



Senator Ann Cummings
Chair of Senate Finance Committee

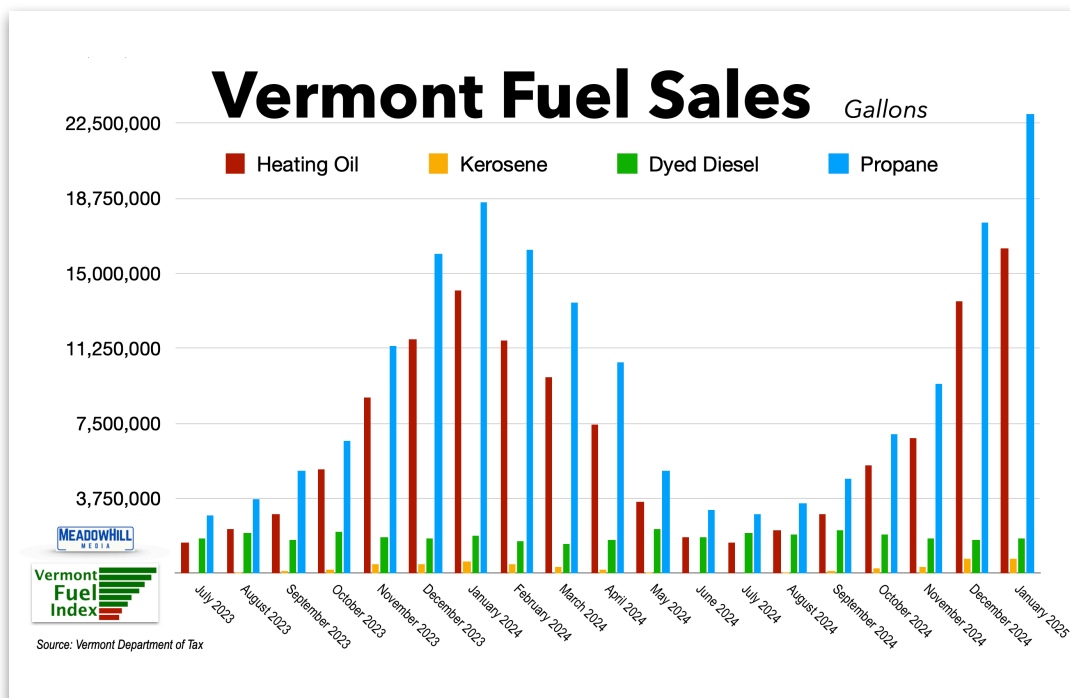
March 19, 2025

Senator Cummings and Members of the Senate Finance Committee:

On behalf of the Vermont Fuel Dealers Association, please see the attached legal filings and order issued by the Public Utility Commission regarding the confidentiality of information in the **existing** Fuel Dealer Registry as required by Act 18 of 2023.

We ask that the Senate Finance Committee honor these agreements going forward if a revised registry is included in the final version of S.65. The following amendments to S.65 would ensure these legal parameters remain in place while we work together to gather the most reliable data set for the sale and consumption of heating fuels.

As discussed in the Senate Natural Resources and Energy Committee, most data on heating fuel sales is already publicly available in aggregate through the Vermont Department of Tax.¹ It is also published on MeadowHillMedia.com and can be seen graphically below.



¹ The data can be found here: <https://legislature.vermont.gov/Documents/2026/Workgroups/Senate%20Natural%20Resources/Bills/S.65/Witness%20Testimony/S.65~Rebecca%20Sameroff~Fuel%20Tax%20Data~3-13-2025.pdf>

Although the state agencies possess aggregated fuel data, identifying the specific entities that supply heating fuels in Vermont, where they are located, the types of fuel sold, and other thermal energy services provided would be valuable. There are multiple approaches to obtaining this information and enhancing the data collection process outlined in the current version of S.65, as approved by the Senate Natural Resources and Energy Committee. The following amendments could facilitate this improvement:

Sec. 3. 30 V.S.A. § 35

~~§ 35. HEATING FUEL SELLER REGISTRY~~

~~1 (b) The Department shall require registration information to include legal
2 name; doing business as name, if applicable; municipality; state; types of
3 heating fuel sold; and the monthly retail sale of gallons of heating oil, propane,
4 kerosene, and other dyed diesel delivered in the State in the calendar year
5 immediately preceding the calendar year in which the entity is registering with
6 the Department, separated by type, that was purchased by the submitting entity
7 and the name and location of the entity from which it was purchased.~~

~~8 (c) Each year, and not later than 30 days following the annual registration
9 deadline, the Department shall share complete registration information of
10 registered entities with the Agency of Natural Resources for purposes of
11 updating the Vermont Greenhouse Gas Emissions Inventory and Forecast.~~

Sec. 6. REPORT; DELIVERY OF FOSSIL FUELS

15 On or before January 15, 2026, the Department of Public Service, after
16 consultation with the Vermont Fuel Dealers Association shall report to the
17 Senate Committee on Natural Resources and Energy and the House Committee
18 on Energy and Digital Infrastructure recommendations on the best way to
19 collect data on **the identity and location of businesses engaged in the bulk retail sale of
heating fuel** heating fuel sellers and heating fuel delivery on a town-by-town
20 basis, including the volume and, the **types of fossil heating fuel used** ~~used~~ **used**. The
21 collection of this data would be to support the enhance **enhanced** energy planning
1 conducted by regional planning commissions and municipalities pursuant to 24
2 V.S.A. § 4352

Thank you for your consideration.



