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To: Senator Dick Sears, Chair

From: Laura Murphy, Assistant Attorney General and Director of the Environmental Protection Unit, prepared on behalf of Attorney General Clark, Attorney General's Office

Date: February 28, 2024

Re: S. 259 - An act relating to climate change cost recovery

In light of recent Committee discussion, the Attorney General's Office is pleased to convey its position on S.259 and, separately, to provide an update on the State's consumer protection case against Exxon and other fossil fuel companies.

The Attorney General supports the policy underlying S.259 and appreciates the Legislature's efforts to address the damaging impacts of climate change in our State. We also appreciate the thoughtful, thorough airing the Committee is giving to the bill, including hearing technical testimony about climate change attribution and damages quantification. While there is legal risk associated with the bill, we believe there are sound, good-faith arguments supporting its validity and we stand ready to defend it if it is challenged.

Regarding the State's consumer protection case, earlier this month the federal district court in Burlington granted our motion to return the case to state court. The Attorney General's Office filed the case in 2021 against Exxon Mobil, Shell, Sunoco, Citgo, and related entities in Chittenden Superior Court. The case was brought solely under Vermont's consumer protection law, 9 V.S.A. § 2453, and alleges that these companies sought to mislead Vermont consumers about the risks and dangers of their products—including the connection between their products and climate change—which denied Vermont consumers the opportunity to make informed decisions regarding the purchase of fossil fuel products. Defendants removed the case to Vermont federal district court and the State filed a motion to remand the case back to state court in November 2021, which was granted on February 6, 2024. The case can now proceed to the next stage of litigation in state court, where Defendants are scheduled to file motions to dismiss on April 8, 2024.

Our case seeks statutory civil penalties (based on a separate \$10,000 penalty for each violation), disgorgement of amounts the Defendants acquired or retained as a result of the unlawful acts and practices, injunctive relief to prohibit further deceptive acts and to rectify past deceptive conduct (e.g., through a required disclosure of the role of fossil fuels in climate change at points of sale in Vermont), and investigative and litigation costs and fees. The case does not bring any claims for environmental harm nor does it seek damages or other forms of relief for such harm.

For the Committee's convenience, we are attaching a copy of the State's Complaint and the Court's recent remand order. We would be happy to provide additional filings from the case at the Committee's request.