IN THE SUPREME COURT OF THE STATE OF VERMONT

DOCKET NO. 23-AP-84

In re Petition of Vermont Gas Systems, Inc.

APPEAL FROM THE
VERMONT PUBLIC UTILITY COMMISSION
Case No. 22-2230-PET

Brief of Appellee Vermont Department of Public Service

VERMONT DEPARTMENT OF PUBLIC SERVICE

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STATEMENT OF ISSUES

Whether the Vermont Public Utility Commission's approval of an out-of-state natural gas purchase contract and consideration of relevant, existing state regulatory policies and objectives constituted clear error or was appropriately within its discretion under 30 V.S.A. § 248(i).

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STATEMENT OF THE CASE

This case involves the Vermont Public Utility Commission's (the "Commission") investigation and approval of an out-of-state renewable natural gas ("RNG") purchase contract between Vermont Gas Systems, Inc. ("VGS") and Archaea Energy Marketing LLC ("Archaea") under 30 V.S.A. § 248(i) (the "Contract"). Under the Contract, VGS is required to purchase a minimum supply of RNG annually from a landfill RNG plant in Waterloo, New York owned by Archaea. PC-17; PC-559. The Contract would remain in effect for a term of 14.5 years, with an option to extend the term for an additional five years. PC-17; PC-582. The Contract includes a purchase option that permits VGS to increase the total volume of RNG it purchases each subsequent year. *Id*. Important to the Commission's findings and underlying approval in this case, the Contract contains a resale option that permits VGS to nominate RNG that would be sold under the Contract to VGS to be retained by Archaea and marketed into the vehicle transportation market on VGS's behalf. PC-19; PC-584. Any revenues received from the net proceeds of RNG sold into the transportation markets will be applied to the overall cost of RNG within VGS's supply portfolio. PC-19; PC-591-92. As such, the Contract essentially provides VGS a source of RNG to deliver to its retail customers or to resell "to generate offsetting revenues to effectively 'buy down' the cost of the remaining RNG volumes [VGS] choose[s] to deliver to [its] retail customers." PC-19-20; PC-510-11.

VGS filed its petition for approval of the Contract, pursuant to 30 V.S.A. § 248(i) on June 13, 2022. PC-14; PC-602-05. During the 30-day notice and review period, pursuant to 30 V.S.A. § 248(i)(2), the Vermont Department of Public Service (the "Department") submitted its recommendation to open an investigation and evaluate the Contract to "consider a range of possible outcomes and the associated cost to avoid carbon emissions from [the] Contract relative to other sources of RNG." PC-552-54. The Commission opened an investigation into the Contract following the Department's recommendation on July 11, 2022. PC-547-50. Consistent with the 120-day period to investigate the Contract, pursuant to 30 V.S.A. § 248(i)(3), the Commission conducted a thorough administrative review, including the receipt and acknowledgment of several public comments submitted in this case, receipt of testimony from the VGS, the Department, and the Appellant's witnesses, and conduct of an informational workshop and evidentiary hearing. Following this administrative process, the Commission issued an exhaustive final order on November 8, 2022 approving the Contract, considering the issues raised by all the parties in this matter (the "Final Order"). PC-12-52.

