

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 23-2220-RULE

Proceeding to design the potential Clean Heat Standard	
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Order entered: 09/10/2024

ORDER DISMISSING MOTION FOR RECONSIDERATION

I. INTRODUCTION

In Public Act 18 (2023 Vt., Bien. Sess.) (“Act 18”), the Vermont Legislature directed the Vermont Public Utility Commission (“Commission”) to develop a proposed Clean Heat Standard.¹ Pursuant to 30 V.S.A. § 8127(b), the Commission must establish a standard methodology for determining ownership of clean heat credits.

On July 16, 2024, the Commission issued an order adopting an interim standard credit ownership methodology based on the extensive public input the Commission had received over the previous seven-and-a-half months as well as consultation with the Equity and Technical Advisory Groups.

On July 30, 2024, the Vermont Fuel Dealers Association (“VFDA”) filed a motion asking the Commission to reconsider its order.² Specifically, the VFDA argues that the following two standards, proposed in the July 16 order but not yet finalized, should “be modified because they do not adequately reflect fuel delivery operations in the marketplace”:³

1. For delivered measures, the entity delivering the clean heat measure initially owns the clean heat credits generated by that measure.
2. For biodiesel blends above “B20” and other biofuels that have a reasonable risk of causing heating equipment to malfunction, the entity delivering the measure must certify that the fuel customer’s equipment is able to utilize the clean heat measure effectively and safely.

¹ For an overview of the work done to date and other information on the proposed Clean Heat Standard, please see the Commission's clean heat website at <https://puc.vermont.gov/clean-heat-standard>.

² VFDA stated that the motion was filed pursuant to Commission Rule 2.206; however, Rule 2.206 is the Commission’s general procedural rule regarding the filing of motions (*e.g.*, form, timing, page limits). Commission Rule 2.221 prescribes the process and grounds for filing a motion to reconsider.

³ VFDA Motion at 1.

On August 13, 2024, Thomas Weiss filed a response to VFDA’s motion to reconsider.⁴

II. LEGAL STANDARD

The Commission reviews motions to reconsider pursuant to Commission Rule 2.221, which incorporates the language of Vermont Rule of Civil Procedure 59 without modification. Thus, precedent applying Rule 59(e) is relevant to the application of Commission Rule 2.221(A).

Reconsideration under Rule 2.221 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.”⁵ The disposition of a reconsideration motion rests with the discretion of the Commission.⁶ Granting reconsideration is an extraordinary remedy to be used with great caution.⁷ Rule 2.221 does not permit parties to relitigate issues or correct previous tactical decisions.⁸ It is not a vehicle to introduce new evidence or advance arguments that could have been made previously.⁹ The Commission also retains “discretion to deny consideration of discrete issues not raised prior to entry of judgment.”¹⁰

III. DISCUSSION

A prerequisite to filing a motion to reconsider is the entry of a *final* order by the tribunal — in this case the Commission.¹¹ The Commission’s July 16 order is not a final judgment subject to Rule 59 motions or appeal. The title of the order as well as the content explain that the order is an interim statement of the Commission’s thinking regarding credit ownership. In

⁴ On August 27, 2024, Thomas Weiss filed reply comments.

⁵ *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)).

⁶ *Alden v. Alden*, 2010 VT 3, ¶ 7, 187 Vt. 591, 592, 992 A.2d 298 (2010)).

⁷ *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.*

⁸ *Id.*

⁹ *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.”).

¹⁰ *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.”).

