No. 23-AP-84

In the Supreme Court of the State of Vermont

IN RE PETITION OF VERMONT GAS SYSTEMS, INC.

CATHERINE BOCK, APPELLANT

v.

VERMONT GAS SYSTEMS, INC., APPELLEE

ON APPEAL FROM THE VERMONT PUBLIC UTILITY COMMISSION, NO. 22-2230-PET

BRIEF OF APPELLEE

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STATEMENT OF THE CASE

In this case, the Vermont Public Utility Commission reviewed and approved a utility supply contract consistent with its broad discretionary authority under 30 V.S.A. § 248(i). Section 248(i) gives the Commission the option to investigate a supply contract. If it chooses not to, such contracts are "deemed to be approved" by operation of law. Additionally, if the Commission chooses to investigate, Section 248(i) does not require the Commission to make any specific findings or conclusions to approve a supply contract.

Given the Commission's broad statutory discretion, this Court's review is limited to determining whether the Commission adequately explained its decision under Section 812 of the Vermont Administrative Procedure Act. 3 V.S.A. § 812. This Court's review is further limited by the traditional deference it affords Commission decisions and by the clear-error standard. Here, the Commission explained, in dozens of pages, the criteria under which it chose to evaluate the Contract and how it applied those criteria.

Specifically, the Commission investigated a proposed 14.5-year contract to supply renewable natural gas to Vermont Gas Systems, Inc. ("VGS"), a rate-regulated public utility that "has a statutory obligation to provide safe, reliable, and cost-effective service to its customers." PC-41. The Commission approved the proposed contract, concluding that it:

- Is consistent with VGS's previously approved Alternative Regulation Plan and Integrated Resource Plan, both of which expressly contemplate an incremental increase in renewable natural gas as part of VGS's overall retail supply portfolio, PC-41;
- Could be a cost-effective part of VGS's broader approach to reducing carbon emissions through "(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 [renewable natural gas], hydrogen, and district energy systems to displace traditional natural gas," PC-21; and

- Is in line with State energy policy, including the Department of Public Service's Comprehensive Energy Plan and the Global Warming Solutions Act, PC-41.

The Commission's Final Order approving the Contract included extensive findings and conclusions that explain its decision. Because the Commission's decision does not rest upon any clearly erroneous factual findings or conclusions of law, this Court should affirm.

A. The Contract

Under the Contract at issue in this case, VGS agreed to buy an annual supply of renewable natural gas from Archaea Energy Marketing LLC. PC-563-85; PC-17. The renewable natural gas will be produced at the Seneca Meadows Landfill in Waterloo, New York and transported to VGS. PC-17. Over the course of the Contract's 14.5-year term, VGS has the option to increase the amount of renewable natural gas it purchases each year. PC-17.

The Contract also includes a price term for the renewable natural gas, which will be adjusted annually, subject to a cap. PC-17. The Contract further gives VGS a choice about what to do with the renewable natural gas it buys: VGS can either deliver it to retail customers or resell the gas into the renewable transportation fuel markets. PC-18. That latter "resale" option allows VGS to "generate offsetting revenues to effectively 'buy down' the cost" of the renewable natural gas delivered to Vermonters. PC-19.

B. Regulatory Background

As a rate-regulated public utility, VGS is subject to a host of regulatory requirements. Among them is the statutory requirement to seek approval of contracts for the purchase of natural gas from out of state if the term of the contract is longer than five years. VGS's utility service is also subject to rate

regulation under an Alternative Regulation Plan, and its long-term resource planning is directed by its Integrated Resource Plan. Both plans are subject to Commission review and approval.

1. 30 V.S.A. § 248(i)

Approval of the Contract at issue in this case is governed by 30 V.S.A. § 248(i). At a high level, Section 248 concerns purchases, investments, and construction activities by rate-regulated utilities like VGS. As relevant here, Subsection (i)(1)(B)(i) requires Commission approval of any "contract for the purchase of gas from outside the State, for resale to firm-tariff customers, that . . . is for a period exceeding five years." 30 V.S.A. § 248(i)(1)(B)(i). Because the Contract in this case is for a term of 14.5 years and involves the purchase of gas from outside the State, VGS was required to notify the Commission and the Department "at least 30 days prior to the proposed effective date of that contract." *Id.* § 248(i)(1).

Upon receiving notification of a covered contract, Section 248(i) imposes only one duty on the Commission and the Department: to "consider within 30 days whether to investigate the proposed . . . contract." 30 V.S.A. § 248(i)(2). The statute leaves it up to the Commission whether to actually initiate an investigation. *Id.* "If the Commission does not initiate an investigation within such 30-day period, the contract . . . shall be deemed to be approved." *Id.* § 248(i)(3).

If the Commission chooses to investigate, the statute requires only that the investigation "shall conclude" within 120 days of the Commission issuing notice of the investigation. *Id.* "[I]f the Commission fails to issue a decision within that 120-day period, the contract . . . shall be deemed to be approved." *Id.* Section 248(i) authorizes the Commission to "hold informal, public, or evidentiary hearings on the proposed . . . contract," *id.*, but it does not otherwise impose any requirement to make specific findings of fact or conclusions of law relating to its decision.

2. VGS's Alternative Regulation Plan and Integrated Resource Plan

Although not required by Section 248(i), the Commission exercised its discretion to consider whether the Contract was consistent with other regulatory requirements applicable to VGS, including VGS's "Alternative Regulation Plan," which was approved under 30 V.S.A. § 218d, and VGS's least-cost "Integrated Resource Plan," which was approved under 30 V.S.A. § 218c. Those documents "encapsulate overarching planning principles and objectives that direct VGS's energy-acquisition policies." PC-30. These regulatory requirements were "subjected to detailed scrutiny by the Commission in separate proceedings that went through the Commission's contested case process." *Id.* Ms. Bock did not participate in either process.

