STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 24-3359-INV

Investigation of the standard-offer contract between Vermont Renewable Gas, LLC and the Standard Offer Facilitator	

VERMONT RENEWABLE GAS LLC's EXCEPTIONS TO PROPOSAL FOR DECISION AND REQUEST FOR ORAL ARGUMENT

Pursuant to 3 V.S.A. § 811, Vermont Renewable Gas, LLC ("VRG") provides the following comments on the Proposal for Decision Addressing Standard-Offer Contract Eligibility dated June 9, 2025 ("Proposal for Decision" or "PfD") regarding the present Investigation. For the reasons below, VRG respectfully requests that the Commission reject the Proposal for Decision, suspend the present Investigation, and allow VRG's Section 248 Petition for CPG for its proposed project to proceed. VRG also requests that the Commission use this opportunity to suggest appropriate guidance for VRG, the parties, and hearing officer in the CPG petition process to follow in crafting the CPG. VRG will then work with the state agencies to prepare conditions for consideration by the Hearing Officer and Commission as necessary to ensure that VRG's proposed facility qualifies as a plant "using methane derived from an agricultural operation" pursuant to the requirements of 30 V.S.A. § 8005a(d)(1).

I. Introduction

The Hearing Officer proposes that the proposed facility, which will use biogas containing methane produced from the pyrolysis of farm-derived woody material to generate electricity is not eligible for the Standard Offer Contract entered into between VEPP, Incorporated ("VEPP")

and VRG. This is based on the Hearing Officer's determination that VRG's proposed facility cannot qualify as a "[p]lant[] using methane derived from an agricultural operation" under 30 V.S.A. § 8005a(d)(1) (also referred throughout these comments as a "farm methane plant"). In making this determination, the Hearing Officer proposes new standards regarding which projects qualify for the Standard Offer farm methane category, and recommends that the Commission apply those standards retroactively. Based on this conclusion, the Hearing Officer proposes the Commission declare the standard offer contract that VRG has relied upon to make significant investments in the development of its proposed project to be "null and void ab initio."

VRG has the technical ability to operate the proposed facility in a manner that qualifies as a farm methane plant, whether under the Hearing Officer's proposed new standards or as originally proposed by VRG. In either case, VRG is able and willing to work with the Vermont Department of Public Service ("PSD"), Vermont Agency of Agriculture Food and Markets ("AAFM") and Vermont Agency of Natural Resources ("ANR")(collectively "state agencies") to propose conditions to incorporate into a Certificate of Public Good ("CPG") for the proposed project -- conditions that will ensure that VRG meets the appropriate requirements regarding farm-derived feedstock and production of methane gas as necessary to fully comport with the requirements of 30 V.S.A. § 8005a(d)(1).

If the Commission were to adopt the Proposal for Decision, it would be creating new standards for determining which projects qualify for the farm methane category in the Standard Offer Program and applying them retroactively. This would deprive VRG and the participating state agencies of the opportunity to demonstrate that VRG's proposed project qualifies as a farm methane plant through the CPG petition process.

For this reason, and as more fully set forth below, the Commission should not adopt the Proposal for Decision.

II. The Proposal for Decision Would Create New Standards for Determining Qualifications for the Farm Methane Category Not Grounded in Science, Policy or Law

VRG agrees with the general two-part framework that the Hearing Officer established for determining whether a project qualifies as a Farm Methane Plant, namely (1) does the plant use methane, and (2) is the methane derived from an agricultural operation. PfD at 2. VRG does not, however, agree with the standards that the Hearing Officer proposes under this framework.

A. Methane Generation

The Proposal for Decision includes a new requirement, not found in the statute or Commission rulings: methane must constitute a majority of the combustible component of the gas by volume in order to be considered a farm methane plant. *PfD at 13.* This new requirement is based on the assumption that the term "methane" should be read narrowly and limited only to plants that have the "characteristics of the methane derived" from livestock waste anaerobic digesters. *Pfd at 12-13.* Anaerobic digesters produce biogas comprised of greater than 50% methane by volume and so the Hearing Officer concludes that greater than 50% is the standard by which projects proposing to use methane derived from agriculture should be measured.

