

House Committee on Energy and Technology

April 23, 2019

Supplemental Testimony of James A. Dumont, Esq. on H.51, H.175 & H. 214

Thank you for allowing me to testify again on H. 51, H.175 and H.214. I will not repeat the detailed background information that I provided on April 9, 2019, about how Certificates of Public Good are issued in Vermont and about the lop-sided and unfair eminent domain process used in Vermont to seize private land for utility projects.

In the brief time available today, I want to highlight the following key facts.

► 1. Methane Is Not Carbon Dioxide. Leakage of *natural gas (methane)* during extraction, transmission and distribution, produces *far worse impacts on our climate than the carbon dioxide produced by burning fuel oil.* Vermont Gas System’s advertisements and its testimony that natural gas releases very little carbon dioxide is like arguing that tobacco contains no cholesterol. Each of these bills would help Vermont avoid increased use of *both* oil and natural gas, and we need to do both.

► 2. President Trump and Section 401. The State of Vermont possesses un-preempted authority under section 401 of the federal Clean Water Act to reject interstate natural gas projects, and all other energy projects requiring federal permits, because of their impacts on Vermont rivers, streams and wetlands. President Trump does not like section 401, exactly because state authority cannot be overridden by his administration. He issued an Executive Order earlier this month to try to weaken section 401. He won’t succeed unless the Congress votes to amend section 401, which is very unlikely. While ANR’s rules to implement section 401 would benefit from updating and clarification, you should not be concerned that President Trump’s recent executive order will have any effect on Vermont’s section 401 authority -- or on these bills.

► 3. H.51 Requires Additional Wording Because It Only Bans New Infrastructure that *Transports* Fossil Fuel. The fossil fuel infrastructure ban and ban on new natural gas facilities, is too narrowly drafted. The definition of “infrastructure” includes only those facilities that *transport* fossil fuels, not those that *burn* fossil fuels to generate power. Likewise, the definition already in statute of “natural gas facility” also excludes generating stations, so banning new natural gas facilities does not ban new natural gas generating stations.

To remedy this omission, the bill should say it also prohibits a “*natural gas facility or electric generation station that uses fossil fuel, such as natural gas or oil.*” Likewise, the definition of infrastructure should be changed to define infrastructure as including facilities or structures that would transport fossil fuel or that “*produce electricity, heat or other energy using fossil fuel.*”

►4. H.175 Would Halt New Pipelines other than Interstate Pipelines. Eminent domain is the sovereign power of the State of Vermont. Utilities, by statute, have been given the right to use that power to seize land from private landowners. H. 175 forbids use of that awesome power for a purpose that is against the interests of Vermonters – expanded use of fossil fuels. Legal scholars have encouraged bills just like this as a way that states can tailor their eminent domain statutes to disfavor fossil fuel expansion while allowing eminent domain for cleaner energy sources.

►5. H.214 Codifies Strengthens Existing PUC Practice. The bill mandates that when deciding whether a natural gas project would serve the public good, the PUC must take into account the methane that leaks into the atmosphere during natural gas extraction and transmission. The bill strengthens existing PUC practice.

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