July 29, 2024

Holly R. Anderson
Clerk of the Commission
112 State Street
Montpelier, VT 05620-2701

Re: Proceeding to design the potential Clean Heat Standard
Case No. 23-2220 RULE, Reply Comments on Staff Straw Proposal issued on July 10, 2024.

Dear Ms. Anderson:

On behalf of the Vermont Fuel Dealers Association (VFDA), which represents the entities selling liquid energy in Vermont to provide heat and hot water, I submit the following in response to the Vermont Public Utility Commission's (PUC) request for comments regarding its Staff Straw Proposal issued on July 10, 2024, regarding credit fulfillment plans and criteria, non-compliance, and waiver process.

We have reached a critical moment in the design of the Clean Heat Standard, when those charged with designing this policy must determine whether to replicate existing regulatory structures that are familiar to utilities but entirely foreign to the deliverable heating fuels industry. As set forth in the comments below, the straw poll that implements the Clean Heat Standard mimics the existing structure for electric utilities under Tier 3 of the Renewable Energy Standard. Following this proposal could lead to the demise of the competitive marketplace that distributes an essential commodity to most Vermonters. There is a better path forward, which is based on a compliance program that is utilized by the Vermont Department of Taxes. The comments below outline the problems with the current and suggest changes to the PUC's Straw Proposal.

Fuel Dealers, Who Are Obligated Entities, Are Not Similar to Regulated Utilities.
As stated in previous filings, it is essential to distinguish between regulated utilities and the unregulated liquid fuels markets. Vermont utilities receive a guaranteed rate of return on their investment and a monopoly in exchange for a regulatory structure.

They recoup their capital expenses through this process. Act 18 (2023) does not offer a similar safety net or other protections for wholesalers, distributors, and retailers of heating fuel. The other crucial distinction is the ability of the State of Vermont to control the different energy markets and create monopolies through active supervision. The PUC has regulatory authority over where electrons are acquired and distributed, as well as whether an electric utility can be sold and who is allowed to purchase it. In return, the electric utilities have a state-sponsored monopoly. No such opportunity exists for sellers of liquid fuel, which exists in a highly competitive market. Furthermore, Vermont's regulated utilities have developed complex integrated resource plans to help create accurate measurements for demand management that can assist in meeting their respective obligations under Tier 3 of the Renewable Energy Standard. Such complex planning tools to project future demand are not reasonably available or too costly for many of the small "mom and pop" fuel dealers that may become obligated parties.

The goal of the Clean Heat Standard, as envisioned by the authors of Act 18 (2023), is to ensure the continuity of this competitive marketplace while providing incentives for market actors to sell energy and equipment that reduces greenhouse gas emissions in the thermal sector. In subjecting the liquid fuels market to the regulatory rubric currently in place for utilities, the straw proposal fails to support this goal and could cause irreparable harm to Vermonters.

How the Straw Proposal is Flawed

The straw proposal divides credit obligations into five "categories of credit." It suggests that obligated parties would have to estimate the number of credits they would need to acquire for each category and use a form to indicate the "*nature of the credits that the default delivery agent will be responsible to deliver on behalf of the obligated party.*" However, *"if the obligated party intends to obtain the required amount of clean heat credits, in whole or in part, through …delivery of clean heat measures…, then the obligated party's plan would be subject to Commission review."* The straw proposal further recommends that this form be completed on August 1 for gallons that will be sold in the following calendar year. For delivered clean heat measures, fuel dealers would have to "*attest*" that they have secured an "*adequate supply of eligible fuels through contracts.*"

In summary, the PUC is asking more than 200 entities these set of questions:
1) How many gallons of heating oil, kerosene, and propane do you intend to sell over the next 15 months?
2) How many of those gallons will be obligated?
3) How many credits will you acquire to account for your assumed obligation?

4) Which “category” do these credits reside?