This assumption also relies too heavily on Act 159 of 2010. This Act was adopted a year after the farm methane category was established and was specifically tailored for a group of dairy farm anaerobic digesters that were excluded from coverage. See VRG Reply Brief at 2-3. The Legislature has never, in fact, included language in the statutes indicating that the farm methane category of the Standard Offer Program should be limited to the anaerobic digestion of livestock manure. *See VRG Brief at 10-15 and VRG Reply Brief at 7-10.* Further, the Commission's own carefully developed decisions have interpreted this category broadly to be technology-agnostic. *Second Order Re Implementation Issues dated October 28, 2009* (One of a series of decisions in the docket titled, *Order Number 7533, Investigation Re: Establishment of a*

Standard Offer Program for Qualifying Sustainably Priced Energy Enterprise Development ("SPEED") Resources) as discussed in VRG Brief at 7-8.

Even if the Commission agrees that livestock waste anaerobic digesters are the appropriate point of comparison for determining eligibility for the farm methane category, it still does not necessarily follow that the appropriate standard should require a biogas composition with greater than 50% methane by volume. A more careful point of comparison would consider the overall purpose of the Standard Offer Program, which is to encourage the production of renewable energy. This comparison is explained by Alexander Skorokkhodov in the following manner:

> the methane proportion still represents a higher volume of methane per ton of feedstock than what is typically recovered through anaerobic digestion of wet agricultural wastes (190% more effective), due to the high volatile matter content and dry nature of our conditioned woody biomass feedstock.

Alexander Skorokhodov Supplemental Prefiled Testimony, June 19, 2025 at 4 ("Skorokhodov Supplemental Prefiled"). Based on this metric, VRG's proposal outperforms anaerobic digestion in terms of methane production.

Further, requiring VRG, or any farm methane plant, to optimize methane production over operational efficiency will lead to less than optimal designs and operations. VRG developed its proposal for how best to operate the plant with consideration for how to optimize "high throughput, durability, and operational simplicity" and to avoid unnecessary "capital and operational cost burdens. *Id.* The project was proposed to operate as optimal to "meet Vermont's energy, climate, and rural development goals using a system that is cost-effective for achieving those goals." *Id. at 6.* While VRG can adjust the design and operation, as described by Mr. Skorokhodov, to generate a greater percentage of methane, there is a cost. *Id. at 4-5.*

Using the high temperature ablative pyrolysis ("HTAP") process, as originally designed

and proposed, methane is a significant and critical component of the combustible gases that would be produced by VRG's plant. Whether methane is a significant and critical component of the gases combusted to generate electricity should be a sufficient criterion for determining whether a facility qualifies as a Farm Methane Plant within the meaning of 30 V.S.A. § 8005a(d)(1) – without applying a 51% methane by volume requirement. Using this as a criterion would still give the term "methane" meaning, without requiring the developer to design the project to choose the production of methane over the efficient generation of electricity.

For these reasons, the Commission should not adopt the Hearing Officer's proposal that a plant only qualifies as a farm methane facility if "the majority of the combustible component of the fuel must be methane by volume, with lesser amounts of other flammable gases allowed." *PfD at 13.*

In the alternative, VRG is willing and able to agree to a condition in the CPG requiring a 51% or other minimum level of methane by volume in the biogas it uses to operate its generators. While VRG continues to seek the ability to operate the facility as proposed, it is technically feasible to "increase the methane content of the recovered gas stream to exceed 50%." *Id. at 6.* VRG can, with some limited adjustments to the facility, shift the process to produce at least 51% methane in its biogas by volume, the standard recommended in the Proposal for Decision, without otherwise compromising the operation of the facility or its overall benefits. *Id. at 6-7.*

Because the proposed facility could meet the standard proposed in the Proposal for Decision, it would be premature for the Commission to declare VRG's Standard Offer Contract "null and void ab initio." Instead, VRG should be allowed to propose adjustments to the facility and work with other stakeholders to develop appropriate proposed conditions to meet this new standard.

B. Feedstock Derived from Agricultural Operations

The description of the single category of feedstock that the Proposal for Decision would set as the full extent of woody biomass that can be considered to be "derived from an agricultural operation" is expressly narrow, and rejects the interpretation of AAFM, the state agency tasked by the Legislature with the responsibility for agriculture in the State of Vermont. *PfD at 17-19; cf. AAFM Brief at 5-7.*

VRG proposes four categories of feedstock sources to comply with the requirement that 51% of feedstock be derived from agricultural operations. *Evan Dell'Olio Prefiled Testimony, December 12, 2024 at page 20.* In the Proposal for Decision, only one of the four would qualify as a feedstock for a farm methane plant: "byproducts from Christmas tree, maple sap, horticultural, and orchard crop production." *PfD at 21-22.* The second category including "timber grown and harvested as short-rotation tree crops grown for energy production," third category including "timber purposefully harvested from woodlots on farms and grown for energy production," and fourth category including "byproducts from timber grown and harvested from woodlots on farms" would not qualify as "derived from an agricultural operation" under the test proposed in the Proposal for Decision. *PfD at 22-23.*