While Section 248(i) is the statutory authority for the Commission's jurisdiction over review and approval of the Contract, the Commission aptly considered a host of additional state energy policies and regulatory objectives to inform its analysis. First, VGS is subject to the regulatory obligations contained within its Alternative Regulation Plan, pursuant to 30 V.S.A. § 218d, and its Integrated Resource Plan, pursuant to 30 V.S.A. § 218(c). These planning documents, which were subject to prior Commission scrutiny and approval, "encapsulate overarching planning principles and objectives that direct VGS's energy-acquisition policies, including . . . mitigating the greenhouse gas impacts that inherently result from its traditional business practices." PC-30. Both regulatory plans "contemplate that VGS will progressively increase the supply of RNG . . . as a part of a broader array of policies and programs that are intended to limit VGS's greenhouse gas emissions." PC-31. Second, the Commission framed the Contract in the context of VGS's plan to meet its expected requirements under the Global Warming Solutions Act ("GWSA"). 10 V.S.A. §§ 578, 592(b). The GWSA calls for specific state-wide greenhouse gas reductions by 2025, 2030, and 2050. 10 V.S.A. § 578. The first phase of implementing the GWSA required the issuance of a Climate Action Plan by the Vermont Climate Council, issued on December 2021, to "set forth the specific initiatives, programs, and strategies . . . necessary to achieve the State's greenhouse gas emissions reduction requirements. . ." 10 V.S.A. § 592(b). Additionally, pursuant to 30 V.S.A. § 202b, the Department issued its Comprehensive Energy Plan ("CEP") intended "to implement the State energy policy . . . including meeting the State's greenhouse gas emissions reductions requirements pursuant to 30 V.S.A. § 578, and shall be consistent . . . with the Vermont Climate Action Plan adopted and updated pursuant to 10 V.S.A. § 592." PC-28. Notably, the CEP encourages consideration of increased usage of RNG and concludes that "[a]ny RNG design should consider the benefits and burdens of RNG to all ratepayers." *Id*.

The Commission approved the Contract in its Final Order, concluding that the Contract "is consistent with the energy policy objectives of the Vermont Comprehensive Energy Plan [] and with VGS's existing regulatory obligations, including VGS's alternative regulation plan and its most recently approved integrated resource plan []." PC-41. Additionally, the Commission concluded that the broader GWSA mandates are a factor in its analysis, "as are the policy objectives encapsulated in the CEP and VGS's IRP and alternative regulation plan," in determining that the Contract can be a cost-effective means for VGS to reduce its overall greenhouse-gas emissions. PC-45.

The Appellant opposed the Proposal for Decision adopted by the Commission arguing, *inter alia*, that the Contract "offers negligible to no GHG emissions reduction benefit. . . fails to provide a pathway to net zero emissions by 2050. . . [and] does not advance . . . the requirements of the [GWSA]." PC-241. Following issuance of the Commission's Final Order approving the Contract, the Appellant filed a motion for reconsideration of the Final Order, arguing that it is "grounded in material misapprehensions of the Commission's duty and authority, specifically with respect to the requirements of the [GWSA]." PC-97. The Commission denied the Appellant's motion, concluding that the Appellant did not present "any arguments or information to demonstrate a mistake or inadvertence that would warrant reconsidering the Final Order." PC-9. The Appellant appealed the Commission's orders below on February 24, 2023.

STANDARD OF REVIEW

In conducting analysis under Section 248, the Commission engages in a "legislative, policy-making process," and "utilize[es] its particular expertise and informed judgment." In re Petition of GMP Solar-Richmond, LLC, 2017 VT 108, ¶ 2, 206 Vt. 220, 223, 179 A.3d 1232, 1233 (2017) (citation omitted). This Court affords "'great deference' to the [Commission's] expertise and judgment" and "a strong presumption of validity to the [Commission's] orders." In re UPC Vt. Wind, LLC, 2009 VT 19, ¶ 2, 185 Vt. 296, 969 A.2d 144 (2009) (citation omitted). This Court "will affirm the [Commission's] findings unless they are clearly erroneous, and an appellant bears a heavy burden of demonstrating clear error." *Id*. Furthermore, 30 V.S.A. § 11(c) requires a deferential standard of review for factual determinations of the Commission, stating, "[u]pon appeal to the Supreme Court, its findings of fact shall be accepted unless clearly erroneous."

The Commission is afforded "substantial discretion in evidentiary matters." Pet. Of C. Vermont Pub. Serv. Corp. for a 6.23% Increase in Rates, 141 Vt. 284, 288, 449 A.2d 904, 907 (1982). The Court "do[es] not second guess the [Commission's] determinations on evidentiary weight and credibility. In re Adelphia Bus. Sols. Of Vermont, Inc., 2004 VT 82, ¶ 11, 177 Vt. 136, 141, 861 A.2d 1078, 1082 (2004). "[I]t is not for this Court to review the rightness of the [Commission's] findings; rather it is only for this Court to review the reasonableness of those findings." In re Petition of Green Mt. Power Corp., 131 Vt. 284, 305, 305 A.2d 571, 584 (1973).

