HOFMANN: Do you have any reason to
3 believe that it was negotiated earlier?

4 THE WITNESS: I really don't know.
5 It's hard to believe that, you know, they just got
6 together a couple days earlier than the MOU and said,
7 hey, let's get together, have a cup of coffee and
8 create an MOU. You know, it seems like it's
9 something that's going to take some time and effort
10 and probably was in the works for awhile.

11 MS. HOFMANN: But you don't have any
12 evidence. That's my question. Do you have any
13 evidence?

14 THE WITNESS: I'm not privy to all the
15 paperwork and everything that's here, so I don't have
16 that, no.

17 CHAIRMAN VOLZ: Anything else up here?
18 Any follow up to our questions? Any redirect?

19 MR. GRAYCK: None from me.

20 CHAIRMAN VOLZ: Okay. Thank you, Mr.
21 Palmer.

22 THE WITNESS: Thank you.

23 CHAIRMAN VOLZ: Why don't we take our
24 afternoon break. It's a little early. Why don't we
25 come back at quarter of.

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MS. PORTER: I apologize. They were at a meeting that was scheduled at 2.

(Recess was taken.)

CHAIRMAN VOLZ: We're back from our break. Are we ready for our next witness?

MS. PORTER: Yes, sir.

CHAIRMAN VOLZ: Go ahead.

MS. PORTER: The Department calls Asa Hopkins.

MS. CHENEY: Dr. Hopkins, I would like to remind you that remain under oath from your previous appearance in this Docket.

1 ASA HOPKINS

2 Having been duly sworn, testified
3 as follows:

4 DIRECT EXAMINATION

5 BY MS. PORTER:

6 Q. Would you like to state your name and
7 occupation for the record?

8 A. My name is Asa Hopkins. I'm the Director of
9 Energy Policy and Planning at the Public Service
10 Department.

11 Q. You have your testimony in front of you?

12 A. I do.

13 MS. PORTER: Mr. Chairman, given that
14 we have stipulated to the admission of the evidence,
15 the Department moves the testimony of Asa Hopkins
16 into evidence.

17 CHAIRMAN VOLZ: Okay. It's admitted
18 subject to Mr. Dumont's opportunity to -- subject to
19 our ability to hear from Mr. Dumont about it when
20 he's here next.

21 (The Prefiled Testimony of Asa S.

22 Hopkins was admitted into the record.)
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1 MS. PORTER: And Dr. Hopkins is
2 available for cross examination.

3 CHAIRMAN VOLZ: Okay. Mr. Grayck?

4 MR. GRAYCK: Oh, no cross exam. Thank
5 you.

6 CHAIRMAN VOLZ: Okay. Mr. Saudek?

7 MR. SAUDEK: Thank you.

8 CROSS EXAMINATION

9 BY MR. SAUDEK:

10 Q. Just a couple. I'm not going to get into math
11 with you, Dr. Hopkins. I'm going to read something from
12 your May 6 testimony. I'm just going to read it. When
13 considering the changes from the original proceeding, I am
14 particularly concerned about the increased projected costs
15 to existing VGS ratepayers relative to the original cost
16 estimate. One cannot ignore the ratepayers in Chittenden
17 County and Franklin County will pay more for natural gas
18 than would otherwise be the case if this project were not
19 built. As ratepayer advocate the Department is committed
20 to ensuring that net ratepayer costs are in relative
21 balance with the direct customer benefits of the project.
22 It is therefore imperative for the Board, the Department
23 and other stakeholders to focus on the issue of cost
24 recovery and rate design in the appropriate proceedings to
25 ensure positive outcomes for new and existing ratepayers.

1 Do you remember saying that?

2 A. It sounds like me, and you read from my
3 testimony, so sure.

4 Q. You remember it. And is that still true today
5 your feelings on that subject?

6 A. Yes.

7 Q. Now I notice that in your testimony filed on
8 November 6, your current testimony, at the bottom of page
9 10 beginning on line 19 I guess is the best place to
10 begin. You say the rate cap in the MOU would reduce the
11 expected period of cross subsidy by approximately one
12 year. That is, instead of ending between years 33 and 34,
13 it would now be expected to end between years 32 and 33.
14 How long -- how old will you be 33 years from now?

15 A. I will be 69.

16 Q. If you were a current ratepayer in Chittenden,
17 Franklin County, do you think that is a reasonable amount
18 given your concern that you've already expressed? A
19 reasonable amount of time to continue cross subsidies?

20 A. Looked at in the broader context of the state
21 as a whole, which is the relevant criterion to my
22 understanding about the general good of the state, that
23 period of cross subsidy is -- while longer than might be
24 desired, is reasonable.

25 Q. At what point do the lines cross? What would

1 you say would -- given your concerns that you earlier
2 expressed, what do you think would be too many years?

3 A. I don't think I can answer that. I think
4 because if those year numbers were different, a lot of
5 other things would have to be different also, and the
6 overall balance in terms of the general good of the state
7 would be different in some fashion. And so I think that's
8 too hypothetical for me to be able to give you a concrete
9 answer.

10 Q. Well let's assume that the advantages are the
11 same, the advantages as you analyzed them are the same.
12 How many years do you think that should be cross
13 subsidized by existing customers?

14 A. I don't have a numerical answer for you.

15 Q. Have you ever heard of a situation where this
16 cross subsidy has lasted this long in order to bring in
17 some new customers to a company?

18 A. No.

19 Q. Would you agree with me that the difference of
20 one year out of 33 or 34 or 32 or 33 as the case may be is
21 not a particularly significant difference?

22 A. I think it's a difference in the right
23 direction. I think the next sentence in my testimony
24 where I discuss the fact that the time of the first remand
25 it was to be one year shorter. That the -- this cross

1 subsidy period is a -- is an imperfect measure of the
2 project as a whole. And the difference of, you know,
3 from, you know, when the project costs between the first
4 remand and the current project costs, you know, went up by
5 whatever much it went up, 30 or so million dollars, that
6 that's -- that that's only two years' difference in this
7 measure. It's not a very fine measure for measuring the
8 impact of the project as a whole.