By allowing only the first category, the Proposal for Decision would exclude categories of woody biomass products and byproducts from agricultural practices and products which provide environmental and climate benefits as well as economic benefits to farmers and rural communities as discussed at length in each of submission of prefiled testimony by Evan Dell'Olio. *Prefiled Testimony of Evan Dell'Olio dated December 12, 2024 at 15-18, Supplemental Prefiled Testimony of Evan Dell'Olio dated February 13, 2024 at 2-6,* and *Second Supplemental Prefiled Testimony of Evan Dell'Olio ("Dell'Olio Second Supplemental Prefiled") dated June 19, 2025 at 4-6.*

Further, this narrow definition of eligible feedstock also ignores the perspective of AAFM, which agrees, for instance, that the growth of certain types of trees qualifies as the cultivating of land to grow fiber[1] crops and fits squarely within the definition of farming. *AAFM Brief at 9.* Finally, this narrow definition also ignores the Commission's ruling in Docket 7533, *Order Re: Farm Methane Project Eligibility* dated March 28, 2011, in which the Commission concluded that "the production of energy crops represents a feedstock derived from agricultural operations", a conclusion based on AAFM's recommendation. *Commission March 28, 2011 Order at 3.*

VRG proposes to source only 30% of its agricultural feedstocks from the first category and 70% from the second, third and fourth categories. *Dell'Olio Second Supplemental Prefiled at 3.* Allowing the use of this broader set of woody biomass materials as feedstock is not only consistent with the concept of using material "derived from an agricultural operation," but will serve a multitude of beneficial purposes, *Id. at 4-6,* all consistent with the purpose of the Standard Offer Program incentives for farm methane plants.

As Evan Dell'Olio explains, "forest management is not incidental to farming in Vermont – it is essential." *Id. at 6.*

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[1] While not directly relevant to the interpretation of what materials qualify as "derived from agricultural operations" in 30 V.S.A. § 8005a(d)(1), the Commission may want to consider whether the Hearing Officer correctly dismissed VRG's statements in its briefs that the term "fiber" as used in the definition of farming at 10 V.S.A. § 6001(22)(A) includes "woody fiber". In considering this question, the Commission should look to the Environmental Court's decision in the case In re Moore Accessory Structure Permit, No. 161-8-09 VTEC, 2012 WL 1241222 (Vt.Super. Mar. 30, 2012) (opinion also found on the Vermont Judiciary website at this link) at 4-5 for a different perspective. The Court stated the following: "The definition of farming in 10 V.S.A. § 6001(22)(A) covers the 'cultivation or other use of land' for 'growing food, fiber, Christmas trees, maple sap, or horticultural or orchard crops.' 10 V.S.A. § 6001(22)(A). Because the growing of trees for lumber is not separately listed in this definition, it was necessary to take evidence at trial from experts in the fields of silviculture and agriculture as to whether the growing of trees for lumber is considered to be growing 'fiber.' Based on the evidence given by Appellants' as well as Appellees' expert forestry and agriculture witnesses, the Court finds that the use of land to grow trees to be used for lumber does constitute the growing of a 'fiber' crop, as used in 10 V.S.A. § 6001(22)(A). The Court therefore concludes that the woodlots or managed forest land on the Farm-related Properties from which logs are taken to be processed into lumber involve 'the use of land' for 'growing ... fiber' and therefore constitute 'farming' as defined in 10 V.S.A.§ 6001(22)(A)."

> [I]n Vermont, over 50% of land comprising farms consists of managed woodlands. Such land is managed both for conservation and economic purposes such as timber, firewood, or value-added products like maple syrup or harvested tree crops. When farmers harvest trees or undertake thinning as part of forest stewardship or to support forest crop production, the resulting wood residues are a byproduct of active farm management – not unlike corn stover or manure from livestock. Additionally, many farmers are tasked with returning lands which for property tax purposes may be classified under the state's Current Use Program as "idle agricultural land" to production of row crops, pasture, or other uses. Trees harvested in the return of such land to agricultural production are directly tied to the management of the farm for other crop production and so constitute "farming."

Id. at 3-4.

