STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

THE VANGUARD GROUP, INC.
Request for Declaratory Order or
"Public Interest" Finding with Respect to
N.H. Rev. Stat. § 374:33

AMENDED
PETITION

Docket No. DE-20-124

The Vanguard Group, Inc., ("VGI"), on behalf of its Vanguard Advised Funds[1] (together VGI and Vanguard Advised Funds are "Petitioners") hereby amends its Petition filed with Commission on July 31, 2020, to seek different relief than that requested in the July 31, 2020 Petition.[2] Through this Amended Petition, Petitioners respectfully request that the Commission issue either (1) a declaratory order that Petitioners are not public utility holding companies as referenced in N.H. Rev. Stat. § 374:33 and the federal Public Utility Holding Company Act of 1935, or (2) an order concluding that Petitioner's acquisitions of interests in New Hampshire public utilities (including their parent companies, or other affiliates) up to the limits that Petitioners requested here and in their July 31, 2020 Petition are in the "public interest" pursuant

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[1] For the purposes of this Petition, "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. With respect to the corporate organization, the Vanguard Advised Funds are considered to be the "Advisory "Level" in a roughly three tiered organizational structure consisting of (1) the "Complex Level"; (2) the "Advisory Level"; and (3) the individual "Fund Level."

[2] In their July 31, 2020 Petition, Petitioners sought a limited exemption from the Section 374:33 approval requirements.

to N.H. Rev. Stat. § 374:33. In support of this request, Petitioners hereby incorporate by reference the information contained in Petitioners' July 31, 2020 Petition,[3] and further emphasize and state as follows:

1. VGI is one of the world's largest groups of mutual funds, with approximately $6 trillion in assets under management. VGI offers approximately 200 separate low-cost United States-registered mutual funds and exchange traded shares ("ETFs"), as well as approximately 230 non-United States funds and ETFs, and approximately 80 collective investment trusts (each, a "Vanguard Investment Fund"). VGI also offers investment advice and related services. VGI is widely recognized as a leader in low-cost investing and a steadfast advocate for the interests of all investors. From its start over forty years ago, VGI 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 Vanguard U.S. mutual funds, which in turn own VGI. A more detailed description of VGI and its subsidiaries in set forth in Exhibit A to the July 31, 2020 Petition. As Exhibit A demonstrates, the individual Vanguard 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.

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[3] For example, in this Amended Petition, Petitioners have not restated Exhibit A to the July 31, 2020 Petition, but incorporate that information by reference.

2. From time to time, through individual funds, Vanguard Advised Funds trade in shares of New Hampshire public utilities, either directly or indirectly by purchasing shares of the utilities' parent companies on the open market. Occasionally, although the New Hampshire utility holdings of any individual Fund may be small, the total holdings of any specific New Hampshire utility by all Vanguard Advised Funds when aggregated may exceed 10%. This raises the question of whether Section 374:33 is implicated.

3. In fact, VGI recently discovered that as of June 30, 2020, 67 different Vanguard Mutual Funds currently hold small interests in Eversource Energy, less than 3% interest each. As the Commission is aware, Eversource Energy is the parent company of Public Service Company of New Hampshire (a New Hampshire public utility). More specifically, three Funds each hold between 2-3%, and the remaining 64 Funds hold less than 1% each. However, if those 67 separate interests are aggregated, they total 13.45% (as of June 30, 2020). Over 90% of Vanguard's holdings of Eversource Energy shares are held by Vanguard index funds.

4. Section 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, whichever 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, except that commission approval shall not be required for any acquisition of an excepted local exchange carrier….

N.H. Rev. Stat. § 374:33 (emphasis added).

5. Petitioners are not New Hampshire "public utilities." *See* N.H. Rev. Stat. § 362:2.[4] Regarding the definition of "public utility holding company," Congress repealed the Public Utility Holding Company Act of 2005.[5] It is unclear how the Commission interprets

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[4] Section 362:2 states:

> 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, except municipal corporations and county corporations operating within their corporate limits, *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, or owning or operating any pipeline, including pumping stations, storage depots and other facilities, for the transportation, distribution or sale of gas, crude petroleum, refined petroleum products, or combinations of petroleum products*, rural electric cooperatives organized pursuant to RSA 301 or RSA 301-A, and any other business, except as hereinafter exempted, over which on September 1, 1951, the public utilities commission exercised jurisdiction.
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> …

N.H. Rev. Stat. § 362:2 (emphasis added). Petitioners own no such plant or equipment. Therefore, they are not public utilities.