9 So a one-year difference is -- given that it
10 corresponds in terms of overall aggregate cost to, you
11 know, net present value to the state of 10 or so million
12 dollars, one year is -- seems worth it when it comes along
13 with that.

14 Q. If an individual customer who is an existing
15 customer came up to you and said, I'm a lot older than
16 you, I'm like 50. Okay, why should I be cross subsidizing
17 this for the next -- until I'm 82 just to get them to be
18 able to extend their pipeline down to some cheese company
19 or some other big user down in Addison County? Why
20 shouldn't the cheese company, the big user, pay for it?

21 A. So the question --

22 Q. What would you say, how would you answer that?

23 A. That when you look at all of the costs and
24 benefits of the project and their relevant criteria, you
25 know, overall all those 248(b) criteria, the general good

1 of the state, that yes, you're going to -- you're going to
2 pay a little bit more. Some other people are going to
3 save a bunch of money and that the net is in fact in the
4 general good of the state.

5 MR. SAUDEK: Thank you.

6 CHAIRMAN VOLZ: Are you done, Mr.

7 Saudek?

8 MR. SAUDEK: I'm done.

9 CHAIRMAN VOLZ: Okay. Thanks.

10 MR. YOUNG: Good afternoon, Dr.

11 Hopkins.

12 THE WITNESS: Good afternoon.

13 MR. YOUNG: On pages four and five of
14 your testimony you generally discuss your revised
15 modeling. Am I correct that when I look at the --
16 following that discussion you have this table on page
17 six. Am I correct that when I look at that table the
18 green highlighted sections essentially capture the
19 reduced economic activity associated with higher
20 rates, is that what that reflects?

21 THE WITNESS: Right, among existing VGS
22 customers. Yes.

23 MR. YOUNG: Among existing -- they are
24 paying more, therefore there will be a net negative
25 impact on the Vermont economy and this way --

1 THE WITNESS: Those folks will pay a
2 little bit more in their natural gas bills and
3 therefore less in other ways in the economy. And
4 it's the less in other ways part that's captured by
5 the lines in green there.

6 MR. YOUNG: Right. And your conclusion
7 -- your conclusion basically is that overall we still
8 have -- this increases the 35-year NPV by what, 13
9 million dollars at three percent rate; is that
10 correct?

11 THE WITNESS: 35-year NPV at three
12 percent real, yes. 13 million dollars net positive
13 total if the rate cap holds at 134.

14 MR. YOUNG: Did you adjust your
15 analysis for any changes other than simply reflecting
16 the rate cap?

17 THE WITNESS: No.

18 MR. YOUNG: Now I assume you've read
19 Dr. Dismukes' testimony.

20 THE WITNESS: I have.

21 MR. YOUNG: And he raises the question
22 of the oil price forecast, the appropriate oil price
23 forecast, did you see that?

24 THE WITNESS: Yes.

25 MR. YOUNG: Do you think it's

1 appropriate to adjust to reflect oil prices or -- and
2 if so, would that be material?

3 THE WITNESS: Given the specific ask
4 from the Board order of what is the impact of the MOU
5 on state NPV, that's the question that I tried to
6 answer here. I think you could do some other
7 calculation. The materiality of that in the sense of
8 the scale of difference in impact -- at least from
9 what I've -- from my understanding of Dr. Dismukes'
10 testimony, seems to show that that impact is
11 relatively small, on the scale of either the impact
12 of the MOU or of the scale of the net total positive
13 impact that my analysis showed.

14 So I think, yes, one could do that. It
15 is -- I don't think that it is likely to show any
16 sort of dramatic difference, and I chose not to do it
17 just for the purposes of maintaining clarity of
18 answering just, you know, one clear specific question
19 rather than confounding with other factors.

20 MR. YOUNG: Right. But in reconciling
21 the different way you approached the problem from Dr.
22 Dismukes, one of the differences is the oil price
23 assumption, but what you're saying is it's not likely
24 to make a big difference in the overall outcome or --
25 is that correct?

1 THE WITNESS: That I think that -- I
2 believe it's true that if you were to update both the
3 oil price forecast and the natural gas price
4 forecast, that the net impact of all that would be
5 relatively small on this scale of these analysis.
6 Obviously we will operate off the best forecast we
7 have at any given time.

8 MR. YOUNG: Okay. And so if I'm trying
9 to reconcile your outcome with his outcome, the
10 bigger differences to look at are the same ones we
11 talked about in June, things like the assumption on
12 discount rates; correct?

13 THE WITNESS: Yeah. I think we have
14 covered a number of differences between my analysis
15 and Dr. Dismukes'.

16 MR. YOUNG: Now Dr. Dismukes in his new
17 testimony points out that your testimony still
18 assumes the full value of savings for industrial
19 customers that are now using CNG; is that correct?

20 THE WITNESS: Right.

21 MR. YOUNG: We probably talked about
22 this in June. But since he's raised the issue once
23 again, why shouldn't you be measuring only the
24 incremental savings?

25 THE WITNESS: You know, I think it's a

1 question of baselines of what the appropriate case
2 against which you're comparing should be. It seemed
3 most appropriate from my standpoint to have that
4 baseline be consistent throughout the proceeding, and
5 to have that baseline reflect the state of the world
6 pre-project, which means before customers made
7 whatever investment or changes they might have made
8 in anticipation of the project or not in anticipation
9 of the project.

10 MR. YOUNG: Do you know if you only
11 counted the incremental savings how that might affect
12 your analysis? Have you looked at all?

13 THE WITNESS: I have not done a state
14 GDP NPV calculation with a different baseline, no.

15 MR. YOUNG: Did you look at all at Dr.
16 Dismukes' attempt to quantify that on page 15 of his
17 testimony?

18 THE WITNESS: I recall him discussing
19 it. I don't remember the details of it, and I don't
20 have a copy of it here with me.

