

**STATE OF NEW YORK
BEFORE THE
PUBLIC SERVICE COMMISSION**

- Case 12-G-0141 – Petition of Corning Natural Gas Corporation for Authority to Form a Holding Company and for Approval of Certain Related Transactions.
- Case 11-G-0417 – Joint Petition of Corning Natural Gas Corporation and Mirabito Holdings, Inc. for Approval, Pursuant to Section 70 of the Public Service Law, of Stock Acquisition.
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**ADDITIONAL SUBMISSION
OF
CORNING NATURAL GAS CORPORATION**

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I. INTRODUCTION

At the Procedural Conference held in these consolidated proceedings on September 20, 2012, the Staff of the Department of Public Service (“Staff”) requested that Corning Natural Gas Corporation (“Corning” or the “Company”) submit additional information in support of the Company’s position, stated in its petition to form a holding company,¹ that Corning customers will benefit from the proposed holding company structure while, at the same time, enjoying protection from potential negative consequences of such a structure. Staff’s request was premised on the assertion that the Holding Company Petition did not address these issues. Although the Company believes that the Holding Company Petition provided sufficient detail about the benefits and protections inherent in the proposed structure to address any relevant and reasonable questions that might be raised with respect thereto, Corning, without prejudice to that

¹ Case 12-G-0141, Petition of Corning Natural Gas Corporation for Authority to Form a Holding Company and for Approval of Certain Related Transactions, filed March 26, 2012 (the “Holding Company Petition”).

position, nevertheless agreed to provide additional information on the subject of benefits and protections. This submission is intended to fulfill that commitment.

Following the Procedural Conference, Staff, on September 24, 2012, propounded a set of interrogatories, designated its “first set,” consisting of three individually numbered interrogatories, DPS-1, DPS-2 and DPS-3, with DPS-1 containing 30 separate questions. Since a number of the individual questions contained in Staff’s interrogatories relate to the topics of benefits and protections, and many of them deal with specific subjects that Staff believed should be addressed in this proceeding, Corning has appended the Company’s responses to those interrogatories to this document as Appendix A and incorporates them herein by reference.²

One further introductory note is in order. Corning has observed that Staff, both at the Procedural Conference and in its interrogatories, seems to view these proceedings as if the Company were proposing a major merger. Indeed, a number of Staff’s interrogatories even refer to “the merger” or “the acquisition.”³ To be clear, the request made in Case 12-G-0141 is for the formation of a holding company, not for approval of a merger or acquisition. While the mechanism for effectuating a holding company structure may have some formal elements that might be employed in a merger or acquisition transaction, the instant request is not for one company to acquire or merge with another, but rather a request by the Company to put in place a different corporate structure in which, unlike a merger or acquisition, the ultimate shareholders will remain the same. In the case of a merger or acquisition, the Public Service Commission (the “Commission”) has a clear interest in ensuring that the “new” owner or owners are vetted and can establish that they have the necessary financial wherewithal, appropriate experience and other attributes to run the acquired utility. Here, there are no “new” owners; the proposed

² Inclusion of these responses, however, should not be construed as agreement that each of the subjects addressed therein is relevant to the matters to be decided in this proceeding. Corning reserves its rights to assert otherwise.

³ See, e.g., Interrogatory No 1. Parts 10, 11, 17.

transactions are designed to establish a different structure for the acquisition and deployment of capital.⁴ Shareholders should be permitted to carry out such a structural change freely, *provided* that safeguards are in place to insulate customers of the regulated local distribution company (“LDC”). In other words, unlike a merger or acquisition proceeding, the appropriate inquiry in this proceeding is not whether the transaction should be permitted at all, but, instead, under what conditions (*i.e.*, protections for LDC customers) it should proceed. Thus, the appropriate standard of review is not whether holding company structure produces public benefits, but whether it adequately protects customers of the regulated business from adverse consequences resulting from the structural change. If adequate protections are already in place or are established, there is no basis for concluding that the transactions should not be approved.

Notwithstanding Corning’s foregoing position that benefits of the proposed structural change need not be established in this proceeding, such benefits clearly exist and are described below. The discussion of those benefits in this document, however, should not be construed as agreement by the Company that such a showing is required; and Corning reserves its rights to assert its position to the contrary on this subject.

II. NEED FOR AND BENEFITS OF HOLDING COMPANY

Corning is the *only* LDC in New York that has aggressively sought to bring the benefits of locally and regionally produced natural gas to its existing customers and to expand service to currently unserved or underserved customers.⁵ Corning transports locally produced gas from wells in and contiguous with the Company’s service area, using as much of the gas as possible

⁴ Corning anticipates that the post-transaction Board of Directors of the holding company will be the same as that of Corning.

⁵ The only other gas utility in the State that seems to be pursuing expansion of gas service is Central Hudson Gas & Electric Corporation, which has discussed extending service into previously unserved areas of its existing service territory.

for its own customers and transporting what cannot be used locally to the interstate pipeline system. During the depths of the Company's financial crisis in 2005 and 2006, transportation of local production was one of the few bright spots in Corning's financial picture. Following emergence, under new management, from that crisis, transportation of local production has taken on ever-increasing importance as a revenue stream benefiting both customers and shareholders of the Company. Investments in the Root Pipeline, bringing Pennsylvania-produced natural gas into New York, and the Maxwell Compressor Station, making possible substantial increases in quantities transported, together with upgrades to Corning's existing facilities, have increased shared revenues substantially, again benefiting both customers and shareholders.