Matt Cota

Meadow Hill

On behalf of the Vermont Fuel Dealers Association

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 23-2220-RULE

Proceeding to design the potential Clean Heat Standard	
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Order entered: 01/24/2024

ORDER GRANTING CONFIDENTIAL TREATMENT OF REGISTRATION INFORMATION

I. INTRODUCTION

Under Act 18, the Affordable Heat Act,¹ each entity that sells heating fuel into or in Vermont must register with the Vermont Public Utility Commission (“Commission”) annually.² The Commission has devised a registration form and online portal for collecting this information. The registration information is intended to allow the Commission to determine whether a registrant would be considered an obligated party under the Clean Heat Standard—an entity that is required to obtain or create clean heat credits—and, if the Clean Heat Standard is adopted, the amount of an obligated party’s annual clean heat credit requirement.

The content of the registration form and the publication of the registration information are prescribed by Act 18. First, the Commission must share the obligated parties’ information with the Vermont Agency of Natural Resources (“ANR”) and the Vermont Department of Public Service (“Department”) for purposes of updating the Vermont Greenhouse Gas Emissions Inventory and Forecast and meeting the requirements of 10 V.S.A. § 591(b)(3).³ Second, the Commission must maintain “a list of registered entities on its website that contains the required registration information.”⁴

Global Partners LP, the Vermont Fuel Dealers Association (“VFDA”), and Vermont Gas Systems, Inc. (“VGS”) allege that required registration information about suppliers, customers, and fuel purchased and sold should be kept confidential. Further, the VFDA contends that requiring each registering entity to apply individually for confidential treatment would be unduly

¹ Public Act 18 (2023 Vt., Bien. Sess.) (“Act 18”).

² See 30 V.S.A. § 8124(b).

³ 30 V.S.A. § 8124(b)(3).

⁴ 30 V.S.A. § 8124(b)(4).

burdensome and have requested that the Commission issue an order waiving public disclosure of volumetric information and the identities of supplier and client businesses.

On December 15, 2023, the Commission requested legal briefing on whether we have the legal authority to give confidential treatment of information gathered from entities that sell fuel into and in Vermont during registration as required by Act 18. Legal briefs were filed by the VFDA, VGS, ANR, and the Department.

In today's Order, we grant the request to treat the volumetric information and the identities of supplier and client businesses as confidential.

II. POSITIONS OF THE PARTIES

The VFDA and VGS, on behalf of registrants, argue that the Commission should protect volumetric information and the identities of supplier and client businesses as confidential. VGS argues that “competitively sensitive usage volumes associated with specific customers and other transactional details that are (1) generally kept secret, and (2) provide a business advantage to the owner are not generally subject to public inspection,” and, therefore, qualify under the “trade secrets” exemption to the Vermont Public Records Act.⁵ The VFDA also argues that the Commission should find that this information qualifies as a trade secret under 1 V.S.A. § 317(c)(9) and should protect it as confidential.

The Department argues that the Commission does not have the legal authority to issue a blanket order keeping the annual registration data confidential under the Public Records Act, both on the grounds that an exemption to the Public Records Act does not apply to the registration form and because application of the Public Records Act requires additional, case-specific information. ANR does not take a position on whether the information should be protected as confidential but highlights the necessity for sharing the data under Section 8124(b)(3) and states that ANR would abide by the terms of a protective order if the Commission deems the information confidential.

III. DISCUSSION

The Commission has been asked to hold as confidential the information filed on the registration forms that concerns volumetric information and the identities of supplier and client businesses. A determination regarding this request proceeds in three steps. First, we examine

⁵ *Brief of Vermont Gas Systems, Inc. Regarding Confidential Business Information* (1/8/24) at 1.

whether the portion of Act 18, codified in 30 V.S.A. § 8124(b), requires the publication of the entire contents of the registration form on the Commission’s website. Second, we evaluate whether designating the information as confidential is consistent with the Public Records Act. Finally, we explain how our determination affects the sharing of information with the Department and ANR.

A. Interpreting the Disclosure Requirements of 30 V.S.A. § 8124

The overarching objective of any “statutory interpretation is to construe and effectuate the legislative intent behind a statute.”⁶ The first step in any statutory analysis is to look to the plain meaning of the law.⁷ Only if the statute’s language is ambiguous do we go beyond the statutory language to “consider the statute’s subject matter, effects and consequences, as well as the reason for and spirit of the law” and, ultimately, to determine the legislative intent.⁸

Initially, the Commission must examine what information it is required to publish on its website from the registration forms filed by entities complying with 30 V.S.A. § 8124(b). We begin with the language of Section 8124(b)(4), which reads, “[t]he Commission shall maintain, and update annually, a list of registered entities on its website that contains the required registration information.” The statute requires posting a “list of registered entities” rather than the individual registration forms or the full contents of each entity’s registration form. The Legislature could have given a clear directive to post the entire contents of the registration forms or the forms directly but did not use that language. Instead, the emphasis in the statute is on publication of the list of registrants.

Additionally, the phrase “that contains the required registration information” modifies the Commission’s website and not the portion of the statute that refers to the information to be posted. One interpretation of this subsection is that the Commission is required to publish a list of registered entities on its website and that the Commission’s website is also required to contain a section that outlines the required registration information, not the individual registrant’s responses to the categories of required information. An alternative interpretation is that the

⁶ *State v. Hurley*, 2015 VT 46, ¶ 9, 198 Vt. 552, 117 A. 3d 433; see also *In re Programmatic Changes to Standard-Offer Program*, 2014 VT 29, ¶ 9, 196 Vt. 175, 95 A.3d 999 (“Our paramount goal in construing a statute is to give effect to the intent of the Legislature.” (quotation marks and citations omitted)).

⁷ See *Cornelius v. The Chronicle, Inc.*, 2019 VT 4, ¶ 18, 209 Vt. 405, 206 A.3d 710.