21 MR. YOUNG: When -- is your primary
22 reason for not assuming that some customers are
23 already on compressed natural gas simply to provide
24 the common baseline, not -- is that the main reason
25 for doing it?

1 THE WITNESS: I just think that having
2 a consistent baseline and having a baseline that
3 reflects the world absent the project, which it's
4 hard to do the counter factual of that, but given
5 that least -- I'm aware at least of one customer I
6 think, there may be others, who are using CNG now but
7 who have explicitly stated that they made that
8 transition and those investments in expectation of
9 the pipeline. So developing a counter factual to use
10 as a different baseline you end up having to make a
11 whole bunch of assumptions about what would that
12 world have been. Who would have done what, which
13 could really color and shift where you end up.

14 But I think just having a clear
15 consistent baseline of where we were in 2013 and
16 carrying that through makes the most analytic sense
17 to me.

18 MR. YOUNG: Is there some concern that
19 if the pipeline were not constructed those customers
20 wouldn't stay on CNG? Does that enter into your
21 assumptions or not?

22 THE WITNESS: I guess, you know, we
23 don't know what those customers will and won't do.
24 Right now natural gas has an -- or at least over the
25 last several years natural gas has had a real price

1 advantage over fuel oil, and in particular that oil
2 and natural gas prices have decoupled for a
3 generation, when one went up, the other went up.
4 When one went down, the other went down. There
5 wasn't a differentiation that could support the cost
6 of trucking and infrastructure for that.

7 If they were to become recoupled, oil
8 is now also fracked, for example, so that the
9 coupling may become closer, the price differential
10 may shift, trucking may no longer be the more cost
11 effective thing. People may switch back to the most
12 cost effective fuel there, driven by their bottom
13 lines after all. We just don't know going forward in
14 the absence of a pipeline given that trucking price
15 differential what those firms may choose to do.

16 MR. YOUNG: That's all my questions.
17 Thank you very much.

18 MS. CHENEY: I have a question. Just I
19 may have misunderstood you, so I want to go back to
20 what you were saying earlier in answer to Mr. Young's
21 question.

22 You said you didn't look at the
23 difference in oil and natural gas prices in
24 readjusting any assumptions for this because that's
25 not what you were asked to do. Correct?

1 THE WITNESS: My read of the Board's
2 order for this set of proceedings, I think quoted
3 from one of the other parties, maybe AARP asking for
4 an analysis of what the impact of the MOU on the
5 state economic NPV would be. Sorry, there is a lot
6 of acronyms in there. So I tried to answer that
7 question directly.

8 MS. CHENEY: Right. And this is the
9 part I'm not sure if I understood you correctly or
10 not. You shortly thereafter went on to say I believe
11 that nonetheless, those price differentials would
12 make a negligible difference.

13 THE WITNESS: My understanding is that
14 oil prices have fallen, and natural gas prices have
15 also fallen in their intervening several months, by
16 maybe not exactly the same amount, but both --
17 substantially, but both, you know, not that different
18 range from each other. And if you're then just going
19 to trend those out using the same AEO forecasts as
20 previously did, etc., that's just unlikely to result
21 in any sort of dramatic change in the customer
22 savings, for example, for the new -- the customers
23 who switch.

24 So it seems as sort of an order of
25 magnitude in your head kind of an assessment that you

1 wouldn't expect that number to be very large,
2 particularly on the scale of when looking at, you
3 know, net total benefits, you know, in the 20 to 40
4 to 50 million dollars.

5 MS. CHENEY: So this wasn't a paper --
6 pen-to-paper analysis. It's basically based on your
7 understanding generally of the markets recently and
8 so it's a top -- it's top of your head conclusion.

9 THE WITNESS: Yeah. It's backed up by
10 the, you know, well I'm sure just Dr. Dismukes and I
11 have various other methodological differences. He
12 updated fuel oil, and I think to some extent, maybe
13 not entirely natural gas prices as well, and his
14 difference that he saw from his previous prices to
15 his new prices were quite small compared to the
16 difference that he saw from the MOU. So that
17 reaffirms my sort of back-of-the-envelope in the head
18 kind of sense that I wouldn't expect it to be large.

19 MS. CHENEY: Thank you.

20 CHAIRMAN VOLZ: Any follow up to our
21 questions? Yes, Mr. Saudek.

22 MR. SAUDEK: I would like to follow up
23 on the line of questioning of both Ms. Cheney and
24 George.

25 CROSS EXAMINATION

1 BY MR. SAUDEK:

2 Q. Put yourself in the shoes of the Board. You
3 have been -- you are trying to weigh the economic and
4 societal benefits or detriments of this sort of investment
5 and of this particular project. You have to get into the
6 numbers, don't you?

7 A. Yes.

8 Q. There is not much choice.

9 A. If I may, you also have to recognize the
10 limitation of those numbers, and you know, the reason to
11 consider ranges of values over different time periods, et
12 cetera, to see how robust your results are to those
13 numbers being different than you thought they were in case
14 they change over time, because no projection or forecast
15 is going to be exactly correct.

16 Q. Okay. You've just -- you have an MOU in which
17 the Department claims that it can assure that ratepayers
18 won't have to pay more than 134 million dollars for this
19 project. That is a reduction of about 13 percent from
20 153.6, right?

21 A. I would --

22 Q. You can do that in your head.

23 A. I haven't done the math.

24 Q. Now given a reduction of 13 percent, let's
25 assume they can enforce it in future rate cases. Given a

1 reduction of 13 percent, and given the -- all the
2 assumptions that have gone into your programs, don't you
3 think it would be reasonable if you were say staffing the
4 Board or you were on the Board to test the validity of a
5 number of those other assumptions given the time has
6 passed, given that clearly the economics of oil, for
7 instance, have changed. Do you think that they are so
8 insignificant that compared to a 13 percent change you
9 just really ought to ignore them?

