

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on August 1, 2016

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman

CASE 16-G-0200 - Petition of Corning Natural Gas Holding
Corporation for Declaratory Ruling, or in the
Alternative, Approval, Pursuant to Section 70
Public Service Law, of Stock Acquisition.

ORDER DENYING PETITION FOR DECLARATORY RULING AND GRANTING
APPROVAL PURSUANT TO THE PUBLIC SERVICE LAW

(Issued and Effective August 1, 2016)

BY THE COMMISSION:

INTRODUCTION

By petition dated April 11, 2016, Corning Natural Gas Holding Corporation (CNGHC or the Holding Company) seeks a declaratory ruling that Public Service Law §70 regarding the issuance and acquisition of voting capital stock does not apply to it or its shareholders' exercise of certain conversion rights in connection with a rights offering to CNGHC shareholders.

CNGHC claims that the requirements of PSL §70(4), pertaining to the acquisition of interests of more than 10% of the voting capital stock of a gas corporation receive advance approval by the Commission, should, by its terms, be interpreted as to applying only to direct acquisitions of interests in its gas utility subsidiary, Corning Natural Gas Corporation (CNG),

itself.¹ In the alternative, if the Commission determines that PSL §70(4) applies, CNGHC requests that the Commission find that the proposed conversion, described below, is in the public interest and approve it.

According to the CNGHC, its primary business is providing service to end-use natural gas customers through its wholly-owned subsidiary CNG, a local gas distribution company serving customers in Corning, Hammondsport, and Virgil, New York.² It also serves two other gas distribution companies serving the Elmira and Bath, New York areas.

BACKGROUND

The CNGHC Rights Offering

On December 16, 2015, the board of directors of CNGHC declared a dividend of one subscription right for each share of common stock outstanding on April 14, 2016, which, at that time totaled 2,469,871 outstanding shares. Each subscription right entitled the holder of any of those outstanding shares (shareholder or owner) to purchase either a one-eighth share of the Holding Company's 6.0 percent Series A cumulative preferred stock (Series A preferred) for \$25.00 per share or a one-sixth share of CNGHC's 4.8 percent Series B preferred stock (Series B preferred) for \$20.75 per share. A shareholder had to hold

¹ The Holding Company also owns 50% of Leatherstocking Gas LLC, a utility that distributes gas in Pennsylvania and has an application before the Commission to provide gas distribution services in Broome County, New York, and 50% of Leatherstocking Pipeline, an unregulated company supplying gas to one customer in Pennsylvania.

² Securities and Exchange Commission (SEC) Form 10-K, Annual Report for fiscal year ended September 30, 2015. https://www.sec.gov/Archives/edgar/data/1582244/000158224415000075/cng2015_10K.htm

eight subscription rights for one share of Series A preferred and six subscription rights for one share of Series B preferred. For example, if a shareholder held 600 shares of CNGHC stock and exercised all subscription rights for Series B preferred, the owner would have been able to obtain 100 shares of CNGHC Series B preferred stock.

Every CNGHC shareholder had the opportunity to exercise subscription rights to purchase Series A or Series B preferred shares in proportion to the owners' current holdings of common stock. In addition, if any shareholder fully exercised their subscription rights, they were also entitled to purchase additional preferred shares ("over-subscription privilege") if all Series A and Series B preferred shares authorized by the board of directors were not purchased through the subscription rights. The board of directors of CNGHC had authorized 140,000 shares of the Series A preferred and 360,000 shares of Series B preferred. The subscription rights expired on June 20, 2016. At the completion of the subscription rights offering 105,303 shares of Series A preferred were subscribed and 244,263 shares of Series B preferred were subscribed for net proceeds of approximately \$7.5 million.

According to CNGHC, only the Series B preferred stock has the option to convert into Holding Company common stock up to September 30, 2026, which is the maturity date. If a current owner who has over 10% ownership exercises their subscription rights to acquire Series B preferred, and then converts those shares into CNGHC common stock, it is possible that their ownership stake could increase (since not all shareholders exercised their subscription rights and may not all convert their Series B preferred into common stock). This increase in the holdings of CNGHC's voting capital stock above 10% would require Commission approval under PSL §70(4). There are

currently three shareholders for whom the 10% ownership threshold of PSL §70(4) is potentially relevant. As shown below, they are Michael German (CNGHC's President and Chief Executive Officer), The Gabelli Group and the Zucker Trust.

Corning Natural Gas Holding Corporation		
Major Shareholders		
at February 26, 2016		
	<u>Shares</u>	<u>%</u>
Michael German	446,176	18.06%
The Gabelli Group	440,820	17.85%
The Zucker Trust*	289,451	11.72%
All others	<u>1,293,424</u>	<u>52.37%</u>
TOTAL SHARES	2,469,871	100.00%
*The Article 6 Marital Trust Under the First Amended and Restated Jerry Zucker Revocable Trust		

The petition states that the potential increase in stock ownership by these three owners is in the public interest as proceeds from the Series A and B preferred will primarily be used to support the acquisition of Pike County Light and Power Company (Pike), a Pennsylvania public utility, from its parent, Orange and Rockland Utilities, Inc. (Orange and Rockland). CNGHC entered into an agreement with Orange and Rockland in October 2015 to purchase the stock, working capital and assumed debt of Pike for approximately \$19 million. Pike will add 4,500 electric customers and 1,200 natural gas customers to the Holding Company's operations. While CNGHC's common stock is traded publicly in the Over the Counter markets with only about 2.5 million shares outstanding, the shares are very thinly traded with an average daily volume of 250 shares, which makes it more difficult to raise equity through regular public

offerings.³ In the past, CNGHC has successfully raised equity from current shareholders. For example, in April 2014, the Holding Company raised \$2.5 million through the sale of 150,000 shares to the Zucker Trust, QCI Asset Management LLC and Robert Johnston (shareholder and CNGHC Director).