¹¹ Commission Rule 2.221(A)(1) (“On a motion for a new hearing or to alter or amend an order, the Commission may open the proceeding and *reconsider a final order* if one has been entered” (emphasis added)); *see also In re G.B.*, 2019 VT 48, ¶ 8, 210 Vt. 431, 216 A.3d 598 (“An appealable order is one that finally disposes of the matter before the court by settling the rights of the parties on issues raised by the pleadings.” (quotation omitted)).

several places in the order, the Commission explains that “there will be additional opportunities to provide feedback on this element of the proposed Clean Heat Standard.”¹² For example, the Commission’s draft rule comment period is another juncture for VFDA to provide the feedback included in its motion. Further, VFDA can direct its comments to the Legislature when the Commission files its final proposed rule.¹³


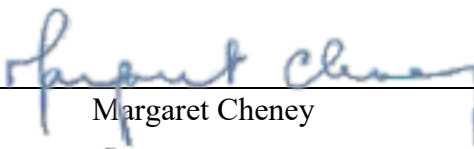
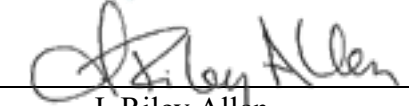
VFDA’s motion for reconsideration is dismissed. The Commission welcomes VFDA’s comments, as well as Mr. Weiss’s comments provided in response to the motion, when it issues the proposed draft rule in early October.

SO ORDERED.

¹² Case No. 23-2220-RULE, Order of 7/16/24 at 1.

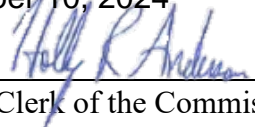
¹³ The final proposed rule submitted to the Legislature will not constitute a “final order” subject to Rule 59 motions to reconsider or appeal.

Dated at Montpelier, Vermont, this 10th day of September, 2024.

 _____)) PUBLIC UTILITY
Edward McNamara)	
 _____)) COMMISSION
Margaret Cheney)	
 _____)) OF VERMONT
J. Riley Allen)	

OFFICE OF THE CLERK

Filed: September 10, 2024

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)

PUC Case No. 23-2220-RULE - SERVICE LIST

Ashley Adams, *pro se*
544 S PROSPECT ST
Burlington, VT 05401
ashleyjaneadams@gmail.com

Ray Albrecht, P.E., *pro se*
National Biodiesel Board
rayalbrechtpe@gmail.com

Isaac Bissell, *pro se*
isaacwbissell@gmail.com

Stuart Blood, *pro se*
851 Poor Farm Road
Thetford Center, VT 05075
ssblood@riseup.net

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

Mary Bouchard
Vermont Gas Systems, Inc.
85 Swift Street
South Burlington, VT 05403
mbouchard@vermontgas.com

(for Vermont Gas
Systems, Inc.)

Sarah Braese
Vermont Public Power Supply Authority
PO Box 126
5195 Waterbury-Stowe Road
Waterbury Center, VT 05677
sbraese@vppsa.com

(for Vermont Public
Power Supply Authority)

Malachi T. Brennan
SRH Law PLLC
91 College Street
PO Box 545
Burlington, VT 05401
mbrennan@srhlaw.com

(for SRH Law PLLC)

Carolyn Campion
The Valero Companies
One Valero Way
San Antonio, TX 78249
Carolyn.Campion@valero.com

(for The Valero
Companies)

Heidi Clifford
Irving Oil
Heidi.Clifford@irvingoil.com

(for Irving Oil)

Andrea Cohen
Vermont Electric Cooperative, Inc.
42 Wescom Road
Johnson, VT 05656
acohen@vermontelectric.coop

(for Vermont Electric
Cooperative Inc.)

William Coster
Vermont Agency of Natural Resources
1 National Life Drive
Davis 2
Montpelier, VT 05620
billy.coster@vermont.gov

(for Vermont Agency of
Natural Resources)

Matt Cota
Meadow Hill Consulting
matt@meadowhillvt.com

(for Vermont Fuel
Dealers Association)

Heather D'Arcy
Vermont Public Power Supply Authority
PO Box 126
Waterbury Center, VT 05677
hdarcy@vppsa.com

(for Vermont Public
Power Supply Authority)

Connor Daley
Vermont Public Power Supply Authority
PO Box 126
Waterbury Center, VT 05677
cdaley@vppsa.com

(for Vermont Public
Power Supply Authority)

