

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	
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Order entered: 03/24/2025

**ORDER DISMISSING PETITION**

**I. INTRODUCTION AND PROCEDURAL HISTORY**

This case concerns a petition filed by Kristin Lyons, Jane Palmer, Nate Palmer, Lawrence Shelton, Rachel Smolker, and Jeffrey Everest (“Petitioners”) pursuant to 30 V.S.A. §§ 208 and 209 asserting that Vermont Gas Systems, Inc. (“VGS”) is violating 30 V.S.A. §§ 248(a), (b), and (k). The Petitioners requested a permanent injunction to compel VGS to either obtain a temporary waiver under Section 248(k) or cease operation of the Addison Natural Gas Pipeline (the “Project” or “ANGP”) unless and until VGS obtains a new certificate of public good.

On January 13, 2025, the hearing officer issued a proposal for decision recommending dismissal of the petition.

On February 14, 2025, the Petitioners moved to withdraw the petition pursuant to Commission Rule 2.220(C).

On February 14, 2025, VGS and the Department filed comments on the proposal for decision.

On February 18, 2025, VGS filed a response opposing the motion to withdraw the petition.

On March 5, 2025, the Petitioners filed a reply to VGS’s response.

In today’s order, the Commission dismisses the petition with prejudice pursuant to Commission Rule 2.220(C).

## II. LEGAL STANDARD

A petitioner may voluntarily withdraw a petition “without order of the Commission by filing a notice of dismissal in any case in which no adverse party has filed substantive comments in response to the petition.”<sup>1</sup> Alternatively, a petition “may be dismissed by filing a stipulation of dismissal signed by all parties who have appeared in the action.”<sup>2</sup> Except as described above, a petition may “not be dismissed except by order of the Commission and on such terms and conditions as the Commission deems proper.”<sup>3</sup> Unless otherwise specified, dismissal under Commission Rule 2.220 is without prejudice.<sup>4</sup>

Rule 2.220 is modeled on Vermont Rule of Civil Procedure 41. The Vermont Supreme court has stated that “while motions for voluntary dismissal should be ‘freely granted,’ the trial court has discretion to convert such a motion into a dismissal with prejudice when the nonmoving party has demonstrated that it will suffer some legal harm other than the prospect of subsequent litigation.”<sup>5</sup>

## III. DISCUSSION AND CONCLUSION

VGS opposes the motion to dismiss because the parties have expended significant resources to make substantive filings responding to the petition. VGS argues that the Petitioners’ motion to withdraw is “gamesmanship [] designed to leave all possible litigation over the [ANGP] on the table.”<sup>6</sup> VGS requests that the Commission should acknowledge the time and effort of the parties in responding to the petition and instruct the Petitioners on their obligations under Rule 2.203. VGS argues that the Commission should deny the Petitioners’ motion to withdraw the petition and review the parties’ comments on the proposal for decision and dismiss the petition for the reasons discussed at length in those filings.

The Petitioners state that they wish to withdraw the petition because, while they disagree with certain aspects of the proposal for decision, they are convinced it reached the correct conclusion. Counsel for the Petitioner states that he is aware of his obligations to the tribunal,

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<sup>1</sup> Commission Rule 2.220(A).

<sup>2</sup> Commission Rule 2.220(B).

<sup>3</sup> Commission Rule 2.220(C).

<sup>4</sup> Commission Rule 2.220(D).

<sup>5</sup> *Watson v. Vill. at Northshore I Ass'n, Inc.*, 2018 VT 8, ¶ 86 (quoting *Elbaor v. Tripath Imaging, Inc.*, 279 F.3d 314, 317 (5th Cir. 2002)).

<sup>6</sup> VGS Response at 5.

the other parties, and his clients under Rule 2.203 and the Rules of Professional Conduct and argues that the motion to withdraw is consistent with those obligations.