⁸ *Northfield Sch. Bd. v. Washington S. Educ. Ass’n*, 2019 VT 26, ¶ 13, 210 Vt. 15, 210 A.3d 460.

Commission must publish all the registration information for each registrant on its website. We therefore find the statutory language ambiguous.⁹

Because Section 8124(b)(4) is ambiguous, the Commission applies the rules of statutory interpretation to construe the statute. To the extent possible, statutes should be harmonized and not read as creating a conflict.¹⁰ Subchapter 3 of Title 1 of the Vermont Statutes Annotated establishes the Vermont Public Records Act. Section 315 states the policy underlying the Public Records Act:

It is the policy of this subchapter to provide for free and open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution. Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment. All people, however, have a right to privacy in their personal and economic pursuits, which ought to be protected unless specific information is needed to review the action of a governmental officer.

The Public Records Act strongly favors the disclosure of government records. However, under the Public Records Act, disclosure of government records is not without exception. Section 317 of the Public Records Act provides 43 exemptions to public disclosure of government records. In support of the request to designate as confidential volumetric information and the identities of supplier and client businesses, the VFDA and VGS have invoked the trade secrets exemption.

Section 8124 does not explicitly acknowledge any exception to publicizing the registration information. However, reading 30 V.S.A. § 8124(b) to require publication of the entire registration form contents would effectively override the exemptions outlined in 1 V.S.A. § 317 because an entity submitting this business information to the Commission would have no protection from disclosure. There is nothing in the language of Section 8124(b) that indicates a legislative intent to repeal potential public disclosure exemptions embodied in the Public

⁹ See *Shires Housing, Inc. v. Brown*, 2017 VT 60, ¶ 14, 205 Vt. 186, 172 A.3d 1215 (concluding that statute is ambiguous when it is “susceptible to more than one interpretation”).

¹⁰ See *In re Snyder Group, Inc.*, 2020 VT 15, ¶ 14, 212 Vt. 168, 233 A.3d 1077 (“When two statutes deal with the same subject matter and one is general and the other special, they must be read together and harmonized if possible to give effect to a consistent legislative policy.” (quotation and citation omitted)).

Records Act in the context of the Affordable Heat Act. Further, the Legislature includes language in the Public Records Act when it intends to avoid application of an exemption.¹¹

For these reasons, we decline to read Section 8124 as an abrogation of the Public Records Act exemptions. Instead, we interpret both statutes to be in harmony.¹² This understanding of Section 8124 is also harmonious with respect to the legislative intent behind the Public Records Act that balances disclosure with other individual rights: “All people, however, have a right to privacy in their personal and economic pursuits, which ought to be protected unless specific information is needed to review the action of a governmental officer.”¹³ The language of Section 8124 requires publication of the list of registrants but does not compel disclosure of the detailed registration information.

Based on the above analysis, we determine that the intent behind Section 8124(b)(4) is to have the Commission publish on its website a list of registered entities. The Commission will do so as soon as practicable after the registration deadline.

B. Vermont’s Public Records Act

A review of Section 8124 does not resolve the question of whether the information in the registration forms should be designated as confidential. To fully answer this question, the Commission must further analyze the requirements of and exemptions to the Public Records Act.

Generally, the Commission resolves disputes about information only when there is a disagreement about its confidential nature.¹⁴ However, even when the request is uncontested, the Commission will review the briefs and averments to ensure that the moving party or parties have presented a *prima facie* case for keeping the documents or information confidential. In

¹¹ See 1 V.S.A. § 317(c)(9) (“except that the disclosures required by 18 V.S.A. § 4632 are not exempt under this subdivision”); 1 V.S.A. § 317(c)(18) (“except as provided in 20 V.S.A. § 1923); 1 V.S.A. § 317(c)(20) (“except as provided in 22 V.S.A. § 761); 1 V.S.A. § 317(c)(29) (“The records in the custody of the Secretary of State of a participant in the Address Confidentiality Program described in 15 V.S.A. chapter 21, subchapter 3, except as provided in that subchapter.”); 1 V.S.A. § 317(c)(38) (“except that the records shall be made available upon request for medical research, consistent with and for purposes expressed in 18 V.S.A. § 4622 or 9410, 18 V.S.A. chapter 84 or 84A, and for other law enforcement activities”); 1 V.S.A. § 317(c)(41) (“except as provided by 13 V.S.A. §§ 5358a(b) and 7043(c)”); 1 V.S.A. § 317(c)(42) (“[e]xcept as otherwise provided by law”).

¹² See *State v. Joseph*, 2017 VT 52, ¶ 14, 205 Vt. 31, 171 A.3d 53 (concluding there was no repeal by implication where statutes could be harmonized).

¹³ 1 V.S.A. § 315(a).

¹⁴ *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC*, Docket No. 6545 (“*Entergy Docket*”), Order of 11/9/01 at 6; see also Docket No. 5983, Order of 11/26/97 at 3-4 and cases cited therein.

determining whether to protect allegedly confidential information pursuant to the Public Records Act, the Commission considers three issues:

- (1) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information which should be protected?
- (2) Would disclosure of such information cause a cognizable harm sufficient to warrant a protective order?
- (3) Has the party seeking protection shown “good cause” for invoking the Commission’s protection?¹⁵

We acknowledge that there are categories of registration information that no parties argue should be kept confidential. Thus, the Commission will not designate as confidential the following: the entity’s legal name; doing-business-as name, if applicable; municipality in which the entity is located; state in which the entity is located; primary contact person for the business and the contact information provided; and secondary contact person for the business and the contact information provided.¹⁶ The information at issue is: the information responsive to the questions regarding heating fuel overview; the heating fuel detail by type imported into Vermont; the heating fuel detail by type produced, refined, manufactured, or compounded for sale in Vermont; and the heating fuel detail by type sold.¹⁷

As mentioned above, the VFDA and VGS argue that this information is a trade secret, invoking an exemption to the Public Records Act.