The opportunities Corning envisions are not limited to simply using locally produced natural gas for existing customers and transporting the remainder to nearby interstate pipelines. Corning saw a need and opportunity for new gas service in the Town of Virgil, in the vicinity of the Greek Peak Resort. Corning acted on that opportunity, obtaining a franchise and providing service in that new territory. Teaming up with Mirabito Holdings, Inc. ("MHI"), which has strong connections to, and extensive knowledge of, potential energy markets in Central and East-Central New York, as well as in Northern Pennsylvania, Corning has identified additional opportunities to expand gas service to currently unserved areas. Leatherstocking Gas Company, LLC ("LGC"), Corning's 50 percent owned joint venture with MHI, has obtained franchises from a number of towns and villages in Central New York⁶ and has just recently received approval to exercise franchises in 13 municipalities in Susquehanna County, Pennsylvania.⁷ In addition, in the late summer of 2012, Leatherstocking Pipeline Company, LLC ("LPC")

⁶ Corning has obtained "new" franchises from the following municipalities in New York: Village of Sidney, Town of Sidney, Village of Bainbridge, Town of Bainbridge and Village of Windsor.

⁷ PA PUC Docket No. A-2011-2275595, *Application of Leatherstocking Gas Company, LLC*, Order issued September 27, 2012.

completed an interconnection between Pennsy Supply, Incorporated (“Pennsy”) and the Williams Laser gathering system in the Township of Middleton, Susquehanna County, Pennsylvania. That interconnection enables Pennsy to receive low-cost local production for its asphalt plant.

The foregoing initiatives share common themes. They take advantage of current and continuously developing opportunities to bring lower-cost natural gas to current and future customers. They promote economic development by making such low-cost gas available for retention and expansion of local business. They thereby serve the energy cost-reduction and economic development policies of New York State (and Pennsylvania). Nevertheless, despite the benefits Corning’s initiatives produce, they are impeded by an existing corporate structure and corresponding regulation that discourage innovation and investment to take advantage of such opportunities.

Corning is virtually unique among gas companies in New York in that it is not part of a holding company structure. All business is conducted under a “parent” (the LDC) that is fully regulated by the Commission. This circumstance produces a major impediment to the Company’s ability to finance core LDC operations – both the existing LDC operations of Corning and new operations to be conducted through LGC. In particular, the Commission has made clear to date that Corning may not provide financing, pursuant to Public Service Law Section 69, for LGC or similar operations, through issuance of stock or long-term debt by the regulated LDC.⁸ Corning is thereby effectively precluded by the Commission from financing

⁸ Case 12-G-0049, *Petition of Corning Natural Gas Corporation for Authority, Pursuant to Public Service Law Section 69, to Issue Long-term Indebtedness and to Issue and Sell Common Stock, Preferred Stock, Rights and/or Warrants*, Order Approving Petition in Part and Denying in Part issued May 17, 2012, at 7-8.

any LDC operations other than those of Corning itself.⁹ That is a severe constraint faced by no other utility in the State that is the size of Corning or larger, because they are all part of holding company structures that facilitate and expedite the ability to invest in other businesses (LDCs and others) that are, according to the Commission's current view, off limits to Corning as a regulated LDC. This inability to raise and deploy capital expeditiously is seriously hampering Corning's ability to provide gas distribution service to the public and undermining public policy favoring the expansion of such service.

Corning appreciates the Commission's intent to apply the requirements of the Public Service Law (*e.g.*, Sections 69 and 107) in a way that does not present undue risk to LDC customers or the financial health of the LDC itself. A holding company structure, however, would not impair the Commission's ability to carry out its mission under the statute. To the contrary, implementation of such a structure would maintain the Commission's oversight of regulated operations while, at the same time, permitting Corning to pursue its goal of expanding the availability of natural gas service in accordance with public policy. Any potential for abuse can be readily discouraged and addressed through the enforcement provisions of the Public Service Law pertaining to affiliate transactions and through agreed upon rules of conduct such as those proposed in the Holding Company Petition (which are based on time-tested rules approved in previous Commission proceedings).

By providing for separation of business units (*e.g.*, the existing Corning LDC operations and new LGC LDC operations), the holding company structure Corning proposes will avoid the situation whereby all investment would have to be made by Corning as the existing regulated

⁹ The implication of the Commission's approach to LGC is that Corning would have to request authorization, pursuant to Public Service Law Section 107, to use funds derived from the rendition of utility service in New York for "non-utility" purposes. The only other option for funding would be to draw upon the relatively modest amount of funds remaining from the sale of the Company's appliance business.

LDC – if such investment were permitted at all. Because the risk of such undertakings, if pursued, would be borne by the LDC’s customers, the tendency of the Commission would be not to approve them – as illustrated by the May 17, 2012 Order in Case 12-G-0049¹⁰ -- and, even if they were approved, the Company would be discouraged from pursuing them lest it be subjected to cost disallowance in a prudence review guided by hindsight.

If, as demonstrated above, regulation under the current corporate structure is inhospitable to expansion of traditional gas distribution in New York, it is downright hostile when it comes to initiatives even remotely different from traditional business models. The construction of the Root Pipeline provides an example of disincentives to entrepreneurial action within the LDC structure. Corning constructed that pipeline at shareholder risk, but, in a dramatic departure from standard practice for utility facilities constructed “between” rate cases, was not permitted to retain the revenues therefrom (to cover carrying costs) during the period prior to the implementation of new rates.¹¹

Establishment of a holding company structure would avoid these types of disincentives and, instead, foster innovation in the distribution sector and other areas that benefits customers, as well as shareholders. Separating LGC’s expansion activities to serve “new” service areas from Corning’s organic growth generally within current service areas or extensions thereof can be carried out effectively under the proposed holding company structure. Under that structure, any differences in risk can be addressed by maintaining the separation, for regulatory purposes, of the different entities. Similarly, other businesses, such as expanded transportation of local and

¹⁰ See footnote 8 and accompanying text, *supra*.