1. The Commission approved VGS's Alternative Regulation Plan on August 11, 2021. *Pet. of Vermont Gas Systems, Inc. for approval of an Alternative Regulation Plan, pursuant to 30 V.S.A. § 218d*, No. 19-3529-PET, 2021 WL 3667073 (Vt. P.U.C. Aug. 11, 2021). Among other things, the Alternative Regulation Plan is intended to "foster innovation and support State policy goals by allowing utilities to develop new products and services that reduce greenhouse gas emissions." *Id.* at *1. To do that, the Alternative Regulation Plan allows VGS to "gradually increase renewable natural gas ('RNG') as a percentage of its retail sales and ensures that VGS remains a competitive heating services company as it reduces its greenhouse gas emissions." *Id.* at *3. Specifically, VGS is permitted to include renewable natural gas as a component of its overall supply and may incrementally increase the amount of renewable natural gas by 2% each year during the three-year term of the Plan. *Id.*

The Alternative Regulation Plan is in effect through September 30, 2024. *Id.*

2. The Commission also approved VGS's Integrated Resource Plan in fall 2021. *Pet. of Vermont Gas Systems, Inc. for approval of its 2020 Integrated Resource Plan*, No. 21-167-PET, 2021 WL 4877582 (Vt. P.U.C. Oct. 13, 2021). In contrast to the Alternative Regulation Plan, which concerns VGS's near-term service, the Integrated Resource Plan is a long-term

planning document containing VGS's forecasted strategy for the next twenty years. It "describes a decision-making process that is likely to meet the public's need for energy services, after safety concerns are addressed, at the lowest present-value life-cycle cost, including environmental and economic costs, through a strategy that combines investments and expenditures on energy supply, transmission and distribution capacity, and comprehensive energy efficiency programs." *Id.* at *4 (quoting 30 V.S.A. § 218c).

Like the Alternative Regulation Plan, the Integrated Resource Plan expressly calls for meeting customer demand in part by the "phasing in of renewable natural gas . . . at a rate of 2% of overall demand per year." *Id.* at *2. As part of the necessary least-cost planning in the Integrated Resource Plan, VGS analyzed multiple financial models to assess the overall impact of renewable natural gas procurement on customer rates. *Id.*

The Commission approved the plan because it meets "the statutory standards outlined in 30 V.S.A. § 218c" for such a "least cost integrated plan," and "promote[s] the general good of the state." *Id.* at *4. The Commission's approval was conditioned on its acceptance of a Memorandum of Understanding between VGS and the Department of Public Service. *Id.* at *5. The Memorandum of Understanding obligates VGS to include in its next Integrated Resource Plan, among other things, "a discussion of the steps taken to develop and apply a valuation of greenhouse gas emissions framework to inform resource procurement decisions." *Id.* at *7. It also requires VGS to "apply" that framework "to any investment decisions in the interim." *Id.* VGS will file its next 20-year Integrated Resource Plan in 2024.

3. Global Warming Solutions Act

In 2020, as part of Vermont's ambitious climate agenda, the Legislature enacted the Global Warming Solutions Act. 10 V.S.A. § 578. That law "calls for mandatory, state-wide greenhouse gas reductions of 26% from 2005 levels by 2025; 40% reduction from 1990 levels by 2030; and 80% reduction from 1990 levels by 2050." PC-27; *see also* 10 V.S.A. § 578(a).

The Global Warming Solutions Act does not itself impose any specific greenhouse gas emissions reduction requirements on any specific entity. *See*

10 V.S.A. § 578. And the Commission is "not statutorily charged with making ultimate determinations on compliance with" the Act. PC-45. Instead, the State plans to achieve the required greenhouse gas emissions reductions by implementing the Act in phases. First, the Vermont Climate Council adopted the Vermont Climate Action Plan, which sets out "specific initiatives, programs, and strategies, including regulatory and legislative changes, necessary to achieve the State's greenhouse gas emissions reduction requirements." 10 V.S.A. § 592(b). Next, the Agency of Natural Resources is required to adopt rules that are consistent with the Climate Action Plan and "achieve the State's greenhouse gas emissions reductions requirements." *Id.* § 593(a)(2).

For its part, the Department has a role to play in implementing the Global Warming Solutions Act. In January 2022, the Department issued its Comprehensive Energy Plan that implements State energy policy "including meeting the State's greenhouse gas emissions reductions requirements" in the Global Warming Solutions Act. 30 V.S.A. § 202b(a). Recognizing the challenges presented by renewable natural gas as a nascent fuel source, the Comprehensive Energy Plan nevertheless encouraged increased usage of renewable natural gas in Vermont. *2022 Vermont Comprehensive Energy Plan*, Dept. Pub. Serv., https://tinyurl.com/3mafs3z2 (Jan. 2022).

C. Procedural History

1. VGS petitioned for approval of the Contract under 30 V.S.A. § 248(i) on June 13, 2022. PC-605. The Department of Public Service "commend[ed] VGS's proactive steps to further its support of the state's renewable energy and greenhouse gas reduction commitments," and recommended that the Commission exercise its discretion to investigate and "carefully evaluate" the Contract. PC-554. The Commission issued its notice of investigation on July 11, 2022. PC-549-550.

Nearly three weeks later, Appellant Catherine Bock moved for permissive intervention. PC-545-546. Although neither VGS nor the Department opposed her motion, the Hearing Officer denied intervention, concluding that Ms. Bock did "not raise a particularized interest . . . and that the interests presented in [her] Motion [were] adequately protected by the

Department." PC-536. The Hearing Officer nevertheless "strongly encourage[d] [Ms. Bock] to participate . . . by filing public comments with the Commission." PC-536. Ms. Bock chose instead to move for reconsideration. PC-526-532. Again, neither VGS nor the Department opposed the motion, and the Hearing Officer granted Ms. Bock permissive intervention under Commission Rule 2.209(B) on August 25, 2022. PC-520.