At July 13, 2016 CNGHC's stock price was \$18.25 per share. As the Series B preferred conversion price of \$20.75 per share is approximately 14 percent above the recent share trading price, conversion of the Series B preferred to common stock is not expected in the near term.

PUBLIC NOTICE

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on May 4, 2016 [SAPA No. 16-G-0200SP1]. The time for submission of comments pursuant to the Notice expired on June 20, 2016. No comments were received.

ENVIRONMENTAL QUALITY REVIEW

The Holding Company provided Part 1 of a Short Environmental Assessment Form in conformance with the State Environmental Quality Review Act (SEQRA) requirements found at 6 NYCRR 617.6(a)(3). CNGHC states that the proposed action regarding the acquisition by shareholders of more than 10% of voting capital stock will not have a significant adverse effect on the environment and, as Lead Agency for this unlisted action, we concur with that assertion.

The proposed conversion will not result in any significant adverse effects to land and water uses or natural

³ Case 13-G-0202, Joint Petition of Corning Natural Gas Corporation and Zucker Revocable Trust - Stock Acquisition, Order Approving Petition in Part and Denying in Part (issued May 17, 2012).

resources. No other actions are contemplated in connection with this acquisition. Therefore, we find that the conversion will not result in significant adverse environmental impacts. Parts 2 and 3 of the EAF have been completed by Department of Public Service staff and will be retained in our files. A Notice of Determination of Significance is attached to this Order.

DISCUSSION AND CONCLUSION

For the reasons stated below, the Holding Company's request for a declaratory ruling is denied and, instead, we grant approval pursuant to PSL §70(4) of the acquisition by the three shareholders of more than 10% of the voting capital stock of CNGHC.

Contrary to the assertions of CNGHC, it is subject to PSL §70(4) because we do not agree that the statute applies only to direct acquisitions of equity interests in its gas corporation, CNG. In this instance, the potential change in ownership as a result of the Series B preferred offering by the Holding Company directly effects CNG, the wholly-owned gas corporation, which the Holding Company admits is its primary business, providing service to end-use natural gas customers in New York. The purpose and intent of §70(4) is to protect the public against potential harm stemming from an entity gaining control of more than 10% of a utility's stock. The §70(4) review is intended to give the Commission the opportunity to protect customers from potential abuses.⁴ In the situation presented here, our interest in reviewing the acquisition by the three shareholders of more than 10% of the voting capital stock of CNGHC is to protect the public interest by ensuring that such ownership will not cause harm to the captive ratepayers of a

⁴ Id. at 5.

traditional utility providing gas service to end-users. Therefore, PSL §70(4) applies and our approval must be obtained for the acquisition by certain entities, including Michael German, the Gabelli Group and the Zucker Trust⁵, of more than 10% of the voting capital stock of the Holding Company. We have previously reviewed the ownership of over 10% of voting capital stock by the three entities, and we find that the incremental changes which might arise based on the Series B preferred conversions do not raise any concerns regarding the public interest.

Approval of the acquisition of more than 10% of the voting capital stock of a gas corporation turns on whether the acquisition is in the public interest, as required by PSL §70(5). In light of the fact that CNGHC has limited access to equity financing⁶ and because Michael German, the Gabelli Group and the Zucker Trust's percentage ownership changes possible under the Series B preferred conversions are acceptable, we find that it is in the public interest to allow them to potentially increase their holdings by the conversion of Series B preferred to common stock, as this will provide needed capital for the Holding Company and CNG.

The Commission orders:

1. Corning Natural Gas Holding Corporation's petition for approval of certain stock transactions is granted as discussed in the body of this Order.

2. Corning Natural Gas Holding Corporation's petition request for a declaratory ruling under Public Service Law §70 is denied.

⁵ We previously determined that Zucker Trust falls within the ambit of PSL §70(4). Case 13-G-0202, supra.

⁶ Case 13-G-0202, supra.

3. This proceeding is closed.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 16-G-0200 - Petition of Corning Natural Gas Holding Corporation for Declaratory Ruling or, in the Alternative, Approval, Pursuant to Section 70 of the Public Service Law, of Stock Acquisition.

NOTICE OF DETERMINATION
OF SIGNIFICANCE
(Negative Declaration)

NOTICE IS HEREBY GIVEN that an Environmental Impact Statement will not be prepared in connection with the proposed conversion of Series B preferred of Corning Natural Gas Holding Corporation to voting capital stock. Having completed our review, we have determined that the proposed action would not result in significant, adverse environmental impacts. This is an Unlisted action, as defined in 6 NYCRR Part 617.2(ak) because the action does not rise to the level of a Type I action and is not listed as a Type II action by the Public Service Commission or by the Department of Environmental Conservation.

Based upon our review of the petitioner's filing and the record in this case, we find that no significant adverse environmental impacts would result from the proposed acquisition of interests of more than 10% of voting capital stock and issue a negative declaration of environmental significance.

The address of the Public Service Commission, the Lead Agency for purposes of environmental quality review of this project, is Three Empire State Plaza, Albany, New York 12223-1350. For further information, please contact Vance A. Barr (vance.barr@dps.ny.gov) at (518) 402-4873.

KATHLEEN H. BURGESS
Secretary