

1                                   **STATE OF NEW HAMPSHIRE**  
2                                   **PUBLIC UTILITIES COMMISSION**

3  
4   **April 14, 2021 - 1:37 p.m.**

5                                   *[Remote Hearing conducted via Webex]*

6  
7                   **RE: DE 20-124**  
8                   **VANGUARD GROUP, INC.:**  
9                   **Request for a Limited Exemption**  
10                  **from Approval Requirements of**  
11                  **RSA Section 374:33.**

12                  **PRESENT:**     Chairwoman Dianne H. Martin, Presiding  
13                                   Commissioner Kathryn M. Bailey

14  
15                                   Jody Carmody, Clerk  
16                                   Corrine Lemay, PUC Remote Hearing Host

17                  **APPEARANCES:**   **Reptg. Vanguard Group, Inc.:**  
18                                   William S. Harwood, Esq. *(Verrill Law)*  
19                                   Katherine M. McDonough, Esq. *(Verrill)*

20                                   **Reptg. PUC Staff:**  
21                                   Brian D. Buckley, Esq.  
22                                   Jay Dudley, Electric Division

23                                   Court Reporter:     Steven E. Patnaude, LCR No. 52  
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**I N D E X**

**PAGE NO.**

**WITNESS PANEL: JUDY GAINES  
JANINE KORPICS**

Interrogatories by Mr. Buckley	10
Interrogatories by Cmsr. Bailey	11
Interrogatories by Chairwoman Martin	12, 13

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**CLOSING STATEMENTS BY:**

Mr. Harwood	14
Mr. Buckley	15

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**E X H I B I T S**

<b>EXHIBIT NO.</b>	<b>D E S C R I P T I O N</b>	<b>PAGE NO.</b>
1	Vanguard Group, Inc., Request for Limited Exemption from Approval Requirements of RSA 374:33 (07-31-20)	<i>premarked</i>
2	Vanguard Group, Inc., Amended Petition (11-02-20)	<i>premarked</i>
3	Staff Recommendation (04-08-21)	<i>premarked</i>

**P R O C E E D I N G**

1  
2 CHAIRWOMAN MARTIN: Okay. We're here  
3 this afternoon in Docket DE 20-124 for a hearing  
4 regarding the Amended Petition filed by the  
5 Vanguard Group, Incorporated.

6 I have to make the necessary findings  
7 for this remote hearing.

8 As Chairwoman of the Public Utilities  
9 Commission, I find that due to the State of  
10 Emergency declared by the Governor as a result of  
11 the COVID-19 pandemic, and in accordance with the  
12 Governor's Emergency Order Number 12, pursuant to  
13 Executive Order 2020-04, this public body is  
14 authorized to meet electronically. Please note  
15 that there is no physical location to observe and  
16 listen contemporaneously to this hearing, which  
17 was authorized pursuant to the Governor's  
18 Emergency Order. However, in accordance with the  
19 Emergency Order, I am confirming that we are  
20 utilizing Webex for this electronic hearing.

21 All members of the Commission have the  
22 ability to communicate contemporaneously during  
23 this hearing, and the public has access to  
24 contemporaneously listen and, if necessary,

1           participate. We previously gave notice to the  
2           public of the necessary information for accessing  
3           the hearing in the Order of Notice. If anyone  
4           has a problem during the hearing, please call  
5           (603)271-2431. In the event the public is unable  
6           to access the hearing, the hearing will be  
7           adjourned and rescheduled.

8           Okay. We have to take a roll call  
9           attendance of the Commission. My name is Dianne  
10          Martin. I am the Chairwoman of the Public  
11          Utilities Commission. And I am alone.

12          Commissioner Bailey.

13          COMMISSIONER BAILEY: Good afternoon,  
14          everyone. I'm Kathryn Bailey, Commissioner at  
15          the Public Utilities Commission. And I am alone.

16          CHAIRWOMAN MARTIN: Okay. And let's  
17          take appearances, starting with Mr. Harwood.

18          MR. HARWOOD: Thank you, Chairman  
19          Martin and Commissioner Bailey. It's William  
20          Harwood and Katherine McDonough, from Verrill, on  
21          behalf of the Petitioners. And with us this  
22          afternoon, from Vanguard, is Janine Korpics and  
23          Judy Gaines.

