

**STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION**

**Valley Green Natural Gas, LLC**

**Docket No. DG 15-155**

**REPLY TO LIMITED OBJECTION TO MOTION FOR PROTECTIVE TREATMENT**

NOW COMES Valley Green Natural Gas, LLC (“Valley Green”), in accordance with Puc 203.07 (e) and (f), and hereby replies and objects to Liberty Utilities Corp’s d/b/a Liberty Utilities (“EnergyNorth”) limited objection, filed on March 7, to Valley Green’s motion for protective treatment that was filed on February 24, 2016. Valley Green respectfully requests leave to file a reply to EnergyNorth’s objection. In support of its motion, Valley Green states as follows:

1. The Commission approved Valley Green’s Motion for Protective Order and Confidential Treatment on March 2, 2016. When given the opportunity to object to Valley Green’s motion on March 2, EnergyNorth did not voice any objection. Because there were no objections, the Commission granted the motion. Estoppel would apply to prevent EnergyNorth from now changing its mind and EnergyNorth does not address this issue or explain why the Commission should allow EnergyNorth the opportunity to change its mind. Furthermore, because the Commission has already ruled on the motion, the limited objection is, in effect, a motion for reconsideration. Accordingly, pursuant to Puc 203.07(f), Valley Green is entitled to reply and would otherwise not need to request leave to reply.

2. Notwithstanding these procedural arguments, Valley Green responds to the merits of EnergyNorth’s arguments.

3. EnergyNorth states that it does not know whether Valley Green's response to Staff 1-2 or Staff 3-10, or both, in this docket correspond to Energy North's response to Staff 3-9 in Docket No. DG 15-289. It makes the Equal Protection argument that the Commission should treat the confidential and public versions of the responses similarly. In short, EnergyNorth argues that because the Commission found, in Order No. 25,868, EnergyNorth's estimated customer rates ought to be made public the Commission ought to make public Valley Green's estimated customer rates.

4. First, Staff 3-10 in the instant docket is similar to Staff 3-9 in Docket No. DG 15-289, while Staff 1-2 in the instant docket covers different confidential subject matter. Compare Staff 3-9 in DG 15-289 to Staff 3-10 in the instant docket:

**Energy North, Docket No. DG 15-289**

**Staff 3-9** "Please calculate the revenue requirement and rates using the attached format and a 40 year average service life to calculate depreciation on structures. Please provide the response in both hard copy and electronic (Microsoft Excel) formats, with all data and formulas intact."

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**Staff 3-10** "Ref. Staff DR 1-2. Please calculate the revenue requirement and rates using the attached Excel format and a 40 year average service life to calculate depreciation on structures. Please provide the response in both hard copy and electronic (Microsoft Excel) formats, with all data and formulas intact."

By contrast, Staff 1-2 in the instant docket was an earlier request to Valley Green for more general financial information:

**Staff 1-2** "Reference the response to Puc 1604.07 Contents of Filing Requirement Schedules. Please provide the supporting schedules for the draft tariff rates that reflect Puc rate case filing requirements. Explain all assumptions used in determining rate base, revenue and cost estimates, and rate of return."

Accordingly, the Commission should direct its attention to Valley Green's response to Staff 3-10, not Staff 1-2, in this docket.

5. Second, neither the “rates” provided in Staff 3-9 in Docket No. DG 15-289 nor the “rates” provided in Staff 3-10 in the instant docket are “estimated customer rates” as the term is used in Order No. 25,868. Rather, the Commission characterized per-therm revenues as rates in its balancing analysis and concluded that the public’s interest in knowing EnergyNorth’s “estimated customer rate information” outweighed EnergyNorth’s interest in protecting the information from public disclosure. See Order No. 25,868 at 6. EnergyNorth responded to that order by disclosing to the parties proposed per-therm revenue data for 2018 and 2021 in its redacted response to Staff 3-9. That is the information EnergyNorth disclosed and that is the information EnergyNorth now seeks to have Valley Green disclose.

6. The distinguishing, important fact is that those “rates” are merely the anticipated revenues for those hypothetical test years divided by the expected customer mmBtu load and expressed on a per-therm basis. See Schedule 2 of Staff 3-9 (confidential) and Staff 3-10 (confidential). This per-therm data has not been subject to a review in a Cost of Service Study and customer rates have not been set. Furthermore, EnergyNorth plans to use its existing tariff rates, which are different than the per-therm “rates” shown on Schedule 2 in its response to Staff 3-9. This latter rate information is already publicly available from EnergyNorth’s tariff.

7. Public policy in fact supports disclosure of what customers can expect to pay for utility service. See RSA 378:1 (Every public utility shall keep open for public inspection schedules showing its rates, fares, charges and prices for service.) EnergyNorth, itself, represents in its petition at paragraph 14 and in testimony of Mr. Mullen on page 3, that it

intended to use its public, Commission-approved tariff rates for the Lebanon-Hanover franchise.<sup>1</sup> Tariff rates are generally comprised of multiple components, including a fixed customer charge and per-therm charges for supply, delivery, and environmental matters, if applicable. This is not how the “rates” on Schedule 2 appear. Balancing such customer interest in knowing estimated, future customer rates, however, is a completely different analysis than balancing a customer’s interest in per-therm data in isolation of the underlying revenue and expense estimates so that the public can understand the Commission’s review. Risks inherent in this latter balancing are more pronounced because the balancing involves a competitive environment. The balancing of these interests and risks is what is before the Commission, not customer rates.

