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 five years	

Order entered: 01/30/2023

ORDER DENYING MOTION TO RECONSIDER

I. INTRODUCTION

This case involves a petition filed by Vermont Gas Systems, Inc. ("VGS") with the Vermont Public Utility Commission ("Commission") seeking approval of an out-of-state renewable natural gas ("RNG") purchase contract with Archaea Energy Marketing LLC ("Archaea") under 30 V.S.A. § 248(i) (the "Contract"). In this Order, we deny a motion from Intervenor Catherine Bock to reconsider our November 8, 2022, Final Order approving the Contract (the "Motion").[1]

II. PROCEDURAL HISTORY

On November 8, 2022, we issued a Final Order approving the Contract subject to conditions (the "Final Order").

On December 6, 2022, Ms. Bock filed the Motion requesting that we reconsider and reverse the Final Order.

On December 20, 2022, the Vermont Department of Public Service ("Department") filed an opposition to the Motion.

Also on December 20, 2022, VGS filed an opposition to the Motion.

[1] The Motion seeks reconsideration under Vermont Rules of Civil Procedure ("V.R.C.P.") 52 and 59. We note that the Commission recently made significant revisions to Commission Rule 2.000, which went into effect on January 18, 2023. Under the updated version of Rule 2.000, motions to reconsider are now subject to Commission Rule 2.221, which incorporates the language of V.R.C.P. 59 without modification. Because Ms. Bock filed the Motion in advance of the January 18, 2023, effective date for the revised Rule 2.221, we will review the Motion under V.R.C.P. 59. We note, however, that the new Commission Rule 2.221 is identical to the current V.R.C.P. 59, and therefore any precedent interpreting V.R.C.P. 59 would apply equally to motions filed under Commission Rule 2.221. Because the same legal standard applies, no party is prejudiced by our reliance on V.R.C.P. 59 instead of the updated version of Rule 2.000 to resolve the Motion.

III. POSITIONS OF THE PARTIES

Ms. Bock argues that "the Final Order approving the contract lacks critical findings of fact present in the record, and, lacking these, certain of the Commission's conclusions cannot be understood by the Intervenor, ratepayers, citizens, or a reviewing court."[2] She further asserts that "the final order is grounded in material misapprehensions of the Commission's duty and authority, specifically with respect to the requirements of the Global Warming Solutions Act ("GWSA") of 2020."[3] In support of these arguments, Ms. Bock asserts that the Commission did not give adequate weight to the GWSA's carbon emission reduction mandates and did not adopt proposed findings of fact that Ms. Bock argues are relevant to compliance with GWSA mandates. Ms. Bock further argues that VGS did not present, and the Commission therefore did not evaluate, sufficient evidence regarding cost or emission comparisons to other pathways for reducing carbon emissions, such as weatherization, heat pumps, or other electric appliances. Ms. Bock concludes that the Final Order should be amended to include several of her proposed findings of fact "so that the [Final Order] may be reconsidered and reversed."[4]

The Department opposes the Motion. The Department asserts that 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)."[5] The Department also argues that Ms. Bock's arguments do not satisfy the legal standard for reconsideration under V.R.C.P. 59 because the Motion "reasserts several identical concerns" that were "thoroughly addressed" in the Final Order and the Hearing Officer's October 19, 2022 proposal for decision.[6] With respect to the substance of the Motion, the Department disagrees with Ms. Bock's assertions regarding consistency with the GWSA mandates and whether VGS conducted adequate inquiry into cost comparisons with

[2] Intervenor's Motion for Reconsideration at 1.
[3] *Id.* at 1.
[4] *Id.* at 12.
[5] Department's Response to Motion to Reconsider at 1.
[6] *Id.* at 2.

alternative pathways for carbon reductions. The Department recommends that we deny Ms. Bock's motion and "affirm [our] decision under the Final Order."[7]

VGS also opposes Ms. Bock's Motion. Like the Department, VGS asserts that Ms. Bock has not presented any arguments that would warrant reconsideration under the applicable V.R.C.P. 59 legal standard. Specifically, VGS asserts that "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."[8] VGS further argues that the "fact that [Ms. Bock] disagrees with the Final Order is not a valid basis for reconsideration."[9] In response to Ms. Bock's substantive position on the GWSA, VGS challenges the Motion on the basis that it "relies almost entirely on unfounded claims that the Commission did not give sufficient weight to the requirements of the [GWSA]."[10] VGS asserts that the "Final Order refers to the GWSA over fifty times" and that the Final Order "gave substantial thought, weight, and consideration to the GWSA requirements."[11] Finally, VGS asserts that our Final Order is sufficiently supported by factual findings with evidentiary support and that Ms. Bock's proposed findings that were not included in the Final Order are either irrelevant, inaccurate, or not supported by evidence in the record.[12] VGS recommends that the Motion be denied.

