

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 9, 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 9, 2015, beginning at
9:30 a.m.

P R E S E N T

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Sarah Hofmann

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1 CHAIRMAN VOLZ: Good morning, everyone.
2 I would like to get started. We are here this
3 morning for Docket Number 7970, which is a continued
4 hearing in the petition of Vermont Gas Systems,
5 Incorporated for a Certificate of Public Good
6 authorizing the construction of the Addison Natural
7 Gas Project.

8 I would like to start by taking notice
9 of appearance. And I guess I need to use the
10 microphone.

11 MEMBER OF THE PUBLIC: Thank you.

12 CHAIRMAN VOLZ: Everyone else -- I
13 would urge everyone else to use the microphone as
14 well.

15 So I'll start by taking notices of
16 appearance.

17 MS. PORTER: Louise Porter and Timothy
18 Duggan for the Department of Public Service, and with
19 us today is Commissioner Christopher Recchia.

20 CHAIRMAN VOLZ: You may need to lean
21 in. You don't need to do over, but in the future.

22 MR. SAUDEK: I'll lean in.

23 CHAIRMAN VOLZ: Is it on? Is yours on?

24 MR. SAUDEK: Richard Saudek for the
25 Vermont --

1 CHAIRMAN VOLZ: Is the green light on?
2 I don't hear you very well.

3 MR. SAUDEK: Yeah, I think it's on.
4 Nope. It wasn't.

5 Okay. Richard Saudek for the Vermont
6 Fuel Dealers Association. With me is Matt Cota, the
7 Executive Director.

8 CHAIRMAN VOLZ: May need to share a
9 microphone, so can you pass your microphone down?

10 MS. PALMER: Jane and Nathan Palmer and
11 about 15, 20 members of the public.

12 MS. LEVINE: Sandra Levine,
13 Conservation Law Foundation.

14 MR. DUMONT: James Dumont. Is this on?

15 CHAIRMAN VOLZ: Press the button.

16 MR. DUMONT: James Dumont for AARP.
17 James Dumont for AARP and Ms. Lions, -- Ms. Taormina
18 and Ms. Lions are here.

19 CHAIRMAN VOLZ: I would say once you
20 used the microphone you need to shut it back off.

21 MR. ZAMORE: Peter Zamore, Sheehey,
22 Furlong & Behm for Vermont Gas. With me also
23 appearing is Kim Hayden Downs, Rachlin & Martin; Don
24 Rendall, Eileen Simollardes, Beth Parent and Lauren
25 Hammer.

1 CHAIRMAN VOLZ: Thank you. Are there
2 any preliminary matters we need to take up before we
3 start with our first witness?

4 MR. ZAMORE: We did discuss two issues.
5 And it's up to the Board whether we address them now
6 or -- one is the motion to admit the MOU. I believe
7 there is no objection to admitting it.

8 And the second is there are going to
9 likely be issues concerning the scope of the cross
10 examination of some of the witnesses which we believe
11 is outside the scope of the Board's order.

12 CHAIRMAN VOLZ: Okay. And Mr. Dumont,
13 when we were here last, you weren't here, and there
14 was -- a number of things were admitted into evidence
15 subject to your opportunity to object if you wanted
16 to object. And I understand you don't have
17 objections to those items.

18 MR. DUMONT: Yes. I read the
19 transcript, and I have no objection.

20 CHAIRMAN VOLZ: Okay. Thank you. So
21 all of those items from last time are admitted. Does
22 that clarify --

23 MR. ZAMORE: That clarifies.

24 CHAIRMAN VOLZ: -- that issue?

25 MR. ZAMORE: The issue of the MOU and

1 the issue of the scope of the cross examination, we
2 can take up now or take it up when it arises.

3 CHAIRMAN VOLZ: Why don't we take it up
4 when it arises.

5 MR. ZAMORE: Okay.

6 CHAIRMAN VOLZ: So are we ready for our
7 first witness?

8 MR. ZAMORE: Vermont Gas calls Don
9 Rendall.

10 MS. CHENEY: Good morning, Mr. Rendall.
11 I will remind you that you remain under oath in this
12 Docket.

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1 DONALD J. RENDALL, JR.

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

4 THE WITNESS: Thank you. I understand.

5 DIRECT EXAMINATION

6 BY MR. ZAMORE:

7 Q. Please state your name for the record.

8 A. Donald Rendall.

9 MR. ZAMORE: Witness is available for
10 cross examination.

11 CHAIRMAN VOLZ: Mr. Dumont?

12 MR. DUMONT: Thank you.

13 CROSS EXAMINATION

14 BY MR. DUMONT:

15 Q. Good morning, Mr. Rendall.

16 A. Good morning, Mr. Dumont.

17 Q. Do you have the MOU in front of you?

18 A. Yes.

19 Q. Do you have your prefiled testimony?

20 A. Yes.

21 Q. And do you have your -- the excerpt from Mr.
22 Rome's prefiled testimony dated March 27, 2015, that I've
23 provided to everybody, and that is Exhibit W, pages four
24 through six of what's already in evidence and made it
25 Exhibit W.

1 A. I have Exhibit W in front of me.

2 Q. Thank you. Page two of the MOU paragraph five
3 says: "Whereas Vermont Gas believes that the Addison
4 project is on time and on budget, a material delay in
5 resolution of the 60(b) proceeding or in achieving
6 construction access to rights of way, seriously risks the
7 Addison project's completion."

8 Did I read that correctly?

9 A. Yes.

10 Q. And on page five of your prefiled lines 14
11 through 20, do you discuss that risk, or should I say --
12 let me ask a better question.

13 Do you discuss the risks of what in your
14 opinion are the risks of material delay?

15 A. Yes.

16 Q. So on page five you say: "As it pertains to
17 the cost of the project, delay in completion of the
18 project beyond 2016 will seriously risk increased project
19 costs in a variety of ways," and then you list the ways;
20 correct?

21 A. Yes.

22 Q. Now Mr. Rome is an expert on cost; is he not?

23 A. Yes.

24 Q. He works with Price Waterhouse.

25 A. Yes.

1 Q. And Price Waterhouse works for Vermont Gas?

2 A. Yes, we have engaged Price Waterhouse to
3 provide project management.

4 Q. Is he the most reliable witness you know of on
5 the cost aspects of this project?

6 A. He is a reliable witness on the cost aspects
7 of this project as they relate to the work that the --
8 that the company and Price Waterhouse did to complete the
9 budget estimate for the current budget, and as it relates
10 to our managing the project within the scope of that
11 budget.

12 Q. So if you turn to page four of the Rome
13 testimony, the bottom of the page he is asked about
14 schedule assumptions. And then on page five he has a
15 little graph in color about the existing schedule, and
16 then he discusses that, do you see that?

17 A. Yes, I see it.

18 Q. And then question 8 on the bottom of page five
19 he is asked this question. "Is the March 2016 phase one
20 completion date still expected to be achieved?" And does
21 he answer on page six: "No, as a result of delays in
22 right of way acquisitions and additional regulatory
23 proceedings, VGS is now planning to complete construction
24 in the fall of 2016. We have analyzed the potential
25 impact of this schedule adjustment and it does not change

1 the 150 million dollar cost estimate."

2 Did I read that correctly?

3 A. Yes.

4 Q. So he's talking about what is a six-month
5 delay caused zero increase in the cost?

6 A. Six months of delay caused no increase in the
7 overall budget.

8 Q. So he knows more about this than you do,
9 agreed?

10 A. Yes.

11 Q. So when you wrote your prefiled testimony at
12 page five, you had the opportunity to consult with and
13 obtain prefiled testimony from Mr. Rome; correct?

14 A. I wrote my prefiled testimony in the best way
15 I knew how to convey the facts that I wanted to convey in
16 my testimony and the opinions that I wanted to convey.

17 Q. Well that's what I'm interested in. Are they
18 fact or are they opinions, Mr. Rendall?

19 A. Well there are both in here.

20 Q. If there were facts, we would want them from
21 Mr. Rome, would we not?

22 A. Depends on what you're talking about.

23 Q. Well you're trained as a lawyer; correct?

24 A. I am trained as a lawyer. Yes.

25 Q. And practicing law until this past fall;

1 correct?

2 A. I practiced law for a long time.

3 Q. Several decades? Not as many as I have, but
4 several.

5 A. Not as many as you have, but I've practiced
6 law for a long time.

7 Q. Have you ever testified as an expert on
8 economics?

9 A. Yes.

10 Q. And costs?

11 A. Yes.

12 Q. Is there a reason -- I take it you did not
13 consult with Mr. Rome in preparing your testimony, am I
14 correct?

15 A. I consulted with a variety of project members
16 in connection with my oversight of the project team and in
17 connection with my duties as the company's president, and
18 of course, those check-ins, those -- all that work
19 informed my testimony. So --

20 Q. So is the work that you did preparing this
21 testimony as reliable, more reliable, or less reliable
22 than the cost estimates that Clough Harbor prepared that
23 we found out were quite wrong?

24 A. I'm not familiar with the Clough Harbor work
25 that you're talking about.

1 Q. So the record is clear, you did not consult
2 with Mr. Rome in preparing this testimony?

3 A. No, the record is clear that I consulted with
4 a variety of project personnel that would have included
5 Mr. Rome in the course of all of my work which informed my
6 preparation of this testimony.

7 Q. Can you tell us why Mr. Rome testified under
8 oath that the delay of about six months that he was
9 addressing would cause no increase in cost, but your
10 testimony says that delay will cause increase in costs?

11 A. There was a significant change in the way that
12 the project was scheduled between the time that we did the
13 original resetting of the cost in December of 2014, and
14 when we made the decision to reschedule the timing of the
15 construction which is reflected in Mr. Rome's testimony of
16 March of 2015. And we were able to make those changes in
17 the construction schedule without changing the overall
18 budget of the project.

19 It was a shift during a construction season
20 from March to the end of the construction season. That is
21 a very different shift than having to move from one
22 construction season into another construction season with
23 a significant amount of work still to accomplish in a
24 following year.

25 Q. You've lost me here, Mr. Rendall. Mr. Rome's

1 prefilled on page five says: "The initial schedule called
2 for completion at the end of the 2014 construction
3 season;" correct? December of 2014. Top of page five.

4 A. It is my recollection he --

5 Q. Let's do this my way if you don't mind. Let's
6 start with the exhibit. What does Mr. Rome say under
7 oath?

8 A. You'll have to point me to a line and a page
9 number if we are going to do it your way, Mr. Dumont.

10 Q. Top of page five in VGS's original estimate
11 filed in December of 2012 the project schedule
12 contemplated construction completion in December of 2014.
13 Right? Yes or no?

14 A. That's what the testimony says.

15 Q. So the delay beyond that did put you into a
16 new construction season; correct?

17 A. Oh, between 2014 and 2016, oh, yes.

18 Q. And he testified that that pushing into the
19 next construction season caused no added costs?

20 A. That's not what he says.

21 Q. Top of page six, we will read it again. "As a
22 result of" -- "as a result in delays and right of way
23 acquisitions and additional regulatory proceedings, VGS is
24 now planning to complete construction in the fall of 2016.
25 We have analyzed the potential impact of this schedule

1 adjustment and it does not change the 154 million dollar
2 cost estimate."

3 A. You've neglected to state the question which
4 is: "Is the March 2016 phase-one completion date still
5 expected to be achieved?" And the response to the
6 question was "The difference between March and later in
7 2016." Not the difference between 2014 and 2016, Mr.
8 Dumont. And that's very clear in the testimony as you
9 well know.

10 Q. So going from March to the fall completion in
11 March basically means you're completing at the end of
12 2013.

13 A. 2016.

14 Q. I'm sorry. Completion in March of one year
15 means you are basically completing in the fall of the
16 prior year?

17 A. No.

18 Q. You're going to work right through the winter?

19 A. Yes. That was what the original contemplated
20 schedule --

21 Q. What difference does the construction season
22 make in your testimony?

23 A. The construction during the winter months is a
24 much more expensive proposition.

25 Q. Can you explain to us why you have been

1 presented as an expert on the costs of delay rather than
2 having Mr. Rome come in?

3 A. I am testifying here on the subject of the
4 Memorandum of Understanding and the judgments that went
5 into the Memorandum of Understanding, Mr. Dumont.

6 Q. So going back to your testimony, page five,
7 you list what in your opinion will be the increased costs
8 from delay. One is construction costs; correct? Page
9 five line 16.

10 A. I say that: "Delay in completion of the
11 project beyond 2016 will seriously risk increased project
12 costs in a variety of ways," and I list them, yes.

13 Q. One is construction costs, second is project
14 management costs?

15 A. Yes.

16 Q. And those depend on the season?

17 A. Yes. They are influenced by the season.

18 Q. And is this an area within your expertise?

19 A. It's an area that I'm confident to be able to
20 testify about in a general way.

21 Q. What about overhead? How does delay -- how is
22 overhead related to season?

23 A. It is principally not related to season. It
24 is -- there are aspects of it that would be related to
25 season with respect to the -- how we deployed resources

1 during various times during the year.

2 Q. So I want to go back to Mr. Rome's testimony
3 again if you don't mind. Page six. He states: "As a
4 result in delays," which I think should have been "of
5 delays, as a result in delays or of delays, in right of
6 way acquisitions and additional regulatory proceedings VGS
7 is now planning to complete construction in the fall of
8 2016."

9 In connection with that I would like you to
10 turn to Exhibit O.

11 A. I am -- I'm not sure I have an Exhibit O. See
12 if I can keep these in order. I have Exhibit O.

13 Q. At this point I would ask that we also show
14 the witness Exhibit U which will expedite the testimony
15 and examination.

16 A. Exhibit U? Do I have Exhibit U?

17 MR. ZAMORE: I hope.

18 MR. DUMONT: I have extras.

19 THE WITNESS: All right. Mr. Dumont, I
20 have Exhibit O, Cross O and Exhibit AARP Cross U.

21 MR. DUMONT: Going to wait until
22 everybody has them. U is the demonstrative exhibit.

23 CHAIRMAN VOLZ: We have it.

24 BY MR. DUMONT:

25 Q. Let's start with -- and Mr. Rendall, you're

1 free to look at Exhibit U to speed this up. Let's start
2 with Mr. Berger's expert testimony filed by the Department
3 in 2013. Have you had a chance to review that?

4 A. Not recently.

5 Q. Have you ever seen it?

6 A. I have seen it at one point. Yes.

7 Q. So do you agree with me that initially Mr.
8 Berger filed expert testimony on behalf of the Department
9 about pipeline safety standards?

10 A. I don't recall specifically what he testified
11 about. I would have to see the testimony. I'm not
12 disputing that. I just don't remember how you're
13 characterizing it is accurate.

14 Q. So why don't you look at Exhibit F which is in
15 evidence already. It's Mr. Berger's 8/14/13 testimony.

16 CHAIRMAN VOLZ: Is that in the stack
17 that we have on our desk?

18 MR. DUMONT: Yes.

19 THE WITNESS: I have Exhibit F. Hang
20 on. I have it.

21 BY MR. DUMONT:

22 Q. If you turn to page six.

23 A. I have page six.

24 Q. For ease of reading I've included it as
25 Exhibit E, pages 50 through 54 of the Board's order from

1 December 23. Finding 246 in the Board's order which is in
2 the pile -- I'm sorry. Finding 264 not 246 states: "The
3 construction of the pipeline will be done under a quality
4 assurance plan which addresses pipe inspection, hauling
5 and stringing, field bending, welding, non-destructive
6 examination of girth welds, applying and testing field
7 applied coating, lowering of the pipeline into the ditch,
8 padding and back filling and hydrostatic testing." And
9 the Board cites Berger Rebuttal Prefiled at page 6. And
10 that's the page I'm directing you to now.

11 A. I have page six.

12 Q. And is that in front of you? I'm going to
13 read finding 265. "Vermont Gas will have a quality
14 assurance inspection and testing program for the pipe
15 coating that will cover the surface quality of the bare
16 pipe, surface cleanliness and chlorides, blast cleaning,
17 application temperature control adhesion, cathodic or
18 cathodic disbondment, moisture permeation, bending,
19 coating fitness, holiday detection and repair," that also
20 cites to page six. You see on page six that Mr. Berger
21 says that discusses those subjects?

22 A. I see a lot of testimony on page six which is
23 highlighted and I see the -- in answer to the first
24 question on page six that he references a quality
25 assurance inspection and testing program for coating.

1 Q. And if you could turn to page two of Mr.
2 Berger's prefiled exhibit, Exhibit F, page six is within
3 the caption of agreed safety -- additional safety
4 measures, meaning safety measures that Vermont Gas had
5 agreed to.

6 A. Okay. And what page am I going to next?

7 Q. That's page two.

8 A. Okay.

9 MR. ZAMORE: Can you identify the line?

10 MR. DUMONT: Line one. And line two.

11 THE WITNESS: I see line one and two,

12 yes.

13 BY MR. DUMONT:

14 Q. Am I correct that Vermont Gas did not submit a
15 quality assurance program -- sorry, a quality assurance
16 plan to the Department of Public Service for approval
17 until after construction had started? Are you aware of
18 that?

19 A. No.

20 Q. Have you ever seen Exhibit O before?

21 A. No.

22 Q. As part of your duties as president of the
23 company do you stay on top of concerns the Department of
24 Public Service has about safety?

25 A. Yes.

1 Q. So have you been made aware of the concerns
2 the Department has about violation of the safety practices
3 Mr. Berger described in his prefiled testimony over the
4 course of construction?

5 A. I've been made aware of active and vigorous
6 discussion between the Department's staff and the project
7 team over quality assurance in particular during the weeks
8 shortly after I arrived at the company.

9 Q. Do you agree construction started in 2014?

10 A. Yes.

11 Q. And do you agree that the company did not have
12 a quality assurance plan for welding until sometime in
13 2015?

14 A. No.

15 Q. When did the company have a quality assurance
16 plan?

17 A. I'm confident that the company had and has had
18 for many years, a quality assurance program relating to
19 welding.

20 Q. Are you aware that the Department issued a
21 written notice of violation to the company in 2014 for
22 defective welding?

23 A. I recall a notice. I don't recall the
24 specifics as I'm sitting here. But I do recall that the
25 company received a notice from the Department, and I

1 recall the company received many follow-on requests from
2 the Department's staff relating to safety and compliance.
3 And we continue to do that as part of the Department's
4 oversight of the project.

