**STATE OF VERMONT**
**PUBLIC UTILITY COMMISSION**

Case No. 24-2630-PET

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| Petition pursuant to 30 V.S.A. §§ 208 and 209 for injunctive relief regarding Vermont Gas Systems, Inc.'s operation of the Addison Natural Gas Pipeline | |

## VERMONT GAS SYSTEMS, INC.'S RESPONSE TO PETITIONERS' MOTION TO WITHDRAW PETITION

Vermont Gas Systems, Inc. ("VGS") submits the following response to Petitioners' Motion to Withdraw Petition filed on February 14, 2025. More than seven months ago, the Petitioners in this case began relitigating issues that were already decided by the Vermont Public Utility Commission ("Commission") in Case Nos. 17-3550-INV and 18-0395-PET (the "Investigation") by filing the initial petition on these issues in the Investigation cases.[1] In response, parties to this case have been required to expend significant resources to make substantive filings articulating a myriad of reasons why this Petition is meritless and should not have been filed in the first place. VGS, the Department of Public Service ("Department"), and the Commission itself have already spent substantial time and resources filing legal briefs, motions, and responses relating to this Petition.

On January 13, 2025, the hearing officer issued a fourteen-page Proposal for Decision, thoughtfully evaluating the legal issues raised by the Petitioners in this case and recommending

[1] On July 1, 2024, Jane Palmer, Nathan Palmer, Kristin Lyons, Lawrence Shelton, and Rachel Smolker filed a motion requesting injunctive relief in the Investigation after the Commission had already closed that case. The same request was then refiled by the same individuals in this case on July 31, 2024, except that Mr. Everest was also added as a petitioner. A corrected Petition was later filed on August 12, 2024.

On August 22, 2024, the Commission issued a procedural order inviting the parties to file dispositive motions in response to the petition. On September 23, 2024, VGS and the Department of Public Service ("Department") filed motions to dismiss. Petitioners filed an opposition to those motions on October 23, 2024. VGS and the Department then filed replies to Petitioners' opposition on November 6, 2024.

dismissal of the Petition for many of the same reasons articulated in the Department's and VGS's Motions to Dismiss. The hearing officer gave the partes 30 days to file comments on the Proposal for Decision. After waiting the full 30 days, counsel for Petitioners asked for parties to consent to withdrawal of the Petition on February 13, 2025—the day before comments on the Proposal for Decision were due and after VGS had already expended more time and resources preparing comments for the February 14, 2025 deadline.

On February 14, 2025, the Petitioners filed a Motion to Withdraw the Petition without providing VGS more than a 24-hour opportunity to respond to Petitioners' request to stipulate to withdrawal. Counsel for Petitioners has not proposed any conditions or stipulations regarding withdrawal, nor have Petitioners provided any opportunity for the parties to discuss whether there are terms and conditions upon which the parties would stipulate to withdrawal. Instead, Petitioners seek a voluntary withdrawal of the Petition at the last minute with no stipulation, presumably to avoid an adverse decision on the merits.

Under Commission Rule 2.220(A), a petitioner can only voluntarily withdraw a petition where "no adverse party has filed substantive comments in response to the petition." In this case, VGS and the Department have filed substantive motions to dismiss the petition, reviewed Petitioners' filing opposing dismissal, filed replies to Petitioners' opposition, reviewed the hearing officer's Proposal for Decision, and prepared and filed substantive comments on the Proposal for Decision—all in accordance with the Commission's direction. Accordingly, voluntary withdrawal of the Petition is not available under Commission Rule 2.220 because adverse parties have filed extensive substantive comments in response to the Petition.

Additionally, the gamesmanship demonstrated by Petitioners and their counsel in this case should not be rewarded by granting withdrawal of a Petition that was never warranted by

existing law or by a nonfrivolous argument to modify existing law in the first place.[2] Petitioners' Motion to Withdraw states that they "have been convinced by the reasoning of the Hearing Officer's Proposal for Decision," but there are no legal principles set forth in the Proposal for Decision that Petitioners and their counsel did not already know, could not have learned through diligent consideration and research of their own, or were not apparent in VGS's and the Department's Motions to Dismiss at the time Petitioners filed an opposition to those motions.