¹¹ Case 09-G-0813 *et al.*, *Petition of Corning Natural Gas Corporation for a Declaratory Ruling as to the Treatment of Revenues and Costs Associated with Transportation of Natural Gas Produced in the Vicinity of the Company’s Service Area or, in the Alternative, for a Waiver or Modification of Existing Requirements Applicable to Such Revenues and Costs*, Order Denying Petition issued March 29, 2010.

regional gas production can be financed and carried out through non-LDC business units that do not present risk to LDC customers.

Where operations are financed through the holding company, rather than through the LDC, timely decision-making is enhanced. Financing will not be constrained by the strictures of the Section 69 approval process, as to subject matter or timing, including inordinate delay under the notice requirements of the State Administrative Procedure Act. Timing considerations are particularly important because many commitments must be made in a short period of time; and the Section 69 approval process, no matter how efficiently carried out by the Commission and Staff, is often too slow and costly to be meaningful in the context of time-sensitive opportunities. Windows of opportunity for favorable financing can easily be missed. The benefits of faster, less costly, turn-around for financing are not limited to unregulated operations; the LDC and its customers stand to benefit as well, since there will be times, such as those experienced by Corning in the recent past, when the Company's aggressive infrastructure improvement programs create a heavy demand for immediate financing.

Time is of the essence for LGC's ability to obtain the necessary financing to build out its authorized franchise territories in Pennsylvania. If LGC is to be able to commence construction this coming spring, to be in a position to provide service before the subsequent heating season, it will need to be out from under the Corning LDC structure so that it can be funded without the constraints that otherwise would apply pursuant to Public Service Law Section 69.

The establishment of a holding company structure will eliminate the current situation whereby investors are discouraged from investing in Corning due to the advance approval requirement of Section 70(4). Investors will be able to purchase shares in real time, instead of

having to wait an indeterminate period for Commission approval.¹² The holding company and the LDC will have immediate access to capital invested, rather than facing uncertainty as to the ability to undertake projects in a timely fashion – the kind of uncertainty that can cause opportunities to be lost.

It is important to reiterate that facilitation of investment by “large” current and prospective shareholders (*i.e.*, those holding more than 10 percent of Corning’s voting capital stock) is not simply theoretical. Five entities hold most of the Company’s stock. Most, if not all, of these entities are willing to make additional investments as Corning’s capital needs grow; but the prospect of waiting for Commission approval for each and every purchase of shares that would increase their percentage ownership in the Company is a strong disincentive to making such investment. The Commission has made clear that it regards increased equity investment in Corning as a high priority and has recognized Corning’s need to cast a broad net in accessing the equity markets.¹³ That goal cannot be achieved if investors are discouraged from investing. Adoption of the holding company structure would remove such disincentives and put investment in Corning on an equal footing with other investment opportunities.

Corning currently conducts interstate operations (*i.e.*, in Pennsylvania, as well as in New York) as an LDC. The Company’s service area determination from the Federal Energy Regulatory Commission (“FERC”), pursuant to Section 7(f) of the Natural Gas Act, enables Corning to engage in limited cross-border operations.¹⁴ The scope of such authorization, however, is not unlimited and, if cross-border opportunities expand significantly, the Company

¹² This change would also eliminate a burden on the Commission and Staff.

¹³ See, *e.g.*, Case 07-G-0445, *Petition of Corning Natural Gas Corporation to Issue and Sell up to 760,754 Shares of \$5 Par Value Common Stock to Support a Rights Offering for Investment Units Consisting of 506,918 Shares of Common Stock and One Warrant to Purchase One Share of Common Stock Aggregating 506,918 Shares*, Order Amending the Order Authorizing Issuance of Common Stock Issued June 21, 2007, issued December 13, 2007 at 3.

¹⁴ *Corning Natural Gas Corporation*, 125 FERC ¶ 62,183 (2008) (Order Determining Service Area).

may no longer be in a position to pursue those opportunities under the existing authority. Corning needs to be able to continue its pursuit of such opportunities, not only for the Company's shareholders, but also for its customers. A holding company structure will facilitate establishment of any necessary new business entity to permit continued compliance with federal requirements applicable to expansion of cross-border business.

Establishment of a holding company structure brings other benefits. Interest among investors, attributable to a larger and more flexible parent under the holding company structure, should increase. Transportation and distribution of shale gas is a burgeoning industry that is attracting more and more investors. The resulting increase in interest that can be expected for the holding company will redound to the benefit of the LDCs (Corning and LGC) and their customers, providing capital infusions for infrastructure improvements and enhanced service quality.

Growing business units under the holding company umbrella should also enhance Corning's opportunities to attract and retain qualified employees, particularly for the regulated companies. Utilities in New York and elsewhere are generally having a more difficult time staffing their operations with qualified employees as older workers retire and fewer qualified workers are available to fill those positions. As the LDC business continues to grow, there will be personal growth and training opportunities available to more and more employees. There will be greater "bench" strength that will inure to the benefit of customers in the form of greater reliability and improved service. Also, being part of an organization that is actively entrepreneurial is exciting and attractive to employees and prospective employees. The holding company structure and the opportunities it creates and supports should enhance Corning's ability to ensure that its customers are being served by the best available personnel.

In addition to producing or fostering these benefits to existing LDC customers, the holding company structure carries with it benefits to the public generally. The energy cost-reduction and economic development policies of State and local governments will be well served by the activities Corning will be able to undertake under that structure. Ready access to financing, in particular, will enable the business units of the holding company to respond quickly to opportunities to develop new franchise areas and to construct new pipelines and compressor stations to serve vital transportation needs. Once the State concludes the current rulemaking on hydraulic fracturing in New York, these needs can be expected to expand dramatically. It is critical that the necessary structure is in place to permit and encourage Corning and LGC to take full advantage of the opportunities. The flexibility and speed with which holding company-derived funds can be deployed under the holding company model is clearly in the public interest.

