

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DG 15-155

VALLEY GREEN NATURAL GAS, LLC

**VALLEY GREEN NATURAL GAS, LLC OBJECTION TO ARWEN MOTION TO
COMPEL**

Valley Green Natural Gas, LLC (“Valley Green”) hereby objects to the motion to compel filed by Ms. Ariel Arwen on December 31, 2015. In support of this objection, Valley Green states as follows:

1. On December 31, 2015, Ms. Ariel Arwen filed a motion to compel seeking an unredacted copy of Valley Green’s confidential response and confidential supplemental response to Staff 3-10. Staff 3-10 requested Valley Green’s proposed revenue requirement and rates for its proposed natural gas franchise in an active Excel spreadsheet. Valley Green responded to Staff 3-10 by providing that information in a supplemental response to Staff 1-2. Valley Green provided Staff and the OCA with extensive information that included construction costs, gas supply costs, labor, costs of capital, and rates of return.

2. Pursuant to Puc 203.08(d), “a party providing a document...that the party wishes to remain confidential shall accompany the submission with a written statement” and file a motion for confidential treatment prior to the commencement of the hearing. At the time Valley Green submitted the confidential discovery response, Valley Green informed Staff that it considered the information to be commercial and financial information protected from disclosure pursuant to RSA 91-A:5, IV. Valley Green intends in the near future to file a motion for confidential treatment for its confidential discovery. In that motion, Valley Green will argue and explain how release of the information would likely result in a competitive disadvantage for

Valley Green in the form of less advantageous or more expensive supply contracts and that competitors possessing the confidential information would be aware of Valley Green's expectations regarding costs and other contract terms, and would therefore be unlikely to propose to supply such goods and services on terms significantly more advantageous to Valley Green.

3. RSA 91-A:5, IV expressly exempts from the public disclosure any records pertaining to “confidential, commercial or financial information.” The terms “commercial or financial” encompass information revealing financial condition. Information is considered commercial if it relates to commerce. *Union Leader Corporation v. N.H. Housing Fin. Auth.*, 142 N.H. 540, 552-54 (1997).

4. The New Hampshire Supreme Court has adopted a three-step balancing test for determining whether certain documents meet this designation. *Id.*, *Lambert v. Belknap County Convention*, 157 N.H. 375, 382-83 (2008).

5. The Commission has also applied that three-step analysis to determine whether or not information should be protected from public disclosure. *See, Public Service Company of New Hampshire*, Order No. 25,313 at 11-12 (December 30, 2011). The first step is to determine if there is a privacy interest at stake that would be invaded by the disclosure. If such an interest is at stake, the second step is to determine if there is a public interest in disclosure. The Commission has held that disclosure that informs the public of the conduct and activities of its government is in the public interest; otherwise, public disclosure is not warranted. *Public Service Company of New Hampshire*, Order 25,167 at 3 (November 9, 2010). If both of these steps are met, the Commission balances those interests in order to weigh the importance of keeping the record public with the harm from disclosure of the material for which protection is requested. *Id.* at 3-4.

6. In articulating her interest in accessing the financial information provided for in response to Staff 3-10, Ms. Arwen argues that Valley Green has made no claim pursuant to Puc 203.08(d) that it has a good faith basis for seeking confidential treatment of the documents that Staff has requested. Ms. Arwen argues that even if Valley Green had made such claims, nothing in Puc 203.08 provides a basis for withholding information from a party to the proceeding. Ms. Arwen argues that at least some of the information contained in the response to Staff 3-10 is not entitled to confidential treatment. If Valley Green used the template file that was provided by Staff, then some of the information in the response will have previously been disclosed in responses to Intervenor's data requests.

7. Valley Green disputes that it failed to inform Staff and the parties that it considered its response to Staff 3-10, and Staff 1-2, as confidential information protected under RSA 91-A:5, IV. Valley Green does not dispute that Staff's template for Staff 3-10 is not confidential. In fact, that template has been previously disclosed to Ms. Arwen and for Valley Green to produce that template again would merely be redundant.

8. With respect to the first prong of the *Lambert* test, Valley Green argues that it has a privacy interest in its commercial and financial information provided to Staff in Staff 3-10. As the Commission is aware, Staff has characterized the pursuit of a franchise for the City of Lebanon and the Town of Hanover as a competition between Valley Green and Liberty Utilities. If the commercial and financial information produced by Valley Green in Staff 1-2 were not considered confidential, then Valley Green's construction cost estimates, capital costs, rates of return, cost of gas, operational costs, and equity interests of customers would be made known and would place Valley Green and its unregulated gas supplier at a competitive disadvantage. The information has routinely been protected by the Commission in numerous cost of gas cases.

E.g., *Northern Utilities, Inc.*, Order No. 25,162 (2010). As to gas supplier information, see *PNE Energy Supply, LLC*, Order No. 25,512 (2013).

9. With respect to the second prong, as in *Northern*, the information sought by Ms. Arwen concerns cost information and relates to financial arrangements with suppliers. It reveals little if anything about the functions of the Commission. *Northern* at 10. The Commission found the public's interest in disclosure slight and that little information about the Commission, including the processes by which it reviews such information, or the conclusions drawn there from, would be discerned by disclosure. *Northern* at 11. Here, Ms. Arwen has articulated her interest in the information as being something not refused by Puc 203.08. She has not articulated any substantial interest which would affect the balancing test. Importantly, the Commission's rules can only disclose information consistent with RSA 91-A:5, IV, nothing more. Therefore, in balancing Valley Green's privacy interest in its financial documents against Ms. Arwen's interest in knowing the functioning of the Commission, Valley Green posits that its privacy interest greatly outweighs Ms. Arwen's interest in disclosure. For these reasons, Valley Green requests the Commission deny Ms. Arwen's motion to compel.

WHEREFORE, Valley Green respectfully requests that the Commission:

- A. Deny Ms. Ariel Arwen's motion to compel; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

Valley Green Natural Gas, LLC
By its Attorneys,
RATH, YOUNG AND PIGNATELLI, PC

Date: January 8, 2016

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Certificate of Service

I hereby certify that on this 8th day of January, 2016, a copy of this objection has been forwarded by email to the persons listed on the Commission's service list for this docket.

Marcia A. Brown
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