

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: 12/22/2022

**ORDER DENYING MOTION TO RECONSIDER**

**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 November 15, 2022, the Vermont Public Utility Commission (“Commission”) issued an order determining that the Project cannot go forward in its current form.

On November 22, 2022, VGS filed a motion asking the Commission to reconsider its November 15 Order.

On December 7, 2022, the Vermont Department of Public Service (“Department”) filed a response to VGS’s motion.

In today’s Order, we deny VGS’s motion for reconsideration.

**II. DISCUSSION & CONCLUSION**

The Commission reviews requests for reconsideration pursuant to Rule 59(e) of the Vermont Rules of Civil Procedure, which is applicable to Commission proceedings pursuant to Commission Rules 2.103 and 2.105.<sup>2</sup> Reconsideration is appropriate only to avoid an unjust result “due to mistake or inadvertence of the Commission, as opposed to that of a party.”<sup>3</sup>

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

<sup>2</sup> VGS did not cite to a rule upon which it was basing its request for reconsideration. The analysis in this Order assumes the basis is V.R.C.P. 59(e). Rule 60(b) also provides relief from a judgment; however, the moving party must demonstrate mistake, inadvertence, excusable neglect, newly discovered evidence, or fraud. None of those grounds was alleged in VGS’s motion.

<sup>3</sup> *Rubin v. Sterling Enterprises, Inc.*, 164 Vt. 582, 588, 674 A.2d 782 (1996) (citing *Osborn v. Osborn*, 147 Vt. 432, 433 (1986) and *In re Kostenblatt*, 161 Vt. 292, 302 (1994)).

The disposition of a reconsideration motion rests with the discretion of the Commission.<sup>4</sup> Relief pursuant to Rule 59 is an extraordinary remedy that is to be used with great caution.<sup>5</sup> Rule 59(e) recognizes the Commission’s broad power to alter or amend a judgment. In addressing a Rule 59(e) motion, the Commission “may reconsider issues previously before it, and generally may examine the correctness of the judgment.”<sup>6</sup> However, Rule 59 does not permit parties to relitigate issues or correct previous tactical decisions.<sup>7</sup> A party’s disagreement with the Commission’s decision is not grounds for reconsideration.<sup>8</sup>

VGS’s arguments do not meet the high standard for granting reconsideration of a Commission order. VGS argues that (1) the Project is consistent with VGS’s Alternative Regulation Plan because it will provide significant research and development value; (2) the Project is consistent with innovative pilots that advance state energy policy in circumstances where markets are immature; (3) the Project is consistent with other VGS innovations; and (4) the Commission should broadly construe the scope of VGS’s climate action initiatives. All four of VGS’s arguments were already raised and addressed in our original order. Rule 59(e) does not allow reconsideration in these circumstances.

The Commission has allowed distribution utilities the opportunity to jumpstart a nascent market when there is a link between the deployment of that technology or service and ratepayer benefit. For example, Green Mountain Power Corporation (“GMP”) was given this opportunity in the energy storage market to offer Tesla Powerwalls to its customers—not to Vermonters generally. However, once the battery program was tariffed, GMP was required to provide an opportunity for customers to “bring their own battery” and have the system benefits of batteries controlled by GMP. VGS’s motion does not cite to any instances where a monopoly utility

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<sup>4</sup> *Petition of Vermont Transco LLC, et al.*, Case No. 17-3808-PET, Order of 5/9/18 at 3 (citing *Alden v. Alden*, 187 Vt. 591, 592 (2010)).

<sup>5</sup> *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 1.

<sup>6</sup> *Id.* (citing *Drumheller v. Drumheller*, 185 Vt. 417, 432 (2009)).

<sup>7</sup> *Id.* (citing *In re Cent. Vt. Pub. Serv. Corp.*, Docket Nos. 6946/6988, Order of 5/25/05 at 3).

<sup>8</sup> *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 of 12/21/17 at 6.

offered an innovative product or service in a market—nascent or otherwise—to non-customers and where the deployment of the technology had no direct or indirect ratepayer benefit.<sup>9</sup>

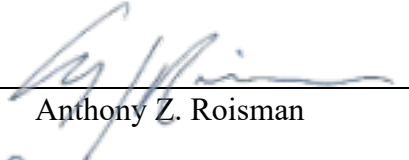
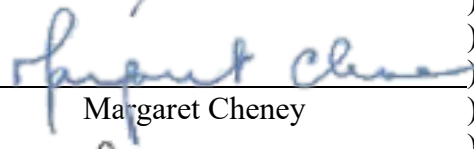
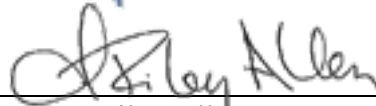
In sum, VGS’s motion reiterates the position it had advanced in its earlier filings. Nothing alleged in the motion alters our conclusion that the pilot as proposed lacks a nexus with ratepayer benefits. While we recognize the importance of reducing carbon emissions, and the potential role that geothermal can play in doing so, VGS’s use of ratepayer funds for such efforts is not without limits. Thus, VGS cannot use monies collected from ratepayers through tariffed rates to test this service exclusively on entities outside of its current service footprint, especially when VGS has not alleged that any of its customers are considering this technology. Our objection to the Project does not preclude VGS from moving forward below-the-line.

**SO ORDERED.**

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<sup>9</sup> VGS cites to the Large-Scale Electric Boiler Optimization Project (“Electric Boiler Project”) as an example of an innovative pilot where VGS was allowed to participate in the development of a technology outside of its current service footprint. However, we distinguished that pilot from the one proposed in this case. One primary difference is that the Electric Boiler Project involves the development of software designed to optimize electric boilers in conjunction with existing fuel sources. The development of this software is essential for commercial and industrial customers to dispatch electric boilers in an economically viable manner and, thus, is necessary for future deployment of electric boilers. In addition, VGS made representations that it was “in discussion with three large-scale industrial customers who are considering employing an electric boiler to displace some portion of their natural gas load.” VGS’s participation in the Electric Boiler Project would “give VGS firsthand knowledge and experience with electric boiler/hybrid systems that can be directly applied to VGS’s own customers who have interest in installing such systems.” Unlike the Electric Boiler Project, here VGS has proposed a pilot as proof of concept for an alternative business model: installing, owning, and servicing a geothermal heating system. VGS has made no representation, either in its original filing or its reconsideration motion, that it has customers with an interest in geothermal systems. Instead, ratepayer funds would be used to develop a geothermal project outside of VGS’s service footprint.

Dated at Montpelier, Vermont, this 22nd day of December, 2022.

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

OFFICE OF THE CLERK

Filed: December 22, 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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