The foregoing benefits cannot be quantified in the sense of assigning a specific dollar value to them. They should not, however, be discounted or dismissed for that reason. As noted at the outset, such a demonstration of benefits, whether quantified or not, is not necessary in the context of the instant request for authority to establish a holding company structure. If, however, the Commission were to conclude to the contrary (*i.e.*, that such a showing is necessary), the benefits outlined above are more than sufficient to constitute a rational and reasonable basis for concluding that establishment of a holding company structure is in the best interests of all stakeholders – customers, shareholders and the people of New York generally – and thus is in the public interest.

III. PROTECTION AGAINST RISK

As indicated at the outset, Corning's business focus, in addition to maintaining and improving the Company's existing LDC operations, is on expanding the natural gas distribution

business in unserved or underserved areas of New York and Pennsylvania. As described above, the proposed holding company structure will help to realize that objective by facilitating financing and enabling Corning to respond in a timely fashion to new opportunities to serve customers. These activities should be actively encouraged, not impeded, by Commission regulation. Moreover, LDC activities are already subject to extensive oversight and shareholders bear the burden of any shortcomings that may arise under a wide array of measures designed to maintain and enhance reliability, safety and quality of service, discussed further below. The introduction of a holding company structure will not, for example, insulate the holding company's shareholders from any penalties that might be imposed under the current Rate Plan.¹⁵

Corning is cognizant of the importance of protecting customers of the LDC against the potential financial risks of involvement of the LDC or affiliates in non-LDC activities. While the focus of risk management is often on the potential for the holding company or other subsidiaries to increase risk to regulated utility customers (which is discussed below), it is also important to bear in mind that establishment of a holding company structure has the potential to reduce risk currently or potentially residing in the LDC business. Under the existing corporate structure, all operations are under the LDC umbrella and, if Corning were to pursue new ventures today, they would be under that umbrella, too. As pointed out in the Holding Company Petition, activities, such as gathering and interstate transportation pose potential risks; but those risks to the LDC and its customers can be mitigated or eliminated by conducting non-LDC activities through a

¹⁵ Case 11-G-0280, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Corning Natural Gas Corporation for Gas Service*, Order Adopting Terms of Joint Proposal and Establishing a Multi-Year Rate Plan issued April 20, 2012. See footnote 21 and accompanying text, *infra*.

separate corporate entity (*i.e.*, a sister corporation) under the holding company umbrella.¹⁶ Thus, the holding company structure offers certain risk mitigation benefits that should not be ignored.

To the extent that a holding company structure presents potential risks that do not exist under Corning's current corporate structure, those risks can be effectively mitigated. Indeed, many of the potential risks that might be envisaged have effectively been addressed in prior orders of the Commission. In 2009, for example, the Commission relaxed certain severe restrictions on Corning's issuance of dividends that had been implemented in response to the Company's near collapse under "old" management.¹⁷ The Commission, however, retained certain other restrictions to prevent Corning from "drain[ing] the regulated company of needed funds."¹⁸ The regulated operations were required to maintain a common equity ratio of at least 30 percent of regulated capitalization before any declaration of dividends on common stock; cumulative dividends declared in a fiscal year were restricted to 50 percent of regulated net income until regulated operations achieved a 40 percent equity ratio, and were restricted to 90 percent of regulated net income so long as the regulated equity ratio exceeded 40 percent. These measures or similar restrictions would continue to apply to Corning so as to prevent excessive "dividending" to unregulated operations.

Similarly, in the Holding Company Petition, Corning has stated its commitment to protect the regulated LDC from risks inherent in the competitive businesses of unregulated affiliates.¹⁹ Specifically, the LDC "would not bear any losses or be responsible for any obligations that may

¹⁶ Holding Company Petition at 4. Obviously, such risk avoidance assumes the implementation of certain fundamental rules regarding the relationship among holding company subsidiaries, as discussed later in this submission.

¹⁷ Case 07-G-0772, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Corning Natural Gas Corporation for Gas Service*, Order Authorizing Amendment of Dividend Restriction issued March 13, 2009.

¹⁸ *Id.* at 7.

¹⁹ Holding Company Petition at 8.

arise from the [holding company] or its unregulated subsidiaries.”²⁰ Since the LDC would not count as an asset any investment in affiliates, it should not have its access to capital markets or credit ratings adversely affected by the holding company or affiliates. In other words, any debt issuance for other subsidiaries of the holding company would be non-recourse in nature and no utility assets will be pledged to support such debt. These are meaningful protections for customers of the LDC.

The Standards Pertaining to Affiliates and the Provision of Information appended to the Holding Company Petition as Exhibit 13, together with the Cost Allocation Guidelines for Affiliate Transactions included therein as Schedule I, provide a comprehensive set of restrictions on affiliate relationships in the interest of protecting primarily the customers of the LDC. These rules of conduct are modeled closely after similar sets of rules that were approved by the Commission in the past for other utilities and their affiliates. By following protections implemented in numerous other restructuring proceedings for the purpose of protecting regulated utility customers from risks inherent in the business activities of unregulated affiliates, Corning believes that it has developed a consistent set of rules that address any reasonable concerns about affiliate relationships that might be raised in the instant proceeding.