When it comes to clean heat-eligible fuels, the straw proposal asks fuel dealers to agree to a contract for credits that covers 100% of the gallons they intend to sell. Meanwhile, the actual accounting for gallons sold will be reported nearly two years after the credit form is filed. *Under Act 42 of 2024, fuel distributors are required to report gallons sold on June 30 from the prior calendar year.*

All of this is likely to fail and could disrupt the efficient and cost-effective delivery network of an essential commodity. Here is why: Unlike utilities with fixed assets such as wires, poles, and pipes, the liquid fuels market is entirely mobile. Gallons enter Vermont by train or truck, and decisions on where to acquire this energy can change daily. If the price of energy that qualifies as a clean heat measure is available at a discount to traditional fuel, more of that product will enter the market. These decisions are not made 15 months in advance; they are made every day.[1] The flexibility in deciding how many gallons are purchased and where they are purchased is essential for these local businesses to remain viable in a competitive marketplace.

The legislature intended to create stability in the energy market. This straw proposal does the opposite. Retailers that are not obligated in 2026 may become obligated in 2027. A wholesaler that sells gallons in Vermont in 2026 could exit the market in 2027. Retailers could choose to file on August 1 that they intend to purchase 100% of their gallons in-state (thus avoiding obligation) only to change where and how they acquire their fuel in January. Such a long disconnect between reporting credit assumptions, registering gallons sold and credits obtained only increases instability and volatility in the energy and credit marketplace. These scenarios are not outliers; they are likely outcomes.

The straw proposal asks that an obligated party understand the “anticipated compliance cost” and demonstrate it has the “financial resources to pay.” The average retail heating fuel company in Vermont has just 12 employees and sells approximately 2.4 million gallons.[2] Some supporters of this policy frequently state incorrectly that the obligation of a Clean Heat Standard is a burden on the wholesale supplier of fossil fuels. This is false. The obligation rests with the entity that transports fuel into Vermont, which in many areas of Vermont means even the smallest retail providers

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[1] The exception is prebuy contracts, which represent a minority of fuel sales. Guaranteed price agreements are regulated by Title 9, Chapter 63, § 2461e, and require 75% of gallons sold to be acquired through a physical or paper contract.

[2] Source: Vermont Center for Rural Studies: vermontfuel.com/uvmstudy

will become obligated under a Clean Heat Standard. What metric will be used to determine if these "mom-and-pop" fuel companies have the "financial resources" to pay? How will the balance sheet of the largest fossil fuel corporation that provides heating fuel in Vermont[3] compare to the locally owned small family fuel providers? Both are competing in the same clean heat credit marketplace on an uneven playing field that benefits the largest conglomerates at the expense of Vermont-owned businesses. Adding insult to injury, the straw proposal also asks the obligated entity to predict what their anticipated compliance cost will be. Fuel retailers, both large and small, cannot accurately predict how many gallons they will sell any more than they can forecast the weather. Further complicating this wild guess is the fact that the vast majority of fuel retailers do not know 15 months in advance if all, some, or none of the gallons they purchase will be obligated. As a result, they have no idea how to predict their compliance costs 15 months in advance.

Further complicating the straw proposal are issues of confidentiality in the review process of compliance programs. The proposal indicates that compliance may require fuel dealers to attest to having an estimate of its compliance costs, financial resources, and contracts to ensure that their obligations will be met. Aside from the impossibility of meeting these requirements as set forth above, the requests may involve highly sensitive financial and market share information. Maintaining confidential treatment of such disclosures will be necessary to ensure against unfair competitive advantage that would otherwise occur with public disclosure. The PUC should also clarify that only the Department of Public Service would be considered an interested party for such review. Fuel dealers are concerned that allowing parties outside of the Department of Public Service would create a litigious, unwieldy, and expensive process that burdens an industry sector that will already be challenged to achieve compliance under a new regulatory regime.

The Need For Retroactive Compliance

As stated previously, the CHS credit structure requires fuel dealers to look into the future and make bold predictions that could be wildly inaccurate because most lack the resources and tools for sophisticated demand-side management. Moreover, when it comes to compliance, the straw proposal effectively subjects fuel dealers to crushing penalties if they fail to achieve these forward estimates. This could result in a broken market for an essential commodity that is needed by most Vermonters during the winter.