5 Q. If you could turn to Exhibit O page one. The
6 entry for January 6, 2015.

7 A. Okay. Do you want me to read it?

8 Q. Well does it state -- and this is -- I'll
9 represent to you this is a document we obtained from the
10 Department of Public Service in discovery. Does it state:
11 "Subject matter experts in quality control and pipeline
12 construction which were recently retained by the company
13 continued to develop written procedures related to these
14 activities with particular attention to the company's
15 welding program."

16 MR. ZAMORE: I'm going to object. I
17 let this go on for awhile. To the extent that the
18 inquiry relates to impact on schedule, we have no
19 objection. But this examination seems to be
20 addressing specifically safety issues, and we believe
21 that the Board's November 2 order identified the
22 scope of the hearing, and that scope was to address
23 the Over and Under documents, and to address the
24 impact of the MOU on the hearings for the second
25 remand hearings and the briefing. And the MOU does

1 not address safety, and that scope was not objected
2 to by AARP.

3 We believe that the questions about
4 safety go beyond the scope as identified --
5 established by the Board.

6 CHAIRMAN VOLZ: Mr. Dumont.

7 MR. DUMONT: Yes. What I will show
8 with this witness, if I'm allowed to, is that the
9 safety problems became cost problems, and the safety
10 problems became delay problems. Construction halted
11 because they couldn't meet the safety standards.

12 MR. ZAMORE: If the counsel wants to
13 ask the witness directly what impact safety problems
14 had on cost or on schedule, we have no objection.
15 What we have an objection to is going through all of
16 these documents without establishing that that --
17 that there is a relationship that AARP suggests.

18 MR. DUMONT: That's what I intend to do
19 by going through the documents. I will establish
20 their relationship.

21 MR. ZAMORE: We are getting there in a
22 fairly winding way. And it would seem to me that he
23 hasn't demonstrated that there has been a
24 relationship, and we would like that established as a
25 foundation.

1 CHAIRMAN VOLZ: Mr. Dumont, we have a
2 similar concern, so if you could bring forward your
3 point a little more quickly, that would be helpful.

4 BY MR. DUMONT:

5 Q. Mr. Rendall, am I correct that pipe that had
6 been installed by the company had to be ripped out because
7 it had been defectively installed?

8 A. I don't recall that as I'm sitting here. I
9 don't recall anything being uninstalled or taken out of
10 the ground. I just don't recall.

11 Q. Are you saying you never heard of that before
12 I mentioned it, or you have a vague recollection and can't
13 remember it?

14 A. No, the -- we did -- construction ended at the
15 end of the construction year in 2016. We spent the winter
16 focusing on getting ready for -- excuse me, 2014. We
17 spent the winter getting ready for construction in 2015.

18 We did a lot of work around looking at the
19 concerns that the Department had, looking at the way that
20 we could advance this project in a way that was fully
21 consistent with both the concerns that the Department had
22 raised, and with our focus on doing this job safely,
23 reliably and effectively. So we did a lot of that work.

24 CHAIRMAN VOLZ: Let him finish his
25 answer and then you can ask the question.

1 MR. DUMONT: My fault. I apologize.
2 Did I cut you off?

3 THE WITNESS: There was a lot of work
4 done in the field and in the office, and in
5 connection with getting ready for the 2015
6 construction season relating to safety, reliability,
7 compliance.

8 BY MR. DUMONT:

9 Q. Turn to page four of Exhibit O. The entry for
10 March 31. Middle of the paragraph: "Engineers
11 Construction, Inc. removed approximately 130 feet of pipe
12 which exhibited unacceptable damage to its corrosion
13 protective coating caused during installation." Do you
14 see that?

15 MR. ZAMORE: I'm going to object again.
16 I still don't see any establishment of a relationship
17 between these issues and either the schedule, which
18 as Mr. Dumont elicited is to complete the project at
19 the end of 2016, or an impact on the budget which is
20 153.6 million dollars.

21 CHAIRMAN VOLZ: Mr. Dumont?

22 MR. DUMONT: This is directly relevant
23 to the schedule and the cause of delay. What we will
24 see here is that construction halted. What we will
25 see is that the information -- this is where it's

1 going, is the information Mr. Rome was given about
2 cost as is shown on page five of his prefiled, he was
3 told that the delay was because of regulatory
4 proceedings and right of way issues.

5 In fact, if you go through this
6 document, construction was halted because they could
7 not meet safety standards. It had nothing to do with
8 the reasons Mr. Rome based his testimony on which
9 then goes to where I want -- what I would like to
10 pursue with this witness is if Mr. Rome was never
11 told of this really distressing history of a repeated
12 safety violations, and not just 130 feet but 800 feet
13 of pipe being ripped out and then them finding a
14 total of defective installation in four locations
15 total, if Mr. Rome didn't know about that in doing
16 his cost estimating that goes to the credibility and
17 the reliability of his cost estimate. And it appears
18 from this prefiled he didn't know that. He was told
19 the delay was caused by something else.

20 MR. ZAMORE: Had Mr. Dumont addressed
21 this directly rather than circuitously as he has, he
22 would understand that Vermont Gas filed the most
23 recent cost update in October of this year, well
24 after the testimony and well after all of the events
25 that Mr. Dumont is going laboriously through.

1 So if he wants to ask whether or not
2 this cost update is affected by the work that has
3 been done before in a way that affects the budget
4 from 153.6, then he should ask that, and then there
5 would be a foundation. Otherwise, all he's doing is
6 rehashing old testimony that -- and focusing on
7 safety. We object.

8 CHAIRMAN VOLZ: Mr. Dumont.

9 MR. DUMONT: I don't believe there is
10 any old testimony on these issues. We didn't find
11 out about these issues until I got the discovery
12 answer from the Department two weeks ago.

13 MR. ZAMORE: My point is that we filed
14 a cost update in October which is after all of the
15 events that Mr. Dumont is testifying to. And based
16 on that recollection there should be a better
17 foundation established as to how all these events
18 that occurred prior to the most recent update affect
19 the most recent update.

20 MR. DUMONT: Mr. Rome's not here. The
21 company chose not to bring him. The company is
22 asking the Board to rely on Mr. Rome's estimates from
23 June. We have just learned that Mr. Rome believed
24 that the cause for the delay up until that point had
25 nothing to do with safety violations and ripping out

1 pipeline and being told you must stop work, which the
2 only logical conclusion is that either Mr. Rome lied
3 under oath, which seems very unlikely, he seemed like
4 a pretty honest and sincere person, or nobody told
5 him of all the safety problems and the pipeline
6 having to be removed. And therefore his estimates
7 could not have been based on this information.

8 CHAIRMAN VOLZ: How does it matter what
9 caused the delay if the estimates were based on the
10 fact of delay?

11 MR. DUMONT: It goes to the credibility
12 of the existing estimate whether it's 134 or 154.

13 MS. HOFMANN: But there is also a cap
14 in there, Mr. Dumont. So how does that come into
15 play? So now there is the cap of 134. So let's say
16 the costs go up -- how does that come into your
17 argument?

18 MR. DUMONT: Well if the question is
19 should we just assume the worst and assume that the
20 project will cost 154 or 174, and we don't have to
21 worry about it because there is a cap of what will go
22 into rate base of 134, if that's the point of the
23 question, that's actually not a correct summary of
24 where we are, because the cap has numerous
25 exclusions, and we don't know how they will come into

1 play. We don't know if repeat actions such as this
2 will count as material delay if this happens again.

3 MR. ZAMORE: That could be readily
4 addressed by asking the witness exactly that
5 question.

6 MR. DUMONT: Well I would rather
7 perform my own cross rather than have Mr. Zamore do
8 it for me.

9 CHAIRMAN VOLZ: Excuse us.

10 (Pause).

11 CHAIRMAN VOLZ: The objection is
12 overruled. We are going to continue.

13 MR. DUMONT: I'll try and speed it up.

14 CHAIRMAN VOLZ: Okay. Thank you.

15 BY MR. DUMONT:

16 Q. Mr. Rendall, if you could turn to page nine of
17 the exhibit. Exhibit O. I'm sorry. Page eight. The
18 entries for July 8. See if you can look at it carefully
19 and see if it refreshes your recollection that pipe was
20 damaged during installation in four different locations.

21 A. There is a lot of texture. Do you want me to
22 take the time to read all of it, or do you want to point
23 me to a particular place?

24 Q. July 8, 2015.

25 A. Okay. I'm reading this, and I'm just not

1 seeing what you're referring to here.

2 Q. Okay. Well I'll represent to you that if you
3 look at July 1, the Department reports that there was a
4 second damaged pipe that was installed in Essex in July 8,
5 they find two more locations, so it's locations three and
6 four of pipeline that was damaged during installation.

7 MR. ZAMORE: Are you asking him a
8 question or reading from a document that's not yet in
9 evidence?

10 MR. DUMONT: I'm reading from Exhibit
11 O.

12 MR. ZAMORE: So are you asking him
13 whether in fact the exhibit says that?

14 MR. DUMONT: I'm trying to speed it up.
15 But if you object, I'll ask him to take the time to
16 read July 1 and July 8 entries.

17 THE WITNESS: I believe I see the place
18 on July 8 that you're referencing.

19 BY MR. DUMONT:

20 Q. If you turn back to page seven, do you see the
21 incident -- the example in Essex of pipeline that was
22 damaged during installation?

23 A. Yes.

24 Q. Okay. So we have the first site which is at
25 the interstate in Williston. Then there is a second site

1 in Essex. And then there is sites three and four that
2 come to light on July 8.

3 A. Yes.

4 Q. Okay. If you could turn to July 22 Exhibit O
5 page nine. Second paragraph. See if I'm reading this
6 correctly.

7 "Previously the gas engineer informed a VGS
8 representatives that critical elements were missing from
9 each of the programs referenced above. These elements
10 include adequate criteria for inspection of production
11 welding processes, methods to identify root causes of non-
12 conforming conditions, methods to monitor the efficacy of
13 corrective actions, specific task training modules for
14 construction personnel, and individual skill assessment
15 verifications."

16 Did I read that correctly?

17 A. Yes.

18 Q. And you agree that the Department of Public
19 Service's engineer informed your company these were
20 critical elements missing from the QA plan?

21 A. I see those words on this page on an exhibit
22 that I have never seen before. And I recall that we
23 worked very closely with the Department's gas engineer to
24 address opinions that he had, concerns that he had, about
25 what he wanted in certain written materials, and that this

1 references that. And we were able to accommodate him in
2 the normal course as you would expect us to do.

3 Q. Had he -- we were here last in June. In
4 answer to Chairman Volz's question you testified that
5 "between 60 and 70 million dollars had been spent on the
6 project by June 22." Correct?

7 A. That sounds about right.

8 Q. So by June 22 these critical elements were
9 still missing from the company's quality assurance plan.

10 A. I disagree with that.

11 Q. Why?

12 A. Because we had a quality assurance program.
13 We were working with a quality assurance program. We had
14 a number of discussions with the Department about where
15 the Department's engineer wanted to see specific language
16 and specific documents. And we ultimately -- we got to a
17 resolution of all of those issues, and I'm sure we will
18 have more as time goes on.

19 That's part of the give and take of the
20 regulatory oversight process. I'm confident that the
21 company has had good quality assurance around the project
22 and all of the construction that we have done, the pipe
23 that's in the ground. I'm confident that we have good
24 quality assurance programs in place now, and I'm confident
25 that we will continue to work with the regulators to deal

1 with issues in the field as they arise in an appropriate
2 way, just as we did with respect to the examples that you
3 described a few minutes ago which are not unusual, and
4 which were all taken care of in the normal course in an
5 appropriate way.

6 Q. So are you aware that 800 feet of pipe that
7 had been installed by the company had to be removed, taken
8 out from an HDD site?

9 A. I don't recall the specific number of feet. I
10 recall an HDD site, a horizontal directional drill site
11 where the pipe was installed, where the pipe did not meet
12 our quality assurance. And the pipe was taken out and was
13 reinstalled successfully.

14 Q. Actually didn't meet the Department's quality
15 assurance because the Department ordered inspection done.
16 Are you aware of that?

17 A. It didn't meet either of our inspections, sir.

18 Q. If you look at -- rather than walk you through
19 this, are you aware that the Department found --
20 Department's engineer found that the quality assurance
21 inspection program was -- of the company was inadequate?

22 A. I'm aware that the Department's engineer had
23 concerns from his point of view about the company's
24 quality assurance program. Yes.

25 Q. And in April construction was suspended to try

1 and figure out what was wrong with the quality assurance
2 program?

3 A. We were -- we closed down construction
4 effectively at the end of 2014, and we picked it up again
5 in approximately April of 2015. I think I have those time
6 frames about right.

7 Q. Well if you could turn to Exhibit O page four,
8 the entry for April 8. Am I reading this correctly?
9 "Construction activity at the site of the pipeline
10 crossing under I-89 in Williston was suspended this report
11 period to allow VGS and Engineers Construction, Inc. to
12 analyze pipe exhibiting damage caused during
13 installation."

14 A. I see those words. Yes.

15 Q. But according to you there was no construction
16 going on then anyway.

17 A. I believe I said in April.

18 Q. No. This is saying construction was suspended
19 in April.

20 A. Well so -- my time frame may not have been
21 perfect. As I said, my recollection was April. In
22 looking at this it appears that there was some drilling
23 activity going on between March 31 and April 8. I stand
24 corrected.

25 Q. Well let's see if we need to make any more

1 corrections. Look at the next entry at the top of page
2 five, April 15, 2015. "VGS has halted all construction
3 activities related to phase one of the Addison
4 transmission project including current pipeline
5 installation by horizontal drilling in Williston. The
6 company has informed the Department gas engineer that it
7 is reorganizing its technical personnel and has entered an
8 agreement with an established engineering firm to assume
9 construction management following the suspension."

10 A. I'm sorry. Could you just help me on -- where
11 on the page?

12 Q. Top of page five.

13 A. I'm sorry. So this is on the April 15?

14 Q. Yes.

15 A. Okay. Let me look at that. I see the words.
16 I'm not sure what they mean. What I recall during that
17 period is we were working on horizontal directional
18 drills. We were working with the Department on some
19 concerns that the Department's engineer had around quality
20 assurance. And we were -- and we did that in an
21 appropriate, a workmanlike way, and we successfully worked
22 our way through those, all of those issues, and those
23 drills were successfully completed.

24 Q. And part of working through those issues was
25 that in May 800 feet of pipeline had to be -- that had

1 been installed had to be removed, if you look at the entry
2 on May 13, bottom of page five.

3 A. On -- in approximately May, I'm working from
4 my memory not from this exhibit wherever it comes from, we
5 did reinstall a horizontal directional drill in the spring
6 of 2015 because the pipeline did not meet our quality
7 assurance standards. Yes.

8 Q. So these four segments that are discussed in
9 the exhibit are all HDD segments; correct?

10 A. I believe they are.

11 Q. I'll represent to you that the document says
12 that.

13 A. I believe they are.

14 Q. How many HDD segments are there in the
15 remaining portions of the pipeline?

16 A. We are working on one today which is itself
17 experiencing some challenges in the moment here. When I
18 was here last week we talked about our schedule to pull --
19 to pull test pipe within a couple of days. We did that.
20 The pull was unsuccessful. We now have a piece of
21 equipment actually stuck in the drill hole, and we are
22 working on that. So we have got that drill ongoing. And
23 it is a challenge. And we have -- after that drill is
24 completed, there are I believe it is nine horizontal
25 directional drills that remain to be completed to complete

1 the project.

2 Q. Let me see if I can refresh your recollection.
3 Turn to July 8 which is page 8 of 13. Second paragraph.
4 Bottom of the paragraph, there are a total of 16
5 additional HDD installations to be done; correct?

6 A. No. I don't agree with that as I consider
7 them. There are -- there were at that time -- let me
8 think about this. There were some HDD installations that
9 we were doing in the 2015 construction season which we
10 have completed. And as I'm sitting here I can't remember
11 how many of them, but there was more than one. And we are
12 one, two, three or four. There is one that's in process
13 and there are nine to go. I'm quite confident that nine
14 is the correct number of horizontal directional drills
15 that we have on our list for completion in 2016.

16 Q. Okay. So let's get back to cost and delay.
17 When you have to rip out 800 feet of pipeline and then
18 reinstall it, does that add to project cost?

19 A. I object to your characterization of ripping
20 out. We install pipeline, and then we take it out if it
21 does not meet compliance standards, and then we reinstall
22 it.

23 Q. How much did it cost to install the 800 feet
24 of pipeline under the interstate in Williston and then
25 remove it?

1 A. I don't know.

2 Q. Many millions of dollars?

3 A. No.

4 Q. A million?

5 A. I don't know. We have -- essentially we have
6 a contract with a contractor, and the -- and we have an
7 allocation of risks. I don't know what the -- what the
8 specific costs were of doing that work.

9 Q. How much did that process -- how long did that
10 delay your construction schedule?

11 A. Well it delayed the construction schedule for
12 completing that particular horizontal directional drill.
13 It did not delay the construction schedule that we had
14 either for the first segment which is the first 11 miles
15 or for the overall project.

16 Q. So if an event like happened at Williston
17 happens in the rest of the project, will that qualify as
18 an event that takes you outside the 134 million dollar
19 cap?

20 A. No.

21 Q. Why not?

22 A. Because that is the risk that we have agreed
23 to accept, it's construction risk. And that's on us.

24 Q. Okay. And if it causes delay and costs go up
25 because of delay, what then?

1 A. That is -- those are delay -- those would be
2 delay-related costs that the company would be responsible
3 for. It would not be included in the cap.

4 Q. So as we sit here today, has the company
5 submitted a quality assurance plan for installation of
6 pipeline that the Department has said meets its approval?

7 A. I believe so.

8 Q. And when did that happen?

9 A. I don't recall the specific date.

10 Q. Sometime in the last couple months?

11 A. I just don't know. This quality assurance
12 plan and documentation has been an ongoing discussion with
13 the Department over pretty much the entire time that I
14 have been at the company. And we have worked to
15 accommodate the engineer's concerns.

16 We have a quality assurance plan and a quality
17 assurance manual that is way over and above all of the
18 applicable codes. And we are -- and we will continue no
19 doubt to work with the Department to address any concerns
20 that the Department's engineer has, and resolve them in an
21 appropriate way as we have done.

22 Q. So let me ask you some more questions about
23 the MOU and how the MOU does or does not relate to the
24 pending motions.

25 I'm sure you're aware that in its October 10,

1 2014 ruling the Board found that cold-climate heat pumps
2 at residences provide the same financial savings to
3 homeowners and the same environmental benefits as
4 conversion to natural gas. Finding number 10 stated from
5 a residential customer perspective, and societal
6 perspective, the net benefits of switching from oil and
7 propane to cold-climate ductless heat pumps are comparable
8 to the net benefits of switching to natural gas, do you
9 recall that?