10 A. I wouldn't say they should be ignored. You
11 know, between the first remand proceeding and the second
12 remand proceeding enough things changed that I believe it
13 was appropriate to go back and, you know, reset all of
14 those assumptions, and that's what my analysis did.

15 The question in my case for, you know, coming
16 up with this testimony, was how material are the impacts
17 likely to be, and also recognizing, you know, what
18 explicitly the Board asked for, how material were those
19 changes likely to be over the course of the period between
20 June and November, and whether to complicate the analysis
21 by adding those other components as opposed to more
22 clearly identifying this particular piece, which I think
23 the analysis that's in the record or from -- you know,
24 even Dr. Dismukes' analysis shows, that the changes, you
25 know, in the oil prices and natural gas prices over that

1 period, that the net results of those changes over that
2 period of time, are in fact -- back up my, you know, in-
3 the-head calculation are in fact small compared to that 13
4 percent as you say ratepayer cost reduction for the
5 project.

6 Q. So you're basically telling the Board they
7 should ignore them because in your opinion all these
8 different variables are small enough to be -- not to
9 affect the final judgment?

10 A. There are a number of different things that
11 are small, and you could spend a lot of time trying to
12 characterize each and everyone of them and get a million
13 dollars here and a million dollars there one way or
14 another. When you're looking at the scale of the
15 aggregate net, the aggregate net is, you know, positive
16 20, 30, 40 million, and you're looking also at large
17 things you want to get right. A million dollars one way
18 or the other, yes, you would like to get it. Is it likely
19 to change the sign of the answer when your best estimate
20 of the answer is 20, 30, 40 million positive, no.

21 And so narrowing in and putting weight on the
22 parts of the analysis that matter to the greatest extent,
23 and recognizing that there are a lot of things -- there
24 are a lot of uncertainties that are going to mean that,
25 yes, over time things shift and a million dollars here and

1 there, and that's not going to -- you know, that is
2 unlikely to change the sign of the overall answer.

3 Q. Unlikely.

4 A. In all of this is -- all of our best
5 assessment of the future given, you know, the impact of
6 VGS's capital structure, for example, on these numbers as
7 I showed in my earlier testimony is substantial. There is
8 a lot of things we don't know about the future. Just do
9 the best we have and have the best analysis with the best
10 numbers that we have got at any given time.

11 Q. You don't have the best numbers; right? You
12 have historic numbers on everything but the one 13 percent
13 change; correct? Isn't that right?

14 A. Have analysis for everything up to date as of
15 June. And a delta from that -- from those analysis
16 resulting from the MOU.

17 Q. Okay. Thank you.

18 CHAIRMAN VOLZ: Any other follow up to
19 our questioning from anyone? Any redirect?

20 MS. PORTER: No. Thank you.

21 CHAIRMAN VOLZ: Thank you, Dr. Hopkins.
22 Ready for our next witness.

23 MS. PORTER: Department calls
24 Christopher Recchia.

25 THE WITNESS: Good afternoon.

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MS. CHENEY: Good afternoon.

Commissioner, I don't believe we have sworn you.

THE WITNESS: We have not done this
yet.

1 CHRISTOPHER RECCHIA

2 Having been duly sworn, testified
3 as follows:

4 THE WITNESS: I do.

5 MS. CHENEY: Thank you.

6 DIRECT EXAMINATION

7 BY MS. PORTER:

8 Q. Would you please state your name and
9 occupation for the record?

10 A. Chris Recchia. I'm Commissioner of the
11 Department of Public Service for the State of Vermont.

12 MS. PORTER: Mr. Chairman, given that
13 we stipulated as to the admission of the evidence, I
14 move the admission of Christopher Recchia's prefiled
15 testimony.

16 CHAIRMAN VOLZ: It's admitted subject
17 to the opportunity for Mr. Dumont to address the
18 issue of whether he has any objections or not.

19 (The Prefiled Testimony of Christopher
20 Recchia was admitted into the record.)
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1 MS. PORTER: Commissioner Recchia is
2 available for cross examination.

3 CHAIRMAN VOLZ: Okay. Mr. Grayck.

4 CROSS EXAMINATION

5 BY MR. GRAYCK:

6 Q. Thank you. Good afternoon, Mr. Recchia.

7 A. Hi. Good afternoon.

8 Q. Mr. Recchia, were you involved in the
9 negotiation of the MOU?

10 A. Yes.

11 Q. And I assume as the Commissioner of DPS you
12 have an understanding of the used and useful analysis?

13 A. Well I'm not an attorney, but I do understand
14 what those words mean in the lay context as well as
15 although I'm not an expert in the field as previously
16 other folks were, I do understand the context in the
17 regulatory sense as well.

18 Q. Okay. And earlier this morning we heard
19 testimony that the negotiations started somewhere in
20 September of -- September of this year, September of 2015;
21 is that correct?

22 A. Yes. That's my recollection too.

23 Q. And prior to that, there was no discussion,
24 negotiation, of a used and useful valuation between DPS
25 and Vermont Gas?

1 A. No.

2 Q. And then it seems like out of the rush of
3 negotiations there was consultations between VGS and DPS;
4 am I right?

5 A. Correct.

6 Q. Okay. And then it appears from Palmer 5 that
7 there was also consultation with the Governor's office; is
8 that correct?

9 A. Not on the MOU. No.

10 Q. And who was Scott Coriel?

11 MS. PORTER: Excuse me just a minute,
12 Commissioner. Would you like a copy of that?

13 THE WITNESS: No, that's okay. I
14 remember that. Thank you. Scott Coriel is the
15 Governor's communication coordinator.