ARGUMENT

Ancillary to the highly deferential standard of review applied to the Commission's expertise and decisions, Section 248(i) affords the Commission exceedingly broad discretion in electing to review and in approving "a contract for the purchase of gas from outside the State, that is for a period exceeding five years." 30 V.S.A. § 248(i)(1)(B). Pursuant to the authorizing statute, upon receipt of a proposed contract, the Commission and the Department are tasked with "consider[ing] within 30 days whether to investigate the proposed investment or contract." 30 V.S.A. § 248(i)(2). If the Commission "does not initiate an investigation within the 30-day period, the contract or investment shall be deemed to be approved." 30 V.S.A. § 248(i)(3). If the Commission opens an investigation, it "shall conclude its investigation within 120 days of issuance of its notice of investigation, or within such shorter period as it deems appropriate." *Id*. Furthermore, "[t]he Commission may hold informal, public, or evidentiary hearings on the proposed investment or contract." *Id*.

Absent from the statutory language is the level of detail or level of analysis necessary for an affirmative finding of contract approval. Rather, the plain language demonstrates that the Commission is the regulatory authority in determining how much detail and analysis it finds persuasive in approving a contract. The statutory basis for the Commission's regulatory authority under this provision is undeniably broad with respect to the factors the Commission may consider and the procedures the Commission may require. The Commission is afforded substantial discretion in determining whether to investigate a proposed contract and, if it chooses to do so, the appropriate procedure and relevant factors informing its review and final determination.

In its discretion under Section 248(i), the Commission opened an investigation into the Contract noting that the Contract "warrant[s] a detailed regulatory review." PC-548. In its Final Order, the Commission specifically recognized that "this case presents policy issues that fall squarely within a crossroads of the Commission's role of regulating VGS within the rigid confines of traditional utility regulation and a necessary pivot of those standards toward allowing VGS a degree of flexibility to meaningfully confront how its core business practices contribute to greenhouse gas emissions." PC-30. The Commission determined that consideration of the Contract must be conducted with a focus on risks considering "both financial and environmental perspectives." PC-43. In addition to assessing the Contract's financial risk between VGS and its ratepayers, the Commission outlined additional energy policy objectives and regulatory obligations that should be considered against the Contract. The Commission specifically recognized the

CEP, the GWSA, and VGS's Alternative Regulation Plan and Integrated Resource Plan throughout its Final Order as additional, relevant considerations.

The Appellant "bears a heavy burden of demonstrating clear error." In re UPC Vt. Wind, LLC, 2009 VT 19, ¶ 2. The Commission's review of the Contract under Section 248(i) is afforded "great deference" and "a strong presumption of validity" in its expertise as the state's utility commission and by the broad, deferential language of Section 248(i) itself. *Id*. Considering the deferential standard to the Commission's approval under Section 248(i) here, the record demonstrates that the Commission properly examined the financial risks and environmental benefits of the Contract in relying on the record evidence encompassing the Department, VGS's, and the Appellant's witnesses' review and testimony. The record demonstrates that the Commission appropriately determined that VGS's purchase of RNG under the Contract "will achieve greenhouse gas reductions between 26% and 43% per unit of geologic gas displaced." PC-22-3. The Commission appropriately determined that the Contract is consistent with VGS's Alternative Regulation Plan and Integrated Resource Plan which expressly authorize VGS to increase its RNG supply. PC-41. The Commission appropriately determined that the Contract is consistent with the energy policy objectives of the Vermont Comprehensive Energy Plan which incorporate the GWSA mandates. PC-45. Finally, the Commission and the Department maintain a direct, ongoing regulatory role in monitoring VGS's management of the Contract and VGS's "cost recovery using traditional ratemaking standards in a future rate case." PC-33; PC-59.

The Appellant's claims on appeal, each discussed in turn below, do not meet the heavy burden in demonstrating clear error to overcome the heightened deferential standard afforded to Commission decisions. Instead, each of the Appellant's claims broadly and incorrectly asserts that the Commission's findings are unsupported by the record. The Commission, point-by-point, addressed each of the Appellant's arguments below in a comprehensive discussion of this Contract's environmental benefits, financial risks, and consistency with relevant regulatory and policy objectives. The Appellant's mere disagreement with the weight afforded to the evidence that form the basis of the Commission's findings does not constitute sufficient grounds to overturn the Commission's sound decision.