24          CHAIRWOMAN MARTIN: Okay. Thank you.

1 And Mr. Buckley.

2 MR. BUCKLEY: Thank you, Madam Chair  
3 and Commissioner Bailey. My name is Brian D.  
4 Buckley, appearing on behalf of Commission Staff.  
5 And with me today, however in "attende" only"  
6 mode, is a analyst with the Electric Division,  
7 Jay Dudley.

8 CHAIRWOMAN MARTIN: Okay. Thank you.

9 And, for preliminary matters, I have  
10 Exhibits 1 through 3 prefiled and premarked for  
11 identification.

12 Is there anything else we need to go  
13 over before we have the witnesses sworn in?

14 MR. BUCKLEY: Madam Chair, there is  
15 also a request for confidential treatment and  
16 protective order relating to two discovery  
17 request responses provided to Staff during the  
18 proceeding.

19 CHAIRWOMAN MARTIN: Okay. Was there  
20 any objection to that from Staff?

21 MR. BUCKLEY: No objection. And, in  
22 fact, Staff is supportive of the request.

23 CHAIRWOMAN MARTIN: Okay. And I know  
24 you were already all warned to treat anything

1 marked as "confidential" as confidential during  
2 the hearing. So, the Commission will also treat  
3 that as confidential during this hearing and  
4 issue an order on that motion in the order that  
5 comes out of this hearing.

6 Anything else?

7 MR. BUCKLEY: Nothing else on Staff's  
8 side.

9 CHAIRWOMAN MARTIN: Seeing nothing.  
10 Then, let's get the witnesses sworn in please,  
11 Mr. Patnaude.

12 (Whereupon **Judy Gaines** and  
13 **Janine Korpics** were duly sworn by the  
14 Court Reporter.)

15 CHAIRWOMAN MARTIN: Okay. Thank you.  
16 Mr. Harwood.

17 MR. HARWOOD: Yes. Thank you again,  
18 Chairman Martin.

19 This is a bit of an unusual case.  
20 There are no public utilities here in this  
21 proceeding, this has been brought by Vanguard.  
22 And it's further unusual in that we have a Staff  
23 motion, proposal for resolution. So, there is no  
24 issue. But I would just like to briefly state

[WITNESS PANEL: Gaines|Korpics]

1 our position, and then allow for questioning of  
2 the witnesses, if the Staff or the Commissioners  
3 have any.

4 Vanguard has come forward. I think  
5 they have done the responsible thing and taken  
6 the initiative to reach out to New Hampshire PUC  
7 to seek clarification of how your rules govern  
8 investments by investors like the investment  
9 funds in New Hampshire utilities. There is a  
10 good bit of uncertainty about how RSA 374:33  
11 should be interpreted. Vanguard has suggested  
12 several alternatives to resolve this. The Staff  
13 has selected one alternative, and Vanguard is in  
14 support of that proposal.

15 The Staff has identified that, as a  
16 matter of business model, the Vanguard funds are  
17 each separate funds for purposes of 374:33. They  
18 do not need -- they should not be aggregated.  
19 Each fund is a separate investor for purposes of  
20 the 10 percent rule in 374:33. And the Staff has  
21 laid out an explanation for that.

22 The funds are not affiliated in the  
23 corporate sense. They don't have a parent  
24 company that owns their outstanding shares. Each

{DE 20-124} {04-14-21}



[WITNESS PANEL: Gaines|Korpics]

1 fund is owned by the individual investors in that  
2 fund. The funds are passive investors, they are  
3 not investing for control of management, and  
4 therefore there is no need to aggregate.

5 And, finally, each decision -- each  
6 fund's investment decisions are not influenced by  
7 the investment decisions of the other funds.  
8 Each fund makes its own investment decisions  
9 based on the criteria of that fund. There is no  
10 coordination.

11 So, the Staff's proposal, which we  
12 support, is that each fund is an investor and  
13 would be subject to the 10 percent threshold in  
14 374:33. The Commission can make a finding that  
15 the funds are separate investors and should not  
16 be aggregated for purposes of determining whether  
17 the 10 percent has been reached.

18 I'm happy to stop there and take any  
19 questions, or have the witnesses answer any  
20 factual questions. I think the Staff has done an  
21 excellent job of laying out the case, the issues,  
22 and an acceptable resolution to the Petitioners.