16 BY MR. GRAYCK:

17 Q. And so was it your decision to coordinate with
18 the communication coordinator?

19 A. So let me back up a little bit. I was in
20 North Carolina at the time at a conference. I was working
21 on the MOU itself. But not so much on the release of it.
22 So it is perfectly typical for when an agreement like this
23 is reached to release a statement to the press, and it's
24 perfectly typical for that to be coordinated not only
25 among the parties that are doing it, but with my boss as

1 well. Yes.

2 Q. So was that the extent of the coordination
3 with Mr. Coriel?

4 A. Yes.

5 Q. And was that the extent of the coordination
6 with the Governor's office?

7 A. This is where I would ask my attorneys to
8 normally object and claim executive privilege, but since
9 they are not doing that I'll answer the question. I'll
10 try and give you guys time; you're not using it.

11 There was no negotiation with the Governor's
12 office on the content of the MOU. I didn't -- I just
13 didn't answer yes to the way you phrased the question
14 because I want to make sure you understand that I do
15 coordinate with the Governor's office on a regular basis
16 on a variety of topics and issues that are pending, none
17 of which I will go into because of executive privilege.
18 But there you are.

19 Q. Okay. Thank you very much.

20 A. I hope that's helpful.

21 MR. GRAYCK: I think that's all I have.

22 Thank you.

23 THE WITNESS: Thank you.

24 CHAIRMAN VOLZ: Thanks. Mr. Saudek?

25 CROSS EXAMINATION

1 BY MR. SAUDEK:

2 Q. Thank you. Good afternoon, Commissioner.

3 A. Good afternoon, Mr. Saudek.

4 Q. Were you aware in advance of the Governor's
5 characterization of dirty oil in his press release about
6 this MOU?

7 MS. PORTER: I object on relevance, I'm
8 not sure what the Commissioner's knowledge of what
9 the Governor was going to say has to do with the
10 underlying MOU.

11 CHAIRMAN VOLZ: Or any other matter in
12 this case.

13 MS. PORTER: Well that to me is the --
14 what's at issue in the case.

15 CHAIRMAN VOLZ: Mr. Saudek?

16 MR. SAUDEK: My clients don't sell a
17 dirty product, Mr. Chairman. And I just wondered
18 whether he was aware of the fact before.

19 CHAIRMAN VOLZ: You're not answering
20 the objection though.

21 MS. HOFMANN: Right.

22 MR. SAUDEK: I'll withdraw the
23 question.

24 BY MR. SAUDEK:

25 Q. You were here for Mr. Rendall's testimony.

1 I'm going to ask you some of the same questions from your
2 perspective.

3 A. Sure.

4 Q. What is a Memorandum of Understanding?

5 A. It is an agreement among parties, and I
6 consider this to be a contract.

7 Q. And do you consider it to be binding on --
8 assuming you don't serve a lifetime --

9 A. It already feels like one.

10 Q. Do you consider it to be binding on your
11 successors?

12 A. I do.

13 MS. PORTER: Mr. Chairman, before I
14 object I want to make sure Mr. Saudek began by saying
15 in his view, are each of these questions; is that the
16 preface? Because some of them obviously could be
17 calling for legal conclusions, so could we inquire if
18 Mr. Saudek means for that to be the preface of each
19 of these questions?

20 MR. SAUDEK: I mean he signed the
21 contract. I wanted to see his impression of the
22 significance. I'm not meaning to ask a technical
23 legal question.

24 MS. PORTER: Thank you.

25 BY MR. SAUDEK:

1 Q. I have intended that for Mr. Rendall, but --

2 A. Of course.

3 Q. How do you propose -- well let me do some lead
4 up. Strike that.

5 Your -- you would agree with me, would you
6 not, that this will -- that the rate implications of this
7 will unfold over quite a number of years?

8 A. Actually am anticipating that they'll unfold
9 next year.

10 Q. And this is the November 2016 rate --

11 A. Yeah. The rate year starting then, 2017 rate
12 year.

13 Q. And what is your impression of what happens if
14 they don't have this pipeline fully built in November of
15 2016?

16 A. There are a couple of implications, and I want
17 to make sure I understand your question. I'll probably
18 ask you to clarify a little bit. But there is a physical
19 understanding of what happens, and then there is the
20 contractual understanding of what happens, and the rate
21 impacts of what happens. Which of those --

22 Q. Well let's assume that the pipeline is not
23 serving customers beyond the 11 miles --

24 A. Right.

25 Q. -- that presumably will have completed. Let's

1 assume the -- that the rest of the Addison project is not
2 yet serving customers, and next November comes and goes.

3 A. Right.

4 Q. Are you -- do you believe that you have
5 committed by the MOU to allow the company to begin to
6 collect rates for that pipeline that hasn't yet been
7 completed?

8 A. Do you expect in your hypothetical -- do you
9 expect it to be completed in the rate year?

10 Q. Yes. Let assume it will be completed in April
11 or something like that.

12 A. Okay. Then you would account for it to be in
13 rates as of April, and spread that back over the year.

14 Q. So you would start, in effect, by spreading it
15 back over the year, you mean you would back fill it?

16 A. That's my understanding of how it's typically
17 done. Yes. So I mean to answer your question as the way
18 I think you were answering it before, let's assume it
19 doesn't get finished, okay, it is not collectible in
20 rates. That's my understanding.

21 Q. So there is kind of a -- let's stick with me
22 on the April date.

23 A. Okay.

24 Q. Would there then be some sort of a surcharge
25 on bills in order to relate it back to November, is that

1 the way it would work?

2 A. Not a surcharge. It's a -- what's the right
3 word, not amortization, it is a prorata. That's the word
4 I'm looking for, prorata allocation of the rate for the
5 April through October time frame spread out over the whole
6 year is my understanding of how that gets done.

7 Q. You would wait until it was completed before
8 that rate would kick in?

9 A. If it is -- if it is going to be known and
10 measurable in the rate year, then my understanding is that
11 it is -- then the appropriate amount is allocated in the
12 rate year for the whole year in a prorated way.