10 MR. ZAMORE: I'm going to object to
11 this question too. It's not relevant to the MOU.
12 Could you make an offer?

13 MR. DUMONT: The Board's order
14 specifically said that the purpose of the hearing was
15 to see how the MOU relates to pending motions.

16 MR. ZAMORE: Yeah.

17 MR. DUMONT: This -- our motions
18 pertain to -- our motions specifically address the
19 testimony about -- we had testimony on this heat pump
20 issue in June and July, which the Board hasn't ruled
21 on yet. So it relates to the same subject as Mr.
22 Neme's testimony and Mr. Hopkins -- Dr. Hopkins'
23 testimony which hasn't been ruled on yet.

24 MR. ZAMORE: You're saying the MOU
25 affects the testimony on heat pumps.

1 MR. DUMONT: That's what I want to ask
2 the witness.

3 MR. ZAMORE: Okay. Fine.

4 THE WITNESS: I'm sorry.

5 CHAIRMAN VOLZ: So continue, Mr.
6 Dumont.

7 MR. DUMONT: I haven't asked the
8 question yet.

9 BY MR. DUMONT:

10 Q. Are you aware that in that hearing on June 22,
11 23, Mr. Neme testified that as of June of 2015, heat pumps
12 are now more cost effective than switching to gas, and
13 heat pumps now are better at protecting the environment
14 against greenhouse gas emissions than gas. Are you aware
15 of Mr. Neme's testimony?

16 A. I don't have a recollection of Mr. Neme's
17 testimony as I'm sitting here, Mr. Dumont.

18 Q. Do you recall that the Board found in October
19 of 2014 that heat pumps would not address the projected
20 need for gas by industrial and large commercial users in
21 Middlebury?

22 A. I don't dispute it. I don't recall it, and I
23 don't have the document that you're referencing in front
24 of me.

25 Q. So am I correct as Mr. Zamore was just

1 pointing out that the MOU has no effect whatsoever on the
2 greenhouse gas advantages of heat pumps over the gas
3 pipeline?

4 A. As I'm sitting here I can't think of how the
5 MOU would have a direct impact on greenhouse gas emission
6 analyses by whoever may have done them.

7 Q. Am I correct that the MOU has no significant
8 effect on the cost effectiveness of heat pumps as compared
9 to the cost effectiveness for residential users of the gas
10 pipeline?

11 A. As I'm sitting here I can't think of a -- of a
12 reason why the MOU would relate to the cost effectiveness
13 or other aspects or implications of heat pumps.

14 Q. Thank you. When I read the transcript from
15 last week I saw that Mr. Saudek in his customary way asked
16 some pointed questions of Commissioner Recchia that I
17 would like you to cover.

18 Mr. Saudek asked if any future rate design,
19 this is -- I have copy of the transcript for anybody who
20 didn't have it. It's in the exhibit list, in the pile of
21 exhibits. This is December 1 page 169. On page 169 Mr.
22 Saudek asked if any future rate design case can fix a
23 project cost that is \$45,000 per customer, do you recall
24 that?

25 A. I generally recall the -- that area of

1 inquiry.

2 Q. And on lines 15 through 23 of the transcript
3 on page 169 the Commissioner answered, quote: "The
4 company is doing a risk assessment of that issue." Is
5 that true?

6 A. Now I have to look at the testimony. Because
7 I just -- I don't know what specifically we are
8 referencing. Can you give me a --

9 Q. Page 169.

10 A. Which exhibit is it?

11 MR. ZAMORE: It is D.

12 CHAIRMAN VOLZ: Exhibit D as in David.

13 MR. ZAMORE: Yes.

14 THE WITNESS: I have Exhibit D and the
15 page is?

16 MR. DUMONT: 169.

17 THE WITNESS: Thank you.

18 BY MR. DUMONT:

19 Q. The word risk assessment appears on line 20.

20 A. I see that. I see it in the context of the
21 entire answer.

22 Q. So is the company doing a risk assessment to
23 answer Mr. Saudek's question?

24 A. We have done an assessment of whether this
25 project is in our view, in our analysis, cost effective

1 for customers. And we have concluded that it is cost
2 effective for customers. We have concluded that it is --
3 that it is cost effective for the State of Vermont, that
4 it is an energy infrastructure project that will help
5 reduce carbon, it will help bring affordable natural gas
6 service to families and businesses in Addison County, and
7 that it is -- it is an appropriate project to complete.

8 Q. So have you produced that risk assessment in
9 answer to our discovery request?

10 A. We have produced all -- we have produced the
11 analyses that we have performed that demonstrate the cost
12 effectiveness of the project.

13 Q. Can you identify those?

14 A. Well the -- it is the testimony and the
15 exhibits that we have proffered in this proceeding over
16 the course of as many months.

17 Q. Mr. Rendall, could you turn to Exhibit Cross T
18 as in Thomas. This is a discovery question that
19 references a case you're well familiar with. Green
20 Mountain Power Docket 5983. 1998, were you a member of
21 the law firm that was counsel for Green Mountain Power
22 during the Hydro-Quebec lock-in rate cases?

23 A. Actually the -- I was a member of a law firm
24 that had a -- had involvement in that case. The law firm
25 that I was a member of did not have this aspect of the

1 case.

2 Q. But you're well familiar with the Hydro-Quebec
3 lock-in?

4 A. I'm familiar with the Hydro-Quebec lock-in and
5 I'm familiar with the decision referenced, 5983. It's
6 been a long time since I have reviewed it though. It was
7 in 1998. So almost 20 years ago, Mr. Dumont.

8 Q. So the discovery question we asked the company
9 referenced the MOU, was question VGS 2-15, has the company
10 satisfied its obligations, and this is all a paraphrase
11 from the Board's ruling. In quotation marks "its
12 obligations to," quote, "continued monitoring, review and
13 assessment of its participation in this project."

14 A. I am very confident that we have satisfied our
15 obligations to do a continuing assessment review and
16 monitoring of this project under any regulatory standard.

17 Q. Including its effect -- the effect of the
18 continued investment on ratepayers, quote unquote?

19 A. Including the continued impact on customers,
20 including the impact of doing something differently,
21 including the ongoing monitoring of our ability to
22 complete the project as we have designed it, including the
23 effort that we are making to bring natural gas service to
24 Addison County, including the greenhouse gas savings, yes.
25 Including all of the factors that go into a thoughtful and

1 principled evaluation as to whether to proceed with a
2 significant capital project by a public service utility.

3 Q. So the company chose not to answer the
4 question, and it objected saying this was irrelevant. Do
5 you see that answer?

6 A. I do.

7 Q. Do you believe it's irrelevant?

8 A. To the consideration of the MOU, yes.

9 Q. So the general good of the State of Vermont is
10 not relevant to the MOU?

11 A. That's not what you're asking, Mr. Dumont.

12 Q. Okay. What about impacts on ratepayers, is
13 that irrelevant to the MOU?

14 A. Oh, the MOU is certainly relevant to
15 customers. Yes.

16 Q. So forget the objection, if I may ask you to.
17 Has the company done an analysis, to use the
18 Commissioner's terms, a risk assessment of the impact on
19 ratepayers with or without the MOU other than the prefiled
20 testimony you refer to?

21 A. We conduct an ongoing review of this project
22 and our other capital projects in the normal course of
23 business on a regular and routine basis. We report to
24 ourselves, we talk about where we are, we talk about what
25 the alternatives are and we talk about what the

1 implications are of proceeding, of adjusting course, of
2 making changes. Yes, we do that on an ongoing basis.

3 Have -- the sum and substance of our
4 evaluation as to whether this project should be completed
5 has been presented to you and to the parties and to the
6 Board.

7 Q. So let's make sure I understand your answer.
8 When you testified in June and we asked you about the
9 potential rate increase at that point of nineteen 8.8
10 percent if SERF funds aren't used, and 15 percent if SERF
11 funds were used, your answer was we are not going to go
12 there. We will come up with something that prevents that.
13 Is that a fair summary of your testimony?

14 A. No.

15 Q. You summarize it.

16 A. I would have to go back and look at my
17 testimony before I summarize it, Mr. Dumont.

18 Q. All right. So and now in December of 2015 Mr.
19 Saudek asked you basically tell us what you've got, and he
20 asked the Commissioner that question. What have you
21 heard? What's the company doing to answer that question?
22 And the answer he gave, the Commissioner gave, well the
23 company has done a risk assessment.

24 A. The answer the Commissioner gave was much more
25 complete than that.

1 Q. Okay. The rest of his answer was the company
2 believes that this type of investment benefits them and
3 their customers, existing and future.

4 A. I would have to get that answer back out. I
5 recall there were many more words than that in his answer,
6 Mr. Dumont. If you would like me to read his complete
7 answer, I would be happy to do that.

8 Q. No. I'm really interested in what you have to
9 say. What is your answer to the same question Mr. Saudek
10 asked the Commissioner? How can -- how do you propose to
11 fix a project the cost of which is \$45,000 per customer
12 without a large rate increase?

13 A. Well as we have testified previously, Mr.
14 Dumont, we have -- we are looking at a variety of tools in
15 the rate making toolbox, and nothing is off the table. We
16 have this MOU is an example of one of those -- one way
17 that we can reduce impacts to customers. Right? We have
18 already taken 20 million dollars off of the estimate --
19 estimated budget that was presented to the Public Service
20 Board in January.

21 We talked -- as I recall, we talked in June
22 about addressing things like the capitalization of the
23 project from an equity and debt point of view which was
24 conservatively modeled. We talked about the return on
25 equity. And where that stands, what the models inputs

1 are, and how that would adjust it, and we are -- as I've
2 said, we are confident that first that we will present
3 requests for rate adjustments that have our customers'
4 interests in mind and that are -- that are competitive and
5 affordable prices for our customers.

6 We are confident that we will go through a
7 rigorous evaluation of those requests, and we are
8 confident that the rates that we charge to our customers
9 will be just and reasonable as they are finally determined
10 by the Public Service Board.

11 Q. By definition if the Board approves them they
12 are just and reasonable?

13 A. Yes.

14 Q. Always.

15 MR. DUMONT: I'm sorry. Did you want
16 to say something?

17 CHAIRMAN VOLZ: No. You were looking
18 at me like you wanted me to respond in some way.

19 MR. DUMONT: No, I thought you were --

20 CHAIRMAN VOLZ: We are getting close to
21 time for taking a break. And I don't want to do it
22 right now, but how much further do you think?

23 MR. DUMONT: Maybe 10 or 15 minutes.
24 That's fine.

25 CHAIRMAN VOLZ: No. We can wait until

1 you finish.

2 BY MR. DUMONT:

3 Q. Mr. Rendall, could you look at Exhibit X?

4 A. X.

5 Q. We have complete copies for those who want it,
6 but X is just the first page of the MOU that was filed
7 with the Board in connection with the SERF case Docket
8 7712.

9 A. Give me a second. Do I have it? I have X in
10 front of me.

11 Q. First page has a preliminary statement,
12 paragraph on the bottom states: "Vermont Gas believes
13 that the costs of extending service to Vergennes and
14 Middlebury which would include construction of
15 transmission improvements that would reinforce its
16 existing pipeline system in Chittenden County, the
17 project, can be done with little or no future rate impact
18 to the company's customers if revenues associated with the
19 April 2011 Purchase Gas Adjustment under the company's
20 alternative regulation plan, the PGA, which will take
21 effect on or about April 22, 2011, or instead escrowed in
22 the Vermont System Expansion and Reliability Fund fund.
23 Did I read that correctly?

24 A. Yes.

25 Q. That's no longer true, is it?

1 A. I'm reading it again, Mr. Dumont. I have not
2 looked at this in many, many months. So --

3 Q. Take your time.

4 A. Thank you. It is true that the price -- the
5 expected cost of the project to bring service to Vergennes
6 and Middlebury is much higher today than it was when this
7 Memorandum of Understanding was entered into in 2011?

8 Q. And it's no longer true that there will be
9 little or no rate impact; correct? Even with the SERF
10 funds used to soften the impact?

11 A. There will be a cost impact to the company
12 from the project. That cost impact will be part of an
13 overall cost of service which will be part of a request
14 for rate adjustment which we do on an annual basis. The
15 impact to customers from price changes is something that
16 we will address when we file our rate proceeding, our
17 request for a rate adjustment in February.

18 And I expect that we will make a filing at
19 that time that will be competitive and affordable for our
20 customers, and that will take account of the costs of the
21 project and that will address and propose mechanisms that
22 will from the company's point of view assure that rates
23 will be just and reasonable, and that the costs of this
24 project will not present an undue rate impact on our
25 existing customers or our future customers.

1 Q. Thank you. If you could turn to Exhibit H. H
2 is the press release dated January 5, 2015 from the
3 company.

4 A. I have it.

5 MR. DUMONT: I would move Exhibit H.

6 CHAIRMAN VOLZ: Any objection?

7 MR. ZAMORE: No objection.

8 CHAIRMAN VOLZ: It's admitted.

9 (Exhibit H was
10 admitted into the record.)

11 BY MR. DUMONT:

12 Q. Exhibit H you were appointed effective January
13 1, 2015; correct?

14 A. Yes.

15 Q. And on page two the second full paragraph
16 states: After four days as president of the company,
17 quote, "under Rendall's leadership the company will remain
18 committed to bringing natural gas to Addison and Rutland
19 counties as well; correct?

20 A. Yes.

21 Q. So I understand you did some preparatory work
22 before you became officially the president of the company;
23 correct?

24 A. Yes. I started my employment with the company
25 I believe it was the first week in November of 2014.

1 Q. Who appointed you to the position?

2 A. The Board of Directors.

3 Q. Of?

4 A. Vermont Gas Systems.

5 Q. And where are they?

6 A. Where are they? There are a number of
7 directors and they reside in different places.

8 Q. To whom do they report?

9 A. They don't have a reporting structure as you
10 have described it. They have a -- they serve as the Board
11 of Directors, they serve the -- ultimately they serve the
12 -- all of the stakeholders of a public service company
13 including the investor, the customers, the public.

14 Q. Are they directors of Gaz Metro or Valener?
15 How do you pronounce it? Valener?

16 A. Valener.

17 Q. Valener.

18 A. No. I don't believe so. I don't believe that
19 any of the directors of Vermont Gas are directors of
20 Valener.

21 Q. Are they directors of Gaz Metro?

22 A. I don't believe so.

23 Q. Who appointed them?

24 A. Who appointed who?

25 Q. The Board of Directors?

1 A. The shareholder appoints the Board of
2 Directors.

3 Q. Who is the shareholder?

4 A. The shareholder is Gaz Metro.

5 Q. And do you know which body or which person
6 within Gaz Metro appointed them?

7 A. The shareholder, the entity appoints them.
8 And I don't recall who is -- who represents the entity in
9 signifying the appointment, I just don't recall.

10 Q. Were you interviewed by anyone at Valener as
11 part of the appointment process?

12 A. No.

13 Q. Anybody at Gaz Metro?

14 A. I was interviewed by the Board of Directors at
15 Vermont Gas. And I had discussions with a number of
16 people at -- in connection with my appointment.

17 Q. Number of people at Valener?

18 A. No, none at Valener. I had conversations with
19 the CEO of Gaz Metro.

20 Q. Who was that?

21 A. Sophie Bruchu. B-R-U-C-H-U.

22 Q. B-R-O-C-H-U?

23 A. B as in boy, R-O-C-H-U. Thank you.

24 Q. Did you discuss the gas pipeline with Ms.
25 Brochu?

1 A. I don't recall having a -- that specific a
2 discussion with Ms. Brochu. I don't recall it.

3 Q. Who is the chair of the Board of Directors?

4 A. Pierre Despars. D-E-S-P-A-R-S.

5 Q. Is he in Vermont?

6 A. No. He resides in Montreal.

7 Q. And I believe -- you said you're not sure who
8 appointed him?

9 A. The shareholder appointed the Board of
10 Directors. Gaz Metro.

11 Q. Do you recall any other persons who are
12 members of the Board that appointed you, who they are?

13 A. Well the Board of Directors of Vermont Gas
14 Systems?

15 Q. Yes.

16 A. William Gilbert, William Bruett, William
17 Sayre, Serge Regnier, and Merrill Burns.

18 Q. And how many of those persons are part of Gaz
19 Metro or Valener in some way?

20 A. One. Mr. Despars.

21 Q. In your appointment process, your interview
22 process with the Board, did you discuss the pipeline
23 project?

24 MR. ZAMORE: I'm going to object on
25 relevance grounds.

1 CHAIRMAN VOLZ: Mr. Dumont?

2 MR. DUMONT: What I am about to go to
3 next is the Valener documents that show what their --
4 what they view is the purpose of Vermont Gas and the
5 purpose of the expansion.

6 MR. ZAMORE: Well that doesn't have to
7 do with Gaz Metro.

8 MR. DUMONT: And Gaz --

9 MR. ZAMORE: Or interviews as to his
10 becoming CEO.

11 MR. DUMONT: Well I think it goes to
12 his credibility and to how decisions are made that he
13 has just testified were made that this is in the best
14 interest of ratepayers.

15 MR. ZAMORE: That's pretty attenuated.

16 (Pause).

17 CHAIRMAN VOLZ: Mr. Dumont, you had
18 signed up for an hour. You're now 20 minutes over
19 since you started. I'm not asking you to stop, we
20 have -- we fail to see the relevance of this line of
21 questioning at this point.

22 I'm not going to tell you you can't do
23 it. But I would really like you to focus in and get
24 to things that are relevant to whether -- to the MOU.
25 Thank you.

1 MR. DUMONT: So if I could ask -- maybe
2 we should take a short break now, and I will be able
3 to get focused and quicken my remaining questions.

4 CHAIRMAN VOLZ: Okay. Why don't we
5 take a 15-minute break.

6 MR. DUMONT: Thank you.

7 (Recess was taken.)

8 CHAIRMAN VOLZ: Okay. We would like to
9 get started. If people will sit down and be quiet.
10 Thanks. Mr. Dumont.

11 MR. DUMONT: Yes. For your information
12 my questions of Ms. Simollardes will be very brief,
13 maybe 10 minutes.

14 CHAIRMAN VOLZ: Okay.

15 CROSS EXAMINATION

16 BY MR. DUMONT:

17 Q. Mr. Rendall, do you have in front of you our
18 Exhibit P as in Peter?

19 A. I do.

20 Q. I put together P and which is mostly in black
21 and white and then P, 1, 2, 3, 4 all as a package. Would
22 you agree that these are print outs from Valener's Web
23 site?