Alex DePillis
Agency of Agriculture Food & Markets
116 State Street
Drawer 20
Montpelier, VT 05620-2901
Alex.DePillis@vermont.gov

(for Vermont Agency of
Agriculture, Food and
Markets)

Alison Despathy, *pro se*
alison.despathy@gmail.com

Anthea Dexter-Cooper
Conservation Law Foundation
15 East State Street
Montpelier, VT 05602
adexter-cooper@clf.org

(for Conservation Law
Foundation)

Joshua Diamond
Dinse
209 Battery Street
Burlington, VT 05401
jdiamond@dinse.com

(for Vermont Fuel
Dealers Association)

Joshua Diamond
Dinse
209 Battery Street
Burlington, VT 05401
jdiamond@dinse.com

(for Heating and Cooling
Contractors of Vermont)

Steve Dodge
Clean Fuels Alliance America
sdodge@cleanfuels.org

(for Clean Fuels Alliance
America)

Greg Doremus, *pro se*
gregoryhdoremus@gmail.com

William Driscoll
Associated Industries of Vermont
wdriscoll@aivt.org

(for Associated
Industries of Vermont)

James Dumont
PO Box 229
Bristol, VT 05443
dumont@gmavt.net

(for Law Office of James
A. Dumont, Esq. PC)

Laura Edling, *pro se*
81 Carrigan Drive
Burlington, VT
laura.edling@uvm.edu

Brian Evans-Mongeon
Village of Hyde Park Electric Department
P.O. Box 400
Hyde Park, VT 05655
gm@villageofhydepark.com

(for Village of Hyde
Park Electric
Department)

Steven R Farman
Vermont Public Power Supply Authority
5195 Waterbury-Stowe rd
Waterbury Center, VT 05766
sfarman@vppsa.com

(for Vermont Public
Power Supply Authority)

Thomas T. Garden
Triland Partners LP
PO Box 777
44 Indian Rock Road
Windham, NH 03087
tgarden@trilandpartners.com

(for Triland Partners LP)

Geoffrey Gardner, *pro se*
938 Old Post Road
Bradford, VT 05033
Geoffrey323@myfairpoint.net

Joyce George, *pro se*
joyce802@gmail.com

Linda Gray, *pro se*
175 Kerwin Hill Road
Norwich, VT 05055
linda.c.gray@gmail.com

Grace Grundhauser
Green Mountain Power Corporation
163 Acorn Lane
Colchester, VT 05446
grace.grundhauser@greenmountainpower.com

(for Green Mountain
Power Corporation)

Laura Haight
Partnership for Policy Integrity
lhaight@pfpi.net

(for Partnership for
Policy Integrity)

Geoffrey Hand, Esq.
SRH Law PLLC
91 College Street
PO Box 545
Burlington, VT 05402
ghand@srhlaw.com

(for SRH Law PLLC)

David Hillman, *pro se*
Dhillman73@icloud.com

Luce Hillman, *pro se*
University of Vermont
luce.hillman@uvm.edu

Devon Johnson
Center for Resource Solutions
devon.johnson@resource-solutions.org

(for Center for Resource
Solutions)

Justin Johnson
MMR, LLC
45 Court Street
Montpelier, VT 05602
justin@mmrvt.com

(for MMR, LLC)

Ken Jones, *pro se*
Energy Action Network
kjonesvt5@gmail.com

Marcus Jones
Living Buildings, LLC
PO Box 42
North Bennington, VT 05257
marcus@livingbuildings.co

(for Living Buildings
LLC)

Michelle Keller, *pro se*
vtkeller@gmavt.net

James Kelly, *pro se*
kellyjfp@gmail.com

William "Casey" Lamont, *pro se*
City of Burlington Electric Department
clamont@burlingtonelectric.com

Michael Lazorchak
Town of Stowe Electric Department
PO Box 190
Stowe, VT 05672
mlazorchak@stoweelectric.com

(for Town of Stowe
Electric Department)