13 Q. What is the significance in your mind of these
14 references to used and useful?

15 A. So I very much think of it as used in the
16 clear sense of the word means it's being used by the
17 customers, and useful means that the entire project is
18 useful to those customers. And I think of it in a
19 physical sense that the project was completed as permitted
20 and is in service to those customers.

21 You'll notice you can't really read that
22 without reading paragraph seven of the agreement. Let me
23 make sure I've got the right paragraph number.

24 Q. Seven is just before agreement.

25 A. Three. Sorry. So seven is the -- seven is

1 the issue of used and useful in the preamble. And the
2 agreement has in paragraph three showing that the
3 financial aspects of this are fully reserved to the
4 Department to do analysis and to question any costs
5 associated with the project. Even if it is in service and
6 even if it is considered, I'm going to use the layperson's
7 interpretation of even if it's used and is serving a
8 useful purpose.

9 I recognize there is a financial component of
10 usefulness that the Board will decide on at the
11 appropriate time.

12 Q. Looking at paragraph seven it says the parties
13 agree, does that in effect make it a commitment by you
14 regardless -- in your mind, regardless of where it happens
15 to be situated in the MOU?

16 A. Yes. I think that's fair.

17 Q. Can you tell me what you believe are the
18 provision -- are the provisions in the MOU that bear on
19 this 248 proceeding?

20 A. Sure. Although I hadn't anticipated in the
21 prior hearings or technical hearings on this, my staff
22 certainly has, and I have been kept informed what's going
23 on and seeing the Board's orders and various decisions
24 that needed to be made. There was a lot of discussion in
25 spite of the fact that -- well I'll finish the sentence,

1 and then I'll characterize it.

2 There was a lot of discussion of the potential
3 rate impact of this project all through these proceedings
4 by various parties. That started with the 86 million,
5 going to the 121 million, going to the 154 million. And
6 the implication that all of that was going to be incurred
7 to ratepayers automatically. And that's how it's been
8 projected.

9 In my view, that's never been the case, that
10 this was something that will be determined at an
11 appropriate time in a rate case, and they will recover
12 only that to which they are entitled to recover. The 134
13 million as a cap with the exceptions that are noted was
14 designed to show that if the project came in as now
15 budgeted and estimated, that the company would absorb any
16 cost increases over the 134 million, except for those
17 exceptions.

18 The point was to give all the parties an
19 understanding of the view that I had all along, that we
20 were taking ratepayer impacts very seriously about this
21 project. And we were going to preserve our rights to
22 continue to review potential ratepayer impacts. But to
23 give some understanding that the 154 million would not be
24 absorbed in rates, if that is how that was being
25 characterized.

1 Q. How are you going to be sure that they don't
2 get rate relief of more than 134 million in -- given rate
3 cases that evolve over time, are you going to keep like a
4 thermometer with like a --

5 A. We could do that. Maybe I'll ask you to bring
6 a marker.

7 Q. Like a charity?

8 A. That's one option. The other option is, you
9 know, we are pretty good at numbers, not me, but my
10 Department. And we evaluate this stuff all the time. We
11 know -- you know, we will see all their books on the cost
12 of this project in its entirety when completed. And we
13 will analyze those. They have very good staff that are
14 capable of picking those apart and often do in rate cases,
15 and look to see what is known and measurable, and used and
16 useful.

17 So we will be doing all those things in a
18 formal rate case, not in the alt reg structure but in a
19 rate case before this Board.

20 Q. Will you be keeping track of the expenditures
21 that the company makes too --

22 A. On this project?

23 Q. -- that they are not looking for rates for?

24 A. We will ask for all costs associated with the
25 project.

1 Q. So if, for instance, the total cost is 135
2 million, the company will show you that they spent a
3 million?

4 A. Yes.

5 Q. In your testimony on page four answer 10 on
6 line 10, you say: As mentioned above, Vermont Gas's prior
7 missteps in the management of the project are both
8 significant and a cause for concern.

9 You became Commissioner the end of 2013?

10 A. End of 2012 actually.

11 Q. '12. Okay. So what are -- one of the first
12 things you were aware of was that the Board had created a
13 Certificate of Public Good to this company on this
14 company's representations that this project was going to
15 cost in the range of 86 million dollars, right?

16 A. Well when you say one of the first things, I
17 mean it was a year later that the Board issued a CPG for
18 this project.

19 Q. That's right, of course. Yeah, a year.

20 A. All right. I had a few other -- there were a
21 few other things before that.

22 Q. So there were some things that happened in
23 between?

24 A. Yeah. I seem to recall a nuclear power plant
25 and a couple of other issues.

1 Q. Okay. Anyway you remember that fact, that the
2 Board granted it based on the company's representations
3 that this was going to cost 87 million or 86 million?

4 A. Correct.

5 Q. Right. Yes. And you recall that a few months
6 later the company came in and said oh, by the way, it's
7 going to be about 122 million?

8 A. Yes.

9 Q. Do you remember that?

10 A. Yeah. And that then --

11 Q. Do you remember the fact that the company also
12 said that they had known that the costs were going to
13 exceed 86 or 87 million while that case was being heard?

14 A. No. I don't recall that.

15 Q. You don't recall that?

16 A. I don't recall that, and I did not know that
17 if that's the case. I don't even know if that's the case.

18 Q. Okay. How old are you going to be in 33
19 years?

20 A. I knew -- you know how old, since you asked me
21 when this started.

22 Q. You're going to be 90 from the time this thing
23 goes on line.

24 A. Yeah. Should I mention that all my relatives
25 passed away in either their 70s or 80s.

1 Q. So you're not worried about the last ten
2 years.

3 A. You should send me a postcard. I'm working on
4 similar time frames for the spent fuel in the fuel pool
5 from Vermont Yankee.