24 A. I've never seen them before today. I don't
25 know where you got them. I don't know.

1 Q. Have you ever looked at Valener's Web site?

2 A. Yes, I have. Of course.

3 Q. Were you -- are you aware that just a week or
4 two ago Valener placed on their Web site materials called
5 fiscal 2015 fourth quarter and full-year results
6 conference call, November 27, 2015?

7 A. Yes. I'm aware they did put a presentation on
8 their Web site when they announced their final 2015
9 results.

10 Q. Were you on the conference call?

11 A. No.

12 Q. Had you read the material they put on their
13 Web site about the conference call?

14 A. I scanned the presentation after it was put
15 up.

16 Q. And is Exhibit P that presentation?

17 A. I don't know. I haven't compared it.

18 MR. DUMONT: I'm going to move Exhibit
19 P.

20 CHAIRMAN VOLZ: Any objection?

21 MR. ZAMORE: I'm not sure that he's
22 established --

23 CHAIRMAN VOLZ: Use the microphone.

24 MR. ZAMORE: I'm not sure that he's
25 established much of a familiarity with this exhibit.

1 I would prefer that he ask specifically questions and
2 ask whether Mr. Rendall knows the answers to them by
3 reference to this exhibit.

4 MR. DUMONT: I'm moving the exhibit
5 under the Board's rules; I think it's admissible.
6 Are you contesting this is an authentic copy that I
7 downloaded from the Web site?

8 MR. ZAMORE: All I have is the
9 information Mr. Rendall just testified to.

10 MR. DUMONT: So are you objecting? You
11 don't want the Board to read this, is that what
12 you're saying?

13 MR. ZAMORE: No, that's not what I'm
14 saying, Mr. Dumont.

15 MR. DUMONT: Then let us know.

16 MR. ZAMORE: I won't object to it. It
17 can be admitted.

18 CHAIRMAN VOLZ: Okay. It's admitted.

19 (Exhibit Cross P was
20 admitted into the record.)

21 BY MR. DUMONT:

22 Q. If you could turn to page 11 of the conference
23 call document.

24 CHAIRMAN VOLZ: That's Cross P.

25 MR. DUMONT: Yes.

1 THE WITNESS: I have page 11.

2 BY MR. DUMONT:

3 Q. It says Gaz Metro's major initiatives.

4 A. I see it.

5 Q. And on the bottom third of the page it says:
6 "Energy distribution in Vermont," and the first bullet is
7 -- first bullet is VGS Addison project under review by the
8 VPSB?

9 A. I see that.

10 Q. So in fact this project we are discussing is a
11 major initiative of Gaz Metro?

12 A. It is listed on this page.

13 Q. And to your knowledge is it in fact a major
14 initiative of Gaz Metro?

15 A. It's a major initiative of Vermont Gas
16 Systems.

17 Q. That's not my question.

18 A. That's my answer.

19 Q. I want an answer to my question. I'm entitled
20 to it.

21 A. I'm here on behalf of Vermont Gas Systems.
22 I'm not here on behalf of Gaz Metro or Valener.

23 Q. I would like the witness to answer the
24 question please.

25 MR. ZAMORE: I think he has answered

1 the question.

2 MS. HOFMANN: Can you read the question
3 back please?

4 (The record was read as requested)

5 CHAIRMAN VOLZ: We haven't heard the
6 answer to the question.

7 THE WITNESS: You would have to ask a
8 representative of Gaz Metro.

9 BY MR. DUMONT:

10 Q. Are you a representative of Gaz Metro?

11 A. No.

12 Q. How come no where in this document does it say
13 that there is any body in Vermont like a Board of
14 Directors that's making a decision? This is presented as
15 Gaz Metro's initiative. Can you explain that?

16 A. No.

17 Q. You have no idea why that is?

18 A. It would surprise me to see such a
19 presentation in this kind of a public presentation. I
20 would be very surprised to see it. It wouldn't belong
21 here.

22 Q. In fact, Gaz Metro treats Vermont Gas as a
23 wholly-owned subsidiary of Gaz Metro; correct?

24 A. Vermont Gas is a wholly-owned subsidiary of
25 Gaz Metro.

1 Q. And Gaz Metro decides what Vermont Gas
2 Systems' important decision will be; correct?

3 A. Incorrect.

4 Q. If you could look at P-1. I'll represent to
5 you this is a download yesterday from Gaz Metro Valener's
6 Web site in which it describes quote: Our assets. Do you
7 see that?

8 A. I see that.

9 Q. And we have done double-sided copying.

10 CHAIRMAN VOLZ: I'm sorry. Which
11 exhibit are you on?

12 MR. DUMONT: P-1 at the back of P as a
13 whole.

14 BY MR. DUMONT:

15 Q. And does this portray the entire Vermont
16 service territory and Vermont Gas as one of our assets?

17 A. I see on the front side RSS, and I see on the
18 back side a map of Vermont that includes a reference to
19 Vermont Gas Systems and Green Mountain Power. I see that.
20 I have never seen these particular pages before.

21 Q. Does Gaz Metro -- does Valener represent to
22 investors under the rules that govern truthful disclosure
23 to investors that Vermont Gas is an asset of Gaz Metro?

24 A. I'm sure that they represent accurately and
25 appropriately that Vermont Gas is an investment of Gaz

1 Metro.

2 Q. An investment or asset?

3 A. Investment.

4 Q. It's not an asset?

5 A. Well an investment is an asset.

6 Q. If you could turn to Exhibit P-3. This is
7 from the Web site again downloaded yesterday, the Valener
8 Web site. If you click on the tab that says diversified
9 public utilities, have you ever done that?

10 A. No.

11 Q. To your knowledge does Valener represent to
12 the investing public that it's a diversified public
13 utility or owns diversified public utilities including
14 electricity producer in Quebec and Vermont; correct?

15 A. I'm sorry, Mr. Dumont. I do have to --

16 Q. I'll ask another question.

17 A. -- specific references here.

18 Q. Let me go to the flip side of Exhibit P-3.
19 Listing of assets. A chart showing the assets of Valener.
20 Have you ever seen a pictorial depiction of Valener's
21 assets before?

22 A. I have not. That I recall.

23 Q. Is it accurate that natural gas and
24 electricity distribution in Vermont is nearly half of
25 Valener's six billion dollars in assets?

1 A. I just don't know where this came from, Mr.
2 Dumont. And I want to be accurate responding to your
3 question.

4 The Valener is an enterprise. Gaz Metro is
5 another enterprise. I don't know whether this refers to
6 Gaz Metro or to Valener. They are related companies. And
7 what I can tell you is with respect to Gaz Metro, yes, the
8 investments that Gaz Metro has made in Green Mountain
9 Power and Vermont Gas Systems represents whatever portion
10 of Gaz Metro's investments that they disclose. I'm
11 confident that those disclosures are accurate.

12 Q. If you could turn back to Exhibit P which is
13 the conference call document, third page. In describing
14 Valener's net income does the document state that there
15 have been record results at Gaz Metro?

16 A. I see that.

17 Q. In fact, this past fiscal year were there
18 record results at Gaz Metro?

19 A. The document at Gaz Metro's announced
20 financial results speak for themselves. I'm not able to
21 characterize their results beyond what they have
22 announced.

23 Q. That's what I'm asking you. To your knowledge
24 this past fiscal year have there been record results at
25 Gaz Metro?

1 A. This document says there were record results
2 at Gaz Metro. I have no reason to disagree with that.

3 Q. And in fact, because of those record results
4 at Gaz Metro, did Valener have the highest net income
5 since the company's inception in 2010?

6 A. I don't know. Is that referenced in this
7 presentation? I just don't know, I'm not familiar with
8 the financial results of Valener.

9 I'm a CEO of Vermont Gas Systems.

10 Q. If you look on page three on the left-hand
11 side does it say: Highest net income since the company's
12 inception in 2010?

13 MR. ZAMORE: I'm going to object. The
14 witness has already indicated he does not have
15 familiarity with these statements, and all counsel is
16 trying to do is get them into the record by reading
17 them.

18 CHAIRMAN VOLZ: Mr. Dumont?

19 MR. DUMONT: Well it's already in the
20 record. I'm just asking his knowledge of it. I
21 guess the witness is saying he doesn't know, so I'll
22 stick with that answer.

23 CHAIRMAN VOLZ: Okay.

24 BY MR. DUMONT:

25 Q. Is it in fact a priority of your sole

1 shareholder to expand the rate base of your company in
2 Vermont?

3 A. It is a priority of Vermont Gas to provide
4 excellent service to our customers and to provide choice
5 and opportunity to new Vermont families and businesses
6 where it makes sense to do so.

7 Q. Could you answer the question please? I'm not
8 asking about your Board of Directors. I'm asking about
9 your sole shareholder.

10 A. I'm here as the CEO of Vermont Gas Systems. I
11 can tell you what Vermont Gas Systems' priorities are. I
12 can't tell you what the priorities of our investor are in
13 the context of whatever all of their priorities are.

14 Q. Are you saying you can't tell us because you
15 have no information about it, you have no idea what the
16 priorities are of your sole shareholder?

17 A. I have -- I understand what our Board of
18 Directors looks at as they work with our management team
19 to set the priorities and strategies for Vermont Gas
20 Systems, and those priorities and strategies are the ones
21 that I have described to you.

22 Q. That's not the question I'm asking. I'm
23 asking about your knowledge, Mr. Rendall, as a human
24 being, as an individual, of the priorities of your sole
25 shareholder.

1 A. The priorities of our sole shareholder are
2 that our company do an excellent job of providing service
3 to our customers, to bringing choice and opportunity to
4 new Vermont families and businesses.

5 Q. Is it among the priorities of your sole
6 shareholder that appoints the Chairman of your Board to
7 expand the rate base in Vermont?

8 A. Not as you describe it in those words, Mr.
9 Dumont.

10 Q. Why don't you use your words?

11 A. I have.

12 Q. No, you haven't answered the question yet. I
13 would like to know what you know about whether the sole
14 shareholder has a priority to expand Vermont Gas's rate
15 base in Vermont.

16 A. Our shareholder has a priority in achieving
17 the strategies that we have set for Vermont Gas which I
18 have described to you now several times, and those are the
19 priorities of Vermont Gas Systems, and those priorities
20 are supported by our investor.

21 Q. Moving along to the next subject. If you
22 could refer to Cross Exhibit R.

23 A. Exhibit R. Do I have R?

24 MR. ZAMORE: Here it is.

25 THE WITNESS: I'm creating a messy

1 table here, Mr. Dumont. Just give me a second. I
2 have R.

3 MR. DUMONT: It's a discovery response
4 from Vermont Gas. I move R.

5 CHAIRMAN VOLZ: Any objection?

6 MR. ZAMORE: No objection.

7 CHAIRMAN VOLZ: It's admitted.

8 (Exhibit R was
9 admitted into the record.)

10 BY MR. DUMONT:

11 Q. Mr. Rendall, we asked in question 2-11, has
12 the company prepared any analysis of the likelihood and
13 range of costs that may qualify as arising from
14 extraordinary events or material delay? If so, please
15 produce. And your answer E --

16 A. E.

17 Q. Did you answer: "Vermont Gas prepared a
18 quantitative risk analysis that was provided previously in
19 this proceeding. See confidential and redacted
20 attachments A DPS VGS 1-12 provided on April 22, 2015.
21 See also Raphael Rome's March 27, 2015 supplemental
22 prefiled testimony at page 13 which describes the QRA
23 analysis in detail. The QRA contained a risk assessment
24 that included among other risks, risks that could be
25 considered extraordinary events or result in material

1 delays. As part of project management and in light of the
2 completion of construction season, the company is in the
3 process of revisiting the QRA but the analysis is not yet
4 complete."

5 Did I read that correctly?

6 A. Yes.

7 Q. Is that still true today?

8 A. Yes.

9 Q. If you turn to Exhibit Cross S. Another
10 discovery answer. VGS 2-12.

11 A. S. I have S.

12 Q. Runs over on to the back of the page.

13 MR. DUMONT: I move S.

14 CHAIRMAN VOLZ: Any objection?

15 MR. ZAMORE: No objection.

16 CHAIRMAN VOLZ: It's admitted.

17 (Exhibit S was

18 admitted into the record.)

19 BY MR. DUMONT:

20 Q. Using -- let's look at question 2-12-C as a
21 brief way to walk through this. Question was: "Is it the
22 company's understanding of this clause that so long as the
23 project is constructed and brought into service consistent
24 with the plans approved by the Board the project is used
25 and useful, for the purposes of rate proceedings

1 regardless of whether the costs in rate base exceeds 200
2 million dollars because of extraordinary events and
3 material delay. If not, please explain."

4 And your answer was -- answer C was: "See
5 the answer to A." And the answer was after an objection,
6 "The company is unaware of any reason why the project
7 would not be considered used and useful under the
8 circumstances specified."

9 Did I read that correctly?

10 A. Yes.

11 Q. And question and answer 8 I would like to
12 read. E. "Is the company aware of any prior contract,
13 MOU or proceeding in which the Department committed in
14 advance that a project or investment would be used and
15 useful regardless of this eventual cost. If so, please
16 identify."

17 And did you answer E, "Objection." And then:
18 "Notwithstanding the objection, the company responds as
19 follows. The company's not aware of any such commitment
20 nor has the Department made such a commitment with this
21 MOU."

22 Did I read that correctly?

23 A. Yes.

24 Q. Next I have marked as V the Vermont Gas
25 Systems Over and Under complaint.

1 A. I have V here?

2 CHAIRMAN VOLZ: V as in Victor.

3 THE WITNESS: I don't see it in my
4 pile. I have it.

5 BY MR. DUMONT:

6 Q. Is V an accurate copy of the complaint filed
7 in Chittenden Superior Court by your company?

8 A. It appears to be.

9 MR. DUMONT: I'm going to move V.

10 CHAIRMAN VOLZ: Any objection?

11 MR. ZAMORE: No objection.

12 CHAIRMAN VOLZ: It's admitted.

13 (Exhibit V was

14 admitted into the record.)

15 BY MR. DUMONT:

16 Q. If you turn to page four. I'm sorry, page
17 three. Paragraph 17 alleges "VGS was unable to obtain
18 Over and Under's execution of the contract by June 26,
19 2014 when earth moving on the AGNP project began.
20 Thereafter VGS performed its obligations as defined in the
21 proposed written contract, and Over and Under represented
22 that it was complying with the material terms of that
23 document."

24 Did I read that correctly?

25 A. Yes.

1 Q. And is it in fact true that construction began
2 on June 26, 2014 without a written contract?

3 A. Yes.

4 Q. And the contract was a fixed price 45 million
5 dollar contract?

6 A. I don't recall the specifics of the contract.

7 Q. Do you want to check -- do you want --

8 A. I don't recall the specifics of the contract
9 as I'm sitting here Mr. Dumont, and I'm being very careful
10 about accepting your representations without having the
11 information in front of me to be responsible and being
12 responsive to what you're asking.

13 Q. Why don't you turn to page two of the exhibit.
14 Paragraph 8. Does it state: "Over and Under was to be
15 paid approximately 45 million dollars"?

16 A. Yes.

17 Q. Is that true?

18 A. Yes.

19 Q. So you allowed a company to start work
20 building a mainline of the pipeline with the expected
21 payment of up to 45 million dollars without having it
22 signed?

23 A. The company authorized Over and Under to begin
24 work in a normal and customary way in advance of executing
25 a contract. It's called limited notice to proceed. It's

1 quite common in construction projects, that's what the
2 company did as I understand it. I wasn't here then.

3 Q. You've sued -- your company has sued Over and
4 Under for what you've just described as normal behavior.

5 A. We have filed an action against Over and
6 Under. The complaint is in evidence, and the complaint
7 does state the claims that we have against Over and Under.

8 Q. I want to understand the answer you just gave.
9 You just said it's normal behavior to do what you've sued
10 this company for doing; correct?

11 A. No. That's not correct.

12 Q. Okay. What am I missing?

13 A. The company has brought an action against Over
14 and Under for disputes relating to their performance and
15 payment as described in the complaint and with all of the
16 technical legal terms that are in the complaint.

17 So we brought an action under performance of
18 the agreement. We brought an action for declaratory
19 judgment and breach of contract. We brought an action for
20 a declaratory judgment and recovery under the legal theory
21 of quasi contract.

22 Q. Paragraph 18 on page 4 says:
23 "Between June 26 and September of 2014 VGS continued
24 unsuccessfully to attempt to obtain formal execution of
25 the proposed written contract."

1 A. Yes.

2 Q. Is that your understanding of what happened?

3 A. Yes.

4 Q. And then let's read paragraph 19 out loud.

5 "Between the start of work on June 26 until VGS terminated
6 its agreement with Over and Under in November 2014, Over
7 and Under failed to comply with its obligation to act in
8 good faith to finalize and execute a written contract with
9 Vermont Gas Systems."

10 Did I read that correctly?

11 A. Yes.

12 Q. Isn't that what you just described as normal
13 behavior?

14 A. No.

15 Q. So as an experienced lawyer, would you agree
16 that it's pretty serious to claim that someone else has
17 acted in bad faith?

18 A. Yes. Serious.

19 Q. And that's what this alleges here?

20 A. Yes, it does.

21 Q. They acted in bad faith for not doing what you
22 just said was normal behavior.

23 A. No, that's not correct. That's a
24 mischaracterization of what I testified to, Mr. Dumont.

25 Q. Looking at page four, am I correct that by

1 November of 2014 less than 14 percent of the 42 miles of
2 pipeline had been completed?

3 A. Yes.

4 Q. However, 20 percent of the 45 million dollars
5 had been paid?

6 A. Yes.

7 Q. Turn to paragraph 30 on page 5. 20 percent
8 that was paid was paid during the time period quote,
9 "during which" quote: "VGS has repeatedly requested Over
10 and Under to provide it with information reflecting the
11 costs and expenses Over and Under has incurred in
12 performing the work underlying its claims for payment, and
13 Over and Under has consistently refused to provide Vermont
14 Gas Systems with that information;" correct?

15 A. No.

16 Q. Correct me then.

17 A. Oh no, the statement in the complaint is
18 accurate. The way you characterized it with the words
19 that you started the question with are incorrect.

20 Q. So it's incorrect to state that the nine
21 million dollars referenced in paragraph 26 was not paid
22 during the time period that Over and Under was refusing to
23 provide VGS with requested information?