1. Trade Secrets

Pursuant to 1 V.S.A. § 317(c)(9), trade secrets are exempt from public disclosure. “Trade secrets” are defined, in relevant part, as “confidential business records or information . . . which a commercial concern makes efforts that are reasonable under the circumstances to keep secret, and which gives its user or owner an opportunity to obtain business advantage over competitors who do not know it or use it.”¹⁸ We have treated data and other information that could be used

¹⁵ See *Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC 2022 Standard Definition & High Definition Channels annual report*, Case No. 23A-1181, Order of 5/12/23 at 2; Case No. 18-4258-SC, Order of 2/6/19 at 2; *Entergy Docket*, Order of 3/29/02 at 2.

¹⁶ This information is submitted in response to the questions in the following categories on the registration form: registering business information, primary contact, and secondary contact.

¹⁷ This information is submitted in response to the questions in the following categories on the registration form: heating fuel overview and for each type of heating fuel: heating fuel imported, heating fuel purchased in Vermont, and heating fuel sold in Vermont.

¹⁸ 1 V.S.A. § 317(c)(9).

to provide “competitors with insight into [a business’s] finances and operations in Vermont and allow competitors to tailor their marketing efforts to target [that business’s] customers” as a confidential trade secret.¹⁹

The VFDA and VGS maintain that the volume of heating fuels purchased, sold, stored, or consumed, and the identities of the registrant’s heating fuel suppliers are information that is not otherwise publicly available; that the protection of disclosure of volume data and the identity of fuel supplies is necessary to prevent unfair business advantages in a highly competitive marketplace; and that disclosure of this information would give competitors an unfair business advantage and cause harm to registering entities. As to customer or sales information, the VFDA argues that providing this granular market-share data would allow competitors to understand a company’s scope of operations, finances, and customer relationships to target those investments and take business in a highly competitive market without the typical marketing and research investments. Similarly, the VFDA asserts that supplier information is also sensitive because it reveals the scope of business operations and allows competitors to “identify fuel sellers as potential targets for market share within a geographic area based on knowledge about their ability to meet market demand.”²⁰ While supplier lists or the identity of alternate suppliers are not typically protected as a trade secret,²¹ when supplier information is paired with price or quantity of products purchased that can constitute a trade secret.²²

In evaluating the policy considerations underlying the choice between public disclosure and confidential protection, we give weight to the Vermont Supreme Court’s reliance in *Long* on the need to foster submission of the data requested by private entities for a regulatory program to have success.²³ Whether the private entity submits the information on its own accord—for example, to offer a bid for services to the state—or as part of a mandatory registration program is not the critical factor that the Court relied on in *Long*, as the Department suggests. Instead, the analysis falls on the overarching need to receive quality and fulsome information from private

¹⁹ See e.g., *Comcast*, Case No. 23A-1181, Order of 5/12/23 at 2.

²⁰ *VFDA’s Memorandum of Law in Support of Authority to Keep Volume and Supplier Information Confidential* (1/8/24) at 4-5.

²¹ See *Panther Systems II, Ltd. v. Panther Computer Systems, Inc.*, 783 F. Supp. 53, 70 (E.D.N.Y. 1991) (“In general, the identity of suppliers is not a trade secret entitled to protection since they can be readily learned in any productive industry.”); but see, e.g., *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1108 (9th Cir. 2001) (“The identify of a supplier can be a trade secret.”).

²² See *Sigma Chemical Co. v. Harris*, 794 F.2d 371 (8th Cir.1986) (vendor files containing supplier’s name and price and quantity of information regarding products purchased from vendor protected as a trade secret).

²³ *Long v. City of Burlington*, 2018 VT 103, ¶ 25, 208 Vt. 418, 199 A.3d 542.

entities when it will be held by a government entity that is subject to the Public Records Act. Like an entity deciding whether to file taxes—an obligatory government program—the entity might weigh risks and benefits to disclosure of certain information. Thus, in construing the exemptions to the Public Records Act at play here, we consider the need to collect accurate and complete information from fuel dealers to carry out the statutory requirements of the Affordable Heat Act.

Reviewing the briefs and applying the existing standard for the statutory trade-secrets exemption, we conclude that VFDA and VGS have made a *prima facie* showing that the information is commercially sensitive information that should be protected, that disclosure would cause a cognizable harm sufficient to warrant confidential treatment, and that there is good cause for protecting the information.

2. Tax Return

Additionally, the Public Records Act includes an exemption for tax returns as raised by the Department. Section 317(c)(6) provides such exemption for:

A tax return and related documents, correspondence, and certain types of substantiating forms that include the same type of information as in the tax return itself filed with or maintained by the Vermont Department of Taxes or submitted by a person to any public agency in connection with agency business.

This exemption to the Public Records Act was evaluated by the Vermont Superior Court in *Bell Atlantic* in the context of a telecommunications annual report filed pursuant to 30 V.S.A. § 22: “[A tax return is an] income-tax form on which a person or entity reports income, deductions, and exemptions, and on which tax liability is calculated.”²⁴

Under the Vermont Fuel Tax, a tax is imposed on the “retail sale of heating oil, propane, kerosene, and other dyed diesel fuel delivered in Vermont” and the “retail sale of natural gas and coal.”²⁵ Fuel dealers fill out monthly a fuel tax form that includes the volumetric data for the same fuels subject to Act 18.²⁶ However, the information submitted to the Commission does not originate from the tax return; it is business accounting information necessary to issue invoices

²⁴ *Bell Atl. Mobile Sys. of Allentown, Inc. v. Vt. Dept. of Pub. Serv.*, No. 629-11-17 Wncv, 2019 WL 13061514, at *3 (Vt. Super. Jan. 03, 2019) (citing Black's Law Dictionary 1475 (7th ed. 1999)).