8. The public’s interest in the revenue data is diminished when release of the data poses a risk that the per-therm data could be incorrectly portrayed as “estimated customer rates.” Under such circumstances, the public will be misled. It is easy to incorrectly conclude that just because the format of the Excel spreadsheets in Staff 3-10 and Staff 3-9 are similar, the cost inputs for Valley Green and EnergyNorth’s revenue requirements are comparable. They likely are not. Valley Green is not privy to EnergyNorth’s costs but an attempt by the public to do an apples-to-apples comparison without knowing whether the inputs are comparable further diminishes the public’s interest in the information and the ability of the information to shed light on the workings of the Commission. The estimated revenues and expenses summarized in the revenue requirement schedules are based on preliminary planning models by both Valley Green and EnergyNorth and EnergyNorth’s expenses are expected to change due to an audit or possible “mechanism” as discussed below. In this situation, the utility’s interest in ensuring public

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<sup>1</sup> Unlike EnergyNorth, Valley Green has no Commission-approved tariff rates at present.

disclosure does not misinform and incorrectly portray the utility's competitiveness greatly outweighs the public's interest in accessing incomplete data.

9. There are additional complications regarding the data that reduce the public's interest in disclosure: 1) the data in both dockets is preliminary, based on modeled customer commitments and costs, not actual commitments and costs; 2) Valley Green produced multiple build-out scenarios whereas EnergyNorth presented just one scenario; 3) Valley Green's revenue and expense data in Staff 3-10 are based on a stand-alone island system, akin to Keene Gas, whereas it is unclear whether EnergyNorth's revenue and expense data in Staff 3-9 are based on a stand-alone island system; and 4) in Docket No. DG 15-298, both Commission Staff and the Office of the Consumer Advocate raised concerns that existing EnergyNorth customers may be subsidizing the proposed rates. On this latter point, EnergyNorth, itself, has even stated it is amenable to developing a "mechanism" to address the subsidy concern. See EnergyNorth Rebuttal Testimony at page 4. A fifth complication is that in Docket No. DG 14-180, the Commission acknowledged that EnergyNorth's revenue requirement might change as a result of the independent audit's report on EnergyNorth's "account creation and management, meter data management, billing processes, payments and collections processes, call center, vendor relationships, corporate services/IT support and service, staffing, accounting, business planning, and property records." Order No. 25,868 at 5. The Commission supported EnergyNorth using a 2016 test year so as to allow time for resolution of these costs and expenses by the audit. The existence of an audit questioning costs and accounting and the unsettled issue of subsidies strongly indicate that the inputs in Staff 3-9 may change. The Commission is already aware of these uncertainties. These uncertainties reduce the probative value of the data and the public's

interest in disclosure. If made public, it increases the risk of misinformation and will, in turn, cause either Valley Green or EnergyNorth competitive harm. This competitive harm outweighs the public's interest.

10. It is important to note that it is presently a disputed issue of fact as to whether the inputs to the per-therm data produced in Staff 3-9 in Docket No. DG 15-289 are comparable to input to the per-therm data produced in Staff 3-10 in Docket No. DG 15-289.

11. The risk of competitive harm is amplified by the fact that Staff made clear in its testimony that it seeks to have the Commission impose a customer commitment test: "Staff recommends estimated margins from customer commitments meet or exceed fifty percent of the required margins necessary to achieve a ten year payback." Staff (Frink) testimony at pages 12-13. Staff also acknowledged that it is "easier to attain customer commitments" when a franchise is granted than it is if a utility does not have a franchise, or at least a conditional franchise. Staff (Frink) testimony at page 11, lines 17-20. If the Commission discloses to the public the per-therm information for Valley Green and EnergyNorth as "customer rates" and allows the public to make incomplete and misinformed comparisons, then one or the other utility will have a more difficult time securing those customer commitments. The Commission will, in effect, be tying one utility's hand behind its back. The playing field for customer commitments will not be level. The result will be that one utility will suffer a competitive disadvantage. This is the very harm RSA 91-A:5 seeks to protect.

12. Valley Green attempted to level the playing field with EnergyNorth by offering to enter into a non-disclosure agreement to allow EnergyNorth access to Valley Green's redacted schedule for its full build-out in response to Staff 3-10, similar to EnergyNorth's redacted

schedule in response to Staff 3-9. EnergyNorth declined this offer. Valley Green still recommends this approach because this resolution would: 1) level the playing field so that each utility will have access to the same amount of financial information of its competitor, 2) be consistent with constitutional Equal Protection interests, 3) be consistent with an appropriate balance of the interests of persons seeking the information and Valley Green's interest in ensuring such information is not misinterpreted so as to create a competitive disadvantage, and 4) not perpetuate any misunderstanding that the isolated per-therm data represents "customer rates."

WHEREFORE, Valley Green respectfully requests that the Commission:

- A. Deny EnergyNorth's limited objection; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

**VALLEY GREEN NATURAL GAS, LLC.**

By its Attorneys,

Date: March 11, 2016

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 11, 2016, a copy of this Reply has been forwarded to the Commission's service list for this docket.

Marcia A. Brown  
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