

STATE OF NEW HAMPSHIRE  
BEFORE THE  
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DG 15-155

VALLEY GREEN NATURAL GAS, LLC

Petition for Franchise Approval

NG ADVANTAGE LLC's OBJECTIONS TO  
VALLEY GREEN NATURAL GAS, LLC'S  
PARTIALLY ASSENTED-TO MOTION TO STRIKE HEARING TESTIMONY  
AND  
MOTION FOR LEAVE TO FILE SUPPLEMENTAL TESTIMONY

NOW COMES NG Advantage LLC ("NG Advantage"), an intervenor in the above-captioned docket, and pursuant N.H. Admin. Rule Puc 203.07(e), objects to the Partially Assented-To Motion to Strike Hearing Testimony and Motion for Leave to File Supplemental Testimony filed by Valley Green Natural Gas, LLC ("Valley Green"). In support of its Objections, NG Advantage states as follows:

1. Pursuant to the procedural schedule in this docket, the New Hampshire Public Utilities Commission ("the Commission") held an adjudicative hearing on the merits of Valley Green's Petition for Franchise Approval on March 2, 2016. After approximately two and one-half hours, during which Valley Green provided a lengthy opening statement, conducted direct examination of its witnesses, and marked exhibits for identification, the Commission decided to suspend the hearing to provide the parties with an opportunity to work on exhibit numbering to develop a smooth and efficient way for all of the parties to make their presentations. Tr. Day 1, 3/02/16, p. 75, lines 19-24.

2. The above-referenced hearing was recorded and transcribed by a court reporter as required by RSA 541-A:31, VII which provides, in part, as follows: "The *entirety* of all oral

proceedings shall be recorded verbatim by the agency....the transcription made by the agency from its verbatim record shall be the official transcript of the proceeding.” (Emphasis added).

3. Without citing any precedent for its position, Valley Green has moved to strike all of the testimony proffered at the March 2, 2016 hearing. In addition, on April 27, 2016, Valley Green moved to file supplemental testimony in an effort to introduce additional information and numerous exhibits (*i.e.*, responses to data requests) which could have and should have been filed by the February 18, 2016 deadline for Valley Green’s rebuttal testimony. For the reasons discussed below, both Motions should be denied.

4. The Motion to Strike *must* be denied as the requested relief runs afoul of the requirements of RSA 541-A:31, VII, *i.e.*, that the “entirety” of all oral proceedings conducted by New Hampshire administrative agencies be recorded, and if such recordings are transcribed, the transcript “shall be the official transcript of the proceeding.” In addition, the transcript is a “governmental record” within the meaning of RSA 91-A:1-a, III (*i.e.*, information created on behalf of a public body in furtherance of its official function) and therefore must be kept and maintained by the Commission in accordance with the provisions of RSA 91-A:4. For all of the foregoing reasons, the Motion to Strike must be denied.

5. Even if granting the Motion to Strike did not violate the letter and spirit of the state’s administrative procedures act (RSA 541-A) its right-to-know law (RSA 91-A), such a decision is ill-advised as it would set a very dangerous public policy precedent. Parties to state agency adjudicative proceedings should not be allowed to selectively expunge portions of official transcripts that serve to inform the public of the agency’s workings, even if such action is allegedly being taken to promote administrative efficiency. In addition, such parties should not be given an opportunity to cure a bad record that they were responsible for creating. In the

instant proceeding, instead of filing supplemental or rebuttal testimony by the February 18, 2016 deadline set by the Commission, Valley Green waited until the merits hearing and began supplementing its filings with oral testimony and numerous discovery documents in an effort to make its case. In response to a question from Chairman Honigberg, Valley Green's attorney conceded that its filing was not adequate enough to make its case. (Chairman Honigberg: "If you hadn't had the discovery responses, was your Petition and presentation adequate to make the case that you needed to make? Ms. Brown: No. We're making the case now, with the combination of our testimony and the discovery responses.") Tr., Day 1, 3/02/16, p. 15, lines 13-19. Granting the Motion to Strike would erase from the record Valley Green's admission that its prefiled documents were not sufficient to make its case and would eliminate all of the other oral testimony provided by Valley Green's witnesses, thereby precluding other parties from asking cross examination questions about it. It would also allow Valley Green to change the oral testimony and other statements made at the March 2<sup>nd</sup> hearing and to redo its case in chief. Such a result is unfair to the other parties and therefore should not be permitted.

6. Valley Green asserts that because its witness panel will be reconvened at the resumed hearings scheduled for May 5 – 6, 2016, the testimony in the official transcript of the March 2 hearing is now moot and that the transcript testimony should be stricken to avoid duplicative testimony. That argument must fail because it is based on an incorrect premise, *i.e.*, that the resumed hearing will begin anew. Nothing in the Chairman's remarks concerning the decision to suspend the March 2<sup>nd</sup> hearing could reasonably be construed as indicating that the resumed hearing will allow Valley Green to wipe the slate clean and provide its witnesses with an opportunity to provide new testimony or repeat their prior oral testimony. Rather, the hearing was suspended for the purpose of allowing the parties to "discuss and work out the exhibits,

exhibit numbering, and see if we can come up with a smooth and efficient way for all of the Parties to make the presentations they want to make regarding what is a very important and significant matter." Tr., Day 1, 3/02/16, p. 75, lines 22-24; p. 76, lines 1-2.

7. The parties and Staff met on May 2, 2016 to discuss a numbering system for exhibits, many of which Valley Green seeks to admit into evidence through supplemental testimony. NG Advantage objects to this procedural maneuver at this late date. The deadline for Valley Green's supplemental or rebuttal testimony has long since passed. Allowing supplemental filings just a few days before the hearing will not promote the orderly and efficient conduct of the proceeding. To the contrary - it harms other parties because it provides them with very little time to prepare for effective cross examination on this new testimony. This, in turn, will likely lead to an inefficient proceeding. For all of the reasons discussed herein, the Motion for Leave to File Supplemental Testimony should be denied.

WHEREFORE, NG Advantage LLC respectfully requests that the Commission:

- A. Deny Valley Green's Partially Assented-To Motion to Strike Hearing Testimony
- B. Deny Valley Green's Motion for Leave to File Supplemental Testimony; and
- C. Grant such further relief as the Commission deems just and equitable.

Respectfully submitted,

NG Advantage LLC

By its attorneys,  
ORR & RENO, P.A.

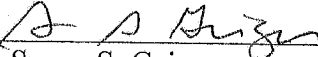
Dated: May 4, 2016

By: 

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Certificate of Service

I hereby certify that a copy of the foregoing Objection has on this 4th day of May, 2016 been either sent by electronic or first class mail, postage prepaid, to persons listed on the Service List.

  
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Susan S. Geiger

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