

STATE OF VERMONT  
PUBLIC UTILITY COMMISSION

Case No. 22A-4238

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Vermont Gas Systems, Inc. Rutland Regional Medical Center Geothermal Project	
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Order entered: 11/15/2022

**COMMISSION OBJECTION TO VERMONT GAS'S PILOT**

**I. INTRODUCTION**

On September 27, 2022, Vermont Gas Systems Inc. (“VGS”) filed notice of an innovative pilot project entitled the Rutland Regional Medical Center (“RRMC”) Geothermal Project (“Project”) pursuant to the Climate Action and Innovation Programs section of its Alternative Regulation Plan (“ARP”).<sup>1</sup>

On October 21, 2022, the hearing officer issued a set of information requests to VGS. The request set a deadline of November 11, 2022, for VGS’s responses, and December 12, 2022, for any comments on or objections to the Project, including VGS’s responses to the information request, and any requests for additional process.

On October 26, 2022, VGS filed responses to the information requests. Concurrently, VGS filed a motion requesting that the Commission set a deadline of November 9, 2022, for responses to the Project and VGS’s responses. VGS also sought clarification of whether it may now move forward with the Project because it has filed responses, or, instead, must wait for the Commission to give permission.

On November 2, 2022, the hearing officer issued a procedural order directing VGS to not move forward with the pilot and setting a deadline of November 9, 2022, for comments.

On November 9, 2022, the Vermont Department of Public Service (“Department”) filed comments on the pilot stating that it does not object to the Project and that “[t]he Project “aligns with the intent of the Climate Action and Innovation allocation and will provide significant research and development value in a nascent market for the benefit of VGS customers.” The Department noted that an expansion of the RRMC project or pursuit of other geothermal

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<sup>1</sup> See Exhibit VGS-JMP-5 (5/21/21), Case No. 19-3529-PET at 5.

offerings may necessitate additional review due to questions or concerns related to regulatory safeguards for ratepayers and competitive service providers.<sup>2</sup>

After review of the Project and VGS's filings in response to the information requests, the Commission has determined that the Project cannot go forward in its current form. While we agree that geothermal installations such as the Project serve laudable goals that advance Vermont policy, we have a central concern that has not been addressed by VGS or the Department. In our discussion below, we take on the issues that the Department alludes to in its comments in this pilot rather than defer the issue.

## **II. DISCUSSION & CONCLUSION**

The purpose of VGS's innovative pilot programs is to pursue and consider opportunities “that support Vermont's statewide energy goals by advancing promising technologies to facilitate efficient, lower carbon energy choices *for its customers*.”<sup>3</sup> The Commission supports VGS's research into and deployment of innovative services and technologies that benefit the utility, the customer, and Vermont. Using the statutory provisions of 30 V.S.A. § 218d, which expressly encourage innovation in the provision of electric or natural gas utility service under alternative forms of regulation, we have permitted a great deal of latitude for monopoly distribution utilities to implement innovative pilots that advance state energy policy in circumstances where markets are immature and technologies are nascent. During the term of the pilots, this fosters the development of markets and technologies through above-the-line treatment for would-be competitive services.

Nonetheless, there are limitations to what VGS can implement in this space where these projects are funded above-the-line by ratepayers. Monopoly distribution utilities enjoy a number of market advantages that can stifle competition. It is one role of regulators to ensure that utilities and private entities can compete toe-to-toe in a fair market for non-monopoly services and products within a monopoly energy-delivery territory. Under robust and mature market conditions, monopoly distribution utilities, such as VGS, should be expected to move competitive services “below-the-line”—for example, by creating a separate, unregulated

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<sup>2</sup> *Vermont Department of Public Service Comments* (11/9/22) at 1.

<sup>3</sup> Exhibit VGS-JMP-5 (5/21/21), Case No. 19-3529-PET at 5 (emphasis added).

business unit to compete on equal terms with independent providers.<sup>4</sup> VGS cannot use monies collected from ratepayers through tariffed rates to test its innovative services exclusively on noncustomers or entities outside of its current natural gas footprint—in this case, in Rutland—when there is not a nexus between that service or technology and ratepayer benefits.<sup>5</sup> Allowing VGS to do so would defy the terms of the ARP and fundamental aspects of monopoly utility regulation. The Project as proposed is such a pilot.

