

**STATE OF VERMONT  
PUBLIC UTILITY COMMISSION**

Case No. 23-2220-RULE

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Proceeding to design the potential Clean Heat Standard	
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**PROTECTIVE AGREEMENT**

THIS AGREEMENT is dated as of March 1, 2024, and is by and between the Vermont Department of Public Service (“Department”) and the Vermont Agency of Natural Resources (“ANR”), the names of which are set forth on the motion and signature pages to this Agreement (Department and ANR will sometimes be referred to herein, where the context requires, as an “Agency” and collectively as the “Agencies”).

WHEREAS, Act 18 of 2023, codified in Title 30, Chapter 94 of the Vermont Statutes Annotated, requires each entity that sells heating fuel into and in Vermont to register annually with the Vermont Public Utility Commission (“Commission”).

WHEREAS, 30 V.S.A. § 8124(b)(3) requires the Commission to “share complete registration information of obligated parties” with ANR and the Department on an annual basis, not later than 30 days following the annual registration deadline, “for purposes of updating the Vermont Greenhouse Gas Emissions Inventory and Forecast and meeting the requirements of 10 V.S.A. §591(b)(3).”

WHEREAS, the Vermont Fuel Dealers Association (“VFDA”), Global Partners LP, and Vermont Gas Systems, Inc. (“VGS”), on behalf of registrants, requested that the Commission protect information about suppliers, customers, and fuel purchased as confidential trade secrets.

WHEREAS, on January 24, 2024, the Commission issued an Order granting confidential treatment of the following registration information: (1) volumetric information and (2) the

identities of supplier and client businesses (which information is referred to herein as “Designated Confidential Information”).<sup>1</sup>

WHEREAS, the Commission’s Order requested the Agencies “to execute and submit for the Commission’s approval a protective agreement to facilitate the sharing of information between the Commission and the Department and ANR, pursuant to 30 V.S.A. §8124(b)(3).”<sup>2</sup>

WHEREAS, the Agencies have developed the procedures established in this Agreement for the disclosure of Designated Confidential Information to the Agencies and the provisions for holding such Designated Confidential Information in confidence;

NOW, THEREFORE, the Agencies agree to procedures as follows:

1. This Agreement applies only to registration information that the Commission has ordered to be treated as confidential in its January 24, 2024, Order.

2. The scope of Designated Confidential Information protected under this Agreement is defined by the January 24, 2024, Order, and can only be amended by Order of the Commission. Any Agency or other person may file a motion with the Commission for an amendment, modification, or addition to the Order adopting this Agreement. There must be a good faith basis for all claims of confidentiality and the burden of establishing that the confidential treatment of this information is warranted is on the entity seeking to prevent disclosure.

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<sup>1</sup> *Order granting confidential treatment of registration information*, Case No. 23-2221-INV, Order of 1/24/24, at 9.

<sup>2</sup> *Order granting extension of filing deadline and providing additional guidance*, Case No. 23-2220-RULE, Order of 2/22/24.

3. No Agency that has executed this Agreement, no person representing such Agency, no employee, agent, consultant or contractor of such Agency, that is afforded access to the Designated Confidential Information shall use the Designated Confidential Information for any purpose other than the purposes described in Title 30, Chapter 94 of the Vermont Statutes Annotated.<sup>3</sup> Each such Agency, and each representative person, agent, or expert of the Agency, shall keep the Designated Confidential Information secure and shall not disclose it or afford access to it to any person not authorized by this Agreement to receive same.

4. Each Agency may afford access to the Designated Confidential Information to their agent, employees, contractors, consultants, and other representatives for the purposes described in Title 30, Chapter 94 of the Vermont Statutes Annotated. The Agencies' employees shall protect the confidentiality of Designated Confidential Information. The Agencies shall direct any contractors, consultants, and other representatives to execute an agreement with the Agencies to protect the confidentiality of Designated Confidential Information before it is shared with them and to return Designated Confidential Information at the expiration of their contract with the Agencies.

5. The Agencies' agent, employees, consultants, contractors, and representatives who have agreed in writing to be bound by this Agreement, may take notes regarding such Designated Confidential Information, but only as necessary for the purposes described in Title 30, Chapter

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<sup>3</sup> Vt. Stat. Ann. tit. 30, § 8124(b)(3), "Each year, and not later than 30 days following the annual registration deadline established by the Commission, the Commission shall share complete registration information of obligated parties with the Agency of Natural Resources and the Department of Public Service for purposes of updating the Vermont Greenhouse Gas Emissions Inventory and Forecast and meeting the requirements of 10 V.S.A. § 591(b)(3)."

94 of the Vermont Statutes Annotated. Such notes shall be treated the same as the Designated Confidential Information from which the notes were taken and shall not be used for any purpose other than as specified herein.

6. Should the Agencies receive any request to disclose Designated Confidential Information pursuant to this Agreement under the Vermont Public Records Law, the Agencies agree to assert the exemption contained within 1 V.S.A. § 317(c)(1) to prevent disclosure of records “that by law are designated confidential or by a similar term.” The basis for this exemption to public records request disclosure will be the Commission’s Protective Order issued in accordance with this Agreement.<sup>4</sup> Assertion of any other exemptions shall be at the discretion of the Agencies.

7. Should the Agencies receive a subpoena or other request for Designated Confidential Information pursuant to this Agreement, the Department or ANR promptly shall notify the Commission of the pendency of such subpoena or other request by filing a notice in the above-referenced proceeding. In response to a subpoena, the Department or ANR will produce the documents or information within the timeframe prescribed by the subpoena or applicable state law unless a registrant, or their representative obtains a Protective Order from a court or the Commission barring the production of the documents or information. Nothing in this Agreement shall limit or waive any rights that a registrant may have under applicable law to seek protection against disclosure pursuant to a subpoena, a request for access to public records, or any other request for information.

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<sup>4</sup> Order of 1/24/24.

8. The Commission's January 24, 2024, Order determined that "[t]he confidential treatment of the registration information provided for in this Order will expire five years from the date that the information is submitted on an annual registration form."<sup>5</sup> Accordingly, this Agreement shall cover Designated Confidential Information for a period of five years from the date it is submitted to the Commission in an annual registration form.

9. No signing Agency hereto may assign to any third Agency its rights or obligations hereunder, and any such assignment by any signing Agency of the rights and obligations hereunder shall be null and void.

10. An individual's access to Designated Confidential Information ceases upon termination of employment with an Agency. Any employee of an Agency, who has access to Designated Confidential Information, shall continue to be bound by the terms of this agreement after termination of employment.

11. This Agreement is made under and shall be governed by the laws of the State of Vermont.

12. This Agreement shall in no way be deemed to constitute any waiver of rights of an Agency not governed by this agreement. The foregoing provisions of this Agreement notwithstanding, any Agency may at any time, to the full extent allowable by applicable law, contest any assertion or appeal any finding that specific information is or should be Designated Confidential Information or that it should or should not be subject to the protective requirements of this Agreement.

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<sup>5</sup> 1/24/24 Commission Order, at 10.

13. Each Agency warrants that it will act in good faith and will not do anything to deprive any other Agency of the benefit of this Agreement.

14. The Agencies have entered into this Agreement to fulfill the Commission's Order to maintain the confidentiality of the Designated Confidential Information. Entry into this Agreement shall not be construed as an admission by any Agency regarding the scope of the Agency's statutory right to information, nor shall it be construed as a waiver of the right to raise any and all appropriate confidentiality issues in future cases.

Dated this March 1, 2024.

VERMONT DEPARTMENT OF PUBLIC SERVICE

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