Over the ensuing months, the Commission engaged in an extensive process, receiving some 150 public comments, and amassing a significant evidentiary record. PC-41-42; PC-14-15. The Hearing Officer held an evidentiary hearing attended by the parties to this appeal, all of the witnesses who filed testimony in the case, and approximately 50 members of the public. PC-15.

2. On October 19, 2022, the Hearing Officer issued a 29-page Proposal for Decision, recommending that the Commission approve the Contract. PC-12-40. The Proposal for Decision made dozens of factual findings. PC-17-25. Most importantly, the Proposal for Decision found that the Contract gives VGS "flexibility to ramp up its [renewable natural gas] supply consistently with its alternative regulation plan and manage unforeseen financial and regulatory risks associated with the Contract." PC-20. The Contract also has environmental benefits, the Hearing Officer found, including "displac[ing] geologic natural gas with [renewable natural gas] . . . to reduce greenhouse gas emissions." PC-21. And those benefits are substantial: the renewable natural gas purchased under the Contract "will achieve greenhouse gas reductions between 26% and 43% per unit of geologic gas displaced." PC-23.

The Proposal for Decision went on to conclude that "the Contract, if properly managed and subject to careful regulatory oversight, will serve to benefit VGS's ratepayers and Vermont's broader energy policy objectives by reducing greenhouse gas emissions in a manner that is consistent with traditional least-cost planning principles." PC-30. And "[o]f significant importance" to that conclusion was the fact that the Contract, "on its face, is consistent with and promotes the high-level objectives set out in VGS's [integrated resource plan] and alternative regulation plan." PC-30-31. That is

so, the Hearing Officer concluded, because "both contemplate that VGS will progressively increase the supply of [renewable natural gas] that is added to its general firm portfolio as part of a broader array of policies and programs that are intended to limit VGS's greenhouse gas emissions." PC-31.

The Proposal for Decision further concluded that because the Contract allows VGS to resell some of the renewable natural gas it purchases, the Contract can satisfy "traditional least-cost planning principles." PC-31. That will require "active[ ] manage[ment]" by VGS "to ensure that any price premium paid" for the renewable natural gas "does not exceed the cost of carbon reductions effectuated by the [renewable natural gas] acquired under the Contract." PC-31. In other words, making sure that the "price paid for emissions reductions" under the Contract "does not exceed the social cost of carbon," would "ensure that financial risk is appropriately balanced between the company and its ratepayers." PC-32. The Hearing Officer concluded that "[c]omparing the premium paid for [renewable natural gas] 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.

Accordingly, the Proposal for Decision recommended adoption of the Department's proposed condition to that effect (which VGS consented to). PC-32. The condition requires VGS to "manage its options under the Contract so that the price paid for emissions reductions from volumes of [renewable natural gas] delivered to VGS customers (net of any proceeds from VGS's sales into [the] renewable transportation fuel market) does not exceed the social cost of carbon." PC-32. With this condition, "the Contract can be managed to result in a cost-effective, net-positive environmental benefit." PC-31.

3. Ms. Bock objected to the Proposal for Decision. PC-112-130. She lodged a long list of complaints directed to the use of renewable natural gas as a tool to achieve the required statewide emissions reductions. In her view, the Commission should not approve the Contract because it "fails to provide a pathway to net zero emissions by 2050 as required by the Global Warming Solutions Act." PC-129. That is because, in her view, although renewable

natural gas can reduce emissions, "it is a dead end, a wasted investment" if it cannot "ultimately achieve the *required* reduction levels" under the Act. PC-122 (emphasis original).

4. The Commission rejected all of Ms. Bock's arguments and approved the Contract in its own ten-page order. PC-41-50. The Commission adopted all the findings, conclusions, and recommendations from the Proposal for Decision. PC-50. And the Commission recognized that it was confronting "important policy considerations and the interplay between [its] traditional, rigid regulatory framework and evolving standards for assessing innovating new service offerings from VGS." PC-49.

Ultimately, the Commission concluded that the Contract "is consistent with State energy policy and can be managed to achieve environmental benefits in a cost-effective manner." PC-41. The Commission reaffirmed the Hearing Officer's conclusions that "the Contract is consistent with the energy policy objectives of the Vermont Comprehensive Energy Plan" and with "VGS's alternative regulation plan and its most recently approved integrated resource plan." PC-41. While "emphasiz[ing] that [renewable natural gas] is only one component of VGS's overall approach to mitigating greenhouse gas emissions, which also includes efficiency, weatherization, heat-pump installations, and the introduction of other low-carbon fuels and sources of energy," PC-45, the Commission reviewed the "evidentiary record in this case" and concluded that "the Contract, subject to the Department's proposed [social cost of carbon] condition, represents appropriate least-cost planning and is consistent with the State's energy policy." PC-46.

5. Ms. Bock moved for reconsideration of the approval order, PC-97-108, on the grounds that the Commission did not give "sufficient weight" to her arguments. Noting that the "proposal for decision and . . . Final Order include extensive, detailed discussions and analyses to explain how [the Commission] evaluated the evidentiary record for this case to arrive at [its] conclusions regarding consistency with applicable and relevant legal requirements," PC-7, the Commission concluded that Ms. Bock did not "present[ ] any arguments or information to demonstrate a mistake or

inadvertence that would warrant reconsidering the Final Order," PC-9. The Commission denied Ms. Bock's motion on January 30, 2023. PC-9-10.

Ms. Bock appealed on February 24, 2023. PC-86.

