

STATE OF NEW HAMPSHIRE  
BEFORE THE  
PUBLIC UTILITIES COMMISSION

Re: Valley Green Natural Gas, LLC

Docket No. DG 15-155

**OBJECTION TO INTERVENTION REQUESTS OF  
LIBERTY UTILITIES AND NG ADVANTAGE**

NOW COMES Valley Green Natural Gas, LLC (Valley Green), and objects to the intervention requests filed by Liberty Utilities and NG Advantage. In support of this objection, Valley Green states as follows:

1. Intervention is allowed by grant of right pursuant to RSA 541-A:32, I(b) which requires the Commission to grant a request for intervention if the request “states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law.”

2. This proceeding has been noticed by the Commission as an investigation into whether Valley Green’s provision of natural gas service to the City of Lebanon and Town of Hanover is for the public good. The proceeding is not noticed for the issue Liberty Utilities seeks to protect, that is, its own interest in providing natural gas service to Lebanon and Hanover. Liberty Utilities articulated its interest on pages 3 and 4 of its petition:

“The Commission would not be likely to approve both petitions, as the two entities would seek to serve the same customers, install a similar network of pipelines and construct/operate similar centralized facilities for gas processing and storage.”

“Liberty Utilities believes that its proven history and depth of experience, among other things, should lead to the granting of the Liberty Utilities Petition and, as a result, the outcome of this proceeding is critical to Liberty Utilities, as well as to the public.”

Liberty Utilities' provision of service to Lebanon and Hanover is not a noticed issue in this proceeding. Accordingly, Liberty Utilities has failed to state reasons why the Commission must grant it intervention status.

3. Also, the Commission has opined before that “[i]t should be recognized that merely being interested in such a proceeding is not the same as having a legal interest of some nature that may be affected by the proceeding.” *Re North Atlantic Energy Corporation*, Order No. 24,007, at 3, 87 NHPUC 455, 456 (2002). “Merely expressing a concern about a relevant issue, no matter how well-intentioned, does not confer party status” under RSA 541-A:32, I. *Id.* Thus, even Liberty Utilities’ general interest does not afford it intervention by right.

4. The Commission is authorized, pursuant to RSA 541-A:32, II, to 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.” This intervention authority is permissive to the Commission. Under this authority, the Commission has generously interpreted “interests of justice” and allowed competitors to participate as parties even when the party cannot identify a right or interest. Notwithstanding the generous reading, the Commission has required intervenors to strictly adhere to the noticed scope of the proceeding. See e.g., Docket No. DE 10-188, Secretarial Letter dated September 27, 2010, regarding competing energy efficiency programs offered by Messrs. Aney, Hill, and Ramage. Here, if the Commission permissively grants Liberty Utilities’ intervention request, it must also limit Liberty Utilities to only those issues properly noticed in this proceeding. But even limiting a

competitor to noticed issues does not protect Valley Green's constitutional rights to due process. There are other concerns.

5. In addition to the possibility of exceeding the scope of the proceeding, allowing a competitor to intervene can offer the competitor an opportunity to thwart competition by stalling a review of a monopoly franchise request long enough for it to catch up. In this case, Liberty Utilities has an incentive to do just that. Valley Green is ahead of Liberty Utilities in developing a project and competing for customers. For example, Valley Green has secured a project site, has already begun the local permitting process, has met with and made presentations to the Lebanon planning and zoning boards and obtained a zoning variance, has met with and made a presentation to the Hanover Board of Selectmen, has held a recent public information session, has applied for an Alteration of Terrain permit, has made presentations and proposals to and received responses of interest from a range of local customers as early as 2011 and as recently as June 2015, has identified a long-term LNG supplier, has secured a financing source, has commenced engineering design, has identified prospective operation and maintenance contractors and has drafted some of the plans required under the Commission's Puc 500 rules. By contrast, Liberty Utilities' franchise petition is replete with references of what it wishes to do in the future, not what it has done. Liberty Utilities lags behind Valley Green in bringing natural gas to Lebanon and Hanover, and Liberty Utilities' participation in the instant docket could threaten Valley Green's existing competitive edge.