24 A. We have a claim against Over and Under. We
25 have asked -- Over and Under has made a request and a

1 claim for additional payment to us. We have repeatedly
2 asked them to provide the information reflecting the costs
3 and expenses that they have incurred and that they want
4 payment for, and they have declined to give us the
5 information that we have asked for as stated in paragraph
6 30 of the complaint.

7 Q. Paragraph 33: "In May of 2015 Over and Under
8 recorded contractors' liens pursuant to 9 V.S.A. 1921, et
9 seq, on easements and pipeline facilities owned by VGS in
10 the Town of Williston. Is that true to your knowledge?

11 A. Yes.

12 Q. Are those liens still of record?

13 A. I don't believe so. They were not perfected
14 by Over and Under in accordance with Vermont statutes, so
15 I don't know what their status is today.

16 Q. Is there a judgment that they were not
17 perfected that you're aware of?

18 A. The time limit under Vermont law has expired
19 for perfection. Again without a -- without an order of
20 perfection.

21 Q. So it's your understanding as a lawyer that
22 bringing suit wasn't enough to perfect the lien?

23 A. That is my understanding -- my understanding
24 is there is a time frame for perfecting liens and that
25 time frame has expired. That is my understanding as I'm

1 sitting here.

2 Q. And you would agree that Over and Under takes
3 a different view?

4 A. I don't know what Over and Under's view is.

5 Q. They claim the lien was perfected by filing
6 suit?

7 A. Is that a question?

8 Q. Yes.

9 A. I don't understand the question.

10 Q. Have you read their suit against you?

11 A. I have.

12 Q. Have you read their answer to this complaint?

13 A. I've seen the answer. I've scanned the
14 answer. I haven't read the answer carefully.

15 Q. Is it Over and Under's position that they have
16 a perfected lien?

17 A. I don't know.

18 Q. So when the lien was recorded in May of 2015,
19 did the company know about it?

20 A. We knew about the lien at some point
21 contemporaneously with when the liens were filed. I'm
22 sure we did. I don't recall -- I don't recall when we
23 were made aware of the fact of the filing of the liens
24 relative to the date of their filing. I just don't recall
25 it.

1 Q. Certainly by June 22 you knew about the lien;
2 correct?

3 A. Yes, I believe I knew of the filing of at
4 least some liens by the time of June 22, 2015.

5 Q. We may not agree -- or Over and Under may not
6 agree with you on what it takes to perfect a lien, but you
7 agree that a necessary step in perfecting a lien is
8 bringing suit?

9 A. A necessary step in perfecting a lien would be
10 bringing suit. I believe that is correct. Yes.

11 Q. A contractor's lien such as this?

12 A. Yes.

13 Q. So you knew when you testified in June that
14 suit by the contractor was imminent against the company?

15 A. Oh no. Not at all.

16 Q. You didn't?

17 A. No. As you know, Mr. Dumont, in your
18 experience, liens are often filed and suits never come to
19 pass for a whole variety of reasons.

20 Q. So your testimony is you didn't know to a
21 moral certainty that you would be sued?

22 A. My testimony is that when I sat in this
23 witness chair in June, I knew that we had a dispute with
24 the contractor. That was not -- it should have come as no
25 surprise to anyone given the circumstances that involved

1 our making a decision to change contractors. I knew that
2 we were going to have a -- we were going to have to
3 resolve a variety of issues with that contractor including
4 issues of performance and payment. And I knew that that
5 was -- that there was a risk that that would ultimately
6 come to filing actions, which is what happened sometime
7 thereafter.

8 I don't think it's fair to say that when I sat
9 in this chair -- it is not correct to say that when I sat
10 in this chair I believed that a lawsuit was imminent.

11 Q. But you did believe that the mainline
12 contractor was seeking at least another nine million
13 dollars from the company?

14 A. Actually I didn't. Actually that surprised
15 me. My recollection is that at the time I thought that
16 their claim was less than that. It was substantial, but
17 whether it was nine million or six million or three
18 million is -- I don't have a specific recollection.

19 What I do recall is that we had a very solid
20 position with respect to Over and Under. That the filing
21 of a complaint in my experience as a lawyer when it comes
22 is -- has very little relevance often to the actual
23 outcome of a negotiation or a dispute resolution around a
24 contractor's claim. And that we had confidence and we
25 have confidence as I sit here that the resolution of our

1 claims with Over and Under will be well within the 153.6
2 million dollar budget that we have to work with on the
3 project.

4 Q. In June of 2015 the Board had under advisement
5 the penalties case against the company; is that correct?

6 A. To the best of my recollection, yes.

7 Q. So in the fall of 2014 the company had
8 admitted wrongdoing and had agreed with the Department to
9 pay a \$35,000 fine; correct?

10 A. Yes.

11 Q. The Board did not accept that. The Board said
12 we want to take this under advisement. A hearing was
13 held, evidence was submitted, Ms. Simollardes's testified.
14 And some parties were requesting a much larger fine and
15 were alleging that this was aggravated misconduct by your
16 company, do you understand that?

17 A. I understand that other parties asked for a
18 higher fine level.

19 Q. And it was because of the fundamental duty
20 that your company had as a regulated utility to provide
21 full disclosure to the regulator and to the other parties;
22 correct?

23 A. To provide full disclosure with respect to
24 matters that were relevant to the Board's determination.
25 Yes. That is correct.

1 Q. So what was the purpose of the hearings on
2 June 22 and 23 -- June 23?

3 A. The hearings are hearings on the remand of the
4 CPG.

5 Q. What were the issues? Did they have to do
6 with cost?

7 A. The issues had to do with the new cost
8 estimate, that the company had -- that the company had
9 provided in December of 2014 of 153.6 million dollars.
10 Yes.

11 Q. Was the testimony about the reliability of the
12 cost information that was being provided to the parties
13 and to the Board?

14 A. Yes, it was.

15 Q. And the candor of the company?

16 A. Yes, it was.

17 Q. And you didn't think it was relevant to
18 disclose to the parties and to the Board that you were in
19 a dispute with the 45 million dollar mainline contractor,
20 you were subject of a lien, and it was a multi million
21 dollar dispute?

22 A. I thought it was clear that we had let the
23 contractor go. I thought it was clear that we had
24 provided a budget to the Board that included the fact that
25 we had let the contractor go. And I thought I was

1 accurate, candid and complete in the answers to all the
2 questions that were provided to me.

3 And I did not think as I was sitting here to
4 make a unilateral offer of the fact that we had a dispute
5 with that contractor which was well within our budget,
6 well within our estimating, and well within our confidence
7 that the -- that we had paid the contractor for their
8 work, and that we have -- and that this will not have a
9 material impact on the ultimate 153.6 million dollar
10 budget.

11 Q. Was the contractor's lien and the possibility
12 of suit disclosed to Mr. Rome?

13 A. I just -- at what point? Before he testified
14 or at some other point? I'm not --

15 Q. Before he testified.

16 A. I don't know.

17 Q. Was the position of the Department of Public
18 Service that the company had not yet executed an
19 acceptable quality assurance program for pipeline safety
20 disclosed to Mr. Rome before he testified?

21 A. I don't know.

22 Q. Was the removal of 800 feet of installed
23 pipeline in Williston disclosed to Mr. Rome before he
24 testified?

25 A. I'm sure that Mr. Rome knew of the -- of the

1 general nature of the field work, which that was part of
2 when he testified. I don't know if Mr. Rome knew about
3 the specific event of any particular drill. Mr. Rome was
4 not working in the field on a day-to-day basis.

5 Q. Exactly why I'm asking whether someone
6 informed him that 800 feet of pipeline that had been
7 installed by HDD had to be taken out and then at some
8 future date would have to be reinstalled?

9 A. It would -- I don't know. He may well have
10 known that.

11 Q. You didn't make any effort to see that he knew
12 it?

13 A. No. It was something that was not -- was not
14 material to the discussion that we were having in here in
15 my estimation.

16 MR. DUMONT: Thank you.

17 CHAIRMAN VOLZ: Thank you, Mr. Dumont.

18 MR. DUMONT: Did I move the Over and
19 Under complaint? I don't recall if I did.

20 CHAIRMAN VOLZ: I think you did. And
21 it was admitted.

22 MR. DUMONT: Okay.

23 CHAIRMAN VOLZ: Does anybody have
24 follow-up questions to Mr. Dumont before we go to
25 redirect? Mr. Saudek?

1 MS. HOFMANN: Can someone hand Mr.
2 Saudek a microphone?

3 MS. LEVINE: Here. Take the mic.

4 CROSS EXAMINATION

5 BY MR. SAUDEK:

6 Q. It's just turned afternoon. So good
7 afternoon, Mr. Rendall.

8 A. Good afternoon.

9 Q. Did you hear -- you've testified in response
10 to Mr. Dumont that your goals I take it include giving
11 your customers choice and opportunities; is that correct?

12 A. Yes.

13 Q. And I take it that -- and you've also
14 testified that you have many tools in the toolbox to
15 handle rate increases, right? You mentioned that to Mr.
16 Dumont?

17 A. Yes. As you know, in the rate making process
18 there are a variety of tools in the toolbox of
19 opportunities we have to manage rates for the benefit of
20 customers.

21 Q. And I want you to assume, if you will, tell me
22 if I'm wrong, that those tools do not include printing
23 money.

24 A. They do not.

25 Q. You heard Dr. Hopkins testify that current

1 ratepayers will be cross subsidizing this extension for
2 about 32 to 33 years, right?

3 A. I generally recall Mr. Hopkins' testimony.

4 Q. Have you tried to analyze or check on Dr.
5 Hopkins' testimony?

6 A. We have provided our own testimony with
7 respect to the cost of the project.

8 Q. And it appeared to -- for the Board to assume
9 that despite the tools of your toolboxes and all the
10 choice and opportunities you want to give customers, your
11 current customers will be cross subsidizing this extension
12 for decades to come?

13 A. Our current customers who have enjoyed the
14 benefits of our extending service over 50 years from a few
15 thousand customers to 50,000 customers over that 50 years
16 will help support the expansion of our system as they have
17 for the last 50 years.

18 Q. And is it not true that the customers in this,
19 who would be supporting the new pipeline that you're
20 proposing in this case, would be cross subsidizing it
21 decades longer than your other customers have cross
22 subsidized expansions in the past?

23 A. We haven't put the project in rates yet. So
24 we still have to get through that exercise. On the
25 analyses that have been presented, yes, this project will

1 take longer from a support point of view than most other
2 expansions.

3 Q. And when you say longer from our support point
4 of view, this is one of the opportunities you're affording
5 your existing customers, right?

6 A. The opportunity that we afford our existing
7 customers is the opportunity to get great customer
8 service, to get excellent -- to get excellent -- an
9 excellent source of fuel and heat, to get efficiency
10 services, and to get all of those at competitive and
11 affordable prices.

12 Q. And also to help you serve a cheese plant
13 south of them, right?

14 A. Well we will serve the Cabot plant in
15 Middlebury which is a significant employer in Addison
16 County, yes, we will.

17 Q. And do you expect that if all these things
18 were -- these opportunities were discussed with your
19 current customers, the opportunity to cross subsidize
20 this, they would be tickled to death?

21 A. Our current customers are very satisfied with
22 the service that we provide which includes the price.
23 They are very satisfied with the fact that unlike your
24 client, our prices are regulated and transparent to all of
25 our customers. And they are very satisfied with the -- by

1 our customer service metrics with the bundle of services
2 that we provide which includes the pricing.

3 Q. And would you agree that my client does not
4 have the opportunity to have regulators impose rates on my
5 client so that my client can expand its service territory?

6 A. Your client has ample opportunities to expand
7 their services and to provide their choice and opportunity
8 to customers as well.

9 Q. And would you also agree that -- yes, but they
10 aren't subsidized by current customers, right?

11 A. It would be very fascinating for us to take a
12 look at the -- to take a look at the books of your
13 customers to understand how the -- how their finances and
14 profit and revenues and costs all relate to each other.

15 Q. One thing we know though is that my client's
16 customers, unlike your -- what you're proposing here,
17 their prices are going way down way fast, right?

18 A. Today they are as they have gone way up way
19 fast in other time periods.

20 Q. Right now they are way down and they are
21 projected to be way down for sometime, right?

22 A. Well if you're asking me to project the future
23 costs of oil, I'm not qualified to do that.

24 Q. Well maybe you ought to -- never mind. I have
25 nothing further.

1 CHAIRMAN VOLZ: Thank you. Ms. Palmer.

2 CROSS EXAMINATION

3 BY MS. PALMER:

4 Q. Afternoon, Mr. Rendall.

5 A. Good afternoon.

6 Q. I just had a question. This has been quite a
7 learning experience for my husband and myself. We had
8 never heard of an MOU before the town of Monkton was asked
9 to sign one with Vermont Gas. And when we inquired of our
10 town representatives what this was, they explained that as
11 a Memorandum of Understanding, it was not a binding
12 contract.

13 So my question to you is you being an attorney
14 or having been an attorney, why would you choose to sign
15 an MOU rather than a contract, a binding contract?

16 A. I consider this to be a binding contract with
17 the Department of Public Service.

18 Q. Why wouldn't you -- I'm asking, why does
19 everybody like MOUs?

20 A. That's an excellent question. That is the
21 nomen -- that's what we often call agreements that we make
22 in the regulatory context that are binding commitment on
23 behalf of the regulated utility, and that's what I
24 consider this one to be. It's really -- it's a question
25 of the title of the document. But I mean I do, Ms.

1 Palmer.

2 Q. You consider it a binding contract, but is it
3 a binding contract in the court of law?

4 A. I think it would be considered a binding
5 contract in a court of law. Yes.

6 Q. That's your opinion?

7 A. Yes.

8 Q. Okay. And you mentioned right of way
9 acquisitions as being a hold up of some -- could be a
10 delay. Has there been any delay due to right of way
11 acquisitions so far in this project?

12 A. Yes.

13 Q. And where would that be?

14 A. Well as Mr. Dumont pointed out when he was
15 questioning me, there was when -- as of the late fall of
16 2014, there was a lot of rights of way still to be --
17 still to be addressed, and that was one of the things that
18 we took into consideration as we made the decisions about
19 how to adjust the project schedule from working through
20 the winter and finishing up in the spring of 2016 as
21 opposed to rescheduling the project completion for the end
22 of 2016.

23 Q. So you're saying that the first 11 miles --
24 you would have gone further than the first 11 miles had
25 there been no land acquisition problems?

1 A. No. We had a whole different set of things
2 that we were considering, of considerations around how and
3 when we would proceed beyond the first 11 miles. And
4 while right of way was one of them, it was certainly not
5 the only one.

6 Q. So as it stands now you're pushing pretty hard
7 to get easements for the last few.

8 A. Yes, we have four property owners that we have
9 not reached agreement with out of approximately 160 or
10 165.

11 Q. Okay. But you don't have the Board's go ahead
12 at this point because the CPG is still in question?

13 A. The CPG is still a valid CPG. We are looking
14 forward to final resolution of this proceeding, no doubt.

15 Q. Okay. And my last question is do you agree
16 that members of the DPS work for the Governor?

17 A. I agree that the Commissioner of the
18 Department of Public Service works for the Governor.

19 Q. Thank you.

20 A. I should say serves at the Governor's
21 pleasure.

22 CHAIRMAN VOLZ: Is there any follow-up
23 questioning to what we have heard so far by anybody?
24 Okay, that hasn't gone already? All right. Hang on.
25 Is there redirect?

1 MR. ZAMORE: No redirect.

2 CHAIRMAN VOLZ: Okay. Thank you. Do
3 the parties want to continue and do Ms. Simollardes
4 now and get that out of the way, or do we need take a
5 lunch break?

6 MR. DUMONT: Whatever your pleasure is.

7 CHAIRMAN VOLZ: Well you said 10
8 minutes, right? You said 10 minutes a little while
9 ago and that didn't turn out to be the case. I'm
10 happy to give you as much time as you need.

11 MR. DUMONT: I'm really good at
12 predicting project costs too.

13 CHAIRMAN VOLZ: It's quarter after now.

14 MR. DUMONT: I think maybe we should
15 take a lunch break.

16 CHAIRMAN VOLZ: Take a lunch break and
17 come back in an hour.

18 (Recess was taken.)

19 CHAIRMAN VOLZ: Okay. We are back from
20 our lunch break, and we are ready for our next
21 witness.

22 MS. CHENEY: And I'll start by
23 reminding you that you remain under oath in this
24 case.

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. Could you please state your name for the
7 record?

8 A. Eileen Simollardes.

9 MR. ZAMORE: The witness is available
10 for cross.

11 CHAIRMAN VOLZ: Mr. Dumont.

12 MR. DUMONT: Thank you.

13 CROSS EXAMINATION

14 BY MR. DUMONT:

15 Q. Ms. Simollardes, do you have the transcript
16 from last week? We have marked it as an exhibit.

17 A. Which exhibit is it please?

18 MEMBER OF THE PUBLIC: The microphone's
19 not on.

20 MR. DUMONT: It's the transcript from
21 December 1.

22 MR. ZAMORE: Exhibit D.

23 THE WITNESS: Thank you.

24 BY MR. DUMONT:

25 Q. Turn to pages 118 to 119.

1 A. I have that.

2 Q. You are in a conversation with Mr. Young at
3 that point, and at lines 17 through 19 -- well look at the
4 whole page. As I understand the transcript you are
5 talking about your understanding of what the impacts were
6 when you initially calculated them in the fall of 2014.
7 But maybe I'm wrong. So look at that and tell me what
8 you're talking about there. It goes on to 119. It refers
9 to the 121 million on line 17.

10 A. It actually appears to be a combination of a
11 discussion of where we were in the fall of 121 and where
12 we were relatively to the 153.

13 Q. Okay. So I don't know if this is maybe the
14 witness's clarification of what you meant to say or what
15 your understanding was, if you can now turn to Cross
16 Exhibit A which is the transcript from September 26, 2014.
17 And let's go through pages 29 through 32.

18 CHAIRMAN VOLZ: Which page?

19 MR. DUMONT: Yes. 29 through 32.

20 THE WITNESS: I'm sorry. I think I
21 already messed these up. I'm going to put them back
22 together.

23 BY MR. DUMONT:

24 Q. Do you want another set?

25 A. No. I just need to not mix -- let me put the

1 first transcript back together, and then I'll open the
2 second one.

3 Q. So your desk doesn't look like my desk.

4 A. I'm sorry. Can you please repeat the page
5 number?

6 Q. Starting on 29. Bottom half of 29.

7 A. Yes.

8 Q. So if I understand this correctly in your
9 discussions with Mr. Young you're explaining that
10 levelized over 25 years looking at the 121 million dollar
11 cost, it's a 15.2 percent rate increase.