Instead of presenting a genuine basis for withdrawal, Petitioners' Motion to Withdraw is just more of the same gamesmanship—designed to leave all possible litigation over the Addison Natural Gas Project ("Project") on the table. In particular, Petitioners' last-minute withdrawal here would not resolve Petitioners' request to (1) enjoin operation of the pipeline, and/or (2) require further process under Section 248(k). Withdrawal without a decision on the merits would also not answer Petitioners' mistaken perception that they are free to litigate matters that have already been finally decided by the Commission—either in cases like this or the pending Certificate of Public Good ("CPG") amendments in Case No. 25-0055-PET, where all Petitioners here have sought to intervene and raise issues that have been decided and/or are beyond the scope of the five proposed CPG amendments. Thus, withdrawal here will only beget more litigation of the same issues in a different case.

Additionally, withdrawal would also permit Petitioners to avoid an adverse ruling in this case regarding the scope of the Vermont Supreme Court's vacatur order as discussed in the Proposal for Decision. In particular, the Petitioners argue in this case that "the factual findings

[2] VGS Motion to Dismiss (filed Sept. 23, 2024) at 2 ("In summary, the Petition is not warranted by existing law or by a nonfrivolous argument to modify existing law and can only be viewed as an attempt to unnecessarily delay and needlessly increase the cost of amending the Project's CPG in accordance with the Vermont Supreme Court's remand order.").

underpinning the Department and VGS's assertions of safety have been struck down,"[3] but as the hearing officer concludes in the Proposal for Decision, the Court's order vacated only the "Supplemental Findings" that begin on page 17 and end on Page 23 of the Commission's Final Order in the Investigation.[4] Withdrawal of the Petition here would avoid clarity on that issue as well, leaving Petitioners free to keep arguing that the Commission has never legitimately found that the pipeline is safe, even though (1) the Commission expressly issued a show cause order to VGS in the Investigation that required VGS to demonstrate the pipeline's safety;[5] (2) the Commission subsequently determined, based on extensive expert evidence, that the pipeline was, in fact, "safe and was adequately installed";[6] and (3) the Court never vacated that finding, limiting its order to supplemental findings that were made only for the purpose of amending the CPG.[7] Without an adverse ruling in response to their argument, Petitioners will continue to press the argument that the pipeline is not safe and should be shut down, notwithstanding the Commission's decision to the contrary.

Petitioners' withdrawal of the Petition here would also allow Petitioners to avoid sanctions for their conduct in this case. For example, "the Commission has previously allowed an award of attorney's fees against a party whose conduct forces another party 'to appear twice . . . in order to obtain relief which should have been forthcoming after the first appearance.'"[8] This

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3 Proposal for Decision at 3, n.5 (quoting Petition at ¶ 65).

4 Proposal for Decision at 3.

5 Investigation, Order re Scope of Investigation (issued Jan. 10, 2019) at 1.

6 Investigation, Proposal for Decision at 3; Investigation, Final Order (issued Apr. 6, 2023) at 20 (adopting the Proposal for Decision and explaining that "[h]ad the evidence shown that the pipeline was unsafe, we would have ordered the pipeline's closure").

7 *In re Vermont Gas Systems., Inc.*, 2024 VT 19, ¶ 56, 316 A.3d 231, 248, reargument denied (May 3, 2024) (vacating only the "supplemental findings").

8 *Investigation Pursuant to 30 V.S.A. Ss 30, 209, and 248 Regarding the 2.2 Mw Solar Plant Owned by Charlotte Solar, LLC in Charlotte, Vermont.*, 8638, 2017 WL 4841510, at *17 (Vt. P.S.B. Oct. 23, 2017); see also *In Re Vermont Elec. Power Co., Inc.*, 6860, 2006 WL 2873114, at *4 (Vt. P.S.B. Sept. 26, 2006) (awarding attorneys' fees where a party was forced to revisit issues previously litigated).

principle would apply in this case because this Petition has forced VGS (and the Department) to relitigate two issues that were finally resolved in the Investigation: whether Section 248(k) applies and whether the five substantial changes here warrant closure of the pipeline. While VGS does not ask the Commission for sanctions here, the Commission should not allow Petitioners to freely withdraw a frivolous Petition that so clearly raises basic questions about the basis for a litigant's appearance before the Commission.

