

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

Valley Green Natural Gas, LLC

Docket No. DG 15-155

MOTION FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT

NOW COMES Valley Green Natural Gas, LLC (“Valley Green”), in accordance with Puc 203.08, and hereby moves the New Hampshire Public Utilities Commission (the “Commission”) to grant confidential treatment to certain information described below and submitted to the Commission herewith. In support of its Motion, Valley Green states as follows:

1. Valley Green seeks protective treatment for confidential documents and records which were responsive to discovery requests as follows: Staff 1-2, Staff 1-7, Staff 3-1, Staff 3-2, Staff 3-6, Staff 3-8, Staff 3-9, Staff 3-10, Arwen 1-1, LU Tech 1-2, OCA 1-6, OCA 1-7, OCA 1-8, OCA 1-26, OCA 2-1, OCA 3-3, OCA 3-8, OCA 3-10, OCA 3-19, OCA 2-26 and OCA 3-27.

2. Pursuant to Administrative Rule Puc 203.08(a), “the commission shall upon motion issue a protective order providing for the confidential treatment of one or more documents upon a finding that the document or documents are entitled to such treatment pursuant to RSA 91-A:5, or other applicable law based upon the information submitted pursuant to (b)....”

3. Documents or records that contain “confidential, commercial, or financial information” are exempt from public disclosure. RSA 91-A:5, IV.

4. In determining whether a competitively sensitive document should be granted protection, the Commission analyzes: (1) whether the information sought is confidential, commercial, or financial information, and (2) whether disclosure of that information would

constitute an invasion of privacy. *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, DG 10-017, Order No. 25,208 at 7-8 (March 23, 2011). An invasion of privacy analysis, in turn, requires an evaluation of three factors: (1) whether there is a privacy interest at stake that would be invaded by disclosure; (2) whether there is a public interest in disclosure; and (3) a balance of the public's interest in disclosure and the interests in nondisclosure. *Lamy v. N.H. Pub. Util. Comm'n*, 152 N.H. 106, 109 (2005). For the reasons set forth below, Valley Green requests the Commission find that the above discovery responses contain, or include by reference, competitively sensitive information and that the balance of Valley Green's privacy interest outweighs the public's interest in disclosure and that it grant confidential treatment.

5. As part of discovery in this docket, certain Valley Green financial documentation and records (the "Financial Records"), were responsive to discovery requests Staff 1-2, Staff 1-7, Staff 3-1, Staff 3-2, Staff 3-8, Staff 3-9, Staff 3-10, OCA 1-6, OCA 1-26, OCA 3-19, OCA 3-26, and OCA 3-27. The discovery responses contain confidential, competitively sensitive information that includes financial projections of income and expenses for the regulated and unregulated scenarios. The Financial Records contain future operating income by month and quarter. Discovery responses Staff 3-1, Arwen 1-1, OCA 3-3, OCA 3-8, and OCA 3-27 identify potential customers, per therm charges, or information on customers that may have equity in the company. Additionally, Staff 3-6, LU Tech 1-2, OCA 1-7, OCA 1-8, OCA 2-1, OCA 3-10, OCA 3-19, and OCA 3-26 incorporate by reference the Financial Records of the above discovery responses and are included in this motion for that reason.

6. Valley Green keeps these Financial Records confidential in its daily business practices. If this sensitive business information concerning how Valley Green plans to serve key customers, which vendors it proposes to use, expected expenses, expected income, projected

sales volumes, its break-even points under various scenarios, ownership structure, and its overall capitalization were disclosed to Valley Green's competitors, Valley Green would lose its competitive advantage over its competitors. Disclosure would put Valley Green in a competitive disadvantage.

7. The Commission has historically granted protection to forward-looking financial information and assumptions similar to the type of information contained in Valley Green's discovery responses. *See, City of Nashua*, DW 04-048, Order No. 24,583 at 3 (January 27, 2006) and *National Grid USA et al.*, DG 11-040, Order No. 25,370 at 44-46 (May 30, 2012). In Order No. 25,867, dated February 17, 2016, the Commission has already found that Valley Green's response to Staff 1-2 contains sensitive financial information and ought to be protected from public disclosure. The Commission should afford this same protection to Valley Green's remaining Financial Records.

8. Additionally, disclosure of the identity of Valley Green's potential customers in Staff 3-1 and OCA 3-27 and information on whether those customers have equity in the company in Staff 1-7 would reveal strategic, competitively sensitive information to Valley Green's competitors and would cause Valley Green to be disadvantaged in its bargaining position with its future customers. The Commission has a history of also protecting this type of information. *See Northern Utilities, Inc.*, DG 11-231, Order No. 25,306 (December 22, 2011) (Granting confidential treatment to information, including customer information, that would reveal internal business decisions and financial information).

9. Valley Green has a clear privacy interest in the confidential information contained in the Financial Records for the reasons described above. This is consistent with comments from

the Commission Staff acknowledging that competitive economic activity will guide the franchise approval process to a certain extent. Hearing Transcript of July 28, 2015 at 44-45.

10. Valley Green concedes that the public has an interest in ensuring that the government is meeting its statutory obligation to review franchise applications and assess a petitioner's managerial, technical, financial, and legal expertise. Release of this information to the public would provide the public with insight into the Commission's operations in this regard.

11. The public's interest in disclosure, however, is outweighed by the harm to Valley Green's competitive position and the privacy interest of its proposed customers if the Financial Records were released to the public. On the contrary, disclosure of Valley Green's Financial Records, especially to its competitors, would cause Valley Green competitive harm because competitors would be able to see pricing and targeted customers and use that information to undercut Valley Green's proposals to serve those customers. A remedy the Commission oftentimes employs in these circumstances is that party seeking access to sensitive financial records of the business, enter into a confidentiality agreement whereby they agree to not disclose the information. Accordingly, because Valley Green would suffer more competitive harm by the release of the Financial Records than the public would gain in learning about the Commission's review of this franchise request, the Commission should deem the subject discovery responses confidential and provide protective treatment consistent with RSA 91-A:5, IV.

12. For these reasons, and in summary, Valley Green requests the Commission issue a protective order preventing the public disclosure of the confidential, sensitive financial information in responses to the following discovery requests: Staff 1-2, Staff 1-7, Staff 3-1, Staff 3-2, Staff 3-6, Staff 3-8, Staff 3-9, Staff 3-10, Arwen 1-1, LU Tech 1-2, OCA 1-6, OCA 1-7,

OCA 1-8, OCA 1-26, OCA 2-1, OCA 3-3, OCA 3-8, OCA 3-10, OCA 3-19, OCA 3-26, and OCA 3-27.

WHEREFORE, Valley Green respectfully requests that the Commission:

- A. Grant this Motion for Protective Order and Confidential Treatment; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

VALLEY GREEN NATURAL GAS, LLC.

By its Attorneys,

Date: February 24, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2016, a copy of this Motion has been forwarded to the Commission's service list for this docket.

Marcia A. Brown
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