12 A. Excluding any use of the System Expansion
13 Reliability Fund, yes.

14 Q. Yes. And that's at 121. Right?

15 A. Correct.

16 Q. And as Mr. Young responded on the next page,
17 page 30, what you're showing me here is that over 25 years
18 Vermont existing ratepayers will pay about 15.2 percent
19 more than they would have in the absence of the system
20 expansion in straight financial costs. And you pointed
21 out only if you're not using the System Expansion and
22 Reliability Fund. Right?

23 A. That's what the transcript says.

24 Q. Okay. And then running on to page 31, the
25 conversation switches from a 25-year time period to a 10-

1 year time period, on the bottom of page 31 Mr. Young is
2 going through the spreadsheets with you, and he says: "If
3 you eyeball it over say that first 10 years here, which is
4 my first page, somewhere in the range of 150 million
5 dollars would be, you know, give or take probably give or
6 take 10 million, I didn't try to actually add it, is that
7 fair enough?" And you say: "I'm going to trust your math
8 and your mind."

9 So that's looking at it's not reduced to
10 present value. I understood just nominal dollars, but
11 that's roughly what existing ratepayers would be paying
12 over a 10-year period as the cross subsidy.

13 A. In that very specific analysis, that is not a
14 specific proposal of what customers will pay.

15 Q. Understood. And sticking with page 32 for
16 just another second in the middle of the page around 12,
17 13, 14, at that point using the 121 million, the crossover
18 date when revenues from the new customers exceed cost of
19 service, that crossover point is around year 32; correct?

20 A. That's what the testimony says. The actual
21 exhibit showed between year 31 and 32.

22 Q. Okay. When I was looking at your testimony
23 last week, 118, 119, 120, I couldn't tell whether you were
24 changing what you had said back in 2014 or it's just the
25 transcript wasn't clear. So what we just read through

1 from 2014 is still accurate in your mind?

2 A. Correct.

3 Q. Okay. Thank you. If we now want to adjust
4 the 121 million to 134 million, simple math, which is all
5 I'm capable of, I took 134 over 121, and multiplied that
6 by 15.2 percent, and I got 16.8 percent as the same -- I'm
7 not saying it will be the rate increase, but it's the same
8 rate impact. That's how you would extrapolate the rate
9 impact; is that correct to you?

10 A. I think you approached it differently than the
11 spreadsheets would have shown, but you're in the ball park
12 of -- offer an apple-to-apples comparison.

13 Q. Thank you. And using the same 134 over 121
14 ratio over the 10-year period following the start of the
15 analysis, I got 166 million would be the nominal, not net
16 present, but nominal amount of the subsidy, cross subsidy?

17 A. That I can't do on the top of my head. I
18 would have to double check it or trust your math.

19 Q. Okay. But the analysis, however, of
20 multiplying 1 -- taking 134, dividing it by 121 and
21 multiplying that by 150, the concept makes sense to you.
22 Taking 134, 121sts of 150.

23 A. I think so. Sorry.

24 Q. And just so we have the third number in mind,
25 what is your present understanding of the crossover date?

1 It was between 31 and 32 years, what would it be at 134
2 million?

3 A. Between 32 and 33.

4 Q. Thank you. If you could turn now to pages 107
5 and 108 of last week's testimony.

6 CHAIRMAN VOLZ: Which exhibit is that?

7 MR. DUMONT: That's D.

8 CHAIRMAN VOLZ: Okay, thanks.

9 BY MR. DUMONT:

10 Q. Lines 12 through to the end. I believe this
11 is Mr. Saudek questioning you.

12 A. On which page? 107?

13 Q. Page 107.

14 A. 107.

15 Q. Mr. Saudek asked: "My point is, are you not
16 asking the Board to stick present customers for 32 years
17 for this project, right? By stick I mean make them pay
18 more than they otherwise -- would otherwise pay?" And
19 your answer was: "Actually that's not what this
20 proceeding is about. This proceeding is about whether or
21 not the project should have a Certificate of Public Good,
22 who pays for it is in the subject of a subsequent
23 proceeding." Did I read that right?

24 A. You read it accurately.

25 Q. And I have just a little discussion with you

1 about that. I want to see if we can make a distinction
2 between whether the Board is deciding who pays for it, in
3 a particular case, or whether it's relevant in a
4 particular case.

5 I think we can agree that it will be a later
6 case, not this case, where the Board would decide who pays
7 for it. But isn't it still relevant in this case, would
8 you concede that?

9 A. No. I'm not sure I agree with that, that
10 assessment. I think what's relevant in this case is
11 whether or not the project is in the public good. And
12 Vermont Gas has presented analysis that we believe the
13 project is in the public good regardless of who pays for
14 it.

15 Q. So if the net economic benefit comes largely
16 from jobs created at Argi-Mark in Middlebury, it shouldn't
17 make any difference that residential ratepayers are paying
18 for that?

19 A. The standard, in my opinion, is public good.

20 Q. No matter how much residential ratepayers are
21 paying for job creation?

22 A. I think various parties have put various
23 positions about the economic benefit and the public good
24 before the Board, and the Board will consider that
25 evidence and give it each the weight that they think is

1 appropriate.

2 Q. One more question about this. And I know,
3 lucky for you you're not a lawyer, we don't have to
4 condemn you with that label.

5 But are you familiar with the Board's
6 precedence about sharing between ratepayers and the
7 shareholder -- the sharing of uneconomic project costs?

8 A. Not really. No.

9 Q. So if I were to tell you that the Board
10 precedent holds that even if a project is not used and
11 useful, generally the uneconomic cost is split 50/50
12 between ratepayers and the shareholder?

13 A. Is not used and useful, the uneconomic portion
14 is split 50/50.

15 Q. Yes. Are you familiar with that?

16 A. From what -- based on what you just told me.
17 I'm sorry. Is there a question?

18 Q. Yes. So I'm giving that to you as --

19 A. Okay.

20 Q. My understanding of, for example, the CVPS
21 decision in 6460. Decided June 26, 2001. At page 23.
22 Assuming that's the law, that the Board will apply in the
23 future, in other words, if the project turns out to be
24 economic, ratepayers are still going to pay for half of
25 the uneconomic costs, isn't that an important reason to

1 look at who pays in costs now?

2 A. I actually think that goes directly to the
3 point of the MOU which caps the amount that customers will
4 be responsible for at 134 million.

5 Q. And potentially a 15 percent rate increase
6 levelized -- averaged -- that would be the average impact
7 over the next 25 years?

8 A. I don't agree with that assertion.

9 Q. Finally, I would like you to talk to me for a
10 second about the MOU. There is a paragraph on the third
11 page. Page five -- not first paragraph five, but it's the
12 second paragraph five on page three. The first paragraph
13 five is on page two.

14 This paragraph of the MOU says: "The parties
15 agree that it is appropriate to place the first 11 miles
16 of the project into service." And so on. I'm sure you
17 know a lot about that.

18 So I want to ask you that first 11 miles, that
19 project doesn't really involve a cross subsidy, does it?
20 Because it's benefiting existing ratepayers by providing
21 looping; correct? Am I right?

22 A. I'm mixing concepts here. The first 11 miles
23 provides benefit to existing customers by reinforcing our
24 existing system.

25 Q. Thank you, yes.

1 A. The issue of who will be paying for those
2 first 11 miles has not yet been decided. So it is hard
3 for me to say that it does or does not involve any sort of
4 cross subsidy. One could argue, however, that there is a
5 cross subsidy between the customers north of that loop and
6 the customers south of that loop.

7 Q. Thank you. I was going to ask you -- that was
8 my next question. Which -- do you know how many customers
9 are served by the loop?

10 A. I do not.

11 Q. Is it everyone in Burlington, in the
12 Burlington area?

13 A. I'm not familiar enough with the system flows,
14 the gas flows on our system to know exactly how many
15 customers are served off of that gate station or that
16 loop.

17 Q. You're not a lawyer and you're not an
18 engineer?

19 A. No.

20 Q. Have you done any examination of what the
21 impact would be on rates if the project stopped right
22 where it is right now with those 11 miles in service?

23 A. No. I don't have an analysis that shows what
24 the -- what the 11 miles would be because I'm not for two
25 -- one, I haven't done it, and two I'm not -- as I sit

1 here right now I couldn't even tell you what the cost of
2 those first 11 miles would be.

3 Q. We know from the testimony in June from Mr.
4 Rendall that somewhere between 60 and 70 million dollars
5 had been spent at that time.

6 A. Correct.

7 Q. And do you know how much has been spent by
8 now?

9 A. The best current estimate is from the October
10 2015 quarterly cost update which I may have with me.
11 Somewhere in the order of -- let me look rather than
12 guess.

13 As of the October 2015 quarterly cost update,
14 we had spent 80.9 million.

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

16 CHAIRMAN VOLZ: Thank you. Any follow
17 up? Do we have any questions? Any redirect?

18 MR. ZAMORE: Yes. I have one area.

19 REDIRECT EXAMINATION

20 BY MR. ZAMORE:

21 Q. Ms. Simollardes, Mr. Dumont asked you --

22 MEMBER OF THE PUBLIC: Microphone
23 please.

24 BY MR. ZAMORE:

25 Q. Mr. Dumont asked you a number of questions at

1 the beginning of his examination as to rate impact
2 analyses performed with respect to the 121 million. Do
3 you recall those?

4 A. Yes.

5 Q. Could you tell me what you forecast is the
6 current revenue requirements impact of the project with
7 the 134 million dollar rate cap and assuming the SERF is
8 used?

9 A. Assuming the SERF is used, at 134 million, we
10 would expect a revenue requirement impact of approximately
11 nine percent over 10 years.

12 MR. ZAMORE: Thank you, no further
13 questions.

14 CHAIRMAN VOLZ: Okay. The witness is
15 excused. And I think, Mr. Dumont, we are ready for
16 your witness.

17 MR. DUMONT: Could I just ask a
18 question of the witness?

19 RECROSS EXAMINATION

20 BY MR. DUMONT:

21 Q. When you said nine percent over 10 years that
22 means the average rate impact would be nine percent over
23 the 10 years?

24 A. That means by the end of 10 years the rate
25 impact would have been nine percent.

1 Q. Averaged over those years?

2 A. No. By the end of 10 years the rate impact
3 would have been nine percent.

4 Q. In total?

5 A. In total.

6 Q. Okay. Thank you.

7 A. In total, correct.

8 MR. YOUNG: Jim, could I just follow
9 up? Just to be clear on that, in terms of the -- how
10 you get to the nine percent. As I understand your --
11 the financial analysis you presented, it assumed an
12 initial 12.2 percent rate increase and a year-10
13 decrease of 3.2, which is how you're getting the nine
14 percent. If you averaged 12.2, 12.2 for nine years
15 plus 3.2, the number is a bit bigger than nine
16 percent.

17 THE WITNESS: That's why I clarified my
18 response to not say it was an average.

19 MR. YOUNG: I wanted to make sure I
20 heard the word average, and I thought I missed
21 something.

22 THE WITNESS: I specifically said it
23 wasn't an average. It was a year-10 impact.

24 MR. YOUNG: Got it.

25 CHAIRMAN VOLZ: Thank you. I think we

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are ready for Mr. Dumont's next witness.

MR. DUMONT: Yes.

MS. CHENEY: Good afternoon, Mr. Dismukes. I would just remind you that you remain under oath from your previous appearance in this case.

THE WITNESS: Yes, ma'am. I understand.

1 DAVID E. DISMUKES

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

4 MR. DUMONT: I offer Dr. Dismukes'
5 prefiled and his three exhibits.

6 MR. ZAMORE: No objection.

7 CHAIRMAN VOLZ: They are admitted.

8 (Exhibits marked DED-1, DED-2 and DED-3
9 were admitted into the record.)

10 (The Prefiled Testimony of David E.
11 Dismukes was admitted into the record.)

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1 CHAIRMAN VOLZ: Cross, Mr. Zamore?

2 MR. ZAMORE: Yes, I do.

3 CHAIRMAN VOLZ: Okay.

4 MR. ZAMORE: Thank you.

5 CROSS EXAMINATION

6 BY MR. ZAMORE:

7 Q. Good afternoon, Dr. Dismukes.

8 A. Good afternoon.

9 Q. Although Vermont Gas and AARP disagree on the
10 methodology for calculating economic benefit, your updated
11 analysis indicates a significant positive change in
12 economic benefit relative to your rebuttal testimony; is
13 that correct?

14 A. Yes, sir.

15 Q. In fact using the economic output measure, the
16 positive benefit is over one third, would you agree?

17 A. That sounds about right. Yes, sir.

18 Q. You -- could you turn to DED-2.

19 A. Okay.

20 Q. And there you compare the changes to your
21 updated economic benefit analysis compared to your
22 rebuttal analysis; is that right?

23 A. Yes, sir.

24 Q. And you indicate -- it indicates that the
25 beneficial impact or the positive impact of the MOU's rate

1 cap is five to seven times the impact of your fuel price
2 update; is that correct?

3 A. That sounds about right. Yes.

4 Q. Could you turn to page 12 of your testimony.
5 On line 16 you criticize the Department for not updating
6 energy prices; correct?

7 A. Yes.

8 Q. And on line 18 you indicate that you have
9 provided an update to the economic impact analyses to
10 include these pricing changes; correct?

11 A. Yes, sir.

12 Q. And in particular, on line 11 of page 12 you
13 indicated that -- you indicate that the fuel oil prices
14 have dropped from \$2.68 a gallon in April to \$2.27 by
15 November; correct?

16 A. Yes, sir.

17 Q. You do not identify in your testimony any
18 similar detailed analysis of the change in natural gas
19 price; correct?

20 A. Not in the testimony directly.

21 Q. And you updated natural gas prices to reflect
22 a Vermont Gas rate reduction occurring in August; correct?

23 A. That's correct.

24 Q. You did not update for an additional rate
25 reduction occurring in November; correct?

1 A. That's correct.

2 MR. ZAMORE: Thank you. That's all I
3 have.

4 CHAIRMAN VOLZ: Any follow-up
5 questions? Do we have some questions?

6 MR. YOUNG: Yeah.

7 CHAIRMAN VOLZ: Do you have some
8 questions?

9 MS. PORTER: The Department doesn't
10 have any questions.

11 CHAIRMAN VOLZ: Okay.

12 MR. YOUNG: Good afternoon, Dr.
13 Dismukes. I think Mr. Zamore just covered a couple
14 of the things that I had on my list. Let me start
15 with this.

16 You raise three criticisms of the
17 Department's new analysis; correct?

18 THE WITNESS: Yeah.

19 MR. YOUNG: I want to focus on the
20 second of these which is the failure to account for
21 the reduction in Vermont economic activity. Do you
22 recall that criticism?

23 THE WITNESS: Where are you at?

24 MR. YOUNG: Let me get to the right
25 page here.

1 CHAIRMAN VOLZ: George, can you use the
2 microphone? Maybe you can change places.

3 MR. YOUNG: Page 10 of your testimony.
4 Line 12.

5 THE WITNESS: Yes. So this is
6 discussing the prior analysis. This is a reiterating
7 from the prior testimony.

8 MR. YOUNG: Okay. That was what I was
9 wanting to ask you. Because I thought Dr. Hopkins
10 actually did address this in his new testimony, or
11 did I miss something?

12 THE WITNESS: This is just a summary of
13 what we had. I think that some of the original --
14 as I recall some of the original analyses omitted
15 some of those impacts.

16 MR. YOUNG: Okay. It wasn't clear to
17 me because when you presented it, you said analyses,
18 and I wasn't sure whether you were just talking about
19 the old or the new.

20 THE WITNESS: Yeah. I'm just kind of
21 reiterating what I said in the last round.

22 MR. YOUNG: I should take that as a
23 reiteration.

24 THE WITNESS: Yes, sir.

25 MR. YOUNG: On page nine of your

1 testimony, you discuss the certain failures of
2 Vermont Gas's economic benefit analysis. And you
3 mention that it fails to appropriately account for
4 all project capital investment.

5 I'm looking at line 15 here. Can you
6 explain to me exactly what you're getting at here?

7 THE WITNESS: Well I think in the
8 original analysis there were some capital investments
9 that were excluded on the service line extensions in
10 the analysis.

11 MR. YOUNG: So we are talking about the
12 distribution systems here?

13 THE WITNESS: Right, right. Again,
14 this is a reiteration of some of the stuff that we
15 talked about before.

16 MR. YOUNG: Right. I understand that
17 --

18 THE WITNESS: Which has not changed
19 since they have not updated it.

20 MR. YOUNG: Okay. And I think you just
21 -- you had this discussion with Mr. Zamore, you -- in
22 your testimony you fault the Department and VGS for
23 their fuel oil price adjustments and assumptions and
24 not updating those; correct?

25 THE WITNESS: Correct.

1 MR. YOUNG: And from the -- your
2 discussion with Mr. Zamore, it appears that at least
3 in your analysis the effect of that -- I mean it's
4 not insubstantial, but it's not really large by
5 comparison to the -- you know, the 64 million dollar,
6 I'm sorry, the 78 million dollar figure that you're
7 presenting as the net negative.

8 THE WITNESS: Right.

9 MR. YOUNG: I mean is this a couple
10 million dollar -- 10 million dollars, 5 million
11 dollar effect? Do you know?

12 THE WITNESS: For?

13 MR. YOUNG: For updating the fuel oil
14 prices.

15 THE WITNESS: Oh, so you're kind of
16 asking me to isolate what is just the difference in
17 the fuel versus the cap ex?

18 MR. YOUNG: If you can. I'm trying to
19 understand if I look at their analysis and say what
20 they didn't do, how big a deal is this?

21 THE WITNESS: It has some impact.
22 Since that time period fuel oil prices have fallen
23 pretty significantly. We have also gotten some
24 decreases in natural gas. They are kind of washing
25 out a little bit on the energy savings piece of that.

1 I think there is still a little bit of a net side
2 change on that. It's clearly not as large as 20
3 million reduction in cap ex that's going to change
4 the revenue requirement. That's what's really
5 driving these numbers.

6 MR. YOUNG: So it's much smaller
7 magnitude than that.

8 THE WITNESS: Oh, yes.

9 MR. YOUNG: Okay. One other issue that
10 you addressed in your original analysis, and I'm
11 assuming that it's here too.

12 Was that the model approach that you
13 used, the output model, includes some economic
14 activity outside of Vermont; is that correct?

15 THE WITNESS: Well it values all the
16 expenditures that are made that may be coming from
17 out-of-state type of activities. Yes.