6 Q. Thank you.

7 A. Thanks.

8 CHAIRMAN VOLZ: That's all you have,
9 Mr. Saudek? Have you concluded, Mr. Saudek.

10 MR. SAUDEK: That's it. Yeah.

11 CHAIRMAN VOLZ: Okay, great. Thanks.

12 MR. YOUNG: Good afternoon, Mr.

13 Recchia.

14 THE WITNESS: Good afternoon, Mr.
15 Young.

16 MR. YOUNG: Were you here this morning
17 for Mr. Rendall's testimony?

18 THE WITNESS: Yes, I did step out at
19 one point for 10 minutes, but I was here for most of
20 it.

21 MR. YOUNG: Do you agree with his
22 characterizations of the agreement and the nature of
23 the understandings there? I mean I realize that's a
24 very global question.

25 THE WITNESS: It's a pretty broad

1 question.

2 MR. YOUNG: I can flip it around to say
3 are there anythings that you disagree with what he
4 said this morning when he was talking about the MOU?

5 THE WITNESS: I can't recall anything
6 that I specifically disagreed with. I think that for
7 the MOU itself and what it means, I think I don't
8 have any disagreement with what he described.

9 MR. YOUNG: Okay.

10 MS. PORTER: Mr. Young, I just want to
11 make sure that the record does clearly reflect that
12 Commissioner Recchia was absent from the room for
13 some period of time.

14 THE WITNESS: It was about 10 minutes,
15 probably exactly the time you were asking about but
16 --

17 MR. YOUNG: Obviously I can't ask you
18 what you didn't hear. I can, but it's not like it
19 would elicit a useful response.

20 The MOU includes a rate cap.

21 THE WITNESS: Yes.

22 MR. YOUNG: But also allows VGS to
23 recover amounts above the rate cap in certain
24 circumstances. Has the Department looked at the
25 likelihood -- made some kind of assessment of the

1 likelihood of those circumstances occurring?

2 THE WITNESS: Yeah, I think we have.
3 We had discussions about it. Let me start with the
4 first ones. Let me go to my MOU so I have that.

5 So the vandalism, protests,
6 interference with construction was actually my
7 requirement, that was something I wanted in there.
8 And in part because I wanted to be able to A, not
9 have there be an excuse that the company -- that
10 something happened that was beyond the company's
11 control, but that they were assuming some
12 responsibility for. I wanted to be clear that that
13 was not anticipated.

14 And I also wanted to provide the right
15 incentive to people interfering with construction to
16 understand that that was going to cost ratepayers
17 money, not the company money under that structure. I
18 am fully supportive of protests, and I've enjoyed
19 these people actually quite immensely considering
20 that we were on opposite sides of this. But we have
21 exchanged muffins and pizza and songs and things, but
22 I do not want them interfering with the construction
23 of the project. And they need to understand that
24 that would be a cost incurred by ratepayers
25 potentially as opposed to the company.

1 Then the force majeure is pretty
2 standard, anticipating if there was another Irene
3 during the middle of the construction season, we
4 would have to talk. But we also place the burden on
5 the company to be clearly identifying what those are
6 and to document them, and to -- and we would have
7 full discretion to query the costs associated with
8 that and the real cost impacts of any delay like
9 that.

10 So we have looked at the things that
11 have happened so far, you know, people chaining
12 themselves to some pipe, interfering with some
13 construction, none of those rose to a level that we
14 felt -- and we answered this in discovery, that we
15 felt were significant enough to trigger this
16 provision. So I feel very comfortable that we are in
17 the 134 million range but for some extraordinary
18 things happening.

19 MR. YOUNG: Okay. Let me ask you sort
20 of the broader question. And I know Dr. Hopkins
21 answered this, you know, a few minutes ago, but since
22 you're the Commissioner, I'm going to ask you the
23 same question, which is this MOU is going to have an
24 impact on existing customers, assuming the Board
25 accepts it and denies the pending Rule 60(b) motions.

1 Existing customers will see rates at least initially
2 jump 12.2 percent, that's on top of the amounts they
3 are experiencing -- they are paying under the SERF,
4 the System Expansion and Reliability Fund, of another
5 five percent.

6 Does the Department believe that given
7 those combined rate impacts for existing customers it
8 is in the best interest of the people of the state to
9 construct this project?.

10 THE WITNESS: I'll answer the question
11 first, and then I want to go back a little bit to the
12 characterization.

13 MR. YOUNG: Okay.

14 THE WITNESS: Yes. We still felt that
15 the benefits to the State of Vermont and what was in
16 the good of the state warrants going forward with
17 this project even at the 154 million dollar price tag
18 as we have testified to in June, even under the new
19 assumptions that were in place at that point.

20 Now I understand the need to
21 characterize the cost impact of this on rates so that
22 people get a perspective 12 percent, 15 percent,
23 whatever that may be, but that is not in my mind how
24 this unfolds. In a rate case for the actual what
25 rates are attributable to this and recoverable, plus

1 rate design on how it gets laid out, I can't agree
2 with the assumptions that this impacts any --
3 Franklin County right now any differently than it
4 does new customers or old customers or Dick's great
5 grandchildren are paying for this and why should they
6 have to it do that. That is unknown. And we hear a
7 lot about it out there, in here, I hope it's
8 understood that we would look very carefully at what
9 the rate impact -- what was recoverable in rates as
10 well as what the design of that was to come up with
11 something that works in the benefit of all both
12 existing customers and new customers.

13 MR. YOUNG: Fair clarification there.

14 CHAIRMAN VOLZ: If I could just follow
15 up on that. So I mean in other words, are you saying
16 that we shouldn't assume that the costs of this
17 project are necessarily going to be just spread out
18 over all customers and all customer classes and
19 perhaps in some future rate design case there may be
20 proposals perhaps coming from the Department that
21 more of the cost is probably -- should be assigned to
22 the people who are directly benefiting from it?