23 CHAIRWOMAN MARTIN: Mr. Buckley, do you  
24 have questions for the witnesses?

[WITNESS PANEL: Gaines|Korpics]

1 MR. BUCKLEY: Just one question for the  
2 witnesses. And this is to whoever feels most  
3 comfortable asking *[sic]*.

4 **JUDY GAINES, SWORN**

5 **JANINE KORPICS, SWORN**

6 BY MR. BUCKLEY:

7 Q If you could please turn to Exhibit -- what has  
8 been premarked as "Exhibit 3", which is the Staff  
9 Recommendation. And I believe it's at one, two,  
10 three -- what is marked as Bates "005" of that  
11 Recommendation, there is a diagram that  
12 identifies what is essentially the relationship  
13 of the Vanguard Group to the various Vanguard  
14 investment companies. Is that correct?

15 A (Gaines) This is Judy Gaines. That's correct.

16 Q Thank you. And was this diagram provided by you  
17 or somebody at your organization in response to  
18 discovery requests by the Staff?

19 A (Gaines) Yes, it was.

20 Q And, to your knowledge, is this diagram accurate,  
21 as far as the corporate structure of Vanguard?

22 A (Gaines) Yes. It is accurate.

23 Q And, so, is it accurate to say that this diagram  
24 shows that the Vanguard Group, who has brought

[WITNESS PANEL: Gaines|Korpics]

1 this Petition on behalf of the Vanguard various  
2 investment companies, is not actually an owner of  
3 those investment companies, but rather a  
4 subsidiary?

5 A (Gaines) That is correct. The Vanguard Group,  
6 Inc., is an investment advisory company that is a  
7 subsidiary of the Vanguard Funds. The Vanguard  
8 Group, Inc., does not own and is not a parent  
9 company of the Vanguard Funds.

10 MR. BUCKLEY: Okay. Thank you, Ms.  
11 Gaines. No further questions from Staff.

12 CHAIRWOMAN MARTIN: Commissioner  
13 Bailey.

14 BY COMMISSIONER BAILEY:

15 Q Is the Vanguard Registered Investment Company a  
16 parent of each of the individual companies listed  
17 in the big block?

18 A (Gaines) No. Rather, each of the entities listed  
19 in the big block is one of the Vanguard  
20 registered investment companies. So, the  
21 "Vanguard Registered Investment Companies" is not  
22 an entity. It's a description, rather, of those  
23 bulleted entities in the box.

24 Q So, would another way of depicting this be to

[WITNESS PANEL: Gaines|Korpics]

1 just cut out the box that says "Vanguard  
2 Registered Investment Companies", and make all of  
3 those connections, "100 percent Ownership",  
4 straight down to the big box?

5 A (Gaines) Yes. That would be another way of doing  
6 it. I believe the way that it's presented the  
7 way it was was just for explanation purposes.  
8 But it would be -- it would be equally accurate  
9 to have the arrows going up and down from "The  
10 Vanguard Group, Inc," in the oval, to the large  
11 rectangle with the bulleted entities themselves.

12 CHAIRWOMAN MARTIN: Commissioner  
13 Bailey, can I jump in there, just to make sure  
14 I'm following that?

15 COMMISSIONER BAILEY: Please do.

16 BY CHAIRWOMAN MARTIN:

17 Q My recollection of the prehearing conference was  
18 that the Vanguard Group doesn't actually own any  
19 of those. That each of the individual funds in  
20 the box is independent and owned by the fund  
21 owners, whoever owns those individual funds.

22 And, so, when you say "the line from  
23 Vanguard Group, Incorporated, to the big  
24 rectangle is 100 percent ownership", that

[WITNESS PANEL: Gaines|Korpics]

1 confuses me. Can you clarify?

2 A (Gaines) Sure. The arrow would be going to "The  
3 Vanguard Group, Inc.", to indicate that those  
4 funds listed in the box own the Vanguard Group,  
5 Inc. The arrow going down from "The Vanguard  
6 Group, Inc." to the larger box would indicate  
7 that the Vanguard Group, Inc., is providing the  
8 investment, advisory, and administrative  
9 services, but it wouldn't indicate ownership.