SUMMARY OF ARGUMENT

The Public Utility Commission appropriately exercised its broad discretion to approve VGS's 14.5-year contract to purchase natural gas from outside Vermont under 30 V.S.A. § 248(i). That approval decision is presumed to be valid because it fell squarely within the Commission's policy-making authority and drew on the Commission's particular expertise. Ms. Bock identifies no error, much less clear error, by the Commission, and this Court should affirm.

1. The Legislature chose a statutory scheme in which the default is approval for contracts subject to Section 248(i). If the Commission, in its discretion, decides not to investigate the contract, it is approved. So, too, if the Commission does not issue a decision within 120 days of commencing its investigation. And if the Commission decides to investigate, the Legislature did not require the Commission to consider any particular criteria or make any particular findings. Instead, the Legislature left it up to the Commission's sound discretion what to consider and how. This Court's review is thus cabined to evaluating whether the Commission adequately explained its decision under the Vermont Administrative Procedure Act.

The Commission's evaluation of the Contract and its ultimate approval were comprehensively explained. And its findings and conclusions were appropriate exercises of its broad discretion. First, as the body charged with supervising the financial management of Vermont's public utilities, the Commission appropriately considered the financial risk of the Contract and concluded that any potential risk was outweighed by the potential benefits of the Contract, the Contract provided options to manage and mitigate risk, and ratepayers would therefore be shielded from financial risk. PC-36. Second, the Commission appropriately considered the environmental benefits of the Contract, finding that it would reduce greenhouse gas emissions between 26% and 43%. PC-23. Third, the Commission appropriately considered how

the Contract fits with VGS's other Commission-approved regulatory planning documents, which contemplate the purchase of renewable natural gas. PC-30. Finally, the Commission appropriately evaluated whether the Contract is consistent with State energy policy. Both the Commission and the Department agree that it is. PC-35-38.

As it routinely does in reviewing Commission decisions, this Court should defer to the Commission's policy expertise and affirm the Commission's discretionary approval in this case.

2. Ms. Bock has not carried her heavy burden to identify clear error that could overcome the strong presumption of validity afforded to the Commission's decision. Her policy disagreements about the merits of renewable natural gas—which the Commission dispatched in two thorough orders—are insufficient.

To start, contrary to Ms. Bock's contention, the Commission correctly concluded that the Contract is consistent with the Global Warming Solutions Act. PC-41. Her own expert testified that the Contract will reduce greenhouse gas emissions. PC-35. Based in part on that testimony, the Commission rightly concluded that the Contract will help achieve the Act's broad State-level emissions reduction requirements. PC-45-46. That conclusion was fully explained and is amply supported by the record.

Ms. Bock's other arguments misconstrue "least-cost planning." That concept does not require VGS to choose the cheapest option to reduce its emissions. Rather, Vermont law requires VGS to have a "least-cost integrated plan." The Commission approved VGS's plan two years ago, and that plan expressly calls for the phasing in of renewable natural gas.

Ms. Bock's reference to statutes that do not govern approval of this Contract and her speculation about the Commission's unstated intent in approving the Contract do not generate error as a matter of law. Ultimately, the Legislature gave the Commission wide latitude to evaluate and approve contracts like the one at issue here. The Commission's decision has sure footing in fact and in law, and this Court should affirm.

STANDARD OF REVIEW

This Court affords "heightened deference" to Commission decisions and "accord[s] a strong presumption of validity to the Commission's orders." *In re Stowe Cady Hill Solar, LLC*, 2018 VT 3, ¶ 15, 206 Vt. 430, 182 A.3d 53 (citation and alteration omitted). This Court will "affirm the [Commission's] findings and conclusions unless the opposing party shoulders the heavy burden of demonstrating clear error." *In re Investigation to Review the Avoided Costs the Serve as Prices for the Standard-Offer Program in 2019*, 2020 VT 103, ¶ 12, 213 Vt. 542, 251 A.3d 525; *see also* 30 V.S.A. § 11(c) ("Upon appeal to the Supreme Court, [the Commission's] findings of fact shall be accepted unless clearly erroneous.").

"The burden of demonstrating clear error is the appellant's, and that burden is not a light one." *In re Vermont Elec. Power Co.*, 2006 VT 69, ¶ 6, 179 Vt. 370, 895 A.2d 226 (quotation omitted). The Court "must have the definite and firm conviction that a mistake has been committed before [it] will hold a finding to be clearly erroneous." *In re TruConnect Commc'ns, Inc.*, 2021 VT 70, ¶ 15, 215 Vt. 422, 263 A.3d 770.

ARGUMENT

The Commission's decision to approve the Contract drew on its particular expertise and informed judgment, which lay at the heart of its discretionary authority as a policy-making body. Not only was that decision well within the bounds of the Commission's broad discretion, it was correct. Ms. Bock's scattershot criticisms do not meet her heavy burden to demonstrate clear error. This Court should affirm.

I. The Commission appropriately exercised its discretion to approve the Contract under Section 248(i) and adequately explained its decision.

The only question this Court needs to answer is whether the Commission appropriately approved the Contract under 30 V.S.A. § 248(i). That question "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's discretion is particularly broad when it is engaged in such a "legislative, policy-making process." *See In re Portland Street Solar LLC*, 2021 VT 67, ¶¶ 12, 16, 215 Vt. 394, 264 A.3d 872. Because the Commission's approval of the Contract was an appropriate exercise of that discretion, this Court should affirm.