Consider this scenario: ABC Retailer files their "fillable form" with the PUC on August

[3] Vermont Gas Systems (VGS): https://puc.vermont.gov/natural-gas

1, 2026, attesting that all gallons sold in calendar year 2027 will be purchased inside the contiguous borders of Vermont, thus declaring that they are not an obligated party. This means that there are no clean heat fees to calculate or credits to acquire. Meanwhile, XYZ Wholesaler decides to sell gallons outside the state instead of delivering fuel into Vermont. This is not uncommon in the liquid fuels market due to demand variability and a dynamic supply chain. ABC Retailer will then have to purchase fuel outside of Vermont and become obligated retroactively. If ABC Fuel Company chooses to go outside of the state, these gallons will be reported on June 30, 2028, and a non-compliance payment will be due by October 15, 2028. More than 26 months after the "*fillable form*" with the "*nature of the credits*" is filed with the PUC, a non-compliance payment will be assessed according to the schedule outlined in the straw proposal. For some Vermont fuel providers, the 2X non-compliance fee for one winter could be more than the value of the company. When the bill comes due in October 2028, it is difficult to imagine how ABC Retailer will continue to operate. October is also when most propane, heating oil, and kerosene tanks are filled for the winter season. Vermonters who depend on them will be searching for a new provider, and revenue to fund the Clean Heat Standard will be lost when ABC Retailer shuts its doors under the weight of the non-compliance payment.

A Simple Solution

The compliance and payment structure, as envisioned by the straw proposal, will stifle program funding and disrupt a competitive marketplace for heating fuels. There is a much simpler way to stabilize and promote a competitive marketplace while incentivizing obligated parties to sell clean heat-eligible fuels and equipment. Instead of mirroring the Tier 3 program for electric utilities, the Clean Heat Standard should look to the existing Vermont Fuel Tax and create a future obligation to account for clean heat credits based upon retroactive sales.

It is important to note that the universe of entities that pay the Fuel Tax and those that could become obligated to pay the Clean Heat Compliance Fee are not the same. The 2-cent per gallon Vermont Fuel Tax is paid on every gallon of dyed diesel, heating oil, kerosene, and propane sold in Vermont, regardless of who the customer is or what it is used for. The last entity to deliver the gallon to the end user pays the tax. Meanwhile, the obligation under a Clean Heat Standard is on the entity delivering the fuel "in or into Vermont" for consumption. This includes the few remaining wholesale suppliers and nearly all heating fuel retailers. As stated previously, a majority of Vermont retailers purchase some or all of their gallons from out-of-state wholesalers due to geography and the competitive marketplace.

The stated goal of Act 18 is to encourage the current network of small family fuel dealers to sell more clean heat-eligible fuels and equipment. This accounting should be done after the heating season is over. If a registered fuel dealer can verify they have sold clean heat-eligible fuels and equipment that reduces greenhouse gas emissions, they should receive credit toward the previous year's obligation. Under this scenario, ABC Retailer would have up to one year to either pay the Clean Heat Credit Compliance Fee or demonstrate the delivery of clean heat measures or credits to satisfy the obligation. In June of the following year, the company could choose to submit receipts for all clean heat-eligible fuels and equipment installed the prior year in order to receive a credit on the previous year's obligation or pay the compliance payment to the default delivery agent. Businesses that sold more clean heat-eligible fuels and equipment to generate credits for sale under the clean heat standard would be more competitive in the marketplace, spurring both innovation and investment in clean energy products, services, and equipment.

This solution is a significant departure from the structure envisioned by the Straw Proposal. The PUC should look outside the box of the Tier 3 model and provide alternatives that are better equipped to deliver clean heat measures at the lowest possible cost to consumers while ensuring the stability of the marketplace that delivers an essential commodity. If we restrict ourselves to a regulatory structure designed for electric utilities, the competitive market for heating fuels and the financial well-being of Vermonters is in jeopardy. We ask the Public Utility Commission to consider all methods and manners for reducing greenhouse gas emissions in the design of a thermal energy policy and be untethered by the narrow path suggested by the Straw Proposal.

Thank you for your consideration,

Matt Cota
Meadow Hill