

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 23-2220-RULE

Proceeding to design the potential Clean Heat Standard	
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VERMONT AGENCY OF NATURAL RESOURCES
REVISED REPLY AND MOTION FOR PROTECTIVE ORDER

ANR submits this Revised Reply and Motion for Protective Order to request that the Commission issue a protective order in accordance with an updated version of the Revised Protective Agreement executed by the Department and ANR on March 22, 2024.

On January 24, 2024, the Vermont Public Utility Commission (“Commission”) issued an Order “Granting confidential treatment of registration information” in the above referenced proceeding.¹ The Order designated the “volumetric information and the identities of supplier and client businesses” included in annual registration filings as confidential.² The Order requested the Vermont Department of Public Service (“Department”) and the Vermont Agency of Natural Resources (“ANR”) 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).”³ On February 22, 2024, the Commission issued an Order “Granting Extension of Filing Deadline and Providing Additional Guidance.”

On March 1, 2024, the Department and ANR executed a joint protective agreement, and ANR filed a Motion for Protective Order requesting that the Commission approve the protective agreement as drafted. The Department did not join ANR’s motion, and instead filed a separate Motion for Adoption of Procedures Order requesting that the Commission adopt the Department’s

¹ *Order granting confidential treatment of registration information*, Case No. 23-2221-INV, Order of 1/24/24.

² *Id.*

³ *Id.*

proposed “Procedures Order” in place of the protective agreement. ANR did not join the Department’s Motion for Adoption of Procedures Order.

On March 7, 2024, the Vermont Fuel Dealers Association, Global Companies LLC, and Global Montello Group Corp filed motions in opposition to ANR’s Motion for Protective Order. The Commission’s March 7, 2024 Order requested responses from the Department and ANR no later than March 15, 2024. In response to the concerns raised in the opposition motions, ANR and the Department agreed to revise the protective agreement and ANR filed a Reply and Motion for Protective Order dated March 15, 2024.

After this filing was submitted, counsel for the Department and ANR conferred with counsel for Vermont Fuel Dealer’s Association regarding Paragraph 7, and VFDA agreed to an additional revision to Paragraph 7 with the understanding that the Commission will make available the registrant’s contact information so that adequate notice occurs.

The Revised Protective Agreement dated March 22, 2024 includes the following revisions to address the concerns raised in the opposition motions:

The first sentence of Paragraph 2 of the Revised Protective Agreement is not revised because it is clear that the Department and ANR have agreed that the scope of Designated Confidential Information protected under the Agreement is defined in the Commission’s January 24, 2024 Order.

Paragraph 2 is revised to include the phrase “seeking to designate additional information as confidential” to clarify that the process described in the second sentence refers only to the process for seeking to designate *additional* information as confidential, beyond what was already designated as confidential in the Commission’s January 24, 2024 Order.

Paragraph 2 is revised to remove the original language objected to: “There must be a good

faith basis for all claims of confidentiality” Paragraph 2 maintains that an entity seeking by motion to prevent disclosure of *additional* information has the burden of establishing that confidential treatment is warranted.

Paragraph 6 is not revised because it clearly states that the Department and ANR will prevent disclosure of the Designated Confidential Information by asserting the exemption contained within 1 V.S.A. § 317(c)(1) of Vermont’s Public Records Law. This exemption is appropriate because it applies to “[r]ecords that by law are designated confidential or by a similar term,” and here the Commission has designated confidential information in its January 24, 2024 Order. By signing the Revised Protective Agreement with Paragraph 6, the Department and ANR have agreed to protect this information from disclosure in response to a records request.

Paragraph 7 is revised to remove the original language “or other request” and “a request for access to public records,” and to clarify that Paragraph 7 only applies to an instance where the Department or ANR receive a subpoena requesting the Designated Confidential Information.

Paragraph 7 regarding subpoenas is necessary because the Commission’s January 24, 2024 Order only addressed confidentiality on the basis of Vermont’s Public Records Law.

Paragraph 7 is revised to clarify that the Department and ANR intend to notify the Commission “and the registrants” of the pendency of a subpoena by filing a notice in the above-referenced docket. Paragraph 7 is revised further to reflect the Department and ANR’s commitment to also provide direct notice to registrants of the pendency of a subpoena if the Commission provides registrant contact information to the Department and ANR.

Paragraph 7 is revised further to comport with Vermont Rule of Civil Procedure 45 governing subpoenas.

As described above, ANR and the Department have addressed all of the concerns raised in

the opposition motions. ANR respectfully requests that the Commission issue a protective order in accordance with the latest version of the Revised Protective Agreement executed by the Department and ANR on March 22, 2024.

Dated at Montpelier, Vermont this 22nd day of March, 2024.

VERMONT AGENCY OF NATURAL RESOURCES

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