18 MR. YOUNG: Right. So they are not
19 direct Vermont impacts, benefits or costs
20 necessarily.

21 THE WITNESS: Well they include those
22 kinds of purchases that aren't net of the value added
23 in the state.

24 MR. YOUNG: If we wanted to limit, and
25 I probably asked you this the last time around, if we

1 wanted to limit it to Vermont impacts, any idea how
2 that might affect the analysis?

3 THE WITNESS: Yeah. I think if you
4 looked at -- so if you look at DED-3, which is the
5 summary on the new numbers, and you look at the
6 bottom right panel, it says: "Economic impacts,
7 economic value added", value added essentially is the
8 comparable measure for GSP that Dr. Hopkins was using
9 so that would be what you want to focus on.

10 MR. YOUNG: So if I looked at this
11 number instead of the other numbers that will give a
12 better measurement.

13 THE WITNESS: Right. The 64 versus the
14 78 if you went to the other corner.

15 MR. YOUNG: So that's the number that
16 -- still pointing in the same direction that you had
17 analyzed and showing a net negative economic impact.

18 THE WITNESS: Right. It's going to
19 change the level, but it's not going to change the
20 sign. And it won't change the other types of
21 measures like employment or wages.

22 MR. YOUNG: I think that's all the
23 questions I had. Everything else you had addressed
24 the last time you testified. Thank you.

25 THE WITNESS: You're welcome.

1 CHAIRMAN VOLZ: Any follow up to ours?

2 MR. DUMONT: Yes.

3 REDIRECT EXAMINATION

4 BY MR. DUMONT:

5 Q. Dr. Dismukes, taking into account all of the
6 questions Mr. Zamore asked you, would any of those have
7 any effect on your result?

8 A. In terms of the updates with --

9 Q. Yes.

10 A. Well the update on the natural gas price, I
11 think there would be a small improvement in the benefits
12 relative to the project of about probably around three or
13 four million dollars to the bottom line on this, so it
14 would be a positive adjustment. So rather than around 78
15 it would probably be around 74. Because I think base
16 rates were up in that last quarterly filing, fuel rates
17 were down, on net it was about a two percent reduction.

18 MR. DUMONT: Thank you.

19 CHAIRMAN VOLZ: Thank you. You're
20 excused.

21 THE WITNESS: Thank you.

22 CHAIRMAN VOLZ: I think we are ready
23 for the Department's witnesses.

24 MS. PORTER: The Department calls Dr.
25 Asa Hopkins.

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MS. CHENEY: Good afternoon, Dr.
Hopkins. And I will again remind you that you remain
under oath.

THE WITNESS: Thank you.

1 ASA HOPKINS

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

4 DIRECT EXAMINATION

5 BY MS. PORTER:

6 Q. Please state your name and occupation for the
7 record.

8 A. Asa Hopkins. I'm the Director of Energy
9 Policy and Planning for the Public Service Department.

10 MS. PORTER: And Dr. Hopkins is
11 available for cross.

12 CHAIRMAN VOLZ: Mr. Dumont, I think
13 you're the one -- the only one who signed up for
14 that.

15 MR. DUMONT: Yes.

16 CROSS EXAMINATION

17 BY MR. DUMONT:

18 Q. Good afternoon. How are you?

19 A. I'm fine.

20 Q. If you could turn to pages 136 through 137 of
21 the December 1 transcript which is Exhibit D.

22 A. Sorry. There is just stacks of paper here.
23 So I have to figure out where we are. I think I have the
24 right one. What pages were you saying?

25 Q. 136 and 137.

1 A. Yes, I'm there.

2 Q. Mr. Young asked you what -- well we probably
3 talked about this in June, but since he's raised the issue
4 once again, why shouldn't you be measuring only the
5 incremental savings and your answer was: "You know, I
6 think it's a question of baselines of what the appropriate
7 case against which you're comparing should be. It seemed
8 most appropriate from my standpoint to have that baseline
9 be consistent throughout the proceeding, to have that
10 baseline reflect the state of the world pre-project which
11 means before customers made whatever investment or changes
12 they might have made in anticipation of the project or not
13 in anticipation of the project."

14 Did I read that roughly correctly?

15 A. Yes, I think so.

16 Q. So I'm going to ask you the lawyer question,
17 again you're not a lawyer, I understand that. Have you
18 read the Board's precedence about a regulated utility's
19 duty to continually monitor, review and assess investments
20 that have been approved of under a CPG?

21 A. No.

22 Q. Are you aware that the argument you make in
23 the transcript is one that would have defeated the
24 Department of Public Service's position in the
25 Hydro-Quebec lock-in case?

1 A. No.

2 Q. And would have also been contrary to the
3 Board's ruling in the locked in case.

4 A. I just want to be clear. I'm just not
5 familiar with that case, so I say no or yes. I'm not
6 saying that I'm agreeing with your conclusion, just that
7 I'm not familiar enough to answer the question.

8 Q. Okay. Was there CNG in Middlebury in December
9 of 2013?

10 A. Not that I'm aware of, but that doesn't mean
11 that there wasn't something --

12 Q. You've read the Board's order from December
13 23, 2013 I'm sure.

14 A. Yes. It's been a little while since I've read
15 the whole thing.

16 Q. There is only one right answer to that
17 question. Did the Board contemplate in the order that CNG
18 would come to Middlebury before the pipeline was built?

19 A. I'm not recalling at the moment what the Board
20 said on that point.

21 Q. I think that's all I have for this witness.

22 CHAIRMAN VOLZ: Okay. Any follow up
23 from the other parties? Or cross -- of the cross?
24 Okay, Mr. Hopkins. Any redirect?

25 MS. PORTER: No thank you.

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CHAIRMAN VOLZ: Thank you, Mr. Hopkins.

THE WITNESS: You're welcome.

CHAIRMAN VOLZ: I think we are ready
for Commissioner Recchia.

MR. DUMONT: I need a minute to get my
notes organized here.

CHAIRMAN VOLZ: Okay.

MS. CHENEY: While he's getting
organized, I'll remind you that you remain under
oath.

THE WITNESS: Yes, very much.

1 CHRISTOPHER RECCHIA

2 Having been duly sworn, testified
3 as follows:

4 CROSS EXAMINATION

5 BY MR. DUMONT:

6 Q. Good afternoon, Commissioner.

7 A. Good afternoon.

8 Q. If you could start -- if we could start with
9 the testimony on page 2.

10 A. I was sworn in, but Christopher Recchia,
11 Commissioner of the Department of Public Service. I'm
12 with you, sir.

13 Q. On lines 14 through 16 you state: "We are
14 actively monitoring progress on the pipeline. And have
15 had inspectors out in the field ensuring that the work is
16 being conducted to strict quality control standards."

17 Can you tell us why you felt that was relevant
18 for the Board to hear in this proceeding?

19 A. I believed it to be relevant because I wanted
20 to make sure that people understood that we were both
21 monitoring the project for quality and ensuring that it
22 was being constructed appropriately, because I did feel
23 that there could be a reaction to the cap of 134 million
24 that might lead people to think that somehow VGS might cut
25 corners to meet that cap. And I did not want that to be

1 the impression.

2 Q. On page four of your prefiled testimony, turn
3 to page four lines 16 and 17. You state: "But it is
4 important to me that the Board and the public have
5 confidence in Vermont Gas." Correct?

6 A. As well.

7 Q. Does that relate also to this issue of whether
8 or not the pipeline is being constructed in accordance
9 with the standards that Department's expert established in
10 2013?

11 A. If you read this answer in its entirety or at
12 least that sentence in the context, obviously there were
13 problems early on in the construction of this in terms of
14 some of the protocols, contracts, things like that. And
15 we had been gaining increased confidence that Vermont Gas
16 was on the right track with this project.

17 This specific provision is really speaking to
18 the opportunity to evaluate that performance independently
19 at a later date, if necessary.

20 Q. Let's go back to page two lines 14 through 16,
21 where you wrote: "We are actively monitoring progress in
22 the pipeline and have had inspectors out in the field
23 ensuring that the work is being conducted to strict
24 quality control standards."

25 Did you mean to say that throughout the

1 construction that has happened, the company has been
2 complying with the standards that the Department's expert
3 established and said that Vermont Gas had agreed to in
4 2013?

5 A. Going back to this answer, and indicating that
6 -- I'll read the sentence. "Progress has been steady
7 throughout this construction season, and I understand the
8 project is on budget and cost estimates have not changed
9 since last December." And then the sentence you read.

10 Q. Right. So the sentence I read refers to the
11 work being conducted to strict quality control standards.
12 And that really isn't true, is it?

13 A. No. I would disagree with that based on all
14 the information I've gotten from my on-site engineers,
15 inspectors, the experts that we have been working with,
16 and my Engineering Department, and other communications, I
17 think -- it's my impression that it is true.

18 Q. If you could turn to Exhibit O. Page nine,
19 the entry for July 22 of 2015. At which point 60 to 70
20 million dollars of work had been completed according to
21 Mr. Rendall the month before.

22 Did your engineer write: "Previously the gas
23 engineer informed VGS representatives that critical
24 elements were missing from each of the programs referenced
25 above. These elements include adequate criteria for

1 inspection of production welding processes, methods to
2 identify root causes of non-conforming conditions,
3 methods to monitor the efficacy of corrective actions,
4 specific tasks, training modules for construction
5 personnel, and individual skill assessment verifications."

6 That's what you wrote?

7 A. Yes.

8 Q. Was that true?

9 A. Yes.

10 Q. And did you also write the gas engineer has --
11 the gas engineer reviewed these elements with the VGS
12 again during this report period, and VGS indicated these
13 elements are not currently available. Was that true?

14 A. Yes.

15 Q. That was in July of 2015?

16 A. Yes.

17 Q. And then July 29, the second paragraph of July
18 29 basically says the same thing. So a week later still
19 no progress, critical elements missing. Correct?

20 A. Yes.

21 Q. And are you aware that in the spring and May,
22 May 13, Vermont Gas had to remove an entire 800-foot pipe
23 that had been placed under the interstate because of
24 damage caused during installation?

25 A. Yes.

1 Q. How much did that cost, do you know?

2 A. No, I do not.

3 Q. You have had a chance to review Exhibit O in
4 preparation for your testimony today?

5 A. Yes.

6 Q. A request that you were very forthright and
7 you provided it in discovery for which I thank you.

8 A. Yup.

9 Q. And you knew I was going to ask you about it
10 today?

11 A. Yes.

12 Q. So I assume you read it. And I'm going to
13 move Exhibit O into evidence. Let me just establish more
14 of a foundation. This is a report prepared for you by the
15 Department's gas engineer?

16 A. These are excerpts from reports that I get on
17 a weekly basis from my staff, each division, so the
18 engineering report included these relevant portions to the
19 Vermont Gas Systems' project.

20 MR. DUMONT: I move Exhibit O.

21 CHAIRMAN VOLZ: Any objection?

22 MR. ZAMORE: No objection.

23 MS. PORTER: I'm not sure I see the
24 relevance of this document stand alone. The
25 Commissioner has given testimony, and he has stated

1 that he relies on any number of things. This was
2 just one piece that, as Mr. Dumont said, we in trying
3 to be forthright provided to the parties as sort of
4 one example of the things that Commissioner Recchia
5 relies on.

6 It's hearsay. We don't have the person
7 who drafted these notes, and we have been going
8 through them in quite some detail. I just -- I'm not
9 sure how relevant this document is to the underlying
10 MOU itself when you have the testimony.

11 CHAIRMAN VOLZ: And you're objecting on
12 that basis?

13 MS. PORTER: Yes.

14 CHAIRMAN VOLZ: Okay. Mr. Dumont?

15 MR. DUMONT: He's identified it is in
16 fact prepared in the course of the Department's
17 business. I don't think there is any question as to
18 authenticity or that -- the accuracy of the
19 statements. He said it was excerpts from reports
20 that were prepared as part of the weekly briefing
21 that as Commissioner he receives. And if those
22 aren't reliable under the hearsay rules, we are in
23 big trouble.

24 So I think they are business records
25 from the Department, and I also think I can develop

1 this further, if necessary, that this is information
2 that the witness was aware of in developing the
3 opinion he presented in his prefiled testimony.

4 CHAIRMAN VOLZ: We are going to
5 overrule the objection and let it in. So it's
6 admitted.

7 (Exhibit O was
8 admitted into the record.)

9 MR. DUMONT: Thank you. I'm nearly
10 done.

11 BY MR. DUMONT:

12 Q. If you could turn to page three of your
13 prefiled. Lines 23, 24. You wrote: "I think the MOU
14 makes it unlikely that project costs subject to potential
15 rate recovery will exceed 134 million." Do you see that?

16 A. Yes.

17 Q. Do you recall Mr. Hopkins -- Dr. Hopkins in
18 his prefiled address the same subject?

19 A. No, I don't recall that. But --

20 Q. Okay. I will represent to you on pages two
21 and three he said it was difficult, if not impossible, to
22 know what those amounts might be.

23 A. Can I ask a clarification?

24 Q. Absolutely.

25 A. Was he speaking toward ratepayer recovery or

1 to the cost of the project?

2 Q. I'm not sure if his testimony made that clear,
3 I don't know.

4 A. Okay. It makes a difference.

5 Q. Okay. Explain.

6 A. So I would agree with the answer that we have
7 no idea what would be available for ratepayer recovery.
8 The potential ratepayer recovery is being capped at 134
9 with the exceptions that have been previously discussed
10 and noted. The cost of the project is likely to be over
11 that, and well over that based on the estimates and budget
12 to date.

13 Q. I don't want to have to speak for Dr. Hopkins,
14 so let me just ask you, in your prefiled at page three
15 lines 23, 24, were you attempting to -- when you said it
16 was unlikely, were you trying to capture within that the
17 material delay clause and the extraordinary event clause,
18 or are you just assuming that those don't come into play?

19 A. I was trying to capture what I thought was
20 likely to come into play related to those knowing that
21 none to date have come into those categories.

22 Q. Now what do you mean by to date?

23 A. Well I can't predict what events might occur
24 in the future as this project is developed. But you know,
25 I thought about this in the context of the events that

1 have occurred so far and found none that would rise to the
2 level to warrant one of those exceptions which means we
3 are still at the 134 million cap.

4 Q. Turning to the MOU paragraph five on page
5 three, that refers to first 11 miles of the project. Do
6 you agree with me that those first 11 miles differ from
7 the remainder of the project because they provide direct
8 benefits to existing ratepayers?

9 A. The first 11 miles do provide benefit to
10 existing ratepayers. I'm not sure -- I do not agree with
11 the characterization that it's different from the rest of
12 the project because it does that.

13 Q. Would you agree that at least there is a
14 difference in degree of benefit to existing ratepayers?

15 A. Yes. I would agree with that.

16 Q. The reason you were hesitant to agree with my
17 first statement was you believe that there is some --
18 there are some benefits for all ratepayers from finishing
19 the project to Middlebury.

20 A. Correct.

21 Q. And -- and what are those benefits to existing
22 ratepayers from finishing -- from going forward, what are
23 those?

24 A. For finishing the project?

25 Q. Yeah. Going from the interstate south to

1 Middlebury.

2 A. I think there is an opportunity to add many
3 more customers to the ratepayer base of this project -- of
4 Vermont Gas Systems as a whole. So that's one.

5 Q. Anything else?

6 A. I'm sure there are other things. There is
7 certainly the general public good benefits that they would
8 also derive as a result of being part of the citizenry of
9 Vermont.

10 Q. Those are very different benefits than the
11 reliability benefits that looping provides to existing
12 consumers; correct?

13 A. Yes.

14 Q. Has the Department conducted any analysis of
15 what the impact on rates would be if the project were to
16 stop where it is right now?

17 A. No. We have not to my knowledge.

18 Q. Has the Department engaged in any discussions
19 with Vermont Gas about evaluating the pros and cons of
20 stopping the project where it is right now?

21 A. Could you repeat the question?

22 Q. Yes. Has the Department engaged in any
23 discussions with the gas company about the pros and cons
24 of stopping the project where it is right now?

25 A. I can only speak for myself on this. I don't

1 know for the Department. I have not had any discussions
2 along those lines. We have certainly raised the prospect
3 of stopping the project in various conversations.

4 MR. DUMONT: I'm done. I just want to
5 -- there are a couple of discovery answers that I
6 wanted to put into evidence. If I can just take a
7 moment to find those, then I will be done.

8 CHAIRMAN VOLZ: Sure. Are there any
9 follow-up questions to Mr. Dumont at this time? Yes,
10 Ms. Palmer.

11 MS. PALMER: Mr. Recchia.

12 CHAIRMAN VOLZ: That's what I meant to
13 say. Why don't you go ahead while Mr. Dumont is
14 looking for his --

15 CROSS EXAMINATION

16 BY MS. PALMER:

17 Q. Hello? Can you hear me?

18 A. I can.

19 Q. Hello Mr. Recchia.

20 A. Hello.

21 Q. Who is your boss?

22 A. My boss is the Governor of the State of
23 Vermont and all the other public officials that determine
24 the duties of my job which includes the legislature.

25 Q. Okay. Did the Governor support this project

1 before the PSB approved it?

2 A. I believe so.

3 Q. Did you? Publicly?

4 A. Not until very far into the technical
5 hearings.

6 Q. But before the Board issued the Certificate of
7 Public Good did you support it publicly?

8 MS. PORTER: Mr. Chairman, I'm going to
9 object on relevance. I'm not sure who supported the
10 pipeline when. Way back when before a certificate
11 was granted or anything else has any relevance
12 whatsoever to this MOU.

13 MS. PALMER: I would like to establish
14 the influence of the MOU.

15 CHAIRMAN VOLZ: Okay. Go ahead.
16 That's fine.

17 MS. PALMER: Thank you.

18 THE WITNESS: So I want to answer your
19 question. We did not take a position on the project
20 until the technical hearings were well underway. And
21 then, of course, we did weigh in in favor of it based
22 on the public benefits, and that was before the
23 issuance of a CPG, we had to take a position on the
24 project.

25 BY MS. PALMER:

1 Q. Do you agree that the Department has a good
2 deal of influence on the Board's decision? Comparatively?
3 To like say Nate and me?

4 A. I think we have more experience in the process
5 and more understanding of what the Board's looking for,
6 but I would not presume that we have a better result than
7 anyone else.

8 Q. Did you hear my questioning of Mr. Rendall
9 about the MOU and why -- were you here?

10 A. Unfortunately I was not.

11 Q. Okay. I explained to him that this Memorandum
12 of Understanding stuff is kind of new to us. We were --
13 we became aware of it when the town of Monkton signed an
14 MOU with Vermont Gas. And we were told that it was a
15 Memorandum of Understanding, but not a binding contract.

