

THE STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

Docket No. DG 15-155  
Valley Green Natural Gas, LLC Petition for Franchise Approval

Docket No. DG 15-289  
Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities  
Approval of a Gas Franchise in Lebanon and Hanover, New Hampshire

**PARTIALLY-ASSENTED-TO MOTION TO CONSOLIDATE DOCKETS**

Pursuant to N.H. Admin. Rules, Puc 203.07, Ariel Arwen (“Intervenor”) respectfully moves the New Hampshire Public Utilities Commission (“Commission”) to consolidate the proceedings in Docket Nos. DG 15-155, Valley Green Natural Gas, LLC Petition for Franchise Approval, and DG 15-289 Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities, Approval of a Gas Franchise in Lebanon and Hanover, New Hampshire, into a single docket for the remainder of both proceedings.

In support of this Motion, Intervenor states the following:

**The two proceedings in the two dockets are duplicative and can yield only a single result.** The question in each proceeding is whether it is consistent with the public good to grant a utility franchise pursuant to RSA 374:26 to provide natural gas to retail customers in certain parts of Lebanon and Hanover. Although utility franchises are not necessarily exclusive as a matter of law, *see Appeal of Public Service Co. of N.H.*, 141 N.H. 13, 24 (1996), it is obvious there is no set of circumstances in which it could be consistent with the public good for two competing public utilities to create natural gas distribution systems to serve the same customers in this territory.

**Consolidation would further the objective of administrative efficiency.** Given that the question the Commission confronts in these proceedings concerns the propriety of granting a utility franchise in the service territory at issue, it would be inefficient to require both the Commission and parties appearing in both proceedings to engage in essentially the same complex administrative process twice in overlapping fashion. The Commission has a longstanding policy of ordering its proceedings in a manner that makes judicious use of its resources as well as the resources of those with business before the Commission. *See, e.g., Liberty Utilities* (Order No. 25,833 in Docket DG 15-353, Oct. 30, 2015) (halving number of annual cost-of-gas proceedings in the interest of “administrative efficiency”); *Pittsfield Aqueduct Co. and Pennichuk East Utility Co.* (Order No. 24,975 in Dockets DW 08-052 and DW 09-051, June 5, 2009) (consolidating in the name of administrative efficiency two dockets whose issues were “intertwined”); *Global NAPs, Inc.*, (Order No. 23,444 in Dockets DT 99-081 and DT 99-085, April 21, 2000) (“the issues involving the three complaints are intertwined and that joining them together will expedite the proceedings, and facilitate the consideration of each petition”). This imperative is especially compelling when, as here, there are parties participating on a pro se basis whose objective is to bring issues to the Commission’s attention that would not otherwise be of record in the cases.

**Not consolidating the two dockets raises Due Process concerns.** As the Commission is aware, “[w]here governmental action would affect a legally protected interest, the due process clause of the

New Hampshire Constitution guarantees to the holder of the interest the right to be heard at a meaningful time and in a meaningful manner.” Appeal of Northern New England Telephone Operations, LLC, 165 N.H. 267, 273-74 (2013) (citations omitted); *see also Appeal of Concord Steam Co.*, 130 N.H. 422, 428 (1988) (“the PUC has important quasi-judicial duties” and must therefore demonstrate “meticulous compliance” with the Due Process requirements of New Hampshire Constitution) (citation omitted).

“A fundamental requirement of the constitutional right to be heard is . . . an opportunity to protect the interest through the presentation of objections and evidence.” *Id.* at 428-29. The rules of the Commission and its unwritten customs are well-calculated to achieve this end, but there are unique challenges here that consolidation would address. Not all parties are present in both proceedings, yet the issues are substantially identical. In these circumstances, there is a significant risk that an issue fully litigated and ultimately dispositive in one proceeding will also be dispositive in the other, but without the parties in the other proceeding having a full and fair opportunity to explore the issue. Specific possibilities are difficult to lay out at this stage of the proceedings, given their complexity. Notions of finality and *res judicata* suggest the Commission’s determination on a given issue should be binding in the other, but parties to the second proceeding would naturally argue in such circumstances that they had been denied a full and fair opportunity to address a given question. Regardless of how the Commission ultimately rules on any issue in the proceedings, it is in the interests of all parties to avoid circumstances in which the determination is vulnerable on Due Process grounds. A cautious approach with respect to Due Process is warranted, which means the Commission should consolidate the two proceedings and conduct one set of hearings at which the possible outcomes compete against each other on an open and level playing field.

For the foregoing reasons, I respectfully request that the Commission exercise its discretion and issue an order consolidating the proceedings for purposes of further discovery, development of additional testimony, the development of the factual record, and briefing.

The following parties to one or both of the dockets assent to this motion:

- Susan W. Almy and Stephen M. Wood

Respectfully submitted this 30th day of November  
2015,

/s/

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Ariel Arwen  
4 Dana Street  
Apt. F  
West Lebanon, NH 03784

[arielarwen@gmail.com](mailto:arielarwen@gmail.com)

(603) 443-3561

**CERTIFICATE OF SERVICE**

I hereby certify that on November 30, 2015, I served an electronic copy of this filing with each person identified on the Commission's service lists for Docket Nos. DG 15-155 and DG 15-289 pursuant to Rule Puc 203.02(a).

Ariel Arwen  
Intervenor  
4 Dana Street  
Apt. F  
West Lebanon, NH 03784

[arielarwen@gmail.com](mailto:arielarwen@gmail.com)  
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