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January 10, 2016

Ms. Debra A. Howland, Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301-2429

Re: Docket No. DG 15-155, Valley Green Natural Gas, LLC

Dear Ms. Howland:

This letter will serve as my reply to the objection filed on January 8, 2016 by Valley Green Natural Gas, LLC ("Valley Green") to my previously submitted motion to compel discovery responses.

In continuing to assert a right to withhold discovery from me, Valley Green relies entirely on RSA 91-A:5, IV. This is a provision of the New Hampshire Right-to-Know Law that authorizes (but does not require) instrumentalities of state government (e.g., the Office of Consumer Advocate and the PUC itself) to withhold from public disclosure certain information in their files. *I am not a member of the public seeking disclosure of information on file with the Commission.* I am a party to this proceeding who, in an effort to prepare my case against the petition at issue in this docket, seek access to the same discovery materials that all other parties to the case are reviewing.

RSA 91-A:5 does not govern my right as a party to participate in this proceeding. Docket DG 15-155 is a contested case within the meaning of the New Hampshire Administrative Procedure Act (APA). The APA provision governing contested cases, RSA 541-A:31, unambiguously requires that "all parties" – not just those parties deemed by the petitioner to be suitable – to have a full opportunity "to respond and present evidence and argument on all issues involved." RSA 541-A:31, IV. Anything less than such a full opportunity would raise significant due process concerns.

I am aware that in similar situations arising in other cases, parties have sometimes entered into confidentiality agreements intended to facilitate full disclosure of discovery materials deemed by parties providing the information to be competitively sensitive. However, counsel to Valley Green has made clear to me that Valley Green refuses to enter into such arrangements with me because Valley Green is unwilling to distinguish between me and other members of the public. In essence, Valley Green does not trust me to abide by any confidentiality agreements into which I might enter. This is an unreasonable and inappropriate stance for such a petitioner and the Commission should not endorse it, even implicitly, by denying my motion to compel discovery responses.

Moreover, the Commission should bear in mind that Valley Green's asserted basis for withholding information from public disclosure is without merit. In its opposition to my motion, Valley Green states that its protectable privacy interest is grounded in the fact that the Staff of the Commission "has characterized the pursuit of a

the pursuit of a franchise for the City of Lebanon and the Town of Hanover as a competition between Valley Green and Liberty Utilities.” Valley Green Opposition at paragraph 8. Therefore, according to Valley Green, public disclosure of the information in question would place it at a “competitive disadvantage” sufficient to justify withholding the information from public disclosure pursuant to RSA 91-A:5, IV. *Id.* But it is business competition – i.e., the competition among market participants for customers – and not the competition between rival litigants in an adjudicative proceeding – that justifies non-disclosure under the applicable language RSA 91-A:5, IV. See *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540, 544 (1997) (referring to “substantial harm to the competitive position of the person from whom the information was obtained”) (citation omitted). Therefore, even assuming Valley Green were willing to postpone this dispute over disclosure by entering into a confidentiality agreement with me, it would be unreasonable to expect me to do so based on so flimsy an asserted basis for entitlement to privacy. In essence, it appears Valley Green does not want the public to learn facts that might tend to suggest its rival franchise applicant is the more suitable candidate. Without any knowledge of what it is that Valley Green is seeking to withhold from me, I am in no position to assess the reality of this situation. I just know I deserve the same rights as any other parties to this proceeding and its companion docket opened to consider the Liberty Utilities petition.

I therefore respectfully ask the Commission to preserve the integrity and fundamental fairness of its adjudicative process by rejecting the arguments in Valley Green’s response to my motion.

Sincerely,

/s/

Ariel Arwen

cc: DG 15-155 Service List