²⁵ 33 V.S.A. § 2503(a).

²⁶ Vermont Form FGR-615, Fuel Tax and Petroleum Distributor Licensing Fee Tax Return, available at tax.vermont.gov/sites/tax/files/documents/FGR-615.pdf.

and perform accounting operations.²⁷ “[T]he tax return exemption does not broadly extend to all information that may appear in a tax return regardless of how the agency came to possess it.”²⁸

The fuel dealer registration form is not a tax return. It is not submitted to assess a tax and is not labeled a “tax return” in the statute or by the Commission. Although the Commission will obtain tax return information to verify the data it collects on the registration form, pursuant to Section 5(a) of Act 18, this does not convert the registration form into a tax return subject to the Public Records Act exemption.²⁹ Further, the data on the registration form go beyond the information collected for fuel dealers to submit the fuel tax form.

Thus, although the issue was raised by the Department as a potential consideration, we do not conclude that the registration form constitutes a tax return and, therefore, the form does not qualify for exemption from the Public Records Act on that basis.

C. Application of Our Confidentiality Determination to Section 8124(b)(3)

Recognizing that the volumetric supplier and customer information is confidential, we then turn to the provision in Section 8124 requiring the Commission to share the registration information with the Department and ANR. Section 8124(b)(3) of Title 30 of the Vermont Statutes Annotated requires that the Commission “share complete registration information of obligated parties with” ANR and the Department on an annual basis, not later than 30 days following the annual registration deadline.³⁰ Finally, because we designate the volumetric information regarding suppliers and customers as confidential, we will require that ANR and the Department enter into a protective agreement to permit the sharing of this information under the same confidential treatment. Otherwise, the Commission may elect to provide summary

²⁷ *Cf. Bell Atl.*, 2019 WL 13061514, at *3.

²⁸ *Bell Atl.*, 2019 WL 13061514, at *3.

²⁹ Section 5(a) specifically addresses the Tax Commissioner’s obligation to share information from the fuel tax form that is otherwise confidential under 32 V.S.A. § 3102. *See* 32 V.S.A. § 3102(h) (“If any provision of Vermont law authorizes or requires the Commissioner to divulge or make known in any manner any return or return information, the person or persons receiving such return or return information . . . shall be subject to the provisions of subsection (a) of this section as if such person were the agent of the Commissioner.”); *see also* 32 V.S.A. § 3102(b)(3) (“‘Return information’ includes a person’s name, address, date of birth, Social Security or federal identification number or any other identifying number; information as to whether or not a return was filed or required to be filed; the nature, source, or amount of a person’s income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liabilities, tax payments, deficiencies, or over-assessments; and any other data, from any source, furnished to or prepared or collected by the Department of Taxes with respect to any person.”).

³⁰ This year, the deadline for the Commission to share this information with ANR and the Department is March 1, 2024, 30 days after January 31, 2024.

information on obligated parties that is necessary to update the Vermont Greenhouse Gas Emissions Inventory and Forecast.

IV. CONCLUSION

We determine that the volumetric information and the identities of supplier and client businesses should be protected as confidential under 1 V.S.A. § 317(c)(9). We find the circumstances presented by our implementation of Section 8124 necessitate a blanket determination that the data provided will be handled confidentially, as we have done in other similar situations in the past.³¹ Although it is uncommon to deem information confidential under these circumstances, we find the briefing provided by the registrants' representatives sufficiently concrete to render our decision.

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Utility Commission ("Commission") of the State of Vermont that:

1. The information supplied on the Fuel Dealer Annual Registration form in response to the questions in the following categories on the registration form will be treated as confidential: heating fuel overview and for each type of heating fuel: heating fuel imported, heating fuel purchased in Vermont, and heating fuel sold in Vermont.

2. If any individual entity's registration information provided in response to the categories identified in paragraph 1 above is sought in this or other Commission proceedings, then the participant(s) seeking to rely on that information must file a motion for confidential treatment and an accompanying protective order for approval by the Commission.

3. The confidential treatment of the registration information provided for in this Order will expire five years from the date that the information is submitted on an annual registration form.

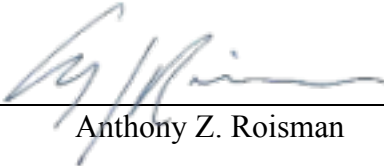
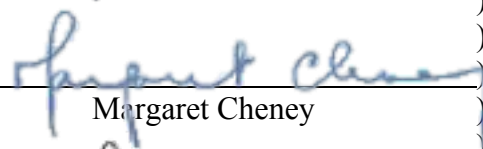
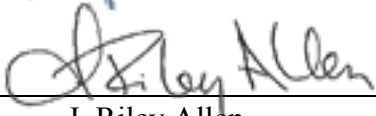
4. In any future matter, the burden of establishing that the confidential treatment of this information is warranted is on the party seeking to avoid disclosure.

5. The Vermont Department of Public Service ("Department") and the Vermont Agency of Natural Resources ("ANR") are requested to execute and submit for the Commission's approval a protective agreement to facilitate the sharing of information between the Commission

³¹ See *Comcast*, Case No. 23A-1181, Order of 5/12/23.

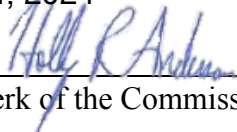
and the Department and ANR, pursuant to 30 V.S.A. § 8124(b)(3). The motion and accompanying protective agreement must be filed into this case no later than February 15, 2024.