I. THE APPELLANT HAS NOT DEMONSTRATED CLEAR ERROR IN THE COMMISSION'S FINDING THAT THE CONTRACT IS CONSISTENT WITH THE GLOBAL WARMING SOLUTIONS ACT

First, the Appellant claims that the Commission erred in concluding that the Contract is consistent with the GWSA and failed to articulate its rationale or basis in the record evidence that the Contract will reduce GHG emissions. Appellant's Brief at 25-26. The Appellant's argument is without merit and critically fails to account for the significant discussion and findings of fact outlined in the Commission's Final Order regarding the environmental benefits associated with the Contract. The Commission found that "RNG purchased by VGS under the Contract and supplied for retail sales in Vermont will achieve greenhouse gas reductions between 26% and 43% per unit of geologic gas displaced." PC-22. This finding was based on both VGS's calculation of GHG reduction using the California Air Resource Board's ("CARB") GREET Model and the Appellant's own witness's testimony. PC-21-22. As acknowledged by the Appellant, "[i]f VGS were to replace 10% of geologic natural gas from its project supply portfolio by 2030 with RNG purchased under the Contract, there would be an approximate 4% reduction of VGS's projected 2030 greenhouse gas emissions that would otherwise occur in the absence of the Contract." PC-21.

Importantly, and as noted in the Department's testimony reviewing the Contract, renewable natural gas - particularly, methane gas produced at landfills - is considered a renewable energy resource under Vermont law. PC-513; 30 V.S.A. § 8002(21)(A). The Agency of Natural Resources' current emissions inventory practice would assume a 100% reduction in emissions from any source of RNG. PC-514. Rather than relying upon an assumed 100% emissions reduction, the Department and the Commission conducted extensive review of the methodology used by VGS to assess GHG emission reduction. In order to determine GHG emissions intensities of RNG acquired under the Contract, VGS used the GREET Model to determine a 43% reduction in GHG emissions. PC-23. Recognizing that the GREET model is "not a perfect representation of the exact conditions for every resource," the Commission and the Department found that "it is reasonable to assume comparable emissions intensities to that of CARB's GREET model in magnitude and direction when evaluating the Contract." PC-22; PC-514.

The evidence cited to and relied upon by the Commission in its Final Order appropriately determined that the methodology used by VGS to assess the Contract's environmental benefits was reasonable. The Commission considered the testimony from all parties in this proceeding, "which recognizes that the GREET Model has been the

foundation for assessing the carbon intensity of various RNG resources within several jurisdictions that have imposed compulsory renewable transportation or clean fuel standards." PC-43. The Commission sufficiently weighed the evidence presented by all parties in determining a reasonable estimate of the potential environmental benefits of the Contract. In light of the Commission's findings and reliance on the evidence submitted below, the Commission did not commit, nor has the Appellant shown, clear error in the Commission's assessment of the anticipated GHG emissions reductions under the Contract.

The Appellant further argues that the Commission's analysis failed to consider and cite a basis for in the evidentiary record that the Contract would result in reduced overall natural gas demand. Appellant Brief at 25. In response to the Appellant's argument and proposed findings, the Commission reiterated that "VGS has a legal obligation to provide safe and reliable service to its customers, and many VGS customers will continue to rely on VGS's services for the foreseeable future." PC-48. The Commission expressed the importance of VGS's pursuit of "all cost-effective approaches for reducing the greenhouse gas impacts of providing service to those customers." *Id*. Unsatisfied with the Commission's reasoning, the Appellant argues that the Contract was specifically intended to "reduce the company's overall emissions in keeping with the GWSA - not to reduce the profile of individual customers." Appellant Brief at 26. However, the Commission found and the evidentiary record demonstrates that the Contract will result in GHG emissions reductions because RNG supplied under the Contract will have a lower carbon intensity than geologic natural gas. PC-47. Additionally, the stated purpose of the Contract "is to provide a lower-carbon alternative" to VGS's natural gas customers. PC-266. As the Commission repeatedly emphasized, the Contract and its corresponding reduction in GHG emissions is "only one component of a broader array of measures that VGS intends to implement to address its overall greenhouse gas emissions. PC-48; PC-37-38. The Commission, in its own expertise and legislative, policy-making authority, weighed the Contract's environmental benefits of reduced GHG emissions resulting from the Contract and its ability to provide a lower-carbon alternative "to those customers who are unable to fuel switch away from natural gas in the near-term future . . . ." PC-9.