The overarching purpose of the restrictions presented in the Holding Company Petition and in prior orders of the Commission is to prevent deterioration of LDC service through lack of funds. Comprehensive measures designed to prevent service from deteriorating – and, indeed, to enhance the quality of service – are already in place through the Commission’s orders in recent rate cases, including the Company’s most recently concluded rate case.²¹ They include the following measures described in the January 13, 2012 Gas Rates Joint Proposal under “Gas

²⁰ *Ibid.*

²¹ *See* footnote 15, *supra*.

Safety – Regulatory Goals,” adopted by the Commission: (1) a risk-based assessment to assure proper prioritizing of pipe replacements; (2) targets, with financial penalties, for leak backlogs; (3) targets, with financial penalties, for bare steel main replacements; (4) targets, with financial penalties, for bare steel services replacement; (5) required annual leak surveys for a particular type of steel pipe having a manufacturing defect; (6) target times, with penalties, for emergency response; and (7) return on equity-based penalties for non-compliance with certain Commission regulations identified as “high risk.”²² Other measures in the Gas Rates Joint Proposal that are geared to preventing deterioration in service include a Customer Service Performance Mechanism and very specific directives for capital expenditures, including a true-up mechanism.²³ The creation of the holding company will facilitate acquiring capital for the purposes identified above.

These measures, adopted less than six months ago and designed to assure the soundness of Corning’s LDC system and to penalize performance shortfalls, apply to the LDC now and will continue to apply to the LDC regardless of whether the LDC is part of a holding company structure or not. In other words, corporate structure, including holding company ownership of Corning, presents no impediment to the Commission’s enforcement of these provisions.

Corning believes that the foregoing measures provide LDC customers with full protection against any risk that is possible as a result of establishment of a holding company structure. With these protections in place, there can be no doubt that the restructuring the Company proposes in this proceeding will not result in harm to LDC customers or to the public generally.

This conclusion ought to be sufficient, in and of itself, to warrant approval by the Commission of Corning’s proposal to form a holding company. The same shareholders who

²² *Id.*, Gas Rates Joint Proposal at 18-23.

²³ *Id.*, Gas Rates Joint Proposal at 26-32

own the business now will own it after restructuring. The key inquiry in that circumstance is whether the restructuring requires safeguards to prevent deterioration of the financial integrity of the LDC or the service it provides, or to prevent other abuse. These issues have been fully addressed, as described in this section. There are ample financial and other incentives in place, along with ongoing Commission authority, to prevent harm to LDC customers. Even if, contrary to Corning's position stated above, it were necessary to identify benefits resulting from restructuring, such benefits are clear and significant. Accordingly, under any view of the relevant standards for approval, establishment of a holding company structure is fully warranted.

IV. UNNECESSARY "PROTECTION" MEASURES

As noted in the Introduction, Staff seems to have approached this proceeding as if Corning were proposing a major merger. A number of the topics enumerated by Staff at the Procedural Conference have their origin in prior Commission proceedings involving acquisitions of New York utilities by non-U.S. companies. They involve protective measures that only make sense in the context of mergers and, in particular, those involving foreign acquirers. Several of these measures are addressed in this section. It is important to understand, however, that the following discussion is not intended as a comprehensive treatment of the measures mentioned by Staff. Corning bears no burden of proof or other obligation to refute unsupported assertions, in the form of a list of topics, that these measures have any relevance to this proceeding.²⁴

Accordingly, the following discussion is intended to give the flavor of just how far afield some of Staff's suggestions are.

²⁴ As indicated at the outset (*see* footnote 2 and accompanying text, *supra*), Corning has responded, without objection, to all of the interrogatories propounded by Staff to date, many of which relate to the subjects Staff asserted, at the Procedural Conference (S.M. 14), "can be addressed through the interrogatory process." While the Company appreciates that Staff's interrogatories were generally within the bounds of permissible discovery, Corning is concerned that some of the questions raised by Staff at the Procedural Conference, but not included in interrogatories, are inappropriate in this proceeding.

The “golden share”²⁵ is perhaps the most egregious example. The premise of requiring a New York utility to amend its Certificate of Incorporation to establish a class consisting of a single share to be voted in the event that management proposes to file for voluntary bankruptcy, and to have veto power over that recommendation, is an extreme infringement on the rights of shareholders and management to carry out their statutory responsibilities and to exercise business judgment. Whatever purported justification it may have in the context of foreign acquisitions, it is unnecessary in this context.

The “golden share” was first implemented by the Commission to address the concern that a New York utility could be placed in bankruptcy through a decision made in another country, well beyond the reach of the Commission and other New York officials and courts.²⁶ Here, the holding company will be organized under New York law; it will be subject to New York courts and other New York agencies, including the Attorney General; the Commission will have access to the books and records of the holding company and its controlled affiliates, in addition to the Commission’s broad access and authority under Section 110 of the Public Service Law. The Pennsylvania operations of LGC are subject to the jurisdiction of the Pennsylvania Public Utility Commission, as well as the courts and other agencies of the Commonwealth. In addition, the holding company will be subject to the jurisdiction of the Securities and Exchange Commission. In sum, there is no shortage of oversight regarding Corning or the holding company. Under these circumstances, there is no reasonable basis for imposing the “golden share” requirement.

It is also important to observe that the “golden share” is both cumbersome and costly to implement. Obtaining shareholder approval for the necessary amendment of the Certificate of

²⁵ S.M. 16.

²⁶ *E.g.*, Case 07-M-0906, *Joint Petition of Iberdrola, S.A., Energy East Corporation, RGS Energy Group, Inc., Green Acquisition Capital, Inc., New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation for Approval of the Acquisition of Energy East Corporation by Iberdrola, S.A.*, Order Authorizing Acquisition Subject to Conditions issued January 6, 2009.