Donna J. Leban
American Institute of Architects Vermont Chapter
7 Iris Lane
South Burlington, VT 05403
lightspd@comcast.net

(for American Institute
Of Architects Vermont
Chapter)

Sam Lehr
Coalition for Renewable Natural Gas
sam.lehr@rngcoalition.com

(for Coalition for
Renewable Natural Gas)

Stephen Leslie, *pro se*
Cedar Mountain Farm and Cobb Hill Cheese
hartlandyoga@yahoo.com

Emily Levin, *pro se*
elevin@nescaum.org

John Mandeville, *pro se*
Central Vermont Council on Agencies on Aging
jmandeville@cvcoa.org

John Mandeville
Central Vermont Council on Agencies on Aging
jmandeville@cvcoa.org

(for Vermont
Association of Area
Agencies on Aging)

Henry Mauck
112 State Street
Montpelier, VT 05620
henry.mauck@vermont.gov

(for Vermont
Department of Public
Service)

John L. McCormick
Louise Diamond Committee to Protect Next Generations
280 Rounds Road
Bristol, VT 05443
jmccormick@imtd.org

(for Louise Diamond
Committee to Protect
Next Generations)

Phillip Merrick, *pro se*
134 Dale Rd
Burlington, VT 05408
philsnextone@gmail.com

Elena Mihaly
Conservation Law Foundation
15 East State Street
Ste. 4
Montpelier, VT 05602
emihaly@clf.org

(for Conservation Law
Foundation)

Johanna Miller
Vermont Natural Resources Council
11 Baldwin Street
Montpelier, VT 05602
jmiller@vnrc.org

(for Vermont Natural
Resources Council)

Liz Miller
Green Mountain Power
163 Acorn Lane
Colchester, VT 05446
Liz.Miller@greenmountainpower.com

(for Green Mountain
Power Corporation)

David Mullett
AllEarth Renewables, Inc.
94 Harvest Lane, Suite 100
Williston, VT 05495
dmullett@allearthrenewables.com

(for ALLEARTH
RENEWABLES, INC.)

Jen Myers, *pro se*
Champlain Valley Office of Economic Opportunity
jmckaymyers2020@gmail.com

Jen Myers, *pro se*
Champlain Valley Office of Economic Opportunity
jmckaymyers2020@gmail.com

Ken Nolan
Vermont Public Power Supply Authority
P.O. Box 126
Waterbury Center, VT 05677
knolan@vppsa.com

(for Vermont Public
Power Supply Authority)

Frederick M Parks, *pro se*
PO Box 217
Fairfield, VT 05455
parkstrib@gmail.com

Katherine E Parks, *pro se*
PO Box 217
Fairfield, VT 05455
parkstrib@gmail.com

Jill Pfenning
Vermont Gas Systems, Inc.
85 Swift Street
South Burlington, VT 05403
jpfenning@vermontgas.com

(for Vermont Gas
Systems, Inc.)

Gregory Pierce, *pro se*
12 Farrar Street
Saint Albans, VT 05478-1540
greg.pierce7@gmail.com

Walter (TJ) Poor
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620
tj.poor@vermont.gov

(for Vermont
Department of Public
Service)

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

(for Vermont
Department of Public
Service)

Pike Porter, *pro se*
544 S Prospect St
Burlington, VT 05401
pikeporter@gmail.com

William Allen Powell
Washington Electric Co-op
P.O. Box 8
East Montpelier, VT 05651
bill.powell@wec.coop

(for Washington Electric
Cooperative Inc.)

