

Vermont State Auditor  
Douglas R. Hoffer



*Report to the Public Service Board*

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**Improving Public Access to Official  
Records of Proceedings**

## **Mission Statement**

The mission of the Vermont State Auditor's Office is to hold government accountable. This means ensuring taxpayer funds are used effectively and efficiently, and that we foster the prevention of waste, fraud, and abuse.

### ***Principal Investigator***

*Andrew C. Stein*

### **Non-Audit Inquiry**

This is a non-audit report. A non-audit report is a tool used to inform citizens and management of issues that may need attention. It is not an audit and is not conducted under generally accepted government auditing standards. A non-audit report has a substantially smaller scope of work than an audit. Therefore, its conclusions are more limited, and it does not contain recommendations. Instead, the report includes information and possible risk-mitigation strategies relevant to the entity that is the object of the inquiry.

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## **Introduction**

In April 2014, the Office of the Vermont State Auditor (SAO) initiated a non-audit inquiry into the Vermont Public Service Board's (PSB) practice of recording its proceedings and providing those records to stakeholders and the public.<sup>1</sup>

The PSB is a quasi-judicial body that oversees the financial management and project proposals of public utilities and approves the rates they charge to consumers. The PSB reviews environmental and economic impacts of proposals to purchase energy and build energy facilities; it monitors the safety of hydroelectric dams and evaluates the financial aspects of decommissioning a nuclear plant; it oversees the statewide Energy Efficiency Utility, and the Board supervises the service quality of electric, gas, telecommunications, and water companies.

PSB proceedings often include a range of stakeholders, such as residential property owners, local businesses, utilities, development firms, and special interest groups. To create official records of these proceedings, the PSB contracts with a third-party stenography vendor that in practice has the property rights and controls the cost of public access to these records.

The chief objectives of the SAO's inquiry into this matter were to determine: 1) what process the Board follows in recording its proceedings and making copies available to stakeholders and members of the public; 2) whether this process acts as a barrier to public participation in the Board's proceedings; and 3) whether there are alternatives to improve public access to this information.

This document details the SAO's findings. Historical documents and interviews with recent participants in PSB proceedings indicate that the current process poses hurdles to accessing information. The SAO decided against conducting a comprehensive survey of this issue after the Chair of the PSB informed our office that he is aware of and concerned about the barrier that the current system can pose to accessing these records.

The SAO also decided against conducting a comprehensive review of alternatives to the Board's current process because the PSB is already moving to implement a new system that is intended to provide greater accessibility to its records. Statements from the Chair of the PSB and a recent Request for Proposal (RFP) for a new stenography contract indicate that the PSB is planning to shift to a new system in the next year that would make non-confidential transcripts available to the public free of charge.

## **Background**

The PSB uses a court reporter to transcribe all of its hearings, whether they are technical hearings, public hearings, oral arguments, prehearing conferences, or status conferences.<sup>2</sup> These transcripts serve as official records of the proceedings. The stenographer provides a paper original and a copy of each transcript to the board, which gives the copy to the Vermont Department of Public Service – the state department charged with representing the public in PSB proceedings.

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<sup>1</sup> For more information on non-audit inquiries, see: [Chapter 9 of the SAO's Professional Standard's Manual](#).

<sup>2</sup> Nearly all of these hearings are open to the public. The term "public hearings" refers to those PSB hearings where the public is given an opportunity to provide the Board with input on a case.

Any party to a case or member of the public is able to view non-confidential portions of the transcripts at the PSB's offices, but they cannot make copies. "Under the contract with (the stenographer) ... the Board may not, and therefore does not, permit copying of the transcript," the PSB chair wrote in a letter to the SAO.<sup>3</sup> Parties who wish to obtain copies of the official records of PSB proceedings must buy them directly from the stenographer.

An exchange of letters from 1994 shows this arrangement has proven financially burdensome to some for at least 20 years. In 1994, the director of the firm Design Access Network appealed a PSB decision to withhold reduced-priced copies of transcripts. He argued under Vermont public records law that his business should only pay for the cost of copying the records to floppy disks.