Generally, the dismissal of a petition under Rule 2.220 is without prejudice, which means the Petitioners would be free to relitigate their claims at a future date. In contrast, “[a] dismissal with prejudice . . . operates as an adjudication on the merits of the legal action.”<sup>7</sup> The Commission has stated that dismissal with prejudice:

may be appropriate in circumstances where the underlying legal action involves a dispute between private parties over private rights, where a plaintiff initiates a suit against a defendant who then is compelled by law to mount a defense to avoid a default judgment. Under such circumstances, a dismissal with prejudice serves to protect a defendant from repeated institution of the same lawsuit.<sup>8</sup>

The petition in this case was filed under 30 V.S.A. § 208, which provides a private right of action for persons adversely affected by an unlawful act of a utility company. Therefore, this case is an adjudication of the Petitioners’ private right to challenge VGS’s allegedly unlawful actions. While such proceedings may implicate the Commission’s independent responsibility to protect the public good — such as a Commission-initiated enforcement action — this proceeding was initiated by the Petitioners and is limited solely to the adjudication of their interests.<sup>9</sup>

The Commission agrees with VGS that the parties have expended substantial resources responding to the Petitioners’ claims. Vermont courts have converted motions for voluntary dismissal into dismissal with prejudice where the non-moving party was forced to “investigate[] facts related to each issue and expend[] time and effort in addressing each of the issues in its motions to dismiss and for summary judgment.”<sup>10</sup> Over seven months since the petition was filed, both VGS and the Department have filed motions to dismiss and replies to the Petitioners’ response to those motions. The hearing officer issued a proposal for decision recommending

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<sup>7</sup> *Petition of Vermont Gas Sys., Inc. for A Certificate of Pub. Good, Pursuant to 30 V.S.A. S 248, Authorizing the Constr. of Phase II of the Addison Nat. Gas Project to Extend Nat. Gas Transmission Facilities Through Addison & Franklin Ctys. to the Int'l Paper Mill at Ticonderoga, New York, & Constr. of Two Gate Stations for Distribution Serv. in the Towns of Cornwall & Shoreham, Vermont.*, Docket No. 8180, Order of 6/5/15 at 7.

<sup>8</sup> *Id.*

<sup>9</sup> The Commission opened its own enforcement action into the facts giving rise to the Petitioners’ claims in this case and assessed a monetary penalty. *In Re Investigation Pursuant to 30 V.S.A. §§ 30 & 209 Regarding the Alleged Failure of Vermont Gas Systems, Inc.*, 2024 VT 19, ¶ 22; see also *In re SolarCity Corp.*, 2019 VT 23, ¶ 16 (stating that dismissal by stipulation of a Commission proceeding may be inappropriate where the Commission has an independent obligation to protect the public good).

<sup>10</sup> 2018 VT 8, ¶ 87.

dismissal, and VGS and the Department filed substantive comments responding to the proposal for decision. The litigation had proceeded substantially and was nearing a final decision by the Commission when the Petitioners moved to withdraw the petition. Accordingly, the Commission finds that VGS has demonstrated prejudice beyond the threat of subsequent litigation. It would be unfair to allow the Petitioners to relitigate the same issues at a future date after the significant efforts that the parties were forced to undertake in response to the petition and where the Petitioners have conceded that they would not prevail on the merits.<sup>11</sup>


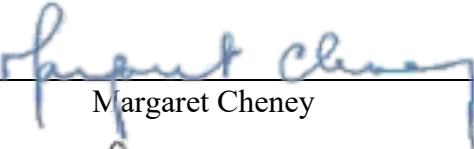
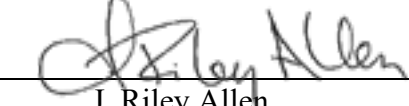
Therefore, the Petitioners' motion to withdraw the petition is granted, subject to the condition that the petition is dismissed with prejudice.

**SO ORDERED.**

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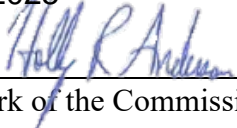
<sup>11</sup> Motion to Withdraw Petition at 1 (“[The Petitioners] have been convinced by the reasoning of the Hearing Officer’s Proposal for Decision (“PFD”) and therefore wish to withdraw their Petition.”).

Dated at Montpelier, Vermont, this 24th day of March, 2025.

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

OFFICE OF THE CLERK

Filed: March 24, 2025

Attest:   
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 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)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Commission within 30 days. Appeal will not stay the effect of this Order, absent further order by this Commission or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Commission within 28 days of the date of this decision and Order.*

PUC Case No. 24-2630-PET - SERVICE LIST

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