Incorporation takes time and money. The selection process for an appropriate holder of the “golden share” is time-consuming and costly. Once the appropriate shareholder is selected, it is necessary to provide compensation commensurate with the responsibility to be exercised. For a holding company of the size contemplated here, that is already subject to ample scrutiny and enforcement power, imposing a “golden share” requirement makes no sense at all.

“Goodwill,” also mentioned by Staff,²⁷ may be appropriate for consideration in merger transactions, but it has no relevance here. There is no acquisition, just a restructuring. Accordingly, there is no purchase of stock and, therefore, no premium or other component of the transaction to become “goodwill.” It should be noted that Corning has no “goodwill” on its balance sheet today and, after the reorganization, neither Corning nor the holding company will have any “goodwill.” This topic has no place in this proceeding.

In addition to the foregoing measures, there are certain others raised by Staff at the Procedural Conference that have no conceivable bearing on the instant proposal for restructuring. They include customer service and gas safety, together with enforcement “metrics.”²⁸ Service and safety standards, as well as penalties to ensure compliance with the goals established for each element, are a major feature of the Gas Rates Joint Proposal adopted in Case 11-G-0280.²⁹ These goals and penalties apply to Corning’s distribution business regardless of whether a holding company exists or not. Moreover, these measures, as noted above, were adopted less than six months ago. There is no need to revisit them in this context, or at this time, or at all.

²⁷ S.M. 15.

²⁸ S.M. 17.

²⁹ The Customer Service Performance Incentive is addressed at pages 26-27 of the Joint Proposal, and the Gas Safety objectives and enforcement mechanisms are presented at pages 18-23.

V. SUMMARY AND CONCLUSION

Although Corning's Holding Company Petition provided the requisite information upon which to base a decision approving Corning's request to form a holding company and to undertake the related transactions necessary to effectuate such restructuring, the additional information provided herein provides further support for approval. *Relevant* questions have been answered. Although Corning believes that the Company has already provided more information and proposed more safeguards than have been considered necessary by the Commission in its past approvals of holding company structures even for major combination gas and electric companies, Corning is willing to submit to further discovery and to expand the record in this proceeding to ensure that any *legitimate* concerns of other parties and the Commission are addressed.

That is not to say, however, that this proceeding should be allowed to become the equivalent of a full-blown merger proceeding or a generic proceeding to explore all the possible conditions that might conceivably be imposed on a company to discourage it from expanding the availability of natural gas service and engaging in any entrepreneurial action whatsoever. Shareholders of a regulated utility are entitled to deploy their capital in whatever way makes sense, *provided* that it does not impair the public service obligation of the utility. The protective measures Corning has proposed accomplish that objective. If other parties disagree, they are free to make their own proposals to correct any perceived deficiencies in the Company's presentation. Differences such as these can be resolved efficiently and promptly in this proceeding. Months of discovery are simply not necessary.

Equally important, a showing of benefits to customers from restructuring is neither required by law nor otherwise appropriate as a standard for decision-making here. There is no change in ultimate ownership or other feature present here that has been cited as a reason for

imposing a “benefits” requirement in other – *merger* – transactions. Nevertheless, in the Holding Company Petition and in the foregoing discussion, Corning has presented substantial benefits. Accordingly, even if, the Commission were to conclude – mistakenly – that the Company must demonstrate benefits to customers in a restructuring proceeding, that demonstration has been made here.

The Holding Company Petition and this Additional Submission address and support all of the relevant determinations to be made in this proceeding to permit the establishment of a holding company and the proceeding should move expeditiously to permit such restructuring to take place in time for Corning to carry out its plans to expand natural gas service in New York and Pennsylvania. In particular, it is important to reach a decision in time for the Holding Company to go to the financial markets to obtain financing for construction commencing in the spring of 2013.

Respectfully submitted,



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October 9, 2012

Stanley W. Widger, Jr.
Of Counsel

CASES 12-G-0141 and 11-G-0417

APPENDIX A

RESPONSES TO DPS-1, DPS-2 AND DPS-3

CASES 12-G-0141 and 11-G-0417
CORNING GAS – HOLDING COMPANY PETITION AND STOCK ACQUISITION

STATE OF NEW YORK
STAFF OF THE DEPARTMENT OF PUBLIC SERVICE

INTERROGATORY / DOCUMENT REQUEST

Request No.: DPS-1
Requested By: Christopher Simon
Date of Request: September 24, 2012
Witness: Firouzeh Sarhangi
Subject: Holding Company

1. Provide the one-time incremental costs to achieve the restructuring.
2. Will the restructuring result in increased costs to the utility in the short and/or long run? If so please explain how Corning Natural Gas Corporation (Corning) can be shielded from these costs.
3. Provide a list of the management and corporate services that will be provided for Corning.
4. Provide a list of savings anticipated by the restructuring.
5. Will Corning receive most favored nation status with regard to natural gas produced or transmitted to its affiliates?
6. Will the holding company be filing a consolidated tax return? If so, how can Corning be shielded from the tax liabilities of its other affiliates?
7. Provide the amount of planned amounts of future investments in exploration by type and geographic location for the years 2013-2017. Specify the level of investments, if any, in the service territory of Corning.
8. Are any future acquisitions contemplated by the holding company? Please identify the line of business of any contemplated acquisition.
9. Provide all restructuring related presentations and materials provided to the respective Boards of Directors or committees of the Boards in which the restructuring was discussed, reviewed, and/or voted upon.
10. Provide a schedule listing all potential payments that will be made to Corning directors and officers if the merger is approved and consummated. The schedule should list the payments by type, amount, and position/title. Please explain if ratepayers will be responsible for funding all or part of any of this executive compensation.

