



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

Dear Ms. Anderson:

On behalf of the Vermont Fuel Dealer's Association (VFDA), I submit the following response to the Vermont Public Utility Commission's (PUC) request for comments on October 23, 2023, regarding information for the annual registration requirements. The PUC should not add additional registration requirements because it will create a significant burden on heating fuel businesses, whether or not they are obligated parties. In addition, it should treat market share data, such as the number of gallons purchased and from whom, as confidential trade secrets.

**I. The registration requirement places a significant burden on fuel heating businesses whether or not they are obligated parties.**

The clean heat standard requires obligated parties to obtain and retire clean heat credits each calendar year. 30 V.S.A. § 8124(a)(1). At the outset, it should be recognized that the universe of businesses required to register with the PUC is much broader and diverse than the population of obligated parties that will be required to obtain credits in order to comply with the clean heat standard.

Obligated parties are those businesses that import heating fuel for ultimate consumption within the State of Vermont. 30 V.S.A. § 8123(12). However, the annual registration requirement captures far more businesses. "Each entity that sells heating fuel into or in Vermont shall register annually with the Commissioner..." 30 V.S.A. 8124(b)(1). The registration requirement is not limited by those who import fuel for ultimate consumption. The reason for this overly broad approach is explained in the same statute. It states that "the commission shall use the information provided in the registration to determine whether the entity shall be considered an obligated party and the amount of its annual requirement." *Id.*

This expanded approach for registration makes good sense because the PUC will need to answer a number of complex questions to determine who is appropriately considered an “obligated party.”

These include, but are not limited to:

- How will the PUC determine whether heating oil, kerosene, or propane gallons sold by a wholesaler in Vermont are being utilized for eventual consumption in Vermont? For example, a Vermont wholesaler or retailer that sells heating fuel from a large bulk distribution facility or a small stationary pump will not know whether or not sales are eventually consumed in Vermont. It could be a mere throughput for interstate commerce or end sales in another state.
- How will the PUC determine where heating oil, kerosene, or propane gallons imported by a Vermont retailer from an out of state wholesaler are being utilized for eventual consumption? How will the PUC be able to determine the gallons imported to Vermont by a retail distributor but then sold out of state?

30 V.S.A. § 8124(b)(2) sets forth the minimum of data requirements that must be collected from the registering parties. These are: (1) legal name of the business; (2) its d/b/a (if applicable); (3) state and municipality where it is located; (4) types of heating fuel sold; (5) exact amount of gallons of each type of heating fuels sold into or in the State for final sale or consumption in the State; (5) for each type of heating fuel purchased, the name and location of the entity from which it was purchased.

These “minimum requirements” are already quite extensive. They will be considered burdensome for many Vermont businesses due to the fact these are not public utilities with experience interacting with the Public Utility Commission. Many are small “mom and pop” operations without sophisticated regulatory staff that may be needed for this type of regimen. VFDA does not believe additional information is required for the initial registration phase. Furthermore, VFDA strongly recommends that any additional requirements, if any, take into account the unique spectrum of businesses that will be subject to this new regulatory regime. Entities that are required to register include fuel distribution businesses of varied size, from one truck operators and small fuel stations with a single pump to large multi-state wholesalers and retailers. Most Registered entities will include businesses based outside of Vermont that transport and/or store liquid fuel in Vermont and are likely unaware of the January 31, 2024, registry deadline in statute. January is also the busiest month of the heating season. Ensuring Vermonter are safe and warm will be the priority for these businesses. The PUC should also consider the outreach necessary to ensure

compliance. There are likely to be more than two hundred registered entities, depending on how the PUC interprets who must file. The PUC needs to make sure that it creates a culture of compliance that is achievable by the variety of businesses that will be subject to this new regulatory environment. Creating an overly broad and complex set of data requirements for registration could adversely impact the policy objectives by discouraging businesses to participate or failing to obtain accurate data because the reporting requirements are unnecessarily complex.

## **II. The registration data should be kept confidential.**

VFDA strongly believes much of the data collected for registration be maintained as confidential and not subject to public disclosure. Such a limitation is consistent with existing public records law. Specifically, the amount of gallons sold into Vermont and the entity from which such gallons were purchased and sold constitute trade secrets and should be kept confidential from public disclosure.

It is well recognized that trade secret data should be treated as confidential and exempt from public disclosure. See 1 V.S.A. § 317(c)(9)(public records exemption for trade secrets); *Long v. City of Burlington*, 2018 VT 103, ¶s 1, 24 (trade secret exclusion includes private corporate information that gives the possessor a commercial advantage over others).

The PUC's recent decision in *In re: Comcast*, VT-PUC Case No. 23A-1181, 2023 WL 3534588 (Order May 12, 2023) provides a good illustration how the trade secret exclusion is applied. In this docket, Comcast sought to keep confidential the number of customers that subscribe to high-definition cable as a trade secret. The PUC agreed that this market share information should be kept confidential. It did so by recognizing that this is commercially sensitive information, not available to the public, and disclosure would provide Comcast's competitors with an unfair business advantage by giving insight into Comcast's business operations and finances.

Similarly, VFDA's members would be adversely impacted by public disclosure of the gallons it purchases and entity from which they were purchased. This information would reveal valuable market share information. Public disclosure would provide competitors insight into business operations and company finances. This could result in competitors trying to undermine financial investments to take away market share from fuel dealers if such publication occurred. The number of gallons purchased for

each type of heating fuel and the entity from which it is purchased is not publicly available now, nor should be in the future.

The PUC's decision is not an aberration. Courts across the country have recognized market share data as confidential trade secrets. See *Medidata Solutions, Inc. v. Veeva Sys. Inc.*, 2021 WL 467100, at 9 (S.D.N.Y. Feb. 9 2021)(market share data that is used to assess competitive positioning against rivals considered a trade secret); *Cooper Interconnect, Inc. v. Glennair, Inc.*, 2015 WL 13722129, at 3 (C.D.Cal. Feb. 3, 2015).

Therefore, VFDA strongly urges the PUC to issue a blanket order recognizing that the specific gallons purchased and identity from which it is purchased and sold be considered confidential. This information falls into long recognized exemption of keeping market share information confidential as a trade secret. In light of the voluminous number of businesses that will be subject to the broad registration requirement, the PUC should not require each party to make individualized filings requesting confidentiality orders for this registration. This would be unduly burdensome to the businesses that fall within the registration requirements as they typically have not been subject to PUC jurisdiction and often to not have general counsel like the utilities that the PUC regulates. In addition, a broad confidentiality directive would save the PUC from having to divert significant resources to address individualized confidentiality requests instead of focusing on the task of developing a regulatory scheme to implement the Clean Heat Act.

Sincerely,



Matt Cota

Meadow Hill, on behalf of the Vermont Fuel Dealers Association (VFDA)