1. As an initial matter, the statutory scheme governing approval of the Contract in this case limits this Court's review. Contracts subject to Section 248(i) can be approved by operation of law, without any action on the part of the Commission. Section 248(i)(2) requires only that the Commission "consider . . . whether to investigate the proposed investment or contract." Such an investigation is not mandatory: the Commission "*may* determine to initiate an investigation." *Id.* § 248(i)(3) (emphasis added). If the Commission opts not to, "the contract or investment shall be deemed to be approved." *Id.* And if the Commission does investigate but takes too long to issue a decision (i.e., more than 120 days), the Legislature provided that "the contract or investment shall be deemed to be approved" then, too. *Id.*

On its face, the statute gives the Commission an *opportunity* to review out-of-state gas contracts lasting longer than five years, but it does not impose an *obligation* on the Commission to do so. The Legislature also left the decisions about *how* to evaluate the Contract to the Commission's discretion. *See id.* Given this wide statutory latitude, the Commission was not required in this case to investigate the Contract, evaluate whether the Contract was consistent with any other specific regulatory requirements, or conclude that the Contract had any specific environmental benefits.

In the ordinary course, this Court "give[s] great deference to the [Commission's] expertise and judgment and accord[s] 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 (citation omitted). That exceedingly deferential review both "respect[s]. . . the expertise and informed judgment of agencies, and [recognizes] this Court's proper role in the separation of powers." *In re Conservation Law Found.*, 2018 VT 309, ¶ 15, 207 Vt. 309, 188 A.3d 667

(citation omitted). Such deference is particularly vital here because as the statute makes plain, the Legislature intended for the default to be approval of contracts under Section 248(i).

Accordingly, this Court's review of the Commission's exercise of discretion and ultimate approval is narrow. Because the Commission chose to investigate and issue a decision through a contested case process, the proper lens is Section 812 of the Vermont Administrative Procedure Act. 3 V.S.A. § 812. Section 812(a) requires the Commission to issue findings of fact and conclusions of law in support of its decision. *Id.* "The purpose of this requirement is to make a clear statement to the litigants, and to this Court if an appeal is taken, of what was decided and how the decision was reached." *In re Derby GLC Solar, LLC*, 2019 VT 77, ¶ 19, 211 Vt. 144, 221 A.3d 777 (citation and quotation marks omitted).

In other words, this Court need not second guess the Commission's policy judgments about what is relevant to its review of the Contract under Section 248(i) or the Commission's weighing of the relevant considerations. Instead, it is sufficient for the Court's review to focus on whether the Commission adequately explained its decision. Because the Commission's 39-page written order in this case details both what was decided and how the decision was reached, the Commission's decision comports with Section 812. Indeed, given the statutory structure of Section 248(i)—under which the Contract would be approved by operation of law in the absence of action by the Commission—the Court can affirm based on compliance with Section 812 alone.

2. If the Court looks beyond the adequacy of the Commission's explanation for its approval, it should defer both to the Commission's selection of criteria used to evaluate the Contract and the Commission's application of those criteria. *See* 30 V.S.A. § 248(i); *In re Derby GLC Solar*, 2019 VT 77, ¶ 18 (this Court "defer[s] to the [Commission's] interpretation of the statutes that it is charged with interpreting").

To start, in contrast to other kinds of purchases or investments regulated by the Commission, Section 248(i) does not require the Commission to evaluate any specific criteria or make any specific findings. *Compare* 30

V.S.A. § 248(a)-(b) (mandating what the Commission "shall find" to issue a certificate of public good for certain projects), *with id.* § 248(i) (requiring the Commission only to "consider within 30 days whether to investigate"). To that end, the Commission had discretion on how to evaluate VGS's contract.

At its core, the Commission's optional Section 248(i) review is part of its general statutory responsibility to supervise the "the rates, quality of service, and overall financial management of Vermont's utilities" to "ensure the provision of high-quality public utility services in Vermont at minimum reasonable costs, consistent with the long-term public good of the state." *About Us*, Vt. Pub. Util. Comm'n, https://puc.vermont.gov/about-us; *see also* Title 30, Chapter 5 (setting forth the general duties and powers of the Commission). Here, the Commission evaluated the Contract with an eye toward doing just that. The Commission considered the "financial risk associated with the Contract," PC-43-44, and determined that the Contract is a "cost-effective means for reducing greenhouse gas emissions," PC-49. The Hearing Officer's Proposal for Decision, adopted by the Commission, PC-50, further demonstrates the appropriate consideration of financial risk to ratepayers. The Hearing Officer evaluated the balance of "financial risk . . . between the company and its ratepayers," and recommended approval of the Contract. PC-32. That recommendation was supported by ample factual findings. PC-18-20. And the conclusion that the Contract does not pose a significant risk to VGS as a public utility or compromise its ability to provide a necessary service to Vermonters is unchallenged on appeal.

Beyond the consideration of financial risks (and VGS's mitigation of those risks), it was also appropriate for the Commission to consider the Contract's environmental benefits, whether the Contract is consistent with VGS's existing regulatory obligations, and whether the Contract is consistent with State energy policy embodied in the Global Warming Solutions Act and the State's Comprehensive Energy Plan. *See* PC-20-24. It makes sense (although it was not statutorily required) for the Commission to consider its prior regulatory decisions and Vermont's broader energy policy regime in this context.

The Court can affirm on this basis, too. The Commission's approach aligned with its role as a guardian of public utility services in the State and as superintendent of the financial health of the companies that provide them. It explained that approach in multiple, comprehensive written decisions. *See* 3 V.S.A. § 812(a). Given its highly deferential review of Commission decisions—particularly where the Commission is "relying on its particular expertise to make a determination that is legislatively entrusted to the agency," *In re Stowe Cady Hill Solar*, 2018 VT 3, ¶ 16—there is no reason for this Court to disturb the Commission's sound exercise of its broad discretion in evaluating its selected criteria.

3. The Commission's application of the criteria it chose is also entitled to deference. This Court reviews the Commission's findings and conclusions only for clear error. *In re Stowe Cady Hill Solar*, 2018 VT 3, ¶ 15. Because the Commission's evaluation was an appropriate, well-supported—and, indeed, correct—exercise of its discretion, this Court should affirm.