The PSB's general counsel at the time relied on Vermont's rules of civil and appellate procedure as well as the practice of Vermont's courts, as the Board has "the powers of a court of record."<sup>4</sup> The counsel concluded, as did the PSB chair at the time, that the Board could not grant Design Access Network's request for more affordable copies of the records, stating in a 1994 letter: "Vermont's civil courts all treat transcripts as a work product created by, and purchased upon terms set by, independent contractors. Vermont's courts consistently recognize those independent contractors – the court reporters – as having a property interest in, and a right to be paid for, copies of their work product. Thus, the court system does not provide paper or electronic copies of transcripts at less than market price set by (and eventually paid to) the court reporters."<sup>5</sup>

### **Current PSB Contract and Who Pays for It**

In recent years, the PSB has contracted for transcription services to Burlington-based Capitol Court Reporters, Inc. The rates that the court reporters currently charge the PSB vary based on the proceeding type and turnaround time.<sup>6</sup>

The court reporters charge an appearance fee that ranges from \$150 for a half-day daytime hearing (four hours or less) to \$275 for a public hearing. The per-page transcription rate for a daytime hearing ranges from \$2.75-\$5.50 for a regular delivery (two weeks) to \$3.55-\$6.50 for an expedited delivery (one week). The per-page rate for a public hearing – often held at night – ranges from \$3.50-\$6.00 for a regular delivery to \$4.50-\$7.00 for an expedited delivery.

The chief factor that determines whether the PSB is charged \$3.50 or \$6.00 per page – these rates are for a public hearing with a regular delivery time – is whether parties or members of the public buy copies of the transcript.<sup>7</sup>

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<sup>3</sup> Chairman James Volz to Auditor Doug Hoffer, April 9, 2014.

<sup>4</sup> See: [30 V.S.A. §9](#).

<sup>5</sup> Michael Dworkin to Stephen Whitaker, July 14, 1994.

<sup>6</sup> See Appendices A and B for the payment structures for the 2014 and 2015 state fiscal years.

<sup>7</sup> Capitol Court Reporters charges the PSB \$5 per page, with a three-week turnaround, to transcribe audio recordings of proceedings. By contrast, the two judiciary contractors charge \$3.50 per page, with a 14-day turnaround, and \$2.75 per page for a 30-day turnaround to transcribe audio and video recordings.

The contract with Capitol Court Reporters does not establish the prices that the contractor can charge the public for transcripts, and the contractor does not make prices publicly available. The PSB therefore has no control over what stakeholders and the public pay for copies of these official government records.

According to the Board’s current general counsel, the PSB “always bills back the entire cost of court reporters and transcripts to an applicant in Board proceedings,” except when an applicant is a water company.<sup>8</sup> This means that the State does not foot the cost of the bill for the contracted services, applicants do. These charges may then get passed on to ratepayers in cases where the applicant is a utility. The table below outlines the amounts that the PSB billed back to applicants in three recent cases.

Docket # & Description	Bill-Back Entity	Reporter Charge <sup>9</sup>
7628 – GMP Lowell Mountain Wind Project	Sheehey Furlong & Behm PC (for Green Mountain Power)	\$10,958.22
7770 – GMP-CVPS Utility Merger	Green Mountain Power	\$7,902.35
7970 – VTGas Addison Natural Gas Project	Downs Rachlin Martin PLLC (for Vermont Gas Systems)	\$7,067.11

Data from the Department of Finance and Management show that the PSB paid Capitol Court Reporters a total of about \$204,000 over state fiscal years 2011, 2012, and 2013.

Capitol Court Reporters earned roughly \$200,000 through a range of state entities for

calendar years 2012 and 2013. This figure accounts for roughly 25 percent of the almost \$800,000 paid by the state in court reporting costs over this two-year period. These Capitol Court Reporters earnings do not include revenue from selling records to involved parties and the public.

The PSB is not privy to the amounts charged by Capitol Court Reporters to involved parties and the public for transcripts. The SAO spoke to a representative from Capitol Court Reporters, who did not wish to disclose the company’s rate structure. The court reporter told the SAO that transcript rates vary considerably and that applicants to a case generally pay the most per page for transcripts.

Applicants not only pay for the PSB’s transcripts indirectly, but they pay for their own. This means that in the case of Green Mountain Power’s Lowell Mountain Wind Project application, the utility’s ratepayers paid the \$10,958.22 for PSB transcription services, and they would have paid again for any transcripts that the utility bought.

The court reporter told the SAO that if members of the public, who are not parties to a case, want transcripts, the company generally charges 10 cents per page. This is twice the current 5-cent rate for a single-sided page established by the Secretary of State in the uniform schedule of public records charges for state agencies.<sup>10</sup>

The SAO also reached out to municipalities that have been parties to PSB cases in recent years. No towns or attorneys provided hard-copy receipts, but those that did respond provided amounts they were charged that varied between 25-50 cents per page. To put these rates into perspective, the proceedings for the

<sup>8</sup> June Tierney to Andrew Stein, May 19, 2014.

