STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

DE 20- 124

THE VANGUARD GROUP, INC.

Request for Limited Exemption from Approval Requirements of RSA 374:33

PROPOSED ORDER GRANTING DECLARATORY RULING

In this Order, the Commission issues the following rulings: (1) the Commission grants the request for a declaratory ruling by The Vanguard Group, Inc. ("Vanguard") on behalf of its Vanguard Advised Funds[1] (together Vanguard and Vanguard Advised Funds are "Petitioners") that Petitioners are not entities subject to the approval requirements of N.H. Rev. Stat. § 374:33; and (2) in light of such declaratory ruling, the Commission deems the Petitioners' separate request for an RSA 374:33 public interest finding to be moot.

I. PROCEDURAL HISTORY

Vanguard is an investment management company wholly and jointly owned by 34 investment companies that offer, in the aggregate, more than 200 distinct mutual funds (the "Vanguard Mutual Funds") to investors on whose behalf Vanguard makes investments exclusively for investment purposes." The Vanguard Advised Funds in turn invest in shares of multiple publicly traded companies that, from time to time, may include ownership of shares that directly or indirectly own public utilities in the State of New Hampshire. In some instances, one or more of such funds may individually or in the aggregate be deemed to own more than 10 percent of the ownership interests in such New Hampshire utilities or their affiliates. For this reason, on July 31, 2020, Petitioners filed a Request for a Limited Exemption from RSA § 374:33 (the "Request"), which limits the ability of a public utility or public utility holding company to directly or indirectly acquire more than 10 percent of any New Hampshire public utility or public utility holding company doing business in the state. The Request asked the Commission to grant Petitioners a limited exemption from the approval requirements in RSA § 374:33 so long as the total holdings of all Vanguard Advised Funds did not exceed 25 percent ownership or exceed 10 percent ownership by any individual Vanguard Advised Fund. (The Request at 2-3.)

On November 2, 2020, the Petitioners filed an amendment to the initial Request (the "Amended Request") that included a request for two alternate forms of relief: (1) a declaratory ruling that the Petitioners are not entities subject to the approval requirements of RSA 374:33; or (2) a finding that Petitioners' acquisition of interests in New Hampshire public utilities and their parent companies is in the "public interest" as required by RSA 374:33, so long as the total

[1] "Vanguard Advised Funds" refers to Vanguard's *internally* managed investment funds as well as internally managed portions of those Vanguard funds that are otherwise externally managed. Vanguard Advised Funds excludes Vanguard funds that are entirely managed *externally* (or the portions of which are managed externally) by independent external advisors, who hold independent voting power and investment discretion over the assets managed by those independent advisors. Vanguard Advised Funds and Vanguard funds that are externally managed are collectively referred to as "Vanguard Mutual Funds."

holdings in aggregate of all of the Vanguard Advised Funds do not exceed 25 percent ownership or exceed 10 percent ownership by any individual Vanguard Fund. (Amended Request at 6-7.) In the Amended Request, Petitioners also assert that the Commission should not aggregate the individual fund interests for the purpose of determining whether the investment thresholds of 374:33 are triggered. *Id.* at 5

On February 10, 2021, the Commission held a technical session to discuss preliminary issues relevant to the proceeding. Following the technical session, the parties participated in discovery, including the issuance of data requests.

On April 8, 2021, Commission staff filed their Recommended Decision granting the Amended Request for a declaratory ruling that Petitioners are not entities subject to the approval requirements of RSA 374:33 and deeming the request for an RSA 374:33 public interest finding moot in light of the declaratory ruling.

On April 14, 2021, the Commission held a remote evidentiary hearing on Petitioner's Amended Request. At the hearing, Vanguard stipulated to Staff's proposed resolution of the case and introduced into the evidentiary record several facts that support the Declaratory Ruling.