First, the Commission correctly recognized the environmental benefits of the Contract. Relying on expert testimony—including from Ms. Bock's own expert—the Commission found that the renewable natural gas "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-23.

Second, the Commission correctly found that the Contract is consistent with VGS's existing regulatory obligations. PC-30. And as the body that approved VGS's Alternative Regulation Plan and Integrated Resource Plan, the Commission brought its own expertise to bear on this question. As the Hearing Officer found, VGS's "current alternative regulation plan . . . expressly authorizes VGS to increase its [renewable natural gas] supply" by 2% annually. PC-26. The Integrated Resource Plan includes the same plans regarding incorporating renewable natural gas in overall retail supply, and it even recognizes that VGS "plans to procure [renewable natural gas] from a variety of other sources including landfills . . . that are not local." PC-26-27 (quoting *Pet. of Vermont Gas Systems, Inc. for approval of its 2020 Integrated Resource Plan*, 2021 WL 4877582, at *2). That is exactly what the Contract

does. It was far from clear error for the Commission to conclude that the Contract is consistent with VGS's existing regulatory obligations.

Third, the Commission correctly concluded, based in part on testimony from the Department, that the Contract is consistent with state energy policy. PC-41. The State's Comprehensive Energy Plan "expressly addresses the [Global Warming Solutions Act's] greenhouse gas reduction mandates" and "encourages consideration of increased usage" of renewable natural gas. PC-28; *see also 2022 Vermont Comprehensive Energy Plan*, Dept. Pub. Serv., https://tinyurl.com/3mafs3z2. Coupled with the Commission's findings that the Contract would reduce greenhouse gas emissions, it was correct to conclude that the Contract "is consistent with State energy policy and can be managed to achieve environmental benefits in a cost-effective manner." PC-41.

Moreover, the Commission's oversight does not end with its approval of the Contract in this case. The Commission stressed that it "will closely monitor VGS's management of the Contract, and that issues related to the Contract may be revisited in future rate cases if necessary." PC-49. That continued oversight leaves the door open for the Commission to continue to review the financial benefits of the Contract in future rate cases to ensure that VGS's customers continue to benefit over the life of the Contract. This Court should affirm the Commission's discretionary approval.

II. Ms. Bock identifies no clear error in the Commission's decision.

Ms. Bock cites the controlling statute only once, in passing, in her brief. Br. 9. She makes no effort to explain whether Section 248(i) constrains the Commission's discretion or why Section 248(i) compels the result she seeks on appeal. Her policy-based disagreements with the Commission's factual findings and legal conclusions, which were fully addressed by the Commission below in two different orders, cannot serve as a basis to overturn its approval of the Contract.

Fundamentally, Ms. Bock does not believe that the use of renewable natural gas is consistent with State energy policy and the greenhouse gas emissions reduction requirements of the Global Warming Solutions Act. *See,*

e.g., PC-104 (arguing that "[i]t is not possible to see how" renewable natural gas is "consistent with the [Global Warming Solutions Act] goal for Vermont to reach net zero emissions by 2050"). The Commission and the Department, however, disagree. *See* pp. 5-6, *supra*. The statewide Comprehensive Energy Plan, as well as the Commission-approved Alternative Regulation Plan and Integrated Resource Plan that govern VGS's service, all authorize and encourage the use of renewable natural gas as one strategy among many to reduce greenhouse gas emissions. *Id.*

In any event, Section 248(i) covers *all* contracts "for the purchase of gas from outside the State, for resale to firm-tariff customers" that have a term "exceeding five years." So although this case involves a contract to purchase renewable natural gas, the contract-approval process called for under Section 248(i) is not specific to that resource. Accordingly, Ms. Bock's policy objections to the merits of renewable natural gas are not germane to this Court's inquiry and do not generate a question of law for this Court to address. She does not offer any arguments that demonstrate error, much less clear error, in the Commission's exercise of discretion to approve the Contract.

A. The Commission correctly concluded that the Contract is consistent with the Global Warming Solutions Act.

Ms. Bock's first argument suffers from at least four different errors. First, Ms. Bock wrongly claims that there is no evidence in the record that the Contract will reduce greenhouse gas emissions. Br. 25-26. To the contrary, there is no dispute that the Contract will reduce greenhouse gas emissions—Ms. Bock's own expert testified as much. *See* Br. 13 ("Dr. Grubert testified that a 26% reduction is more accurate."); Br. 7 ("Landfill gas is 26% less carbon-intensive than conventional fossil gas, according to Intervenor's expert"); *see also* PC-410 (calculating a "GHG [greenhouse gas] reduction of only 26%"). Both the Hearing Officer and the Commission credited that testimony, along with VGS's testimony, and found that the renewable natural gas purchased "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-23.

Ms. Bock further contends that there is insufficient support for the Commission's factual finding that the renewable natural gas supplied under the Contract will *displace* geologic natural gas. Br. 26. As she uses the term, Ms. Bock contends that the renewable natural gas will not "displace" geologic natural gas (and therefore reduce emissions) because VGS's *overall* load of natural gas is increasing. That contention misconstrues the record. As discussed above, the Commission found that the Contract "will achieve greenhouse gas reductions between 26% and 43% per unit of geologic gas *displaced*." PC-23 (emphasis added). That finding is premised on the Commission finding that the renewable natural gas would take the place of geologic natural gas that VGS would otherwise procure and sell to its customers. PC-21 ("The primary environmental benefit of the Contract will be to displace geologic natural gas with RNG . . . to reduce greenhouse gas emissions generated by VGS's distribution and sale of natural gas in Vermont."). Ms. Bock's unsupported assertion that the Commission's findings "lacked any foundation in the record," Br. 26, is simply incorrect. There is no clear error where the evidence indicates that the Contract will displace some portion of the geologic natural gas currently in VGS's supply portfolio.