23 THE WITNESS: Correct, that may be.

24 CHAIRMAN VOLZ: That's what you're
25 suggesting.

1 THE WITNESS: Yeah, that's what I'm
2 suggesting. And also you have decisions to make
3 about how the SERF fund gets used or not used. So
4 those are fundamental things that have yet to play
5 out here.

6 CHAIRMAN VOLZ: Okay. Thanks.

7 MR. YOUNG: You -- I think you answered
8 the question I was trying to get at. So let me ask
9 you one final area.

10 On page four of your testimony at the
11 bottom you point to the importance of the provision
12 that Vermont Gas cooperate with any further
13 investigations. Do you see that?

14 THE WITNESS: Yes.

15 MR. YOUNG: Starting at line 17. And
16 you state on line 20 that you're not advocating for
17 one now. Is this something that you think the Board
18 ought to be looking at or considering, or right now
19 you're simply preserving the option for the future
20 and don't have any strong views on that?

21 THE WITNESS: I am preserving the
22 option for the future. I think it was necessary to
23 look at this in the context of the prior 60(b)
24 proceedings, and in the context of the penalty
25 discussion that occurred. I have not seen any reason

1 in the last year why we should be concerned about it.
2 I've actually been impressed by both the company's
3 construction and my staff's oversight of this project
4 and inspection work going on.

5 Still, I think the Board should reserve
6 the ability to do this in the future, if needed, and
7 felt like this was one provision that would set that
8 up in the context of this agreement so that there
9 wouldn't be a debate about it if it was felt
10 necessary either by us or by you.

11 MR. YOUNG: Thank you.

12 MS. HOFMANN: So Commissioner Recchia,
13 you actually mentioned a few minutes ago inspections
14 by yourself, it's mentioned a couple of times in your
15 testimony, day-to-day monitoring of construction.
16 And how is that being done by the Department?

17 THE WITNESS: So we have a full-time
18 gas engineer that has been out doing inspections, but
19 we also throughout this construction hired a second
20 inspector under contract that has been out every day
21 there has been construction going on inspecting one
22 component or another, so we have usually had two out
23 there at a time. But always at least one.

24 MS. HOFMANN: Thank you.

25 CHAIRMAN VOLZ: Any follow up to our

1 questions? Mr. Saudek?

2 CROSS EXAMINATION

3 BY MR. SAUDEK:

4 Q. Following up on the previous answers regarding
5 rate design. Wouldn't you agree with me that if you are
6 trying to pick up 3,000 customers and you're spending 134
7 million dollars to do it, I will tell you the math, the
8 math works out to \$44,666 per new customer. Stated
9 differently, 134 million dollars paid for by 50,000
10 customers works out to \$2,680 per customer.

11 Wouldn't you agree with me that it would be
12 very difficult, if not impossible, to build this project
13 without very significant contributions by which I mean in
14 the thousands per customer, from existing customers?

15 A. They are building the project. So it's not
16 impossible to build the project. And what assumptions
17 they are making -- it's clear that the assumptions they
18 are making is that existing customers and the SERF would
19 be used in some fashion. That's not a guarantee, so the
20 company is doing a risk assessment and believing that this
21 type of investment benefits them and their customers,
22 existing and future, and I look at it from the standpoint
23 of does a project of this magnitude benefit the citizens
24 of the State of Vermont. And I think it does.

25 I don't know if I'm answering your question or

1 if I understand the question.

2 Q. Well given the tremendous cost for a new
3 customer in this --

4 A. Well you're testifying at this point, right?

5 Q. Yeah, I am. Almost \$45,000 per new customer.
6 You can take it as you wish. I don't know how many
7 companies spend that kind of money for new customers, but
8 \$44,000, \$45,000 per new customer?

9 MS. PORTER: Mr. Chairman, have we got
10 a question?

11 CHAIRMAN VOLZ: He's getting to it.

12 BY MR. SAUDEK:

13 Q. Given that, is there a realistic likelihood
14 that you can adjust rate design in order to protect
15 existing customers from a significant contribution to that
16 cost?

17 A. I don't know at this time. We will have to
18 see.

19 Q. It would be a challenge, wouldn't it?

20 A. It probably is a challenge. But not even one
21 we have yet been able to focus on.

22 MR. SAUDEK: Thank you.

23 CHAIRMAN VOLZ: Any follow ups to our
24 questions? Redirect?

25 MS. PORTER: No, thank you.

1 CHAIRMAN VOLZ: Okay. Thank you, Mr.
2 Recchia.

3 THE WITNESS: Thank you all.

4 CHAIRMAN VOLZ: So it looks like we
5 finished all the witnesses that were scheduled for
6 today, for this week actually. So I think we are
7 done for the week.

8 Are there any scheduling or other
9 issues we need to talk about today? Did the parties
10 think they need time -- hearing time for any other
11 issues that we need to talk about? Anything else to
12 be addressed today?

13 MS. PORTER: I don't understand.

14 MR. SAUDEK: I'm sorry. I didn't get
15 the question.

16 CHAIRMAN VOLZ: Anything else we should
17 take up today given that we finished with the
18 witnesses?

19 (No response.)

20 CHAIRMAN VOLZ: All right. I think we
21 are done then. Thank you very much. See you next
22 week.

23 (Whereupon, the proceeding was
24 adjourned at 3:55 p.m.)

25

C E R T I F I C A T E

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2
3 I, Kim U. Sears, do hereby certify that I
4 recorded by stenographic means the Technical Hearing re:
5 Docket Number 7970, at the Third Floor Hearing Room,
6 People's United Bank Building, 112 State Street,
7 Montpelier, Vermont, on December 1, 2015, beginning at
8 9:30 a.m.

9 I further certify that the foregoing
10 testimony was taken by me stenographically and thereafter
11 reduced to typewriting and the foregoing 171 pages are a
12 transcript of the stenograph notes taken by me of the
13 evidence and the proceedings to the best of my ability.

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

17 Dated at Williston, Vermont, this 3d day of
18 December, 2015.

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