10 CHAIRWOMAN MARTIN: Okay. That helps.  
11 Thank you.

12 WITNESS GAINES: Sure.

13 COMMISSIONER BAILEY: And that does  
14 help. Thank you. That's what I was trying to  
15 understand.

16 WITNESS GAINES: Sure.

17 COMMISSIONER BAILEY: I'm all set.

18 CHAIRWOMAN MARTIN: I just have one  
19 more clarifying question for the record.

20 BY CHAIRWOMAN MARTIN:

21 Q So, if any one of these were to own up to the 10  
22 percent, they would each be independent, is your  
23 point?

24 A (Gaines) That's correct.

[WITNESS PANEL: Gaines|Korpics]

1 CHAIRWOMAN MARTIN: Okay. I don't have  
2 any other questions. Do you have any redirect,  
3 Mr. Harwood?

4 I think you're on mute.

5 MR. HARWOOD: Oh, I muted. No. I  
6 think I'm all set. Thank you. You did a nice  
7 job of cleaning up the confusion there. And I  
8 have no further questions.

9 CHAIRWOMAN MARTIN: All right. Thank  
10 you. Anything else from Staff?

11 MR. BUCKLEY: Nothing further from  
12 Staff.

13 CHAIRWOMAN MARTIN: Okay. Then, we  
14 will strike ID on the three exhibits and admit  
15 those as full exhibits.

16 And did you plan to do closings?

17 MR. HARWOOD: I'm happy to make a brief  
18 summary.

19 I think what you've heard is that this  
20 is an unusual business structure. It is not what  
21 we might think of as having one normal pyramid,  
22 with one corporation at the top of the page, and  
23 many corporations that are under it and a wholly  
24 owned subsidiary. This is the opposite. These

{DE 20-124} {04-14-21}

1 individual thousands and thousands of investors  
2 own each of the funds that they invest in. And  
3 those funds are independent and separate. And  
4 they are not coordinated.

5 And therefore, the Staff's  
6 Recommendation, that each fund should be dealt  
7 with as a potentially independent holding  
8 company, and only if each -- if any of the funds  
9 reach the 10 percent would RSA 374:33 be  
10 implicated. As long as each fund stays under the  
11 10 percent, we do not need to concern ourselves  
12 whether you might be able to add them together to  
13 get more than 10 percent.

14 So, we support the Staff's proposed  
15 resolution of this. And hope that you will be  
16 able to write an order that would give Vanguard  
17 the comfort to be able to continue with its  
18 current business model, providing its services to  
19 those investors, without concern about violating  
20 RSA 374:33.

21 Thank you.

22 CHAIRWOMAN MARTIN: Thank you, Mr.  
23 Harwood. Mr. Buckley.

24 MR. BUCKLEY: Thank you, Madam Chair.

1           Staff takes this opportunity to  
2           reiterate its recommendation that the Commission  
3           should find that the interests held at the  
4           individual fund level should not be aggregated  
5           for the purpose of determining whether Vanguard  
6           has reached the 10 percent threshold set forth in  
7           RSA 374:33.

8           Since Vanguard has no ownership  
9           interest in any of the Vanguard advised funds,  
10          and the Petition does not express an intent for  
11          any individual fund to acquire holdings in a New  
12          Hampshire public utility at the levels that would  
13          invoke the Commission's RSA 374:33 authority,  
14          Staff also recommends that the Commission: (1)  
15          grant the Petitioners' request for a declaratory  
16          ruling that the Petitioners are not entities  
17          subject to the approval requirements of RSA  
18          374:33; and (2) deem the request for an RSA  
19          374:33 public interest finding moot in light of  
20          the declaratory ruling.

21                         Thank you.

22                         CHAIRWOMAN MARTIN: Thank you, Mr.  
23                         Buckley.

24                         I do want to thank Vanguard for



1 bringing this to the Commission. I think that it  
2 was an admirable thing to do. So, thank you for  
3 doing that.

4 MR. HARWOOD: Thank you.

5 CHAIRWOMAN MARTIN: All right. With  
6 that, we will close the record and take this  
7 under advisement. Thank you, everyone. We are  
8 adjourned.

9 ***(Whereupon the hearing was adjourned***  
10 ***at 1:53 p.m.)***

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