STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 22-2230-PET

Petition of Vermont Gas Systems, Inc., pursuant to 30 V.S.A. § 248(i), for approval of an out-of-state renewable gas purchase contract with a term exceeding 5 years	

VERMONT GAS SYSTEMS, INC.'S OPPOSITION TO CATHERINE BOCK'S MOTION FOR RECONSIDERATION

Vermont Gas Systems, Inc. ("VGS) provides the following response to Ms. Bock's Motion for Reconsideration of Final Order and Amendment of Findings (the "Motion"). As set forth below, the Motion should be denied because (1) the Commission thoroughly considered the implications of the Global Warming Solutions Act in this case and Intervenor identifies no mistake or inadvertent omission in the Final Order; (2) the Final Order explains how the decision was reached and why, contrary to Intervenor's claims; and (3) the proposed findings that the Intervenor argues are critical to the decision are inaccurate and irrelevant, so the Commission correctly rejected those findings.

STANDARD OF REVIEW

Motions for reconsideration of Commission decisions are evaluated under Vermont Rule of Civil Procedure 59(e). The purpose of Rule 59(e) is to avoid an unjust result due to mistake or inadvertence of the Commission, as opposed to that of a party.[1] The disposition of a reconsideration motion rests, however, with the discretion of the Commission.[2] Granting reconsideration is an extraordinary remedy to be used with great caution.[3] Rule 59 does not

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1 *Pet. of New Cingular Wireless Pcs, LLC Requesting A Certificate of Pub. Good, Pursuant to 30 V.S.A. S 248a(k), Authorizing the Installation of Wireless Telecomm. Equip. at 2777 St. George Rd. Williston, Vermont*, Case No. 22-3182-PET, 2022 WL 16949198, at *1–2 (Vt. P.S.B. Nov. 3, 2022).

2 *Alden v. Alden*, 2010 VT 3, ¶ 7, 187 Vt. 591(2010).

3 *Petition of Vermont Gas Systems, Inc. for authority to condemn easement rights in property interests of the Town of Hinesburg, Vermont, at Shelburne Falls Road, Hinesburg, Vermont, for the purpose of constructing the pipeline authorized in Docket 7970*, Docket 8643, Order of 11/3/16 at 2.

permit parties to relitigate issues or correct previous tactical decisions.[4] It is not a vehicle to introduce new evidence or advance arguments that could have been made previously.[5]

DISCUSSION

1. The Commission Should Deny Intervenor's Motion Because The Commission Adequately and Thoroughly Addressed the Implications of the Global Warming Solutions Act.

The Commission should deny the Motion because it relies almost entirely on unfounded claims that the Commission did not give sufficient weight to the requirements of the Global Warming Solutions Act ("GWSA"). This is not a valid basis for reconsideration.

First, the Commission's Final Order clearly gave substantial thought, weight, and consideration to the GWSA requirements—as well as other relevant and governing regulatory requirements, including VGS's Alterative Regulation Plan and the State Comprehensive Energy Plan. The Final Order refers to the GWSA over fifty times and the Commission's findings expressly conclude that the Contract is consistent with the GWSA.[6] For example, under the heading "Consistency with Regulatory Requirements and Impacts On VGS's Gas Supply and Rates," the Commission's findings quantify how much non-fossil gas will be required "by 2030 to meet [VGS's] expected requirements under the GWSA," and goes on to conclude that the Contract in this case "would allow the company to secure approximately 50% of the non-fossil gas needed to meets its 2030 supply requirements under the GWSA."[7] Moreover, Intervenor's

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4 *Pet. of New Cingular Wireless Pcs, LLC Requesting A Certificate of Pub. Good, Pursuant to 30 V.S.A. S 248a(k), Authorizing the Installation of Wireless Telecomm. Equip. at 2777 St. George Rd. Williston, Vermont*, Case No. 22-3182-PET, 2022 WL 16949198, at *2 (Vt.P.S.B. Nov. 3, 2022)(citing *In re B.K.*, 2017 VT 105 , ¶ 13 ("While the trial court has broad power under Rule 59(e) to reconsider issues previously presented, the rule does not contemplate reopening the evidence or creating a new record.")).

5 *Id.*

6 *See, e.g.*, Final Order at 9; *id.* at 34 ("[I]n this case, our decision is based on our determination that if the Contract is managed effectively, it can be a cost-effective means for VGS to reduce its overall greenhouse gas emissions. The broader GWSA mandates are a factor in that analysis, as are the policy objectives encapsulated in the CEP and VGS's IRP and alternative regulation plan.").