The second error with Ms. Bock's argument is that she misconstrues the legal conclusions that the Commission drew from its factual findings. *See* Br. 26. Contrary to Ms. Bock's suggestion, there is no statutory requirement that a contract subject to Section 248(i) "reduce the company's overall emissions." Br. 26. And the Commission, in its discretion, chose not to focus on whether the Contract would reduce overall natural gas demand (i.e., be "displacive" as Ms. Bock uses that term) and therefore reduce VGS's *overall* emissions. The Commission recognized that VGS has an obligation to provide natural gas service and customers will rely on that service for the "foreseeable future," so VGS should pursue all cost-effective means to reduce carbon emissions of the service it is required to provide. PC-48 (directly addressing and rejecting Ms. Bock's contention that the Contract should only be approved if it reduces overall natural gas demand). Contrary to Ms. Bock's inaccurate assertion that the Commission concluded that displacement was "immaterial," Br. 26, the Commission understood and rejected Ms. Bock's arguments. It was well within the Commission's discretion under Section

248(i) to focus on the carbon-reduction effect of renewable natural gas rather than whether the Contract would result in overall emissions reduction. Accordingly, it was reasonable for the Commission to approve the Contract as part of VGS's broader carbon-reduction efforts.

The third error in Ms. Bock's argument is her contention that the Commission approved the Contract because "it will implement the GWSA—without any evidence that the contract will reduce emissions." Br. 26. As explained above, the Commission's repeated conclusions that the Contract will reduce greenhouse gas emissions, PC-44, have sure footing in the record. More fundamentally, however, the Commission did not consider whether the Contract will "implement the GWSA," Br. 26, and nothing in Section 248(i) required them to do so. In fact, the Commission recognized that it is "not statutorily charged with making ultimate determinations on compliance with" the Act. PC-45. The Commission instead concluded that the emissions reductions achieved under the Contract are "in line with State energy policy, including the [Global Warming Solutions Act] mandates that are incorporated into the" Comprehensive Energy Plan. PC-46. Ms. Bock identifies no clear error in the Commission's conclusion on this point.

Finally, faced with the ample record evidence supporting the Commission's findings and conclusions, Ms. Bock switches tack and suggests that the Commission "failed to articulate the rationale for its conclusion," Br. 26. Not so. Both the Commission and the Hearing Officer issued factual findings and rendered conclusions in exhaustive opinions. PC-12-40 (Proposal for Decision); PC-41-50 (Commission Order); PC-4-9 (Order denying Motion for Reconsideration). Under these circumstances, the Commission's thorough, systematic approval decision meets the Section 812 requirement to make a clear statement of what was decided and how the decision was reached and in no way constitutes clear error.

B. The Commission correctly concluded that the Contract is consistent with least-cost planning principles.

Ms. Bock's argument that the Commission clearly erred in concluding that the Contract is consistent with least-cost planning principles also suffers from a host of factual and legal problems.

1. As an initial matter, Ms. Bock's argument fundamentally misunderstands "least-cost planning principles." Vermont law requires utilities such as VGS to have a "least-cost integrated plan," which is:

> a plan for meeting the public's need for energy services, after safety concerns are addressed, at the lowest present value life cycle cost, including environmental and economic costs, through a strategy combining investments and expenditures on energy supply, transmission, and distribution capacity, transmission and distribution efficiency, and comprehensive energy efficiency programs.

30 V.S.A. § 218c(a)(1).

The statute requires that such a "least-cost plan" assess economic costs "with due regard to" several factors including "the State's progress in meeting its greenhouse gas reduction goals," "the value of the financial risks associated with greenhouse gas emissions from various power sources," and consistency with state "renewable energy goals." *Id.* "Least-cost planning" thus balances a number of interests and requires a broad strategy to supply energy "at the lowest present value life cycle cost." *Id.*

VGS has an approved "least-cost integrated plan": its 2021 Integrated Resource Plan. *See* pp. 4-5, *supra*. Least-cost planning is relevant in this case only because the Commission determined that it was appropriate to assess whether the Contract was consistent with VGS's Integrated Resource Plan. Section 248(i) itself imposes no least-cost planning requirements for contracts approved thereunder. Accordingly, the question before this Court is whether the Commission's findings and conclusions in that regard were clearly erroneous. VGS's Integrated Resource Plan expressly contemplates renewable natural gas contracts, PC-26, and the Commission found that this Contract is "cost effective" (among other carbon reduction efforts VGS is

undertaking to benefit its customers).[1] Because the Commission adequately explained and supported its chosen rationale, *see* 3 V.S.A. § 812(a), there is no basis for finding clear error in the Commission's conclusion that the Contract is consistent with least-cost planning principles embodied in VGS's Integrated Resource Plan.

2. Ms. Bock's overarching argument is based on the erroneous assertion that least-cost principles require the Commission to conduct an "alternatives analysis"—she asserts that the Commission clearly erred by not "evaluat[ing] a range of reasonable supply-side and demand side-alternatives, such as weatherization, fuel-switching and efficiency." Br. 26. This is wrong for several reasons.

First, the cases Ms. Bock cites are not applicable here because they concern a different statute: 30 V.S.A. § 248(b). Section 248(b) requires the Commission to make various findings to issue a certificate of public good for the construction of transmission and generation facilities. To approve such projects, the Commission must find that the proposed project is "required to meet the need for present and future demand for service that could not otherwise be provided in a more cost-effective manner through energy conservation programs and measures and energy-efficiency and load management measures." *Id.* Section 248(i), by contrast, mandates no specific findings at all, much less the "alternatives analysis" that Ms. Bock invokes from Section 248(b). This Court should reject Ms. Bock's attempt to graft such a requirement onto the Commission's approval decisions under Section 248(i).

