

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	
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THE DEPARTMENT OF PUBLIC SERVICE’S RESPONSE TO INTERVENOR CATHERINE BOCK’S MOTION FOR RECONSIDERATION OF THE PUBLIC UTILITY COMMISSION’S FINAL ORDER

For the reasons articulated in its prior briefing and testimony in this case, the Vermont Department of Public Service (the “Department”) does not support the Intervenor’s December 6, 2022 *Motion for Reconsideration of Final Order and Amendment of Findings* (the “Motion”), pursuant to V.R.C.P. 52(b) and V.R.C.P. 59(a).

In the Motion, the Intervenor moves for the Vermont Public Utility Commission (the “Commission”) to amend its November 8, 2022 Final Order and reverse its decision to approve the renewable natural gas contract between Vermont Gas Systems, Inc. (“VGS”) and Archaea Energy Marketing LLC (the “Contract”). The Intervenor’s Motion primarily relies upon the general argument that the Commission does not give sufficient weight in its Final Order approving the Contract to the statutory mandates under the 2020 Global Warming Solutions Act (“GWSA”) for the state-wide greenhouse gas reduction objectives of 26% from 2005 levels by 2025; 40% reduction from 1990 levels by 2030; and 80% reduction from 1990 levels by 2050. The Department disagrees with the Intervenor’s position. The Hearing Officer’s proposal for decision and the Commission’s Final Order provided a comprehensive discussion of the several statutory directives in its review and approval of the Contract, including the 2022 Comprehensive Energy Plan (“CEP”), 30 V.S.A. § 202(b), VGS’s alternative regulation plan (“ARP”), 30 V.S.A. § 218d, VGS’s incentive regulation plan (“IRP”), 30 V.S.A. § 218(c), and the GWSA, 10 V.S.A. §§ 578, 592(b).

As the Commission has previously held, granting a motion for reconsideration pursuant to V.R.C.P 59 is an extraordinary remedy and does not permit the parties to relitigate issues or correct previous tactical decisions.¹ Additionally, a party's mere disagreement with the Commission's decision is not grounds for reconsideration.² In this case, the Commission thoroughly addressed the issues raised by the Intervenor in their October 25, 2022 comments on the Hearing Officer's October 19, 2022 proposal for decision. The Intervenor reasserts several identical concerns expressed in those comments within the pending Motion. However, the Intervenor's Motion does not sufficiently demonstrate any mistake of fact or law or inadvertence of the Commission in reaching its conclusion to approve the Contract. As such, the Motion should be denied. Additionally, the Department briefly addresses some of the points raised in the Motion below.

First, the Department disagrees with the Intervenor general assertion that the Contract is inconsistent with the GWSA's 2025, 2030, and 2050 mandate for greenhouse gas emissions reductions. As the Commission recognizes in its Final Order, the first phase of implementing the GWSA involved the issuance of a Climate Action Plan ("CAP") that is required to "set forth the specific initiatives, programs, and strategies, including regulatory and legislative changes, necessary to achieve the State's greenhouse gas emissions reduction requirements pursuant to section 578 of this title."³ The initial CAP was adopted and issued in December 2021 by the Vermont Climate Council. The 2021 CAP is expressly referenced in the Department's post-hearing brief and its direct pre-filed testimony authored by Mr. Jacobs as a consideration in

¹ *In re Cent. Vt. Pub. Serv. Corp.*, Docket Nos. 6946/6988, Order at 3 (May 25, 2005).

² *Investigation to consider revising maximum and minimum water levels at Great Averill Pond, Little Averill Pond, and Norton Lake in the towns of Averill, Norton, and Warren's Gore, Vermont*, Docket No. 8429, Order at 6 (Dec. 21, 2017).

³ Final Order at 16 (citing 10 V.S.A. § 592(b)).

reviewing the Contract. Specifically, the CAP includes a Pathways Analysis Report “that addresses the scope, scale, and pace of the efforts that will be needed to meet the GWSA requirements.”⁴ The Report itself states that it is “intended to inform design of GWSA compliant policies.”⁵ Notably, the Report includes biogas as one of many measures included in a GWSA compliant strategy to achieve the GWSA mandates. The Report states that its analysis “does not present a menu of options to choose between, but rather a unified pathway intended to achieve emissions reductions. Vermont will likely need all of the actions detailed in this analysis, or their equivalent, working in tandem at the scale and pace presented to achieve the requirements of the GWSA.”⁶ Additionally, subsequent analysis conducted by the Cross-Sector Mitigation Subcommittee of the Vermont Climate Council continue to include biogas and RNG as a component of achieving the GWSA mandates.

