

Vermont Public Utility  
Commission  
Facilitation/Mediation  
Workshop  
January 10, 2019

An Opportunity to Introduce and Discuss  
The Commission's Facilitation and  
Mediation Pilot Project

# Outline of Workshop

- Background – Act 174
- Harvard Negotiation & Mediation Clinical Program (“HNMCP”) Assessment and Report
- Commission Pilot Project and Implementation Plan
  - Commission staff facilitation
  - Hiring professional mediator
  - See what works and modify Commission processes as appropriate
- Comments and Suggestions
- Volunteers

# Background – Act 174

[https://puc.vermont.gov/sites/psbnew/files/doc\\_library/recommendations-citizen-participation-report.pdf](https://puc.vermont.gov/sites/psbnew/files/doc_library/recommendations-citizen-participation-report.pdf)

- Act 174 Goals:
  - Increase stakeholder participation in Commission proceedings
  - Maintain or increase transparency
  - Reduce project timelines, cost, and complexity
- Act 174 Working Group Recommended that the Commission
  - Have staff act as mediators
  - Require mandatory mediation in controversial cases
  - Move contentious cases out of contested proceedings

# HNMCP Report

[https://puc.vermont.gov/sites/psbnew/files/doc\\_library/hnmcp-final-report.pdf](https://puc.vermont.gov/sites/psbnew/files/doc_library/hnmcp-final-report.pdf)

- HNMCP asked to review Commission cases, query stakeholders, and recommend an alternative dispute resolution system that could be used in Commission cases
- Recommended:
  - more comprehensive pre-filing community outreach by petitioners
  - replace pre-hearing conference with a facilitated “screening” meeting, open to all parties
  - replace discovery with a joint fact-finding process, in which parties work together to determine what information is required to reach an agreement and then jointly hire an expert or experts to gather that information
  - Parties should engage in formal mediation to resolve any additional disputes

# Commission Staff Training

## Key lessons learned:

- Hearing Officers are not mediators, but could be
- Facilitation and mediation require certain skills, some of which are already in the Hearing Officer's tool kit
- Hearing Officers need further training and experience to act as facilitators and perhaps eventually as mediators
- The interpersonal skills developed by serving as facilitators and mediators will enhance Hearing Officers' ability to serve in that role as well

# Commission Implementation Plan

- Two-Part Pilot Program
  - Commission Facilitation early in siting case process
    - Pre-filing focus, i.e. before 45-day notice
    - Requested by petitioner
  - Professional mediation of unresolved disputes
    - Post-filing, after contested case disputes emerge
    - Funded in pilot program by Commission
- Hearing Officer Training
  - Serve as facilitators in six pilot program siting cases
  - Shadow mediators hired by Commission to mediate in 1-2 pilot program siting cases
- Assess results of Pilot Program and develop institutional way-ahead

# What is Commission “Facilitation?”

- A meeting held before 45-day notice is issued by petitioner
- Like an “information session” but more
  - Brings interested parties together to get them familiar with the project proposal and each other
  - Facilitator isolates and resolves areas of uncertainty and disagreement
  - Allows for agreements and future joint fact-finding
  - May reshape a project before investment in formal petition
- Facilitator will be “fenced off” from Commission review of the case
- Applicant can “take credit” for seeking facilitation in discussion of its “pre-filing community outreach” summarized in petition filing addressing changes made to proposal, if any



# Goals of Facilitated Meeting Pilot Project

1. reach agreements where feasible
2. narrow scope of contested issues
3. reshape project proposals to reflect stakeholder concerns
4. speed up case review process
5. give the public earlier opportunity to participate
6. test facilitation in up to six pilot cases to determine whether it should become part of Commission review process

# Commission Implementation Plan

## Professional Mediation: “Getting to Yes”

- Mediation resolves outstanding disputes and creates agreement
- In the pilot project, professional mediators would be hired by the Commission
- May be requested by a petitioner after filing or recommended by a facilitator before filing
- Mediated resolutions are documented in an agreement
- Does not eliminate Commission’s need to document compliance with the statutory criteria but forms basis for stipulated findings

# Discussion

- Comments and suggestions on overall approach
- Role of Department, ANR, AAFM, DHP???
- Ideas for tracking outcomes/success
- Other???

# Volunteer Projects

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