[5] When Congress repealed the 1935 Act it replaced it with the Public Utility Holding Company Act of 2005. However, there is a question of whether the so-called "non-delegation" doctrine would prevent the Commission from relying on 2005 Act's definition of "holding company." For reference, the 2005 Act defines a "holding company" as:

> (i) Any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public-utility company or of a holding company of any public-utility company; and
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> (ii) Any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public-utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this subtitle upon holding companies.
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> (2) Exclusions. The term "holding company" shall not include—
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> (i) A bank, savings association, or trust company, or their operating subsidiaries that own, control, or hold, with the power to vote, public utility or public utility holding company securities so long as the securities are—
>
>> (A) Held as collateral for a loan;
>>
>> (B) Held in the ordinary course of business as a fiduciary; or

Section 374:33 under these circumstances. Petitioners contend that the Commission should simply rely on New Hampshire's statutory definition of "public utility." See N.H. Rev. Stat. § 362:2, in which case Petitioners investments are not within the scope of Section 374:33. Petitioners seek a declaratory order to that effect.

6. Further, in Petitioners' circumstance, when considering whether the investment thresholds of Section 374:33 are triggered, the Commission should not aggregate the interests held at the individual fund level. As noted above, the individual Vanguard 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. Moreover, VGI itself is not owned by a single, common owner. It is jointly owned by thirty-four different investment companies. Consequently, this is not a situation in which a single investor holds more than 10% of the stock of a utility parent company.

7. Alternatively, if the Commission concludes that Petitioners fall within the scope of Section 374:33, Petitioners request that the Commission issue an order that concludes that:

> (C) Acquired solely for purposes of liquidation and in connection with a loan previously contracted for and owned beneficially for a period of not more than two years; or

(ii) A broker or dealer that owns, controls, or holds with the power to vote public utility or public utility holding company securities so long as the securities are— (A) Not beneficially owned by the broker or dealer and are subject to any voting instructions which may be given by customers or their assigns; or

(B) Acquired in the ordinary course of business as a broker, dealer, or underwriter with the bona fide intention of effecting distribution within 12 months of the specific securities so acquired.

18 C.F.R. § 366.1. In turn, in the context of the 2005 Act, a "public-utility company" means "an electric utility company or a gas utility company. . ." 18 C.F.R. § 366.1.

> Petitioners' acquisitions or sales of voting securities of any New Hampshire utility, directly or indirectly, so long as the total 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 are "in the public interest" pursuant to Section 374:33.

This finding would be no broader than necessary. It would apply to Vanguard's internally managed funds as well as portions of those funds that are internally managed, and exclude other Vanguard registered funds that are managed externally (or portions of which are managed externally) by independent external advisors, who hold voting power and investment discretion over the assets managed by those independent advisors.[6]

8. The application of Section 374:33 to these investments would create business risks through the delay and uncertainty that results from the Section 374:33 approval process. However, Petitioners investments do not implicate the interests to be protected by the Commission through Section 374:33 because individual Vanguard 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.

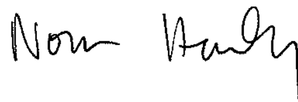
CONCLUSION

WHEREFORE, Petitioners respectfully request that the Commission either (1) issue a declaratory order concluding that under the facts and circumstances presented, Petitioners are not

[6] It is Vanguard's position that those externally managed funds (or portions of funds that are externally managed) should not be subject to any aggregation with respect to Section 374:33 because they are completely controlled by external advisors.

entities subject to the approval requirements of N.H. Rev. Stat. § 374:33; or (2) issue an order that concludes that Petitioners' acquisitions or sales of voting securities of any New Hampshire utility, directly or indirectly, so long as the total 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 are "in the public interest" pursuant to Section 374:33.

Respectfully submitted on November 2, 2020.



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