11. Please describe the public financial reporting obligations of the holding company and Corning before and after the merger, identifying any changes to reporting that will occur because of the merger.
12. Provide a discussion and explanation as to the effect the proposed transaction will have on Corning's post retirement benefits other than pensions (OPEB) expenses and actuarial valuations.
13. Please provide a discussion and explanation as to the effect the proposed transaction will have on Corning's pension plan expenses and actuarial valuations.
14. Please provide an analysis and discussion on the effect the transaction would have on rates for customers of Corning for the years 2013, 2014 and 2015.
15. Will any of Corning's Cost Allocation Manuals be changed due to the proposed transaction? If so, explain how.
16. Will the holding company establish a competitive code of conduct governing relationships among its subsidiaries? If so, provide a copy when available.
17. If consummated, will the acquisition transaction result in any changes in accounting at Corning? If "yes", provide a summary of the change(s).
18. Please describe the effect of any changes in personnel over the three years following the restructuring on Corning's system reliability, customer service and economic development efforts.
19. What safeguards does Corning propose to protect the privacy of its customers by preventing the unauthorized disclosure of identity, social security numbers, addresses, telephone numbers and other sensitive information to its affiliates?
20. Provide any reports analyses, presentations, memorandum, e-mails and other written materials discussing the plans for operating the utility after the transaction closes.
21. Does the holding company commit to maintaining its corporate offices in the service territory of Corning for the next 10 years?
22. Please describe the executive communications links that the holding company will have with Corning and any other utility in order to understand its needs.
23. Does the holding company plan to institute formal board evaluations of Chief Executive Officer (CEO) performance and review of CEO evaluations of other top management incumbents? If not, why not?
24. Does the holding company plan to institute formal board evaluations of CEO performance of Corning? If not, why not?
25. Does the holding company plan to institute yearly self-assessments of board performance?
26. Will the holding company commit to have a compensation committee made up only of independent directors? If not, why not?

27. Will the holding company commit to have an audit committee made up only of independent directors? If not, why not?
28. Will the holding company commit to having no interlocking directors between regulated and non regulated companies?
29. Will the holding company commit to maintaining a majority of independent directors?
30. Will the holding company commit to annual meetings with the Commission or its delegate?

Response:

1. The Company estimates that the one-time incremental costs to establish a holding company structure will range between \$75,000 and \$150,000, a substantial portion of which is anticipated to consist of the legal and related costs associated with this proceeding. Among the variables that will have an impact on a final, actual cost are the scope and schedule of the instant proceeding, stock certificate transfer costs, proxy solicitation costs, and legal and accounting costs pertaining to the transactions involved.
2. No. The Company does not believe that restructuring will result in increased costs to the utility, even in the short run. The Company anticipates that, if anything, costs to the utility business will decline over time as economies of scale are realized.
3. Because the Holding Company is not expected to have any employees, it will not be providing management and corporate services for Corning. The costs of financings and certain governance, compliance and reporting requirements currently borne by Corning will be moved up to the Holding Company where they will be spread over a larger base as other business units grow, resulting in lower costs to Corning than would otherwise be the case in the absence of restructuring.
4. Total system costs are not expected to change; but allocation of total costs over a larger base is expected to result in lower costs to individual business units and customers.
5. This question is unclear. If the intent is to inquire as to whether Corning's LDC business will receive most favored nation status as a transportation or supply customer of one of its affiliates, the Company currently does not intend to engage in production, either directly or through affiliates. If the Company were to become involved in gathering, such service would be provided on a non-discriminatory basis (*e.g.*, through an open season).
6. Corning has filed, and currently files a consolidated tax return for any affiliate that is at least 85 percent controlled by Corning. Corning Natural Gas Appliance Corporation has been included in the consolidated filing. For ratemaking purposes, however, the Commission uses a stand-alone tax calculation. The establishment of a holding company structure is not expected to impact that approach to the calculation of tax responsibility. Accordingly, no additional mechanism to shield the LDC business from the tax liabilities of other business units is required.
7. Corning does not currently have any plans for investing in exploration during the time frame specified in the question.

8. Corning does not currently have in mind any specific future acquisitions that would be made by the Holding Company following its approval. Corning expects, however, that any such investments would most likely be made in natural gas distribution.
9. Pursuant to appropriate confidentiality arrangements, Corning will make relevant portions of the minutes of meetings of the Board of Directors available for inspection by Staff at the Albany office of Nixon Peabody LLP.
10. Since the proposed transaction is not a change in control, Corning does not contemplate making any payments to directors or officers in that regard.
11. The Holding Company would effectively replace Corning as the entity responsible for such reporting. Corning does not anticipate any substantive change in such reporting. Regulatory reporting (*e.g.*, to the Commission) would remain the responsibility of Corning.
12. Since the establishment of the Holding Company structure will not result in changes in employee levels, Corning anticipates no impact of the transaction on OPEB expenses and actuarial valuations.
13. Since the establishment of the Holding Company structure will not result in changes in employee levels, Corning anticipates no impact of the transaction on pension plan expenses and actuarial valuations.
14. Adoption of the Holding Company structure will not alter the terms of the Gas Rates Joint Proposal approved on April 20, 2012 in Case 11-G-0280, the term of which extends through April 30, 2015. Accordingly, the transaction is not expected to have any impact on the rates applicable during the term.
15. No.
16. Yes. Corning proposes to implement the Standards Pertaining to Affiliates and the Provision of Information that is appended to the Holding Company Petition as Exhibit 13.
17. No.
18. In addition to the modest increase in the number of employees working for Corning's existing utility operations, as provided for in the most recent rate order, for the three years ending April 30, 2015, the Company expects that, as Leatherstocking Gas Company, LLC and other affiliates develop, those entities will hire operational and administrative employees, as required. While the pace of their development and resulting staffing needs are uncertain, particularly in New York where it is unclear whether and when hydraulic fracturing will be allowed, Corning anticipates that Leatherstocking could require up to six employees for its Pennsylvania operations, depending on the pace of development of the newly granted franchises, by the end of 2015. Given current conditions in New York, however, the Company has not projected a headcount increase in this state during that period. Corning expects that the increasing need for employees by Leatherstocking and other affiliates will not result in any deterioration of system reliability, customer service or economic development efforts. Indeed, if there is any impact, it can be expected to be positive. Having more employees under the Holding Company umbrella will create a