Dated at Montpelier, Vermont, this 24th day of January, 2024.

 _____))	PUBLIC UTILITY COMMISSION OF VERMONT
Anthony Z. Roisman)	
_____))	
 _____))	PUBLIC UTILITY COMMISSION OF VERMONT
Margaret Cheney)	
_____))	
 _____))	PUBLIC UTILITY COMMISSION OF VERMONT
J. Riley Allen)	

OFFICE OF THE CLERK

Filed: January 24, 2024

Attest: 

Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Case No. 23-2220-RULE

Proceeding to design the potential Clean Heat Standard	
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PROTECTIVE AGREEMENT

THIS AGREEMENT is dated as of March 14, 2024, and is by and between the Vermont Department of Public Service (“Department”) and the Vermont Agency of Natural Resources (“ANR”), the names of which are set forth on the motion and signature pages to this Agreement (Department and ANR will sometimes be referred to herein, where the context requires, as an “Agency” and collectively as the “Agencies”).

WHEREAS, Act 18 of 2023, codified in Title 30, Chapter 94 of the Vermont Statutes Annotated, requires each entity that sells heating fuel into and in Vermont to register annually with the Vermont Public Utility Commission (“Commission”).

WHEREAS, 30 V.S.A. § 8124(b)(3) requires the Commission to “share complete registration information of obligated parties” with the Agencies on an annual basis, not later than 30 days following the annual registration deadline, “for purposes of updating the Vermont Greenhouse Gas Emissions Inventory and Forecast and meeting the requirements of 10 V.S.A. §591(b)(3).”

WHEREAS, the Vermont Fuel Dealers Association (“VFDA”), Global Partners LP, and Vermont Gas Systems, Inc. (“VGS”), on behalf of registrants, requested that the Commission protect information about suppliers, customers, and fuel purchased as confidential trade secrets.

WHEREAS, on January 24, 2024, the Commission issued an Order granting confidential treatment of the following registration information: (1) volumetric information and (2) the

identities of supplier and client businesses (which information is referred to herein as “Designated Confidential Information”).¹

WHEREAS, the Commission’s Order requested the Agencies “to execute and submit for the Commission’s approval a protective agreement to facilitate the sharing of information between the Commission and the Department and ANR, pursuant to 30 V.S.A. §8124(b)(3).”²

WHEREAS, the Agencies have developed the procedures established in this Agreement for the disclosure of Designated Confidential Information to the Agencies and the provisions for holding such Designated Confidential Information in confidence;

NOW, THEREFORE, the Agencies agree to procedures as follows:

1. This Agreement applies only to registration information that the Commission has ordered to be treated as confidential in its January 24, 2024, Order.

2. The scope of Designated Confidential Information protected under this Agreement is defined by the January 24, 2024, Order, and can only be amended by Order of the Commission. Any Agency or other person seeking to designate additional information as confidential may file a motion with the Commission for an amendment, modification, or addition to the Order adopting this Agreement. The burden of establishing that the confidential treatment of this information is warranted is on the entity seeking to prevent disclosure.

¹ *Order granting confidential treatment of registration information*, Case No. 23-2220-RULE, Order of 1/24/24, at 10.

² *Id.*

3. No Agency that has executed this Agreement, no person representing such Agency, no employee, agent, consultant or contractor of such Agency, that is afforded access to the Designated Confidential Information shall use the Designated Confidential Information for any purpose other than the purposes described in Title 30, Chapter 94 of the Vermont Statutes Annotated.³ Each such Agency, and each representative person, agent, or expert of the Agency, shall keep the Designated Confidential Information secure and shall not disclose it or afford access to it to any person not authorized by this Agreement to receive same.

4. Each Agency may afford access to the Designated Confidential Information to their agent, employees, contractors, consultants, and other representatives for the purposes described in Title 30, Chapter 94 of the Vermont Statutes Annotated. The Agencies' employees shall protect the confidentiality of Designated Confidential Information. The Agencies shall direct any contractors, consultants, and other representatives to execute an agreement with the Agencies to protect the confidentiality of Designated Confidential Information before it is shared with them and to return Designated Confidential Information at the expiration of their contract with the Agencies.

5. The Agencies' agent, employees, consultants, contractors, and representatives who have agreed in writing to be bound by this Agreement, may take notes regarding such Designated Confidential Information, but only as necessary for the purposes described in Title 30, Chapter

³ Vt. Stat. Ann. tit. 30, § 8124(b)(3), "Each year, and not later than 30 days following the annual registration deadline established by the Commission, the Commission shall share complete registration information of obligated parties with the Agency of Natural Resources and the Department of Public Service for purposes of updating the Vermont Greenhouse Gas Emissions Inventory and Forecast and meeting the requirements of 10 V.S.A. § 591(b)(3).

94 of the Vermont Statutes Annotated. Such notes shall be treated the same as the Designated Confidential Information from which the notes were taken and shall not be used for any purpose other than as specified herein.

6. Should the Agencies receive any request to disclose Designated Confidential Information pursuant to this Agreement under the Vermont Public Records Law, the Agencies agree to assert the exemption contained within 1 V.S.A. § 317(c)(1) to prevent disclosure of records “that by law are designated confidential or by a similar term.” The basis for this exemption to public records request disclosure will be the Commission’s Protective Order issued in accordance with this Agreement.⁴ Assertion of any other exemptions shall be at the discretion of the Agencies.