<sup>9</sup> These figures were provided by the PSB.

<sup>10</sup> See: [Secretary of State’s Uniform Fee Schedule](#).

Green Mountain Power application to construct the 21-turbine wind project on Lowell Mountain generated 2,943 transcript pages. At a rate of 50 cents per page, the complete transcripts would cost \$1,471.50. At a rate of 25 cents, the complete transcripts would cost \$735.75. At the Secretary of State's rate for a single-sided page, a complete copy would cost \$147.15.

### **Energy Generation Siting Commission & the Judiciary**

The State recently provided the public free access to transcripts of energy hearings that were not convened by the PSB. In 2012, Governor Shumlin formed the Governor's Energy Generation Siting Policy Commission to study best practices for the approval of electric generation projects in Vermont. The commission held roughly 20 hearings and information sessions in 2012 and 2013. The Department of Public Service (DPS) negotiated agreements to make transcripts of the events available to the public online and free of charge.<sup>11</sup>

Capitol Court Reporters transcribed many of these events. DPS records show that Capitol Court Reporters charged the state \$225 to appear at a day hearing and \$275 to appear at a night hearing of the commission. The court reporters charged for mileage at 55.5 cents per mile, and they charged \$5.75 per page for an electronic transcription of a day hearing and \$6.25 for a night hearing. The appearance and per-page rates for daytime hearings are identical to those that Capitol Court Reporters charged the PSB for public hearings in fiscal year 2014 (when only the PSB bought copies of transcripts).<sup>12</sup>

The Vermont judiciary also uses a different system to record proceedings than does the PSB. Vermont court proceedings are recorded via audio and video mediums. While the Supreme Court posts free audio recordings of oral arguments on its website,<sup>13</sup> the Superior Courts direct the public to one of two firms – Arizona-based AVTranz and New York-based eScribers, LLC – to buy recordings at a rate of \$25 per media copy.<sup>14</sup> If parties to a case or the public seek an electronic copy of a transcript, these two firms will transcribe media recordings for prices that range from \$6.50 per page (one-day turnaround) to \$2.75 per page (30 days) to 90 cents per page (indefinite later date). Printed transcripts cost an extra 75 cents per page.<sup>15</sup>

### **PSB Response**

At the outset of the SAO's inquiry, the PSB chair maintained that the current record-keeping process has allowed the Board to better control costs to the State and ratepayers. What the system doesn't control, however, is the amount that the court reporters charge utilities – which is a cost that can get passed along to ratepayers – and the amount the court reporters charge the public.

The chair also acknowledged that the current system can present issues for the public.

"From early on in my tenure as Chairman, I have been concerned that members of the public could not obtain copies of transcripts of Board Proceedings without paying a fee to the court reporter," he wrote.

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<sup>11</sup> See: [Vermont Energy Generation Siting Policy Commission Publications, Presentations, and Meeting Notes](#).

<sup>12</sup> See: Appendix B.

<sup>13</sup> See: [The Vermont Supreme Court Oral Arguments webpage](#).

<sup>14</sup> See: [Transcript Order Form Instructions](#).

<sup>15</sup> Ibid.

“This is why the Board is transitioning to a new process that will make hearing transcripts more widely available to parties in Board proceedings and the public at large.”<sup>16</sup>

The Board is shifting to an electronic case-management system, called ePSB. The PSB had hoped this system would be operational by the end of 2014, but it subsequently pushed back the implementation date for ePSB to the spring of 2015.<sup>17</sup>

“The Board is designing ePSB so as to make electronic versions of transcripts of its proceedings available without charge to anyone, including members of the public,” the Chair explained in a letter.<sup>18</sup>

In May, the Board solicited bids from various court reporter companies. The PSB indicated in its solicitation a clear desire to make transcripts available to the public free of charge.