larger pool of employees who can be borrowed, as necessary, to assist with LDC operations. Such readily available backup can only enhance reliability and customer service. It should also be recalled that, under the current Corning rate plan, there are severe penalties for failure to meet reliability and customer service standards. These standards and penalties are independent of, and will continue regardless of, the corporate restructuring proposed here. Economic development efforts will also benefit. The hiring of more employees is a boon to the local economy wherever the Company has operations. Likewise, the availability of natural gas service in formerly unserved or underserved areas enhances the economies of those areas, as well as broader regions, of New York and Pennsylvania. The healthier the regional economy becomes, the greater will be the opportunities for growth of Corning's market.

19. The Commission's Uniform Business Practices and the standards proposed in Exhibit 13 to the Holding Company Petition (Standards Pertaining to Affiliates and the Provision of Information) contain the appropriate safeguards.
20. Since no material changes in utility operations are proposed following establishment of the Holding Company structure, there are no materials of the nature described in the question.
21. Corning is committed to maintaining the headquarters of the LDC in the Corning service area. Similarly, there are no plans to establish and maintain the corporate offices of the Holding Company anywhere but in Corning's service area. While it is possible that future circumstances could compel moving those offices outside the Corning service area, the Company cannot envision such circumstances at this time.
22. While Corning has not, at this stage, designated specific executive communications links between the Holding Company and its operating subsidiaries, the Company expects to establish those links wherever necessary to ensure that vital information about the needs of the operating subsidiaries (*e.g.*, for the budget process) is communicated to the correct individuals.
23. The Corning Board of Directors currently evaluates the CEO and other incumbent executives. This practice would be maintained following establishment of the Holding Company structure.
24. Please see the response to Part 23.
25. Yes.
26. The current compensation committee is made up of only independent directors. This practice would remain unchanged under the Holding Company structure.
27. The current audit committee is made up of only independent directors. This practice would remain unchanged under the Holding Company structure.
28. Exhibit 13 to the Holding Company Petition (Standards Pertaining to Affiliates and the Provision of Information) contains the Company's proposal regarding permitted interlocking positions. See page 13. That proposal identifies the interlocking positions the Company proposes to prohibit. It should be noted that Corning proposes to continue

applying the Company's Code of Business Conduct and Ethics that addresses, among other subjects, potential conflicts of interest involving members of the Board of Directors. Corning sees no need for the Holding Company or any other affiliate to implement an across-the-board prohibition on interlocking directors between regulated and non-regulated affiliates.

29. The majority of the current Corning Board of Directors is comprised of independent directors. The Company anticipates no change in this circumstance under the Holding Company structure.
30. The Holding Company will make an appropriate representative or representatives available for meetings requested by the Commission.

Name of Respondent: Firouzeh Sarhangi / L. Mario DiValentino

Position of Respondent: Chief Financial Officer and Treasurer / President, Moonstone Consulting LLC

Date: October 9, 2012

CASES 12-G-0141 and 11-G-0417
CORNING GAS – HOLDING COMPANY PETITION AND STOCK ACQUISITION

STATE OF NEW YORK
STAFF OF THE DEPARTMENT OF PUBLIC SERVICE

INTERROGATORY / DOCUMENT REQUEST

Request No.: DPS-2
Requested By: Michael Augstell
Date of Request: September 24, 2012
Witness: Firouzeh Sarhangi
Subject: Equity Offerings

Currently Corning has bank agreements that stipulate that bank(s) will advance funds approximately equal to 50% of the capital expenditures for infrastructure improvements. If a holding company is formed then equity will be raised at the parent level and no longer at the Corning Natural Gas subsidiary level.

1. How will these bank agreements be modified to accommodate equity being raised at the holding company level and not at the Corning Natural Gas subsidiary, where only debt will be issued?

Response:

1. No changes are required. As indicated in the question, the banks are interested only in ensuring that the appropriate percentage of the capital expenditures, in this case 50 percent, is raised as equity in accordance with the relevant agreements.

Name of Respondent: Firouzeh Sarhangi / L. Mario DiValentino

Position of Respondent: Chief Financial Officer and Treasurer / President, Moonstone Consulting LLC

Date: October 9, 2012

CASES 12-G-0141 and 11-G-0417
CORNING GAS – HOLDING COMPANY PETITION AND STOCK ACQUISITION

STATE OF NEW YORK
STAFF OF THE DEPARTMENT OF PUBLIC SERVICE

INTERROGATORY / DOCUMENT REQUEST

Request No.: DPS-3
Requested By: Michael Augstell
Date of Request: September 24, 2012
Witness: Firouzeh Sarhangi
Subject: Equity Offerings

1. What capitalization does the Company expect to target for the Gathering Company (Gatherco) and Leatherstocking Gas Company, LLC (JV DISCO)?

Response:

1. The Company is targeting 60 to 55 percent debt and 40 to 45 percent equity.

Name of Respondent: Firouzeh Sarhangi / L. Mario DiValentino

Position of Respondent: Chief Financial Officer and Treasurer / President, Moonstone Consulting LLC

Date: October 9, 2012