II. POSITION OF PARTIES AND RECOMMENDATION OF STAFF

A. Vanguard

Petitioners explained in the Request and subsequent Amended Request that Vanguard is an investment management company offering more than 200 distinct mutual funds, each of which is separately and independently managed. Vanguard stated that it is owned by its fund shareholders, on whose behalf it makes investments exclusively for investment purposes. In Petitioner's Request and through its answers to subsequent data requests, Vanguard explained that as of December 31, 2020, 63 of the Vanguard Mutual Funds (as defined in footnote 1) held small interests in Eversource Energy, a publicly traded public utility with operations in the State of New Hampshire, with each individual Vanguard Mutual Fund holding less than 3 percent of such interests. However, when the ownership interests in Eversource Energy held by those 63 individual Vanguard Mutual Funds are aggregated, the total ownership interest in Eversource Energy totaled 11.94 percent. Vanguard advises, but holds no ownership interest in, the individual Vanguard Mutual Funds, including those comprising the Vanguard Advised Funds. Vanguard further noted that investments in Vanguard Mutual Funds, including Vanguard Advised Funds, are not operated for the purpose of managing, controlling, or entering into business transactions with companies within its respective investment portfolios, including publicly traded parent companies of any New Hampshire public utilities.

Therefore, Petitioners requested that, for purposes of determining whether any of the individual Vanguard Advised Funds exceed the 10% threshold of ownership of any New Hampshire utility under N.H. Rev. Stat. § 374:33, the holdings of each such individual fund should not be aggregated together.

B. Staff

On April 8, 2020, a Recommended Decision granting Petitioners' Amended Request was prepared and submitted by staff of the New Hampshire Public Utilities Commission. Subsequently, due to a reorganization of the Commission, the individual staff members of the Commission became employees of the New Hampshire Department of Energy. The Department of Energy continues to support the Recommended Decision.

C. Office of the Consumer Advocate

The Office of the Consumer Advocate took no position on Vanguard's Amended Request.

III. COMMISSION ANALYSIS

A. Vanguard Management Structure

The Vanguard Group, Inc. is an investment management company wholly and jointly owned by 34 investment companies that offer, in the aggregate, more than 200 separate low-cost United States-registered mutual funds and exchange traded shares ("ETFs"). Vanguard also offers investment advice and related services. From its start over forty years ago, Vanguard has been structured as a client-owned mutual fund company with no outside owners seeking profits. In this structure, which remains unique in the mutual fund industry, fund shareholders own the individual mutual funds, including the Vanguard Advised Funds, which in turn own Vanguard. A more detailed description of Vanguard and its subsidiaries was provided to the Commission in Exhibit A to the July 31, 2020 Request. As Exhibit A demonstrates, the Vanguard Mutual Funds make investments on behalf of fund investors exclusively for investment purposes. Investments are not made for purposes of managing, controlling or entering into business transactions with portfolio companies, including the publicly-traded parent company of any New Hampshire public utilities

B. Provisions of Law

RSA 374:33 provides:

> No public utility or public utility holding company as defined in section 2(a)(7)(A) of the Public Utility Holding Company Act of 1935 shall directly or indirectly acquire more than 10 percent, or more than the ownership level which triggers reporting requirements under 15 U.S.C. section 78-P,1whichever is less, of the stocks or bonds of any other public utility or public utility holding company incorporated in or doing business in this state, unless the commission finds that such acquisition is lawful, proper, and in the public interest.

"Public utility" is defined by RSA 362:2 which provides, in pertinent part:

> The term "public utility" shall include every corporation, company, association,

> joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court… owning, operating or managing any plant or equipment or any part of the same for the conveyance of telephone or telegraph messages or for the manufacture or furnishing of light, heat, sewage disposal, power or water for the public, or in the generation, transmission or sale of electricity ultimately sold to the public[.]

Section 2(a)(7)(A) of the Public Utility Holding Company Act of 1935 (PUHCA 1935) defines "holding company" as:

> any company which directly or indirectly owns, controls, or holds with power to vote, 10 per centum or more of the outstanding voting securities of a public-utility company or of a company which is a holding company by virtue of this clause or clause (B) of this paragraph, unless the Commission, as hereinafter provided, by order declares such company not to be a holding company.

15 U.S.C.A. § 79b (effective August 26, 1935, through February 7, 2006)

C. Analysis

In evaluating whether Petitioners are subject to Commission oversight under RSA 374:33, the Commission must determine: (1) whether Petitioners are a "public utility" under RSA 362:2; and (2) whether Petitioners are a "public utility holding company" under the Act. With respect to the definition of "public utility holding company" under the Act, the statute refers to section 2(a)(7)(A) of the Public Utility Holding Company Act of 1935, which definition has since been repealed.[2]

Although Petitioners are from time to time in possession of equity shares of public utilities or public utility holding companies incorporated in or doing business in New Hampshire, they do not directly own, operate, or manage plant or equipment "for the manufacture or furnishing of light, heat, sewage disposal, power or water for the public, or in the generation, transmission or sale of electricity ultimately sold to the public." Therefore, Petitioners are not public utilities within RSA 362:2.