“The Board recognizes that acquiring the right to make the transcripts of its future proceedings available online at no charge could result in significant modifications to the rates and/or the rate structure pursuant to which the Board pays for court reporting services,” the solicitation states. “As a result, later this year the Board expects to issue a new Request for Proposals for court reporting services for proceedings conducted after ePSB is operational that would expressly include this right.”<sup>19</sup>

Capitol Court Reporters was the only firm to submit a bid in response to the PSB’s solicitation, and the company mentioned it would propose a different rate structure when ePSB comes online. However, the contract the Board recently signed with Capitol Court Reporters commits the PSB to the current transcript arrangement until the end of state fiscal year 2015. The PSB could therefore not offer these records to the public free of charge until fiscal year 2016 unless both parties agree to amend the current contract or the PSB negotiates a new contract.

Ultimately, it is the Board’s long-standing treatment of these transcripts as the contractor’s property that has kept these records from being more accessible to the public. Regardless of whether the PSB is able to successfully implement a new information technology system, it has the power to make these records publicly available at a free or reduced rate by such means as negotiating a new stenographer contract or bringing these services in house. The PSB Chair has indicated that the Board plans to pursue the first of these two options, and the SAO plans to revisit this issue at the beginning of fiscal year 2016.

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<sup>16</sup> Chairman James Volz to Auditor Doug Hoffer, April 9, 2014.

<sup>17</sup> Chairman James Volz to Auditor Doug Hoffer, August 25, 2014.

<sup>18</sup> Chairman James Volz to Auditor Doug Hoffer, April 9, 2014.

<sup>19</sup> Susan Hudson to court reporter vendors, May 15, 2014.

# Appendix A: State Fiscal Year 2015 Transcription Rates<sup>20</sup>

Contract #26921

STATE OF VERMONT  
PUBLIC SERVICE BOARD  
CONTRACT FOR PERSONAL SERVICES  
Re: Capitol Court Reporters, Inc.

## ATTACHMENT B Payment Provisions (July 1, 2014 - June 30, 2015)

1. Board agrees to pay Contractor in accordance with the following schedule:

(a) <b><u>Daytime Hearings</u></b>	<table border="0" style="width: 100%;"> <tr> <td style="text-align: center; width: 50%;"><u>PSB Cost When Transcript Sold to Others</u></td> <td style="text-align: center; width: 50%;"><u>PSB Only No Other Transcript</u></td> </tr> </table>	<u>PSB Cost When Transcript Sold to Others</u>	<u>PSB Only No Other Transcript</u>
<u>PSB Cost When Transcript Sold to Others</u>	<u>PSB Only No Other Transcript</u>		
<p>Transcript Fees:</p> <ul style="list-style-type: none"> <li>- Regular Delivery \$2.75 per page</li> <li>- Expedited Delivery \$3.55 per page</li> </ul> <p>Appearance Fees:</p> <ul style="list-style-type: none"> <li>\$150.00 per ½ day (up to 4 hours)</li> <li>\$185.00 full day (beyond 4 hours)</li> </ul>	<ul style="list-style-type: none"> <li>\$5.50 per page</li> <li>\$6.50 per page</li> </ul>		
(b) <b><u>Public Hearings</u></b>	<table border="0" style="width: 100%;"> <tr> <td style="text-align: center; width: 50%;"><u>PSB Cost When Transcript Sold to Others</u></td> <td style="text-align: center; width: 50%;"><u>PSB Only No Other Transcript</u></td> </tr> </table>	<u>PSB Cost When Transcript Sold to Others</u>	<u>PSB Only No Other Transcript</u>
<u>PSB Cost When Transcript Sold to Others</u>	<u>PSB Only No Other Transcript</u>		
<p>Transcript Fees:</p> <ul style="list-style-type: none"> <li>- Regular Delivery \$3.50 per page</li> <li>- Expedited Delivery \$4.50 per page</li> </ul> <p>Appearance Fees:</p> <ul style="list-style-type: none"> <li>\$275.00 per day</li> </ul>	<ul style="list-style-type: none"> <li>\$6.00 per page</li> <li>\$7.00 per page</li> </ul>		
[c] <b><u>Deposition Rates</u></b>	<ul style="list-style-type: none"> <li>\$3.65 per page, when Deposition taken by PSB/DPS</li> <li>\$1.65 per page, when Deposition taken by another party</li> </ul> <p>Appearance Fee:</p> <ul style="list-style-type: none"> <li>\$100.00 for first 2 hours</li> <li>\$20.00 per hour thereafter</li> </ul>		
(d) <b><u>Daily Copy</u></b>	Rates determined on a case-by-case basis		
(e) <b><u>Electronic Transcript</u></b>	\$20.00 per transcript		
(f) <b><u>Taped Transcription</u></b>	\$5.00 per page to transcribe recorded proceedings; three-week delivery		

2. Contractor shall submit an invoice for each day of hearing on a case-by-case basis.

3. Board shall reimburse Contractor for all reasonable and necessary expenses as follows:

- a. Mileage shall be reimbursed at current State reimbursement rate.
- b. Lodging, when required
- c. Postage for delivery of transcripts

Original receipt must be provided by Contractor for lodging expenses. All other expenses must be itemized but need not be receipted.