7. Should the Agencies receive a subpoena for Designated Confidential Information, the Agencies promptly shall notify the Commission and the registrants of the pendency of such subpoena by filing a notice in the above-referenced proceeding. If the registrants provide contact information to the Commission, and the Commission shares that contact information with the Agencies, then the Agencies will use that contact information to provide direct notice to registrants of the pendency of a subpoena, in addition to filing a notice in the above-referenced proceeding. In response to a subpoena, the Agencies will produce the documents or information within the timeframe prescribed by the subpoena or applicable state law unless a registrant, or their representative files an objection to the production of the documents or information with the court or Commission. If an objection is made, the Agencies will withhold production of the documents or information, unless otherwise directed pursuant to an order of the court or Commission. Nothing in this Agreement shall limit or waive any rights that a registrant may have under applicable law to seek protection against disclosure pursuant to a subpoena.

8. The Commission's January 24, 2024, Order determined that "[t]he confidential treatment of the registration information provided for in this Order will expire five years from the date that the information is submitted on an annual registration form."⁵ Accordingly, this Agreement shall cover Designated Confidential Information for a period of five years from the date it is submitted to the Commission in an annual registration form.

9. No signing Agency hereto may assign to any third Agency its rights or obligations hereunder, and any such assignment by any signing Agency of the rights and obligations hereunder shall be null and void.

10. An individual's access to Designated Confidential Information ceases upon termination of employment with an Agency. Any employee of an Agency, who has access to Designated Confidential Information, shall continue to be bound by the terms of this agreement after termination of employment.

11. This Agreement is made under and shall be governed by the laws of the State of Vermont.

12. This Agreement shall in no way be deemed to constitute any waiver of rights of an Agency not governed by this agreement. The foregoing provisions of this Agreement notwithstanding, any Agency may at any time, to the full extent allowable by applicable law, contest any assertion or appeal any finding that specific information is or should be Designated Confidential Information or that it should or should not be subject to the protective requirements of this Agreement.

⁵ 1/24/24 Commission Order, at 10.

13. Each Agency warrants that it will act in good faith and will not do anything to deprive any other Agency of the benefit of this Agreement.

14. The Agencies have entered into this Agreement to fulfill the Commission's Order to maintain the confidentiality of the Designated Confidential Information. Entry into this Agreement shall not be construed as an admission by any Agency regarding the scope of the Agency's statutory right to information, nor shall it be construed as a waiver of the right to raise any and all appropriate confidentiality issues in future cases.

Dated this March 22, 2024.

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STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 23-2220-RULE

Proceeding to design the potential Clean Heat Standard	
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**VFDA'S MEMORANDUM OF LAW IN SUPPORT OF
AUTHORITY TO KEEP VOLUME AND SUPPLIER INFORMATION CONFIDENTIAL**

The Public Utility Commission (“PUC” or “Commission”) has the authority to keep confidential the volume of heating fuels purchased and sold and the identities of suppliers. Such information is exempt from public disclosure as a trade secret under the Vermont Public Records Act. Confidentiality should be maintained because it is necessary to prevent an unfair business advantage in the highly competitive market for heating fuel. Furthermore, the Clean Heat Act does not compel publication of this sensitive trade secret information.

I. Background.

The Clean Heat Act requires the annual registration of every entity that sells heating fuel into or in Vermont. 30 V.S.A. § 8124(b)(1). The Clean Heat Act requires registrants to provide data necessary to establish the “annual requirements under the [clean heat standard].” *Id.* The PUC issued an Order Addressing Annual Registration on December 15, 2023, which identifies the types of information that will be collected as part of the registration in process. In general, sellers will need to provide the following:

- Identity and contact information for the seller;
- Types of heating fuel sold;
- Identity of the supplier and the amount of each fuel purchased from the respective supplier;

- Exact amount of gallons of each heating fuel sold in Vermont;
- Exact amount of heating fuel consumed or stored (if not sold); and
- Exact amount of fuel type sold to another business (if not sold directly to consumers).

In determining whether to keep information confidential and prevent public disclosure, the PUC historically considers three different issues:

1. Is the matter sought to be protected a trade secret or other confidential information that should be protected;
2. Would disclosure cause cognizable harm to warrant a protective order; and
3. Is there good cause to invoke the PUC's protection?

In re: Comcast, VT-PUC Case No. 23A-1181, 2023 WL 3534588 (Order May 12, 2023); *In re: Vermont Electric Cooperative, Inc.*, VT-PUC Case No. 18-4258-SC, 2019 WL 568362 (Order Feb. 6, 2019).

Applying this analytical framework, the PUC should keep confidential the volume of fuel purchased, sold, stored, or consumed and the identity of suppliers. This information is not otherwise publicly available, and disclosure would create an unfair business advantage in a highly competitive market. Furthermore, the legislature did not compel disclosure under the Clean Heat Act.

II. Analysis.

A. The volume and supplier data are trade secrets that should be kept confidential to prevent cognizable harm.

The PUC looks to the Vermont Public Records Act, 1 V.S.A. 315 *et seq.*, in determining whether documents are confidential information and should be protected. *In re: Comcast*,

2023 WL 3534588; *In re: Vermont Electric Cooperative, Inc.*, 2019 WL 568362. Without limitation, trade secrets are exempt from disclosure under the Public Records Act. *Id.*; 1 V.S.A. 317(c)(9).

A trade secret includes private business information that gives the possessor a commercial advantage over others. *Long v. City of Burlington*, 2018 VT 103, ¶ 24. The PUC's recent decision in *In re: Comcast*, 2023 WL 3534588, provides a good illustration of how the trade secret exclusion is applied. In *Comcast*, the cable provider sought to keep confidential the number of customers that subscribe to its high-definition cable product 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.

The PUC's analysis in *Comcast* to keep market share data 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).

The amount of heating fuel purchased, sold, stored, or consumed should be protected as a trade secret. Such information reveals sensitive market share data, and public disclosure would create an unfair business advantage for competitors. The sensitivity of this

information is indicated by the fact that fuel sellers do not publicly disclose the granular volume data requested by the PUC. It is kept private and this information is not otherwise publicly available.