IV. DISCUSSION AND CONCLUSION

Reconsideration under V.R.C.P. 59 is appropriate only to avoid an unjust result due to "mistake or inadvertence of the [Commission], and not the fault or neglect of a party."[13] The disposition of a reconsideration motion rests with the discretion of the Commission.[14] A hearing is not mandatory.[15]

---

[7] *Id.* at 5.
[8] VGS's Response to Motion to Reconsider at 3.
[9] *Id.* at 3.
[10] *Id.* at 2.
[11] *Id.*
[12] *Id.* at 4-5.
[13] *Rubin v. Sterling Enterprises, Inc.*, 164 Vt. 582, 588, 674 A.2d 782 (1996) (citing *In re Kostenblatt*, 161 Vt. 292, 302, 640 A.2d 39, 45 (1994)).
[14] *Alden v. Alden*, 2010 VT 3, ¶ 7, 187 Vt. 591, 592, 992 A.2d 298 (2010)).
[15] *Rubin*, 164 Vt. at 588; *see also, e.g.*, *In re B.K.*, 2017 VT 105, ¶ 13, 206 Vt. 110, 115, 179 A.3d 758, 762 (2017) ("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.").

Granting reconsideration is an extraordinary remedy to be used with great caution.[16] V.R.C.P. 59 does not permit parties to relitigate issues or correct previous tactical decisions.[17] It is not a vehicle to introduce new evidence or advance arguments that could have been made previously.[18] The Commission also retains "discretion to deny consideration of discrete issues not raised prior to entry of judgment."[19]

Ms. Bock's Motion does not satisfy the high standard for granting reconsideration of our Final Order in this case. We have reviewed all of the arguments presented in Ms. Bock's Motion. Each of these arguments was either made or could have been made previously. The Motion focuses almost exclusively on the GWSA and generally restates arguments that have already been considered by the Commission on two separate occasions – first in the parties' initial briefing and then in comments on the Hearing Officer's proposal for decision. The GWSA's applicability to this case was addressed extensively, and in detail, by the Hearing Officer in his proposal for decision and in our Final Decision. The Hearing Officer also considered all proposed findings of fact presented by all parties in this case, including the proposed findings related to the GWSA mandates. Our Final Order adopted findings of fact from the proposal for decision that were supported by the evidentiary record and relevant to our final disposition of this case. Ms. Bock cites to *New England Power v. Barnet*, 134 Vt. 498, 503, 367 A.2d 1363 (1976), to argue that our Final Order lacks sufficient explanation for how "[w]e reached factual conclusions upon which [we] relied and why [we] excluded other facts that contradict those conclusions." However, the proposal for decision and our Final Order include extensive, detailed discussions and analyses to explain how we evaluated the evidentiary record for this case to arrive at our conclusions regarding consistency with applicable and relevant legal requirements, including the GWSA.

---

[16] *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.

[17] *Id.*

[18] *See, e.g.*, *In re B.K.*, 2017 VT 105, ¶ 13, 206 Vt. 110, 115, 179 A.3d 758, 762 (2017) ("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.").

[19] *Everbank v. Marini*, 2015 VT 131, ¶ 34, 200 Vt. 490, 134 A.3d 189 (2015); *see also* 11 C. Wright, Miller & Kane, Federal Practice and Procedure § 2810.1 (3d ed.) (2022 Update) ("The Rule 59(e) motion may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.").

We also note that portions of the Motion appear to misunderstand our consideration of the Contract within the context of the GWSA and the CEP. For example, the Motion asserts that:

> By underweighting the importance of the specific GWSA emissions reduction mandates, the Commission has implicitly and sometimes explicitly supported the view that any reduction of greenhouse gas emissions, no matter how small, is a benefit consistent with the State's energy policy and the recommendations of the CEP.[20]

In approving the Contract, we did not determine that *any reduction* in greenhouse gas emissions is consistent with the CEP and the GWSA. Rather, we concluded that the evidence presented in this case shows that the Contract can be *a cost-effective means* of reducing greenhouse gas emissions if the Contact is managed effectively by VGS.