Limiting the concepts of farming or agriculture to exclude the growing of trees and managing of farm woodlots, as the Proposal for Decision does, ignores the present state of farming in Vermont as well as its history and future. As explained by Mr. Dell'Olio, tree management on farms is necessary to reduce risks of damage to agricultural operations from disease, pests, fire risks, wind damage, erosion, damage to crops and livestock, invasive plant and insect species. Further, the planting and management of trees and farm woodlots, and the growing use of agroforestry and silvopasture methods, are intimately tied to soil and water conservation, carbon sequestration, resilience to extreme weather, and water quality. Finally, Mr. Dell'Olio notes that tree and timber products diversify farm income. *Id. at 6*.[2]

While hoping that the Commission will agree to the inclusion of a broader set of woody biomass qualifying as "derived from an agricultural operation," VRG is willing and able to operate its facility with limits on the categories of feedstock consistent with the Proposal of Decision if required. As explained in the Prefiled Testimony of Evan Dell'Olio, at 2-3 and 6-7, VRG can meet at least 51% of its feedstock requirements for the plant through using solely the

[2] See also In re Moore Accessory Structure Permit & Use, 2013 VT 54, ¶ 10, 194 Vt. 159 (noting the importance of diversification on farms and measures taken by the Legislature in recognition of that fact).

first category described in the Proposal for Decision as eligible feedstocks for a facility qualifying as a farm methane plant: "byproducts from Christmas tree, maple sap, horticultural, and orchard crop production." PfD at 21-22. VRG seeks the opportunity to work in the context of the Section 248 CPG process with AAFM, and also with PSD and ANR, to provide a condition for consideration by the Commission, which would place appropriate constraints, consistent with the farm methane category as defined in 30 V.S.A. § 8005a(d)(1), on the feedstock types and volumes used by VRG at its proposed facility.

III. The Section 248 Petition Process is the Proper Forum for Establishing Conditions on VRG's Proposed Facility as Necessary to Ensure Conformance with the Farm Methane Category

VRG understands that the Commission has the authority to void a Standard Offer Contract with VEPP. VRG does not challenge this authority, and questions not whether the Commission may exercise its authority in this instance but whether it should. Instead of declaring the Standard Offer Contract void, the Commission should allow VRG the opportunity to demonstrate that it can operate its facility in a manner that meets the requirements for (1) the production of methane, (2) from materials that are derived from an agricultural operation. As described above and supported by the Supplemental Prefiled Testimony of Evan Dell'Olio and Alexander Skorokhodov, VRG can adjust its proposal to (1) accommodate a minimum methane by volume requirement, and (2) accept limitations on the sources of woody biomass feedstock used to meet the 51% minimum threshold set by the Commission for determining whether a facility is using biomass derived from agricultural operations.

Principles of judicial review, as applied by the Vermont courts, support this approach. Specifically, the doctrine of primary jurisdiction provides a persuasive basis for the Commission to allow the Section 248 CPG process to reach completion before deciding the issue presented in this investigation. The Vermont Supreme Court has described the doctrine of "primary

jurisdiction" as providing courts with the discretion to "refrain from exercising jurisdiction when an alternative tribunal with expertise in the subject matter is available to decide the dispute." C.V. Landfill, Inc. v. Env't Bd., 158 Vt. 386, 388–89 (1992); see also Travelers Indem. Co v Wallis, 2003 VT 103 (2003). While the doctrine of primary jurisdiction and case law applying it are not directly applicable to this matter, given that the PUC is the tribunal for both procedures, the same principle animating this doctrine is relevant.

In C.V. Landfill, Inc., the Vermont Supreme Court considered three factors in deciding to uphold the dismissal of a declaratory judgment action challenging Act 250 jurisdiction on the basis that the matter was more appropriately heard by the Environmental Board: (1) the issues raised involved mixed questions of law and fact; (2) the issues were issues so intertwined with the relevant statute (Act 250) that the body charged with interpreting that statute was the most appropriate tribunal; and (3) the plaintiff, C.V. Landfill, Inc., was not challenging the validity of the statute at issue. C.V. Landfill, Inc. at 392 and Travelers Indem. Co. at ¶10. Applying those factors to the present matter, (1) the question of whether VRG's facility qualifies as a farm methane facility is a mixed question of law and fact, (2) the agencies participating in the Section 248 CPG process have special expertise in the issues that have been raised, and (3) the validity of the relevant statute is not at issue.