6. Because Liberty Utilities has been unsuccessful in catching up to Valley Green through the course of regular business, and given that Liberty Utilities has stated

that its goal is to obtain the exact same franchise in the exact same territory, there is a high likelihood that Liberty Utilities could and would try to use the Commission's docket to delay Valley Green's progress toward a franchise and give it time to catch up with Valley Green. Such a delay in the procedural schedule and review of Valley Green's request would be an impermissible use of the Commission's process, disrupt the proceeding in violation of RSA 541-A:32, II, and violate Valley Green's procedural due process rights.

7. Even if a delay does not occur, allowing Liberty Utilities to participate in the docket still poses a threat in terms of Liberty Utilities' access to Valley Green's confidential business information. Access to this information could aid Liberty Utilities' competitive strength against Valley Green. As such, the use of this proceeding to acquire confidential business information would also be an impermissible use of the Commission's process, disrupt the proceeding in violation of RSA 541-A:32, II, and violate Valley Green's procedural due process rights.

8. The role of the Commission is not to ensure Liberty Utilities can expand its natural gas monopoly. In fact, at both the federal and state level, competition in the gas industry is being promoted. In 1992, the Federal Energy Regulatory Commission (FERC) issued Order No. 636 (the Final Restructuring Rule) as a step toward encouraging a competitive natural gas market. The Commission followed suit with gas restructuring in Docket No. DE 98-124. In addition to these regulatory measures, the recent extraction of natural gas from the Marcellus Shale region is making the provision of natural gas less of a natural monopoly and less in need of economic regulation. The United State's natural gas boom is fostering the competition envisioned by Order No. 636

and Docket No. DE 98-124. Here, in light of the Commission's newer role of promoting competition, the prospect of allowing a competitor to enhance its monopoly status by delaying regulatory review of a competitor and having access to confidential business information would be a misuse of the Commission's process and would violate Valley Green's due process rights.

9. Valley Green's objections to Liberty Utilities' intervention request are also applicable to NG Advantage's intervention request. NG Advantage is a competitor to certain aspects of Valley Green's proposal and NG Advantage's provision of gas is not an issue in the instant docket. NG Advantage has not raised interests that require the Commission to grant intervention as a matter of right. If the Commission were to grant NG Advantage intervention pursuant to its permissive authority, Valley Green has the same concerns about delay and access to confidential information.

WHEREFORE, Valley Green respectfully requests that the Commission:

- A. Deny Liberty Utilities' petition to intervene;
- B. In the alternative, limit Liberty Utilities' participation in this docket to only those issues contained in the Order of Notice, and limit Liberty Utilities' right to discovery as appropriate to prevent abusive discovery and unnecessary delay;
- C. Deny Liberty Utilities access to Valley Green's confidential business information;
- D. Deny NG Advantage's petition to intervene;
- E. In the alternative, limit NG Advantage's participation in this docket to only those issues contained in the Order of Notice, and limit NG Advantage's right to discovery as appropriate to prevent abusive discovery and unnecessary delay; and

F. Deny NG Advantage's access to Valley Green's confidential business information.

Respectfully submitted,

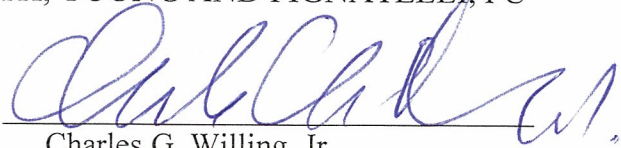
Valley Green Natural Gas, LLC

By its Attorneys,

RATH, YOUNG AND PIGNATELLI, PC

Date: July 27, 2015

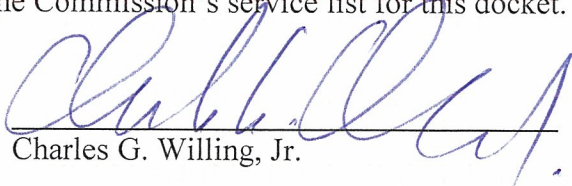
By:



Charles G. Willing, Jr.  
Marcia A. Brown  
One Capital Plaza  
Concord, NH 03301  
(603) 226-2600

Certificate of Service

I hereby certify that on this 27<sup>th</sup> day of July, 2015, a copy of this objection has been forwarded by email to the parties listed on the Commission's service list for this docket.



Charles G. Willing, Jr.