For the reasons discussed above, the Commission should deny the Petitioners' Motion to Withdraw Petition. Instead, the Commission should review the parties' comments on the Proposal for Decision and dismiss the Petition in this case for the reasons discussed at length in those filings. At the very least, the Commission should not permit withdrawal of the Petition without acknowledging the substantial time and effort the parties have devoted to litigating this Petition and without instructing Petitioners that parties before the Commission have a duty to ensure that submissions to the Commission are consistent with the certification requirements of Commission Rule 2.203, which requires "good grounds to support the petition, motion, or other filing," and that "[a]ll legal contentions are supported by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law." Under Rule 2.203(D), sanctions for violation of Rule 2.203 are available under Rule 2.224, which provides:

> An attorney or *pro se* or other representative who fails, after having been requested by the Commission to do so, to comply with these rules or any Commission order may be suspended from further participation in the proceeding or, for such period of time as the Commission finds to be just, from participation in other proceedings.

The Commission can, and has, warned litigants before the Commission that continued attempts to relitigate issues before the Commission—as Petitioners seek to do in this case and the pending

CPG amendment proceeding in Case No. 25-0055-PET—are grounds for sanctions. For that reason, the Commission should issue such a warning prior to resolving this case.[9]

For the above reasons, and those set forth in VGS's February 14, 2025 Comments on the Proposal for Decision, the Commission should dismiss the Petition in this case and give Petitioners notice that continued attempts to relitigate issues that have already been decided by the Commission will not be tolerated and will expose Petitioners to potential sanctions.

DATED at Burlington, Vermont, on this 18th day of February 2025.

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[9] *See, e.g., Pet. of Cross Pollination, Inc., for A Certificate of Pub. Good, Pursuant to 30 V.S.A. Sec. 248, Authorizing the Constr. and Operation of A 2.0 Mw (Ac) Solar Electric Generation Facility in the Town of New Haven, Vermont.*, 7645, 2013 WL 4398963, at *2 (Vt. P.S.B. Aug. 8, 2013) ("Finally, we note that this is Mr. Madden's second request for reconsideration of the 2011 Order. We remind Mr. Madden that in making filings in this forum, he is subject to Rule 11 of the Vermont Rules of Civil Procedure. Having now twice called upon the Board to reconsider its 2011 Order, and having in both instances failed to present any discernible grounds for seeking such relief, we now put Mr. Madden on notice that any further filings of this nature in this docket will be reviewed by the Board for strict compliance with Rule 11(b)(2) and (3), and that we will consider imposing a sanction upon him pursuant to Rule 11(c)(1)(B) if such a sanction proves warranted."). The Commission's current Rule 2.203 provides substantially the same requirements as Rule 11 referenced in the cited decision.

*See also In Re Entergy Nuclear Vermont Yankee, LLC*, 138273, 2003 WL 22361729, at *9 (Vt. P.S.B. Oct. 7, 2003) (the federal Advisory Committee regarding Rule 11) ("The rule *continues to require litigants to 'stop-and-think' before initially making legal or factual contentions*. It also, however, emphasizes the duty of candor by subjecting litigants to potential sanctions for insisting upon a position after it is no longer tenable . . . . The rule applies only to assertions contained in papers filed with or submitted to the court . . . . However, a litigant's obligations with respect to the contents of these papers are not measured solely as of the time they are filed with or submitted to the court, but include reaffirming to the court and advocating positions contained in those pleadings and motions after learning that they cease to have any merit . . . .") (emphasis in original)). In this case, Petitioners vehemently opposed VGS's and the Department's motions to dismiss even after those motions laid out substantially the same legal reasoning provided in the hearing officer's January 13, 2025 Proposal for Decision.