Specifically, in relying on credible testimony and recommendations presented by the Department, the Hearing Officer determined that "the Contract can be managed to result in a cost-effective, net-positive environmental benefit."[21] In adopting the Hearing Officer's proposal for decision, we emphasized that:

> Although VGS should be encouraged to pursue all available options for mitigating the climate and environmental impacts of its business, any ratepayer investments into new programs, initiatives, or purchase contracts should be cost-effective and ensure that financial risk is appropriately balanced between the company and its ratepayers.[22]

In evaluating the GWSA and CEP, we did not look in isolation at the Contract's potential greenhouse gas emission reductions. Instead, we balanced the potential environmental benefits to be provided by the Contract with ratepayer impacts. This approach is consistent with our general regulatory obligation to ensure that VGS adheres to traditional least-cost principles in providing service to its customers. It also bears repeating that our approval of the Contract under 30 V.S.A. § 248(i) does not constitute a guarantee of rate recovery for the Contract's costs. If the potential environmental benefits do not materialize in a cost-effective manner, or VGS does not manage the Contract effectively, it may be necessary to assess rate recovery or other remedies in future proceedings.

---

[20] Motion at 4.
[21] Final Order at 20.
[22] Final Order at XX.

We also disagree with the Motion's contention that the Final Order did not adequately consider alternative pathways for VGS to reduce the greenhouse gas emissions of its business practices. As we stressed in the Final Order, the Contract is consistent with the CEP, which is a planning document that "shall seek to implement the State energy policy set forth in [30 V.S.A. §] 202a."[23] Section 202a(3), in turn, specifies that the CEP must incorporate the GWSA's emission reduction requirements and be consistent with the Climate Action Plan adopted under 10 V.S.A. § 592. Accordingly, it was appropriate for our Final Order in this case to consider consistency with the CEP to assess "pathways" for achieving the GWSA's emission reduction requirements. We also stressed that approval of the Contract should not dissuade investment in other cost-effective means of reducing greenhouse gas emissions, including "weatherization, heat-pump installations, and the introduction of other low-carbon fuels and sources of energy, such as hydrogen."[24] Finally, it is important to highlight a point noted by the Hearing Officer in his proposal for decision that "[f]or those customers who are unable to fuel switch away from natural gas in the near-term future, whether for financial or logistical reasons, regulatory policy should be directed at reducing the emissions profile of the natural gas that those customers will continue to use in a cost-effective manner."[25]

We have carefully reviewed Ms. Bock's Motion for reconsideration in light of the existing record in this case. Although we place great value on the information and evidence she presented throughout this case, which benefitted our consideration of the Contract, we conclude that she has not presented any arguments or information to demonstrate a mistake or inadvertence that would warrant reconsidering the Final Order. Therefore, consistent with the applicable standard under Rule 59, the motion for reconsideration is denied.

SO ORDERED.

[23] 30 V.S.A. § 202b(a).
[24] Final Order at 34.
[25] Final Order at 27.

Dated at Montpelier, Vermont, this 30th day of January, 2023.

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

OFFICE OF THE CLERK

Filed: January 30, 2023

Attest: _____
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).

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Commission within 30 days. Appeal will not stay the effect of this Order, absent further order by this Commission or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Commission within 28 days of the date of this decision and Order.

PUC Case No. 22-2230-PET - SERVICE LIST

Parties:

Catherine Bock, *pro se*
175 A North Prospect St.
Burlington, VT 05401
tinki.bock@gmail.com

Eric B. Guzman (for Vermont Department of Public Service)
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620
eric.guzman@vermont.gov

Owen McClain, Esq. (for Vermont Gas Systems, Inc.)
Sheehey Furlong & Behm P.C.
30 Main Street
P.O. Box 66
Burlington, VT 05402
omcclain@sheeheyvt.com

James Porter, Esq. (for Vermont Department of Public Service)
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620
james.porter@vermont.gov

Michael Swain (for Vermont Department of Public Service)
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620
michael.swain@vermont.gov