

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DG 15-289

**LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.
d/b/a LIBERTY UTILITIES**

Petition for Franchise Approval

Objection to Valley Green Natural Gas, LLC's Petition for Late Intervention

Now comes Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities ("EnergyNorth" or "the Company"), by and through its attorneys, Orr & Reno, P.A., and objects to Valley Green Natural Gas, LLC's ("Valley Green") Petition for Late Intervention. In support of this Objection EnergyNorth states the following:

1. On July 24, 2015 EnergyNorth filed a Petition for approval of a natural gas franchise for Lebanon and Hanover, New Hampshire. When it filed the Petition, EnergyNorth provided a courtesy copy of its Petition to counsel for Valley Green. On August 6, 2015 the New Hampshire Public Utilities Commission ("the Commission") issued an Order of Notice in which it established a deadline of September 7, 2015 for the submission of petitions to intervene. Valley Green did not submit a petition to intervene at that time. On September 9, 2015 the Commission held a prehearing conference and granted all petitions to intervene. Since that time, this docket has been proceeding on a schedule approved in a letter from the Commission dated September 21, 2015 that has included technical sessions on October 15 and November 20, 2015. Valley Green representatives have been present at both technical sessions.

2. Valley Green filed its own petition for a natural gas franchise for Lebanon and Hanover, which was docketed as DG 15-155. In response to the July 6, 2015 Order of Notice issued in that docket, EnergyNorth timely filed a Petition to Intervene in that docket on July 24, 2015, in which it referred to the Petition for Franchise Approval that EnergyNorth had filed for Lebanon and Hanover. Valley Green objected to the EnergyNorth Petition to Intervene by written Objection dated July 27, 2015. In that Objection, Valley Green stated that DG 15-155 was “not noticed for the issue Liberty Utilities seeks to protect, that is, its own interest in providing natural gas service to Lebanon and Hanover.” Objection at 1. Valley Green went on to cite a number of concerns with granting EnergyNorth’s intervention, including that it would provide a competitor an opportunity to “thwart competition by stalling a review of a monopoly franchise request long enough for it to catch up.” Petition at 3. Valley Green also cited concerns about EnergyNorth having access to confidential business information of Valley Green as a reason not to grant the Petition to Intervene, Objection at 4, and asked the Commission to “prevent abusive discovery.” Objection at 5. The Commission granted EnergyNorth’s Petition to Intervene in DG 15-155 by letter dated July 31, 2015.

3. On November 24, 2015 Valley Green submitted a Petition for Late Intervention in this docket. In its Petition, Valley Green indicates that because “Staff is comparing VGNG’s proposal to Liberty’s proposal” it is “increasingly necessary for VGNG to know to what Staff is comparing VGNG.” Petition at 1. Valley Green goes on to say that as a matter of due process Valley Green should be provided with “access to non-confidential discovery in this docket and to be able to vet at hearing or through testimony, if need be, that discovery in Liberty’s docket.” Petition at 2. Valley Green then goes on to indicate

why it believes that it qualifies for intervention and says that it would be unjust to allow Liberty to intervene in Valley Green's proceeding and not allow it to intervene in Liberty's proceeding.

4. The statutory standards for intervention are set forth in RSA 541-A:32, I and II. A petition for intervention *must* be granted if the petitioner states facts demonstrating how its rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding (or the petitioner qualifies under any provision of law) and the interests of justice and orderly and prompt conduct of the proceedings would not be impaired by allowing intervention. *See* RSA 541-A:32, I(b) and (c). The Commission *may* grant a petition to intervene "at any time, upon determining that such intervention would be in the interests of justice and would not impair the orderly conduct of the proceedings." RSA 541-A:32, II. *See also* N.H. Admin. R. Puc 203.17 (requiring the Commission to grant one or more petitions to intervene in accordance with the standards of RSA 541-A:32). The Commission, however, has denied petitions to intervene in certain instances. *See for example*, Order No. 25,715, DE 14-211 (September 8, 2014) where it cited "general interest in competitive markets or in a bidding process that has not yet occurred" as being insufficient to justify intervention.

5. While the Commission has the discretion to grant late-filed petitions for intervention, when it grants such interventions it typically requires that the party being granted the late intervention accept the schedule as it stands; for example, it is not allowed to go back to propound discovery if the time for doing so has passed. *See, for example*, the February 26, 2010 letter of the Executive Director in DE 09-035, granting the City of Manchester's late intervention but requiring that it conform with the procedural schedule "as

it currently exists in order that it not impair the orderly and prompt conduct of the proceeding.”

6. EnergyNorth submits that Valley Green was clearly aware of this docket, the fact that EnergyNorth had filed its own petition for franchise approval as indicated by its July 27, 2015 Objection to EnergyNorth’s intervention in DG 15-155, as well as its ability to seek intervenor status at that time. At that time, Valley Green made a conscious choice not to intervene in this docket. Valley Green representatives have been in attendance at the two technical sessions in this docket. One of the primary reasons for seeking intervention in this docket that Valley Green articulates in its Petition is so that it may have access to non-confidential discovery. Because non-confidential discovery is public information even though it is not posted on the Commission’s website, the Commission could instruct Staff to provide the non-confidential discovery to Valley Green, while at the same time denying the intervention because of the unreasonably late filing in light of the passage of time and the fact that Valley Green has been aware of this docket since it was first filed in July. EnergyNorth is also willing to provide courtesy copies of all non-confidential responses to discovery to Valley Green if that would obviate the need for the late filed intervention.

7. In the event that the Commission decides to grant the intervention request EnergyNorth respectfully requests that it make it clear that Valley Green will not be allowed to impair the orderly conduct of this proceeding, that it takes the schedule of this docket as it is and that it not be allowed to take any actions that would cause any delay in this proceeding.

Wherefore, EnergyNorth respectfully requests that the New Hampshire Public Utilities Commission:

- A) Deny Valley Green's Petition for Late Intervention; or
- B) In the event that the Commission decides to grant late intervention, condition any grant of intervention as stated herein to avoid any delay in the procedural schedule; and
- C) Grant such other relief as may be just and equitable.

Respectfully submitted,

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities

By Its Attorneys

Orr & Reno, P.A.



Douglas L. Patch, NH Bar #1977
Orr & Reno, P.A.
45 South Main St.
Concord, N.H. 03302-3550
(603) 223-9161
dpatch@orr-reno.com



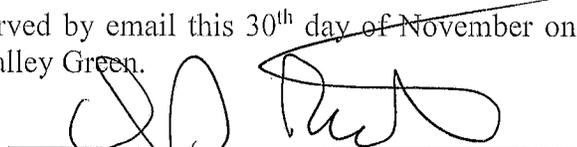
Maureen D. Smith, NH Bar #4857
Orr & Reno, P.A.
45 South Main St.
Concord, N.H. 03302-3550
(603) 223-9166
msmith@orr-reno.com

Dated: November 30, 2015

Certificate of Service

A copy of this Petition has been served by email this 30th day of November on the service list in DG 15-289 and counsel for Valley Green.

Dated: November 30, 2015


Douglas L. Patch