The Department maintains that the Contract is consistent with the GWSA, the 2022 CEP, least-cost integrated planning, and VGS’s ARP and IRP. As articulated in the pre-filed testimony of Mr. Jacobs, RNG is considered renewable by law and would be counted as zero emissions in the State’s current emissions inventory used for compliance with the GWSA.⁷ However, Mr. Jacobs further stated that the 2021 CAP also calls for supplemental accounting and research to consider lifecycle emissions related to energy use of Vermont, including those emissions that occur outside the boundaries of the state as called for in Section 578(a) of the

⁴ 2021 Climate Action Plan at 136, *available at* <https://outside.vermont.gov/agency/anr/climatecouncil/Shared%20Documents/Initial%20Climate%20Action%20Plan%20-%20Final%20-%2012-1-21.pdf>.

⁵ 2021 Climate Action Plan, Appendix 17, Vermont Pathways Analysis Report at 4, *available at* https://climatechange.vermont.gov/sites/climatecouncilsandbox/files/2022-03/Pathways%20Analysis%20Report_Version%202.0.pdf.

⁶ *Id.*

⁷ Prefiled Direct Testimony of Adam Jacobs, Case No. 22-2230-PET at 8 (Aug. 26, 2022).

GWSA. For this reason, the Department’s analysis and recommendations were based on a more rigorous lifecycle accounting, which did not consider RNG to be zero emissions.⁸

Finally, the Motion asserts that “[i]t is more than likely that comparison of the Contract RNG to the other pathways VGS already provides would show that these alternatives produce greater emissions reductions at lower cost. Neither VGS nor the Department offered, nor did the Commission require, evidence that would have allowed this critical comparison to be made.”⁹ However, VGS did provide a comparison of existing and proposed supply and demand-side emissions reduction measures in their response to the Department’s discovery requests.¹⁰ Mr. Jacobs’ pre-filed testimony specifically identifies the Department’s review of VGS’s cost of carbon modeling and states, “VGS’s evaluation of current or pending emissions reduction initiatives using both supply and demand-side measures demonstrates that the proposed contract is one of the most expensive means for VGS to reduce emissions.”¹¹ However, Mr. Jacobs also concludes that the Contract’s options allows VGS to resell volumes of RNG into renewable fuel markets, therefore producing offsetting revenues that effectively buy down the cost of these emissions reductions from RNG.¹²

The Department comprehensively reviewed VGS’s testimony and responses to its discovery requests, which included VGS’s cost of carbon model for all supply and demand side measures and the carbon cost-effectiveness of the Contract under various scenarios exercising the Contract’s available options. The Department recommended, and the Commission adopted, a

⁸ “The Department concludes the Proposed Contract should be evaluated considering the actual emissions impacts based on the best available information under least-cost planning.” *Id.* at 8-9

⁹ Intervenor’s Motion for Reconsideration at 6.

¹⁰ *See* DPS.VGS.1-18.

¹¹ Prefiled Direct Testimony of Jacob Adams at 5.

¹² *Id.* at 5-6.

condition of approval that would ensure continual, regulatory oversight of VGS's management of the Contract to confirm VGS is purchasing emissions reductions below the social cost of carbon, thus providing an environmental benefit to ratepayers and minimizing rate impacts to customers. VGS's increased, incremental utilization of RNG in its general supply is consistent with its ARP and IRP, 2022 CEP, the CAP, and the GWSA. While the Motion and the Intervenor's prior comments on the proposal for decision generally take issue with RNG as a means of achieving the GWSA greenhouse gas reduction mandates, the Motion does not sufficiently demonstrate the Contract's inconsistency with the various regulatory requirements and policy objectives relied upon by the Commission in reaching its conclusion.

For the foregoing reasons, the Department respectfully recommends that the Commission deny the Motion and affirm its decision under the Final Order.

DATED at Montpelier, Vermont this 20th day of December 2022.

Respectfully submitted,

VERMONT DEPARTMENT OF PUBLIC SERVICE

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cc: ePUC Service List