The Commission's acknowledged and rejected the Appellant's argument that there must be a demonstration that the Contract reduces overall natural gas demand. PC-48. Instead, the Commission appropriately determined that the Contract will result in GHG emissions reductions and emphasized the Contract was only one component "of a multi-faceted approach to reducing greenhouse gas emissions and meeting GWSA mandates."

PC-37-38. The Appellant has not demonstrated clear error by the Commission in its decision to decline to adopt the Appellant's arguments and proposed findings on this issue. The Commission is not required to rule on or adopt each requested finding. Petition of Vill. Of Hardwick Elec. Dep't, 143 Vt. 437, 445, 466 A.2d 1180, 1184 (1983).

Finally, the Commission correctly emphasized that its "decision to approve the Contract is not a determination that the Contract, by itself, is sufficient for VGS to meet its anticipated GWSA obligations . . . [it is] not statutorily charged with making ultimate determinations on compliance with the GWSA." PC-45. Rather, like the CEP, VGS's IRP, and VGS's alternative regulation plan, the "broader GWSA mandates are a factor" in the Commission's assessment of the Contract under Section 248(i). *Id*. These considerations are within the Commission's province as the trier of fact and expertise as the state's utility commission. The Commission appropriately exercised its regulatory discretion in weighing the Contract's environmental benefits and ability to contribute to VGS's GHG emissions reductions "in line with State energy policy, including the GWSA mandates that are incorporated in the CEP." PC-45. The function of this Court is not to evaluate the "rightness" of the Commission's conclusions regarding the Contract's environmental benefits and its consistency with the GWSA mandates incorporated in the CEP, but rather to determine whether there was clear error and whether those findings are reasonable. Green Mt. Power Corp., 131 VT at 305.

Given the wide latitude of discretion afforded to the Commission's decisions by this Court and the language of Section 248(i), there is no reversible error in the Commission's weighing of the record evidence and conclusions that the Contract serves as but one practical component in a broader strategy for VGS to meet its anticipated GHG emissions reductions goals, consistent with relevant state policy and objectives.

II. THE APPELLANT HAS NOT DEMONSTRATED CLEAR ERROR IN THE COMMISSION'S FINDING THAT THE CONTRACT IS CONSISTENT WITH LEAST-COST PLANNING PRINCIPLES

The Appellant next argues that the Commission erred in concluding that the Contract complies with least-cost planning principles and incorrectly asserts that the record evidence demonstrates that the Contract is not a least-cost means for VGS's to reduce GHG emissions. The Appellant's argument relies on a mischaracterization of the Department's testimony and position on this issue and misunderstands the state's applicable least-cost planning principles.