While the state agencies with jurisdiction over the questions raised have had the opportunity to engage in the Investigation process, they have done so only in a limited, and largely abstract manner, in contrast to the applied work that happens in a Section 248 Petition process during which the applicant and agencies can work together to present proposed conditions in the CPG. In this manner, the agencies and applicant can work, in a transparent process, to ensure that approved projects are designed, constructed and operated consistent with the complex array of highly technical requirements applicable to energy projects such as VRG is

proposing. Further guidance, relevant to this matter given the creation of new standards in the Proposal for Decision based on a limited record, the Vermont Supreme Court, in Travelers Indem. Co., declined to create new "standards disconnected from the facts in specific cases." Id. at ¶12. Again, while these cases are not precedential or binding on the Commission, they provide a helpful framework for evaluating the question of how best to proceed in a manner that gives meaning to the applicable provisions of law.

In the present matter, the Commission has an alternative and more appropriate pathway than this Investigation for addressing the question of whether VRG's proposed project can be conditioned to satisfy the requirements of the Farm Methane category of the Standard Offer Program. For instance, the CPG process will ensure the opportunity for the full participation of the state agencies with the special competence necessary to evaluate complex legal, policy and technical questions involved in crafting conditions. As VRG has consistently invited, it is willing to agree to conditions that tie directly to the issues related to Standard Offer eligibility raised in this Investigation.

Similarly, because the Commission has determined that this petition will proceed under a procedurally robust Section 248 process, there will be the potential to create a full evidentiary record through discovery and testimony, including the opportunity for cross-examination, and a hearing. While the state agencies parties have theoretically had the opportunity to engage in an evidentiary hearing process, they have not done so and the only evidence presented was in the form of the prefiled testimony submitted by VRG. This is not surprising given that the Section 248 process also provides a significant opportunity for the state agencies to develop appropriate conditions and is typically the process that these agencies use to advance the requirements and policy goals that fall within their respective jurisdictions. Attempting to resolve the complex questions raised in this Investigation with a limited record and without giving the applicant the

opportunity to negotiate conditions as is typical in Section 248 proceedings, while retroactively applying newly created standards and criteria is not consistent, efficient or fair.

For these reasons, VRG respectfully requests that the Commission not decide the ultimate question of whether the Standard Offer Contract between VRG and VEPP is valid but instead provide guidance regarding its interpretation of 30 V.S.A. § 8005a(d)(1) and the definition of "plants using methane derived from an agricultural operation". That will allow the parties and Hearing Officer to develop a record and CPG conditions through a Section 248 procedure for the Commission's consideration.

As described in these comments and VRG's briefs, the Commission has compelling reasons for finding that VRG's facility does indeed qualify for the Standard Offer Contract it entered with VEPP if constructed and operated as initially proposed. If, however, the Commission adopts the standards and criteria contained in the Proposal for Decision, VRG will agree to conditions that (1) limit its feedstock to the single category of woody biomass described by the Hearing Officer and (2) require the facility to ensure that at least 51% of the biogas produced is methane by volume. The Section 248 CPG petition process, currently stayed, would then provide a more effective process for developing appropriate conditions to ensure that the project is operated in accordance with the requirements of 30 V.S.A. § 8005a(d)(1) as interpreted by the Commission. For this reason, the Commission should restart and defer to the Section 248 CPG process as a "more appropriate, route to resolve this dispute," looking to the process applied by the courts in C.V. Landfill v. Environmental Board, at 392, and Travelers Indem. Co. v. Wallis as guidance.

IV. Conclusion

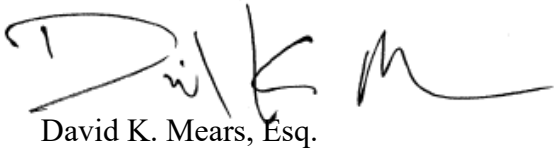
VRG respectfully requests that the Commission reject the Proposal for Decision, suspend the present Investigation, and allow VRG's Section 248 Petition for CPG for its proposed project

to proceed. VRG recommends that the Commission use this opportunity to suggest appropriate guidance for VRG, the parties, and hearing officer in the CPG petition process to follow in crafting the CPG. If VRG establishes, through the Section 248 CPG process and through working to reach agreements with PSD, AAFM and ANR regarding appropriate conditions, that it can meet both the requirements of Section 248 and the requirements of 30 V.S.A. § 8005a(d)(1), then the Commission can approve VRG's standard offer contract with VEPP. Alternatively, if VRG is unable to meet this burden and the Section 248 CPG is denied, then resolving the Investigation based on the facts and circumstances specific to VRG's proposal is unnecessary and the Investigation can be closed.

Finally, VRG respectfully requests oral argument before the Commission, in person if possible.

Dated at Montpelier, Vermont this 20th day of June, 2025

Vermont Renewable Gas, LLC



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