7 *Id.* at 9.

claims that the Commission has conflated the GWSA goals with the 2022 Comprehensive Energy Plan ("CEP") are also untrue because the CEP is structured to meet the emissions reductions required under the GWSA.[8]

Second, Ms. Bock's arguments here are the second or third bite at the apple without identifying any mistake or inadvertence in the Commission's consideration of the GWSA. The Commission's Final Order considered the arguments Ms. Bock makes here about the GWSA because she made the same arguments in her comments on the Proposal for Decision. In particular, Ms. Bock argued—as she does in her Motion now—that "the Contract does not offer an effective pathway to the [GWSA] aim of achieving net zero emissions by 2050."[9] The Commission expressly addressed that contention, stating clearly, "We disagree with this assertion."[10] Indeed, the Commission expressly states that it gave "significant consideration to the GWSA's mandates in rendering [its] decision in this case."[11]

Accordingly, Ms. Bock's Motion must be denied because the Commission did give sufficient weight to the GWSA, and Intervenor identifies no mistake or inadvertence in the Final Order. The mere fact that Intervenor disagrees with the Final Order is not a valid basis for reconsideration.

2. The Commission Should Reject Intervenor's Claim That The Final Order Lacks Sufficient Findings Because the Final Order Addresses Intervenor's Arguments Point-By-Point In Response to Prior Briefing.

Intervenor claims that the exclusion of certain findings proposed by Intervenor "seems unmerited and unexplained" and falsely alleges that the Final Order does not satisfy the

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8 *Id.* at 12.

9 *Id.* at 9; see also Intervenor's Reply to the Proposal for Decision at 9 (filed Oct. 25, 2022)(asserting the same argument).

10 Final Order at 33.

11 *Id.* at 34.

Commission's obligation to "explain how it reached factual conclusions upon which it relied and why it excluded other facts that contradict those conclusions."[12] "Under the Administrative Procedure Act, the [Commission] is required, in a contested case, to state separately its findings of fact and conclusions of law."[13] The Final Order here complies with this requirement. Indeed, the 39-page Final Order thoroughly addresses all of the relevant regulatory requirements, responds to all of Intervenor's arguments, and clearly sets forth "what it decided and how its decision was reached."[14] In particular, the Final Order issued by the Commission provides a point-by-point response to the arguments that Intervenor presented in her comments on the Proposal for Decision.[15] The contention that the Final Order fails to explain the basis for rejecting Intervenor's arguments and proposed findings is untrue.

3. The Commission Should Not Reverse Its Decision to Reject Proposed Findings Itemized By Intervenor's Motion Because Those Findings Are False and Irrelevant.

The findings that Intervenor claims are critical here were not and cannot be adopted by the Commission based on the evidence in this case. In particular, on Page 8 of the Motion, Intervenor sets forth proposed findings that conclude that VGS will always have RNG as part of its climate plan, that VGS will continue to have fossil gas in its system in 20 years, and that VGS will continue to deliver methane in 2050. Although Intervenor claims these proposed findings are supported by testimony (citing to Mr. Murray's testimony at Page 61-62 of the hearing transcript and Mr. Morse's Prefiled Testimony at Page 15), the actual testimony does not support the findings.[16] Even if they were accurate, these findings are not relevant to whether the Contract

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12 Motion at 9 (citing *New England Power v. Barnet*, 134 Vt. 498 (1976).

13 *Pet. of Village of Hardwick Elec. Dept.*, 143 Vt. 437, 444, 1983 WL 813569 (1983)(citing 3 V.S.A. § 812).

14 *Id*.

15 Final Order at 32-37.

16 In fact, Mr. Murray testified on Page 61 of the transcript that VGS is "very interested in seeing how we can evolve our pipe to a completely decarbonized solution." Tr. 9/23/2022 at 61 (Murray). While Intervenor claims that Mr. Morse's testimony supports the finding that VGS's strategy under the GWSA will "always include RNG," Mr. Morse does not use the word "always" in any part of his testimony. Instead, he testifies about VGS's broader

proposed in this case should be approved as part of a suite of strategies that VGS is pursuing to obtain carbon emissions reductions now under the GWSA requirements. The evidence clearly supports the conclusion that the Contract helps to achieve VGS's 2030 goals under the GWSA. Since the Contract is for a term of 14 years, it will be supplemented by other alternatives and options as VGS advances its climate efforts to help Vermont meet subsequent GWSA requirements in the future. Accordingly, the Commission appropriately rejected these false and irrelevant findings in the Final Order because they are not supported by evidence and are not relevant to whether the Contract is consistent with VGS's current regulatory obligations and state policy.

CONCLUSION

For the above reasons, the Commission should deny Intervenor's Motion.

DATED at Burlington, Vermont this 19th day of December 2022.

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strategy "at this stage" and does not discuss how that strategy will change or evolve over the years. Morse pf. reb. at 15.