Although we are not allowing VGS to move forward with this Project, we take this opportunity to provide some additional feedback for future pilot filings. After reviewing the materials VGS has submitted in support of the Project, the Commission had three additional areas of concern. First, when submitting a pilot for Commission review, VGS must ensure that the filings contain explanations and documentation addressing all factors described in the ARP. Second, both the Retail Installment Sales Act and the Truth in Lending Act require creditors to make certain disclosures when offering consumers a retail installment contract.<sup>6</sup> Should VGS enter into such an agreement with a consumer, then the written document memorializing that agreement must comply with the requisite laws governing such lending arrangements. Third, when documenting the financials for such a transaction, VGS should include, if applicable, an explanation of the calculated tax amount, anticipated tax credit amount, recipient of the tax credit, cost of the offering compared to other market options, the effective interest rate of the lending arrangement, what is included in the overhead calculation, how electric and O&M are calculated, and any other financial components that allow the Commission to review VGS's competitive market participation.

Thus, should VGS decide to refile its request for a pilot project of the type it has filed in this case, the new filing should address the issues and concerns that underlie our decision to

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<sup>4</sup> Below-the-line activities are not included in a utility's regulated cost of service. Even below-the-line business endeavors should serve the overall financial wellbeing of the company.

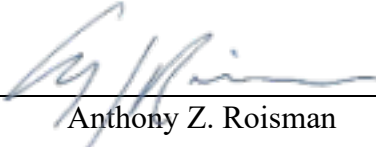
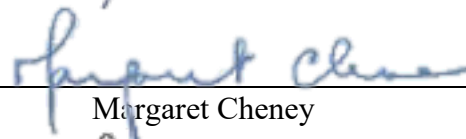
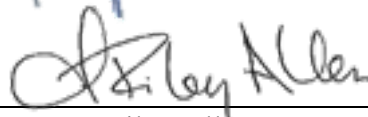
<sup>5</sup> *Cf.* Large-Scale Electric Boiler Optimization Project (“Electric Boiler Project”), Case No. 22A-2094. VGS participated in the Electric Boiler Project located at the Jay Peak Pump House by contributing funding in exchange for the opportunity to observe new technology that facilitates large-scale hybrid fuel systems. The Electric Boiler Project allows VGS to gain knowledge that would be used in its regulated monopoly business and provides ratepayer benefits by integrating electricity in a cost-effective way to reduce natural gas peak demand. In contrast, the RRMCM Project develops an entirely new line of business for VGS in a competitive, unregulated market that is not tethered to VGS's customer base and does not provide VGS ratepayers with a benefit.

<sup>6</sup> See 8 V.S.A. § 10602 (mandating compliance with Truth in Lending Act); 9 V.S.A. ch. 61 (retail installment sales).

disallow the pilot as inconsistent with the VGS ARP requirements for pilot projects, lacking a nexus between that service or technology and ratepayer benefits, and incomplete with regard to compliance with other financial disclosure requirements.

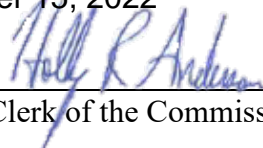
**SO ORDERED.**

Dated at Montpelier, Vermont, this 15th day of November, 2022.

 _____ )	) PUBLIC UTILITY
Anthony Z. Roisman )	
_____ )	
 _____ )	) COMMISSION
Margaret Cheney )	
_____ )	
 _____ )	) OF VERMONT
J. Riley Allen )	

OFFICE OF THE CLERK

Filed: November 15, 2022

Attest:   
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 Clerk of the Commission

*Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: [puc.clerk@vermont.gov](mailto:puc.clerk@vermont.gov))*

PUC Case No. 22A-4238 - SERVICE LIST

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