Jackie Pratt
Town of Stowe Electric Department
PO Box 190
Stowe, VT 05672
jpratt@stoweelectric.com

(for Town of Stowe
Electric Department)

Paul J.M. Quackenbush
SRH Law PLLC
PO Box 545
91 College Street
Burlington, VT 05402-0545
pquackenbush@srhlaw.com

(for SRH Law PLLC)

Andrew N. Raubvogel, Esq.
SRH Law PLLC
91 College Street
P.O. Box 545
Burlington, VT 05402-0545
araubvogel@srhlaw.com

(for SRH Law PLLC)

Emily Roscoe
Efficiency Vermont
eroscoe@veic.org

(for Efficiency Vermont
- Vermont Energy
Investment Corporation)

Paul Rozenberg
Suburban Propane
PO Box 206
240 Route 10 West
Whippany, NJ 07981
PROzenberg@suburbanpropane.com

(for Suburban Propane)

Amanda Sachs
Rewiring America
amanda@rewiringamerica.org

(for Rewiring America)

Laura Simon, *pro se*
PO Box 1112
Wilder, VT 05088
simonlaura06@gmail.com

Annette Smith
Vermonters for a Clean Environment, Inc.
789 Baker Road
Danby, VT 05739
vce@vermontel.net

(for Vermonters for a
Clean Environment)

Sriram Srinivasan, *pro se*
slsrinivasan@gmail.com

Christopher Trombly
Vermont State Housing Authority
christopher.trombly@vsha.org

(for Vermont State
Housing Authority)

Michael C. Trunzo
Shenker Russo & Clark LLP
121 State Street
4th Floor
Albany, NY 12207
michael.trunzo@srclawoffices.com

(for Shenker Russo &
Clark LLP)

Michael C. Trunzo
Shenker Russo & Clark LLP
121 State Street
4th Floor
Albany, NY 12207
michael.trunzo@srclawoffices.com

(for Clean Fuels Alliance
America)

Jared Ulmer
Vermont Department of Health
108 Cherry St
Burlington, VT 05401
jared.ulmer@vermont.gov

(for Vermont
Department of Health)

Ryan Vazza
Global Partners LP
800 South Street, Suite 500
Waltham, MA 02453
ryan.vazza@globalp.com

(for Global Partners LP)

Floyd V. Vergara, *pro se*
Clean Fuels Alliance America
1415 L Street, Suite 460
Sacramento, CA 95814
vergara.law@gmail.com

Ben Walsh
Vermont Public Interest Research Group
bwalsh@vpirg.org

(for Vermont Public
Interest Research Group)

Michael Wang, PhD., *pro se*
Argonne National Laboratory
mwang@anl.gov

Mia Watson
Vermont Housing Finance Agency
MWatson@vhfa.org

(for Vermont Housing
Finance Agency)

Thomas Weiss, *pro se*
PO Box 512
Montpelier, VT 05601
bandsol@together.net

Victoria M. Westgate, Esq.
SRH Law PLLC
91 College Street
P.O. Box 545
Burlington, VT 05402-0545
vwestgate@srhlaw.com

(for SRH Law PLLC)

David C. Westman
Efficiency Vermont - Vermont Energy Investment Corporation
20 Winooski Falls Way
5th Floor
Winooski, VT 05404
dwestman@veic.org

(for Efficiency Vermont
- Vermont Energy
Investment Corporation)

Frederick Weston, *pro se*
formaine@comcast.net

Chase Whiting, Esq.
Conservation Law Foundation
CLF 15 East State Street, Suite 4
Montpelier, VT 05602
cwhiting@clf.org

(for Conservation Law
Foundation)

Amber Widmayer
City of Burlington Electric Department
awidmayer@burlingtonelectric.com

(for City of Burlington
Electric Department)

Geoff Wilcox
Vermont Office of Economic Opportunity
geoff.wilcox@vermont.gov

(for Vermont
Department for Children
and Families)

Patrick Wood, *pro se*
Ag Methane Advisors LLC
patrick@agmethaneadvisors.com

Brian Woods
Agency of Natural Resources-Climate Action Office
1 National Life Drive
Davis 2
Montpelier, VT 05620-3901
Brian.Woods@vermont.gov

(for Vermont Agency of
Natural Resources)

Dylan Zwicky
Leonine Public Affairs
Dylan@leoninepublicaffairs.com

(for Leonine Public
Affairs)