Relevant to this issue are the Commission-approved regulatory framework plans that "encapsulate overarching planning principles and objectives that direct VGS's energy-acquisition policies": VGS's Alternative Regulation Plan and its Integrated Resource Plan. PC-30. Both plans were "subjected to detailed scrutiny by the Commission in separate proceedings that went through the Commission's contested case process." *Id*. VGS's Alternative Regulation Plan was approved by the Commission on August 11, 2021 and "expressly authorizes VGS to increase its RNG supply equivalent to 2% of its retail sales on an annual basis." *Id*. By authorizing the inclusion of RNG supply into its retail sales, the Alternative Regulation Plan "establishes a framework to gradually increase [RNG] . . . and ensures that VGS remains a competitive heating services company as it reduces its greenhouse gas emissions." *Pet. of Vermont Gas Systems, Inc. for Approval of an Alternative Regul. Plan, Pursuant to 30 V.S.A. § 281d*, Case No. 19-3529-PET, 2021 WL 3667073, at *3 (Aug. 11, 2021). The Commission also approved VGS's Integrated Resource Plan "with findings that VGS would seek to increase its supply of RNG by approximately 2% per year and '[i]t is unlikely that VGS will be able to meet its RNG targets exclusively with locally sourced RNG, so it plans to procure RNG from a variety of other sources including landfills . .. that are not local." PC-26-27 (*citing Pet. of Vermont Gas Systems, Inc. for Approval of its 2020 Integrated Res. Plan*, Case No. 21-0167-PET, 2021 WL 4877582, at *2 (Oct. 13, 2021). Notably, the IRP was conditioned on a memorandum of understanding with the Department that requires VGS's next IRP to include an analysis of "'steps taken to develop and apply a valuation of greenhouse gas emissions framework to inform resource procurement decisions in the next IRP and *apply to any investment decisions in the interim*. VGS's 2024 IRP will consider investments from the utility, customer, and societal perspectives.'" *Id*. As such, the regulatory approval of VGS's IRP was conditioned on "tethering VGS's acquisition of new RNG resources to traditional least cost-planning principles." PC-14. Under least-cost integrated planning principles, the Department considers a regulated utilities' plans for meeting the public's need for energy services at the lowest present value life cycle cost, including environmental and economic costs. PC-509. Even further, the Commission recognized the need to review the "financial impacts of VGS's acquisition of new RNG resources. . . from [a] utility, customer, and societal perspective." PC-31.

The Appellant argues that the Commission erred in approving the Contract by failing to "evaluate a range of reasonable supply-side and demand side-alternatives, such as weatherization, fuel-switching and efficiency." Appellant's Brief at 26. The Appellant

further cites at multiple points throughout their brief that the Department found the Contract is not a least-cost alternative and "is one of the highest cost means of reducing emissions." *Id*. at 10, 16, 27.

The Appellant fails to include important context with the Department's testimony: within the framework of least-cost integrated planning, the Department reviewed the Contract's benefits and cost comparisons based on dollar-per-unit of energy prices and dollar-per-unit of emissions reduced. PC 509-510. The Department noted that a dollar-per-unit of emissions reduced basis is a more appropriate measure to consider environmental impacts associated with the Contract and that under this basis, the Contract is an expensive means of reducing emissions. *Id*. However, the Department further recognized that the Contract's option to resell volumes of RNG into renewable transportation fuel markets could result in a net revenue and reduce the effective price for RNG delivered to VGS customers, thus delivering cost-effective emissions reduction benefits to ratepayers. *Id*. In relying upon the Department's analysis, the Commission found that the Contract is consistent with the GWSA and CEP. PC-23-24; PC-31-33. Additionally, VGS did conduct a comparison of existing and proposed supply and demand-side emissions reductions measures that were reviewed by the Department. PC-510. Based on these analyses, the Commission conditioned approval of the Contract where VGS would manage "the Contracts resale options to ensure that any price premium paid for the RNG (i.e. cost in excess of the market rate) does not exceed the cost of carbon reductions effectuated by the RNG acquired under the contract." PC-31. The Commission concluded that "[c]omparing the premium paid for RNG under the Contract against the cost of greenhouse gas reductions is a reasonable means for conducting such an assessment, and the social cost of carbon is an appropriate metric for making that comparison." PC-32. Additionally, the Commission emphasized "that RNG is only one component of VGS's overall approach to mitigating greenhouse gas emissions, which also include efficiency, weatherization, heat-pump installations, and the introduction of other low-carbon fuels and sources of energy, such as hydrogen." PC 45. The Commission found "VGS's broader approach for reducing carbon emissions. . . includes. . . (1) weatherization and efficiency; (2) in-home installations of devices such as heat pump water heaters, cold-climate heat pumps, hybrid heating systems, and geothermal systems; and (3) alternative supply, including new sources of low- and zero-carbon alternative energy such as RNG, hydrogen, and district energy systems to displace traditional natural gas." PC 21. Existing supply and demand side mitigation measures were central to the Commission and the Department's review of the Contract.