16 And so I asked Mr. Rendall why an MOU and not
17 a binding contract. So I'm asking you why would you enter
18 into an MOU and not a binding contract on this issue?

19 A. So I think it is a binding contract. And I
20 testified to that before, last week. So I consider it to
21 be a contract.

22 We were not asking for the Board to approve
23 it. So it was not conditional on board approval. Some
24 MOUs sometimes are. So I considered this to be binding
25 from the time we signed it. I don't know if the -- I'm

1 not familiar with the Monkton MOU, but just speculating if
2 it was conditional on approval of the project by the Board
3 or something like that, might have a delayed effect. But
4 this one does not.

5 Q. So you're saying it is a binding contract, but
6 you're not going to call it that?

7 A. No, I have called it that.

8 Q. But it's an MOU.

9 A. The title is an MOU. But I'm not a lawyer,
10 but my understanding is that any -- anyone would interpret
11 it to be a contract.

12 Q. Okay.

13 A. Like you might call something a lease, but
14 it's a contract. Or an agreement to buy a car is a
15 contract. Things like that.

16 Q. But often when you sign a lease or a sales
17 agreement it says it's a binding contract in the document;
18 does it not?

19 A. I don't really know.

20 Q. Okay. Why would you suggest -- I don't know,
21 I don't know if this question was asked; whose idea it
22 was, and I guess maybe there was some deference, nobody
23 really wanted to answer that question.

24 Why wouldn't you have suggested signing an MOU
25 with Vermont Gas back when it was 86 million?

1 A. When it was 86 million we were still
2 evaluating the project and went through the process, and
3 we did not feel an MOU at that time was in the best
4 interest of the citizens of Vermont or nor was it
5 necessary at the time.

6 Q. So this MOU was not intended -- or was it
7 intended to help influence the Board's decision on the
8 60(b) motion?

9 A. This MOU was intended to address the issue
10 that was under evaluation and being bantered about that
11 the ratepayers were going to be on the hook for 154
12 million dollars. That was my expectation, and the MOU
13 solidifies that.

14 Q. What wasn't your expectation?

15 A. Without prejudging any of the rate case,
16 because we are going to be doing that all next year, but
17 just you know, watching and observing this process unfold
18 and the construction unfold, I saw places where I thought
19 that Vermont Gas would have a difficult time convincing me
20 that they should be recovering some of those costs
21 associated with this project.

22 At some point with a delay here, I felt it was
23 necessary to get out in front of that with the MOU
24 concept, because it is very clear to me that if the
25 project went ahead and extended into a second construction

1 season beyond the one that we are in now, in other words
2 did not finish in 2016, that it was very likely that the
3 costs were going to be greater, and that those would be in
4 areas that Vermont Gas would potentially be entitled to
5 recovery on. And those are unnecessary expenses in my
6 mind if we can conclude this process.

7 Q. So the delays so far you feel are not the
8 fault of the company's, of Vermont Gas's?

9 A. Oh no, I didn't say that.

10 Q. I'm asking.

11 A. No. I think some of them -- I would -- again
12 I can't prejudge how we will do it when we review all the
13 rate impacts and what the costs are. And I don't even
14 know what they are submitting at this point. But there
15 are components of this that I have observed that I would
16 argue are a result of the company's decisions and
17 performance that should not be recoverable in rates.

18 Q. Would you agree or not that the current MOU
19 basically sells the public interest for 10 million dollars
20 more than the currently agreed to price that's agreed to
21 by the PSB?

22 A. No, I don't believe -- I don't agree with that
23 characterization.

24 Q. But it's 10 million dollars more than what was
25 already approved. So usually when you're doing -- it's a

1 negotiation, you try to get the price down for your
2 interests, which I thought was the public was your
3 interest, but the DPS agreed to a higher price, so I'm
4 just kind of -- I was just kind of confused by that.

5 A. Well I didn't agree to a higher price.

6 Q. It's 10 million dollars -- 34 million is 10
7 million more than the last approved price, no?

8 A. It is 20 million dollars less than the current
9 estimate and budget for that project.

10 Q. But the Board has not approved that yet, that
11 price, that's what's sticking in the system.

12 A. So I think I've answered the question. But --

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

14 CHAIRMAN VOLZ: Mr. Saudek?

15 CROSS EXAMINATION

16 BY MR. SAUDEK:

17 Q. Following up on some of the questions you just
18 answered. So is it fair to say that in your opinion 154
19 million project shouldn't go forward, but at 134 million
20 it should?

21 A. No. We testified in June that we thought even
22 at 154 million that the public benefits were still
23 substantial enough that project should go forward.

24 Q. So basically what you're trying to say, I take
25 it, then is that in effect 20 million dollars is found

1 money for these lucky ratepayers, is that it?

2 A. At least. 20 million dollars. That's my
3 understanding -- if the project comes in at the cost that
4 it's estimated.

5 Q. Mr. Dumont got into with -- well Mr. Rendall
6 -- he got into these situations where they pulled the
7 pipe, and -- pulled the pipeline. Have you made any
8 estimate of what that cost?

9 A. No, I have not.

10 Q. Would you concede that it must have added a
11 significant cost to the cost of the project?

12 A. Not more than -- I won't concede that more
13 than the estimate, in the sense that there is contingency
14 in there for things that go wrong and need to be fixed.
15 That's relatively standard in construction work. So if
16 you're asking me would it have been cheaper if they didn't
17 have that happen, that I would say yes. Although I
18 shouldn't --

19 Q. Quite a bit cheaper, wouldn't it?

20 A. I don't know what the magnitude would be.

21 Q. And you made no -- when you learned about
22 this, you didn't say in effect to your people in your
23 department that tell me what this is added to the cost, do
24 you put a number on it? There was no such inquiry?

25 A. Getting the quarterly report on a regular

1 basis, the purpose of these reports was to tell me how the
2 construction was going, and to give me one measure of how
3 sure we were that the project was being constructed safely
4 and appropriately. And that to me is -- when all this is
5 said and done, the most important thing.

6 That if a project is constructed and is going
7 to be operational, that it be safe.

8 Q. Mr. Dumont has brought up a couple times today
9 the concept of sharing in costs that were -- instead of
10 cross subsidizing them.

11 Have you been around when that discussion is
12 taking place? Sharing between shareholder and customers?

13 A. For costs that were not prudently incurred or
14 prudently incurred?

15 Q. Well let's throw prudence to the winds, and
16 simply say costs that would impose substantial cross
17 subsidies on existing customers. Why shouldn't those be
18 shared with the shareholder who is going to reap the
19 benefits of selling this gas?

20 MS. PORTER: I'm going to object to the
21 extent that this question is calling for a legal
22 conclusion. If he's just asking the Commissioner
23 what his personal views are, that's fine.

24 MR. SAUDEK: I don't see it as a legal
25 conclusion. It's a practical conclusion. If the

1 existing customers cross subsidize the extension of
2 this system, and so that VGS can sell gas down
3 country from existing customers. What I'm asking the
4 Commissioner is doesn't he think that some burden of
5 that should be borne by the company that reaps the
6 benefit of it.

7 CHAIRMAN VOLZ: That's a rate making
8 question. So objection is overruled. It's not a
9 legal question.

10 THE WITNESS: So it is a rate making
11 question which will be determined in the rate making
12 proceeding. Just very generally I would say I've
13 given this some thought as I watch this all proceed
14 about who's responsible for what, and how -- what the
15 Department's ultimate recommendation might be about
16 recovery in rates.

17 I don't have a number in mind at the
18 moment.

19 BY MR. SAUDEK:

20 Q. As a basis of fair public policy against the
21 background that existing ratepayers will or may be paying
22 for this for over three decades, don't you think it is --
23 would be appropriate to split those costs so that the
24 shareholder has to pick up more of them?

25 A. I'm going to answer that without saying what I

1 think the split should be, but I'm going to say that I
2 think -- I've already said that I think the company is
3 responsible for some of these costs and should be
4 incurring those and will make that recommendation to the
5 Board at the appropriate time.

6 Q. But I take it that the costs that the company
7 is going to be responsible for are roughly within the
8 contingency, right?

9 A. Not necessarily. No. Not necessarily. Again
10 the 134 million is a cap that we have established, if they
11 spend 154 as expected, we know that that's 20 million that
12 they have to absorb assuming the other contingencies don't
13 occur. But it doesn't mean that they won't have to absorb
14 more based on a review of the actual project costs and
15 expenditures and the overall public benefit that has
16 accrued as a result of the project.

17 Q. Doesn't that go against your commitment in the
18 contract that the plant will be used and useful?

19 A. I don't believe it does. And I'll try and
20 explain that. So it is my expectation that when a CPG is
21 issued, if a project is built in accordance with that
22 approval, that it will be used and useful. That's my
23 expectation. But it is the Board that needs to decide
24 that. And you have to read that paragraph in context with
25 paragraph three of the agreement that reserves the

1 Department's full authorities to review the costs of this
2 project.

3 So to the extent that the used and useful
4 component is a financial piece to that as we discussed
5 last week, then the Department has reserved its full
6 authority to scrub those costs.

7 Q. Does it say -- I'm looking for the MOU. Does
8 it say it is my expectation that it will be used and
9 useful?

10 MS. PORTER: Mr. Chairman --

11 MR. SAUDEK: That's all right. It
12 speaks for itself. I'll withdraw question.

13 CHAIRMAN VOLZ: All right.

14 MR. SAUDEK: I have no more.

15 MS. PALMER: I forgot to ask a
16 question.

17 CHAIRMAN VOLZ: Sure. Go ahead.

18 CROSS EXAMINATION

19 BY MS. PALMER:

20 Q. You said the Governor is your boss?

21 A. Among others. Yes.

22 Q. And he supported the pipeline before it was
23 granted -- how is that not a conflict of interest if the
24 DPS works for the Governor, the Governor clearly supports
25 it, and the DPS does have an influence, albeit you don't

1 admit much, but you have an influence on the Board. How
2 is that not a conflict of interest? I'm struggling with
3 this. Could you explain that?

4 A. Even if I took your premise at face value, I
5 would say that --

6 Q. I'm sorry. Which premise was that?

7 A. The premise that I need to follow exactly what
8 the Governor says and that that would then somehow be a
9 conflict of interest, using your words.

10 Q. You said he's your boss -- you don't have to
11 do what your boss asks you to do?

12 A. I'm getting there. It is not -- this isn't
13 the public interest that we are obligated to do. The
14 Governor's an elected official, I'm an appointed official.
15 I have legislative statute and policies that guide my
16 determination of what is in the public interest, and I
17 present it to the Board who can agree or disagree with me
18 based on their expertise and understanding of the
19 situation. There is no conflict of interest there.

20 Now as to your second point, I've worked for a
21 lot of people, and I've had a lot of people work for me,
22 I've never been in a position where I told somebody that
23 they had to do exactly what I wanted them to do or
24 something happens to them. Lord knows half the people in
25 this room tell me things that I don't really want to hear

1 on a regular basis. And that's part of their job. And I
2 adjust accordingly.

3 Q. Okay. Thank you.

4 CHAIRMAN VOLZ: Mr. Dumont, did you
5 have some exhibits that we were waiting for you to
6 put in?

7 MR. DUMONT: Thank you. I reviewed
8 them, and we have covered what was in the exhibits,
9 so I don't need to.

10 CHAIRMAN VOLZ: Okay. There is no
11 other questioning for this witness other than
12 redirect?

13 MR. DUMONT: Okay.

14 CHAIRMAN VOLZ: Do you have redirect?

15 MS. PORTER: Just a couple things.

16 CHAIRMAN VOLZ: Sure.

17 REDIRECT EXAMINATION

18 BY MS. PORTER:

19 Q. Commissioner Recchia, were you here this
20 morning when --

21 MS. HOFMANN: Can you turn on your
22 microphone?

23 Q. -- when Mr. Dumont was questioning Mr.
24 Rendall?

25 A. Yes, I believe for most of it. I left around

1 -- well I left at the break.

2 Q. And were you here when they were discussing
3 what's been labeled as AARP Cross Exhibit O? It's Cross
4 Exhibit O which was attachment to one of our discovery
5 responses.

6 A. Yes.

7 Q. And I believe that Mr. Dumont also asked you
8 some questions about several of the entries in this
9 document?

10 A. Correct.

11 Q. Is this the only thing that you relied on in
12 making the statements in your prefiled testimony?

13 A. No. It's not.

14 MR. DUMONT: Excuse me. I'm going to
15 interrupt because I did ask for other documents in
16 discovery. I was told these are excerpts, and I said
17 well I want what these come from, and the Department
18 said I was not entitled to those. If we are going to
19 go beyond this document, I'm going to ask that the
20 discovery request be complied with.

21 MS. PORTER: I didn't say documents. I
22 said anything else.

23 MR. DUMONT: Anything else usually
24 includes documents. But if it doesn't --

25 THE WITNESS: It does not. Maybe just

1 answer the question and it will help clarify it. So
2 as you know, I get these weekly reports, and this is
3 a part of it. But I meet regularly with my
4 engineering staff, I talk with them, I talk with the
5 gas engineer about his experiences in the field, talk
6 with the company about what their expectations are
7 and what they are doing.

8 So those all go into my assessment of
9 whether this project is on the right track or not.
10 So that's -- that really goes to the nature of it.
11 These are the only documents that were relevant
12 though.

13 MR. DUMONT: Thank you.

14 MS. PORTER: Thank you.

15 THE WITNESS: Can I -- I did want to
16 ask. Because actually neither of you actually asked
17 me this. But sorry, this is what happens when you're
18 Commissioner, you get yourself in trouble more often
19 than not.

20 The context of all these -- there are
21 specific instances in here that Mr. Dumont asked me
22 about, but the context of all these is to show in my
23 opinion, that we are on top of this project and
24 understanding what is being done for safety purposes
25 and to ensure the quality of the work being done.

1 There is both my staff and the
2 company's staff I think are finding the problems that
3 they see, I know are finding the problems that they
4 see and fixing those. And that's -- that was really
5 the purpose of providing these reports.

6 MS. PORTER: Thank you. I don't have
7 anything else.

8 THE WITNESS: Neither do I.

9 CHAIRMAN VOLZ: Anybody else?

10 MR. DUMONT: I want to thank the Board
11 for accommodating my schedule and scheduling this
12 day. Thank you.

13 CHAIRMAN VOLZ: You're welcome. Mr.
14 Recchia, you're excused.

15 THE WITNESS: Thank you.

16 CHAIRMAN VOLZ: Are there other matters
17 we need to take up today?

18 MR. ZAMORE: I'm not sure we resolved
19 the deadline for the briefs.

20 CHAIRMAN VOLZ: Briefing. Yeah. So as
21 I understand it from conversations at the pre-meeting
22 this morning, there is an issue about when the briefs
23 should be filed. Initial briefs that is, not the
24 reply briefs.

25 MR. ZAMORE: Yes. There is a request

1 to postpone the deadline for the initial brief. By

2 --

3 CHAIRMAN VOLZ: From December 14 to
4 December 17.

5 MR. ZAMORE: Well I'll let the
6 proponents of that speak for themselves.

7 MR. DUMONT: I would appreciate that.
8 Yeah.

9 MR. SAUDEK: I would too.

10 CHAIRMAN VOLZ: Is there any objection
11 to that?

12 MR. ZAMORE: I would -- I wouldn't mind
13 making a request if that's going to be provided that
14 perhaps we could accelerate the deadline for the
15 reply brief which is fairly extensive just to permit
16 the Board as much time as possible to make a
17 decision.

18 MS. HOFMANN: So what are you
19 proposing, Mr. Zamore?

20 MR. ZAMORE: Well what are we proposing
21 as the deadline for the briefs? The 17th?

22 CHAIRMAN VOLZ: Right. That's what I
23 understood.

24 MR. DUMONT: For you the reply will be
25 due eight days later.

1 MR. ZAMORE: Right. And I'm suggesting
2 perhaps --

3 MS. TIERNEY: Mr. Dumont.

4 MR. ZAMORE: Either the 21st or the
5 22d.

6 CHAIRMAN VOLZ: For reply briefs from
7 everyone.

8 MR. ZAMORE: Yes.

9 CHAIRMAN VOLZ: Is there any problem
10 with that?

11 MS. PALMER: I have a problem. David
12 Grayck is having eye surgery -- had eye surgery
13 yesterday. So he can't read anything until Friday.
14 So this would be a hardship for him I think.

15 MR. ZAMORE: This would be the reply
16 brief which would be after the initial brief is due.

17 MS. PALMER: Right. Well I can't speak
18 for him. And --

19 CHAIRMAN VOLZ: If he's going to be
20 writing an initial brief, it's due December 17.

21 MS. PALMER: Okay.

22 CHAIRMAN VOLZ: And then which if we
23 were to grant the three-day extension, that should
24 help him actually.

25 MS. PALMER: Sorry.

1 CHAIRMAN VOLZ: And then we are talking
2 about making the reply briefs being filed a little
3 bit earlier than otherwise.

4 MR. DUMONT: I'm not going to say
5 anything because you're accommodating my problems
6 already.

7 MS. LEVINE: I'll say it -- I'm not
8 sure that the day or two for the reply brief makes a
9 big difference, and to have to do reply between
10 Friday and Monday is difficult. I don't know how
11 long the briefs will be that will be filed, but I
12 expect they will be extensive.

13 CHAIRMAN VOLZ: I think we are going to
14 move the direct briefs to December 17 and leave the
15 reply briefs where they are, the date that they are
16 today. The current schedule.

17 Anything else we need to talk about
18 today? I want to thank everybody. I appreciate it.
19 I appreciate all the people who attended as the
20 audience that you stayed in an orderly fashion and
21 were quiet and let us have this hearing go forward.
22 Thank you.

23 (Whereupon, the proceeding was
24 adjourned at 2:40 p.m.)

25

C E R T I F I C A T E

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I, Kim U. Sears, do hereby certify that I recorded by stenographic means the Technical Hearing re: Docket Number 7970 at the Third Floor Hearing Room, People's United Bank Building, 112 State Street, Montpelier, Vermont, on December 9, 2015, beginning at 9:30 a.m.

I further certify that the foregoing testimony was taken by me stenographically and thereafter reduced to typewriting and the foregoing 150 pages are a transcript of the stenograph notes taken by me of the evidence and the proceedings to the best of my ability.

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

Dated at Williston, Vermont, this 10th day of December, 2015.

A rectangular box containing a handwritten signature in cursive script that reads "Kim U. Sears". The signature is written in dark ink on a light-colored background.

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