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[1] Ms. Bock also implies that the Commission approved VGS's Integrated Resource Plan even though the Plan did not "actually comply" with least-cost planning principles and required VGS to perform an "alternatives analysis" for every resource acquisition undertaken before the next Integrated Resource Plan is submitted in 2024. Br. 28. That is wrong as a matter of fact. The Memorandum of Understanding approved along with VGS's Integrated Resource Plan requires that VGS "include a discussion [in the 2024 Plan] of the 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." *Pet. of Vermont Gas Systems, Inc. for approval of its 2020 Integrated Resource Plan*, 2021 WL 4877582, at *7.

See, e.g., *Murdoch v. Town of Shelburne*, 2007 VT 93, ¶ 17, 182 Vt. 587, 939 A.2d 458 ("[W]here the Legislature has omitted language from a statute, we are constrained not to rewrite it.") (citation and quotation marks omitted).

Second, Ms. Bock is also wrong to suggest that a contract-specific "alternatives analysis" is required by VGS's Integrated Resource Plan. *See* Br. 28. VGS's Integrated Resource Plan has no such requirement. Although a general assessment of potential alternative resource options is part of the process of developing and reviewing an Integrated Resource Plan, there is no requirement under Section 218c for the "alternatives analysis" that Ms. Bock propounds. Rather, integrated resource planning is about creating the most cost-effective "combin[ation of] investments and expenditures." 30 V.S.A. § 218c(a)(1). It does not require any individual investment to be the cheapest option. VGS's Integrated Resource Plan embodies its "multi-pronged approach to reducing its greenhouse gas impact," PC-38, which includes "weatherization and efficiency" as well as "in-home installations of devices such as heat pump water heaters, cold-climate heat pumps, hybrid heating systems, and geothermal systems." PC-21. And consistent with Section 218c, VGS's Integrated Resource Plan embodies least-cost planning considerations that do not include an "alternatives analysis."

Finally, Ms. Bock speculates that, despite dozens of pages carefully explaining its findings and conclusions, the Commission approved the Contract on some unstated ground. *See* Br. 28 (arguing that "[i]t is possible that the intent of the Commission was to approve the contract even though it was not a least-cost alternative"). The Commission expressly approved the Contract as a "cost-effective" carbon reduction option and found it to be one of the "pathways" to achieving emissions reduction identified in the State's Comprehensive Energy Plan. PC-9. The Commission also expressly rejected Ms. Bock's contention that other alternatives were not adequately assessed, noting that nothing about approval in this case should dissuade pursuit of "other cost-effective means of reducing greenhouse gas emissions." PC-9. The Commission unequivocally rejected Ms. Bock's least-cost planning argument, and her conjecture does not amount to clear error.

C. The Commission appropriately approved the Contract with the Department's requested condition.

Ms. Bock's final argument on appeal seems to be a slightly different flavor of her argument concerning least-cost planning. Here, Ms. Bock takes issue with the condition imposed that VGS manage its options under the Contract "[t]o the greatest extent practicable . . . so that the price paid for emission reductions from" renewable natural gas delivered to its customers "does not exceed the social cost of carbon." PC-50. The upshot of the condition is that VGS will manage its options, including the option to re-sell some of the renewable natural gas it purchases under the Contract to "generate offsetting revenues," to ensure that the Contract remains a cost-effective method to reduce carbon emissions for the benefit of VGS customers. PC-19.

Ms. Bock argues the condition does not guarantee that the Contract is the cheapest option to reduce greenhouse gas emissions, and therefore, it was clear error for the Commission to adopt it. *See* Br. 28-29. For the reasons stated above, under Section 248(i) or even considering Section 218c, the Commission was not required to find that the Contract was the cheapest option. Rather, applying principles of least-cost planning, the Commission appropriately determined that this Contract was one of a variety of strategies needed to reduce emissions. Because the Commission had wide discretion in deciding how to evaluate the Contract, and neither the Commission nor the statutory regime required the Contract to be the cheapest option, *see* pp. 21-23, *supra*, Ms. Bock's argument does not identify any clear error.

As for the condition it adopted, the Commission explained that "[c]omparing the premium paid for [renewable natural gas] under the Contract against the cost of greenhouse gas reductions is a reasonable means" to assess cost-effectiveness, "and the social cost of carbon is an appropriate metric for making that comparison." PC-32. Thus, Ms. Bock is incorrect to suggest that the Commission treated the social cost of carbon as a "substitute for least-cost evaluation." Br. 29. Rather, the Commission used the social cost of carbon as only "one of several metrics . . . to assess whether the Contract is managed cost-effectively." PC-33. Those metrics can "in turn affect decision-making about cost recovery using traditional ratemaking standards in a future rate case." PC-33.

The Commission thus rightly recognized the condition's benefits: it "will set appropriate guardrails" to "appropriately balance[ ] the Contract's net costs with its environmental benefits" and "will help to ensure that premium price paid for [renewable natural gas] reflects the environmental benefits that will be achieved through the Contract." PC-46-47. Ms. Bock simply calling those findings clearly erroneous does not make them so.

CONCLUSION

The order of the Public Utility Commission should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE
WITH TYPEFACE AND WORD-COUNT LIMITATIONS

I, Matthew J. Greer, counsel for appellee and a member of the Bar of this Court, certify, under Vermont Rules of Appellate Procedure 32(a)(1)(D) and 32(a)(4)(A)(i), that the attached Brief of Appellee was prepared using Microsoft Word, is proportionally spaced, has a typeface of 13 points, and contains 8,189 words.

July 28, 2023

/s/ *Matthew J. Greer*
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