The Commission clearly evaluated the Contract with substantial consideration of its GHG emissions reduction potential, the price premium paid for the resource, and the Contract's ability to result in a cost-effective, net-positive environmental benefit. As such, the Commission appropriately concluded "that the Contract, subject to the Department's proposed condition, represents appropriate least-cost planning and is consistent with the State's energy policy as set out in the CEP." PC-46. The Appellant has failed to demonstrate clear error in the Commission's findings and conclusions on this issue.

III. THE APPELLANT HAS NOT DEMONSTRATED CLEAR ERROR IN THE COMMISSION'S FINDING THAT THE IMPOSED CONDITION IS CONSISTENT WITH LEAST-COST PLANNING PRINCIPLES

Lastly, the Appellant argues that the Commission did not rely upon a sufficient basis to conclude that the condition imposed on the Contract's approval would satisfy traditional least cost planning principles. Appellant's Brief 28-29. This argument misunderstands the record and the specific language of the condition. The Department's testimony wholly and explicitly considers the Contract in the view of least-cost planning. PC 514 ("The Department concludes the Proposed Contract should be evaluated considering the actual emissions impacts based on the best available information under least-cost planning"); PC 510 ("Least-cost planning, however, requires consideration of the environmental impacts of the resource decision as well. In this context, those impacts are largely related to greenhouse gas emissions"). There can be no doubt that the Department's testimony and recommended conditioned approval of the Contract maintained least-cost planning as a central factor in its review. Likewise, the Commission concluded, based on the Department's review, "the Contract can satisfy these traditional least-cost planning principles only if VGS actively manages the Contract's resale options to ensure that any price premium paid for the RNG (i.e. cost in excess of the market rate) does not exceed the cost of carbon reductions effectuated by the RNG acquired under the Contract." PC-31. "This approach is consistent with [the Commission's] general regulatory obligation to ensure that VGS adheres to traditional least-cost principles in providing service to its customers." PC-6.

With respect to the condition imposed, the Commission requires VGS to effectively manage the Contract "so that the price paid for emission reductions from" renewable natural gas "does not exceed the social cost of carbon." PC-50. To keep the cost paid for emission reductions below the social cost of carbon, VGS "will need to

exercise the option to resell at least a portion of the RNG volume from the Contract into the renewable transportation fuel markets." PC-24. The Commission concluded that the Contract "can be a cost-effective means for reducing greenhouse gas emissions." PC-49. In considering the Contract's RNG resource from a "utility, customer, and societal perspective," the Commission explained that "[c]omparing the premium paid for RNG under the Contract against the cost of greenhouse gas reductions is a reasonable means" to assess the cost-effectiveness and financial risk of the Contract "and the social cost of carbon is an appropriate metric for making that comparison." PC-32. The Commission further reemphasized that the condition "would be one of several metrics. . . to assess whether the Contract is managed cost-effectively, which in turn can affect decision-making about cost recovery using traditional ratemaking standards in a future rate case." PC-33.

Considering the policy objectives and goals contained in the CEP and VGS' approved Integrated Resource Plan and Alternative Regulation to consider and use RNG as one means of achieving GHG reductions, the Commission did not clearly err in approving the Contract, subject to a condition that would "set appropriate guardrails. . . to ensure that VGS's participation in the RNG attribute markets appropriately balances the Contract's net costs with its environmental benefits." PC-46. Such an approach balances traditional least-cost planning principles in the Contract's procurement of an emissions reduction measure contemplated under several regulatory objectives and state policies. The Commission's decision was supported by the evidence and its evaluation of such factors within its expertise and appropriately within its discretion to evaluate such contracts pursuant to Section 248(i).

CONCLUSION

Based on the foregoing, the Court should affirm the Commission's decision below.

CERTIFICATE OF COMPLIANCE

I, Eric G. Guzman, Special Counsel for the Vermont Department of Public Service, hereby certifies, consistent with the Vermont Rules of Appellate Procedure 32(a)(1)(D) and 32(a)(4)(A), that the attached brief was prepared using Microsoft Word, is in 13-point proportionally spaced serif font, has 1.2 line spacing, left-aligned, and contains 4,823 words.