Whether Petitioners should be considered a "public utility holding company" within Section 2(a)(7)(A) of PUHCA 1935 turns on the relationship between Vanguard and the mutual funds it advises. In relation to this docket, Vanguard provided the Commission an organizational chart illustrating the relationship between Vanguard and the Vanguard Advised Funds. In particular, this chart illustrates that Vanguard is owned collectively by the individual funds it advises. Vanguard does not possess an ownership interest in any of the individual funds

[2] The definition of "holding company" in PUHCA 1935 was repealed and replaced by the Public Utility Holding Company Act of 2005. However, when a state law incorporates a federal law by reference, the non-delegation doctrine generally prescribes that the referenced federal provision remains as it existed at the time of the state statute's passage. See, F. Scott Boyd, Looking Glass Law: Legislation by Reference in the States, 68 La. L. Rev. 1201, 1251 (2008) Available at: https://digitalcommons.law.lsu.edu/lalrev/vol68/iss4/7. As a result, we apply the definition of "holding company" under PUCHA 1935 as it existed at the time RSA §374:33 was adopted.

comprising the Vanguard Advised Funds, nor is there a single entity, corporation, or company that has a common ownership stake in the individual funds. Vanguard provides advisory services to each individual fund, but does not actually own such funds.

Although Vanguard's advisory relationship with regard to the Vanguard Advised Funds does not rise to the level of an ownership interest in such funds, Commission staff raised the additional question as to whether Vanguard nonetheless "controls" such funds in a the manner that would fall within the broad definition of "public utility holding company" under the Public Utility Holding Company Act of 1935. To this point, Petitioners assert that the Vanguard Advised Funds do not make investments "for the purposes of managing, controlling or entering into business transactions with portfolio companies, including the publicly traded parent company of any New Hampshire public utilities." (Amended Petition at 5.) As a result, Petitioners further assert that Vanguard does not "control" such funds within the meaning of PUHCA 1935.

However, the Commission need not reach a conclusion on whether Vanguard should be considered a "holding company" because RSA 374:33 focuses only on the *acquisition and ownership* of 10 percent or more of the stocks or bonds of any other public utility or public utility holding company incorporated in or doing business in this state. In this regard, even if Vanguard were a holding company under PUHCA 1935, RSA 374:33's focus on ownership rather than control does not permit aggregation of the interests of the individual Vanguard Advised Funds for the purpose of determining whether Vanguard and the Vanguard Advised Funds have reached the 10 percent threshold of ownership in New Hampshire public utilities.[3]

Turning to the specific instance whereby, as of December 31, 2020, 63 of the Vanguard Mutual Funds collectively owned more than ten percent of the ownership interests of Eversource Energy but no individual fund owned as much as three percent of Eversource Energy, we do not find such ownership interests trigger Commission's RSA 374:33 authority. For the reasons noted above, there is no common ownership in such individual Vanguard Mutual Funds by Vanguard or any other entity, nor does Vanguard's provision of advisory services constitute an ownership interest that would justify aggregating the collective ownership interests in Eversource Energy held by individual Vanguard Mutual Funds, or Vanguard Advised Funds in particular.

Based upon the foregoing, it is hereby

ORDERED AND DECLARED, that the Commission grants Petitioners' request for a declaratory ruling that Petitioners are not entities subject to the approval requirements of RSA 374:33 and that Vanguard's interests in New Hampshire public utilities held at the individual fund level within the Vanguard Advised Funds should not be aggregated across such funds for the purposes of determining whether Vanguard has reached the 10 percent threshold set forth in RSA 374:33.

[3] In some jurisdictions, such as Maine, acquisition statutes include control-based relationships, in addition to ownership, and may permit aggregation of interest for the purposes of the acquisition statute under the circumstances described in the Petition. See, 35-A M.R.S. § 708.

FURTHER ORDERED, that the Request for an RSA 374:33 public interest finding is moot in light of the foregoing declaratory ruling.

By order of the Public Utilities Commission of New Hampshire this _____ day of _____, 20___.

_____	_____
Daniel C. Goldner	Pradip K. Chattopadhyay
Chairman	Commissioner