Furthermore, public revelations of volume data will likely cause cognizable harm by creating an unfair business advantage. Unlike fully regulated utilities, the heating fuel business is highly competitive. There may be several sellers of heating oil, propane, and kerosene available to consumers in any geographic area. Public disclosure of volume data reveals sensitive information where competitors can deduce market share, the scope of operations, and company finances from the number of gallons purchased, stored, or sold by competitors. With this information, competitors can undermine financial investments by targeting companies based on knowledge of their market share resulting in a loss of business.

In addition, the identity of suppliers should be kept confidential as a protected trade secret. Fuel sellers keep the identities of their suppliers confidential. Maintaining the confidentiality of suppliers is also needed to protect economic investments and prevent unfair business advantages in a highly competitive marketplace. Similar to concerns about volume data, fuel sellers may not want competitors to know the identities of their suppliers and the amount that is being sold or received from them. This is sensitive data that reveals the scope of a businesses' operations. If made public, Competitors will be able to identify fuel sellers as potential targets for market share within a geographic area based on knowledge about their ability to meet market demand with the identity and amount of

their source of fuel supply. This action has the potential to undermine financial investments and business relationships built up over generations.

It is noted that a number of courts across the country have recognized the confidential supplier data are trade secrets. *See Citizens of Humanity, LLC, v. Costco Wholesale Corp.*, 171 Cal.App.4th 1, 13-16 (Ca. Ct. App. 2009) (overturned on other matters); *Yeti by Molly, Ltd. V. Deckers Outdoor Corp.*, 259 F.3d 1101, 1108 (2001). *But see, Chemetall GMBH v. ZR Energy, Inc.*, 138 F.Supp.2d 1079, 1084 (N.D.Ill. 2001)(supplier not a trade secret because identity was already public information).

Public disclosure of heating fuel volumes and the identities of suppliers, as set forth above, will create unfair business advantage and harm to businesses in a highly competitive environment. Accordingly, there is good cause to keep this trade secret information confidential.

B. The Clean Heat Act does not require disclosure.

Neither 30 V.S.A. § 8124(b)(3) nor § 8124(b)(4) require disclosure of protected trade secrets including heating fuel volumes or supplier information. The objective of “...statutory interpretation is to construe and effectuate the legislative intent behind the statute.” *In Re: Mountain Top Inn & Resort*, 2020 VT 57, ¶ 27, 202 Vt. 554 (2020).’ In accomplishing this, our first step is to examine the statute’s language because ...the Legislature intended the plain, ordinary meaning of the statutory language.” *Id.* (citation omitted). ’Where there is ambiguity in a statute, we look to the general context of the

statutory language.” *Id.* (citation omitted). Public disclosure of heating fuel volumes and the identities of suppliers is not required when applying these cannons of statutory construction to each subsection.

30 V.S.A. § 8124(b)(3) states that the PUC “shall share complete registration information of obligated parties with the Agency of Natural Resources and the Department of Public Service for purposes of updating the Vermont Greenhouse Gas Emissions Inventory and Forecast and meeting the requirements of 10 V.S.A. § 591(b)(3).” The plain and ordinary meaning of this language does not require public disclosure. Information is to be shared with other government agencies to determine statewide greenhouse gas emissions and the pace and effectiveness of programs to reduce such emissions. Nothing about this process mandates public disclosure. Moreover, sharing information across state agencies does not otherwise create an exception to the exclusions of the Public Records Act. For example, state agencies such as the Department of Public Safety and the Agency of Human Resources share documents in furtherance of criminal investigations. This sharing does not otherwise obviate the public record exceptions related to criminal investigations under 1 V.S.A. § 317(c)(5). The PUC, along with the Agency of Natural Resources and the Department of Public Service, should equally protect the volume data and identities of suppliers as trade secrets from public disclosure pursuant to the Public Records Act.

30 V.S.A. § 2184(b)(4) provides that “[t]he Commission shall maintain, and update annually, a list of registered entities on its website that contains the required registration information.” There is nothing in the plain language or the greater legislative context that

requires disclosure of the volume and supplier data, which are otherwise exempt as trade secrets. The language merely requires the PUC to identify the types of information that are required for registration on its website, not the actual data itself.

The plain language states that the website will have the identities of the registered entities and the required registration information. There is nothing in the plain language that states that the answers to the required registration information be published. The plain language requires the PUC to publish what is required of heating fuel sellers to comply with registration. This interpretation is consistent with the greater legislative context to motivate regulatory compliance.

The Clean Heat Act intends to reduce thermal sector greenhouse gas emissions. *See*, Act 18, Section 3 (2023). Registration of heating fuel sellers is a key component to achieving the goals of this new statutory and regulatory scheme. *See* 30 V.S.A. § 8124(b). Publication of the types of required registration information is necessary for achieving regulatory compliance by heating fuel sellers. Otherwise, how would heating fuel sellers know what is required for registration? The details for registration are found in an Order published by the Commission in the e-PUC filing system. However, requiring heating fuel sellers to find an order issued by the PUC buried within the e-puc filing system is not an effective manner to achieve widespread compliance.

§ 8124(b)(4) addresses this problem by requiring the PUC to publish on its website the respective criteria. It is this context that makes the most logical reading of the statute.

Furthermore, if the legislature wanted seller-specific data, it could have expressed such clarity. It chose not to.

III. Conclusion.

For the reasons set forth above, the PUC should protect heating fuel volume data and the identity of the suppliers as confidential trade secrets exempt from public disclosure under the Public Records Act. Act 18 of 2023 does not require a different outcome.

Dated at Burlington, Vermont this 8th day of January 2024.

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