4. Vermont Interactive television (VIT) hearings: with prior notification to the PSB, Contractor may attend hearing at the location closest in distance to reporter.

<sup>20</sup> See pages two and three for an explanation of these rates.

# Appendix B: State Fiscal Year 2014 Transcription Rates

Contract #24535

STATE OF VERMONT  
PUBLIC SERVICE BOARD  
CONTRACT FOR PERSONAL SERVICES  
Re: Capitol Court Reporters, Inc.

**ATTACHMENT B**  
**Payment Provisions**  
**(July 1, 2013 - June 30, 2014)**

1. Board agrees to pay Contractor in accordance with the following schedule:

(a) **Daytime Hearings**

	<u>PSB Cost When Transcript Sold to Others</u>	<u>PSB Only No Other Transcript</u>
Transcript Fees:		
- Regular Delivery	\$2.50 per page	\$4.95 per page
- Expedited Delivery	\$3.50 per page	\$5.95 per page
Appearance Fees:	\$95.00 per 2 day (4 hours) \$155.00 full day	

(b) **Public Hearings**

	<u>PSB Cost When Transcript Sold to Others</u>	<u>PSB Only No Other Transcript</u>
Transcript Fees:		
- Regular Delivery	\$3.00 per page	\$5.75 per page
- Expedited Delivery	\$4.00 per page	\$6.75 per page
Appearance Fees:	\$225.00 per day	

(c) **Deposition Rates**

\$3.55 per page, when Deposition taken by PSB/DPS  
\$1.55 per page, when Deposition taken by another party

Appearance Fee: \$95.00 per 2 day (4 hours)  
\$155.00 full day

(d) **Daily Copy**

Rates determined on a case-by-case basis

(e) **Electronic Transcript**

\$20.00 per transcript

(f) **Taped Transcription  
delivery**

\$5.00 per page to transcribe recorded proceedings; three-week

2. Contractor shall submit an invoice for each day of hearing on a case-by-case basis.

3. Board shall reimburse Contractor for all reasonable and necessary expenses as follows:

- a. Mileage shall be reimbursed at current State reimbursement rate.
- b. Lodging, when required
- c. Postage for delivery of transcripts

Original receipt must be provided by Contractor for lodging expenses. All other expenses must be itemized but need not be receipted.

4. Vermont Interactive television (VIT) hearings: with prior notification to the PSB, Contractor may attend hearing at the location closest in distance to reporter.

# Appendix C: Chairman Volz's Response to Report

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4<sup>th</sup> Floor  
Montpelier, VT 05620-2701  
TEL: 802-828-2358



TTY/TDD (VT): 800-253-0191  
FAX: 802-828-3351  
E-mail: [psb.clerk@state.vt.us](mailto:psb.clerk@state.vt.us)  
Internet: <http://www.state.vt.us/psb>

State of Vermont  
**Public Service Board**

August 27, 2014

Mr. Douglas Hoffer  
State Auditor  
Office of the State Auditor  
132 State Street  
Montpelier, VT 05633-5101

**Re: Non-Audit Inquiry into Recording Practices for PSB Proceedings**

Dear Mr. Hoffer:

Thank you for sending me the draft report titled *Improving Public Access to Official Records of Proceedings* (the "Draft Report") for comment on August 14, 2014.

As you know, I have had a long-standing interest in finding ways to facilitate the public's ability to follow the proceedings of the Vermont Public Service Board ("Board"). The process of answering your questions has provided helpful and timely reinforcement of my commitment to transitioning the Board to ePSB --- an electronic case-management system. Among other things, ePSB will bring the Board's practices for recording proceedings into line with the public's growing expectation that such government documents will be readily available on-line free of charge.

In conclusion, thank you for the opportunity to comment on the Draft Report. I hope this letter is helpful to you in finalizing the Draft Report. Please contact me if you need any additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "James Volz".

James Volz  
Chairman

cc: June E. Tierney, Esq., PSB General Counsel

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