

NEW YORK STATE
PUBLIC SERVICE COMMISSION

CASE 16-G-0369 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Corning Natural Gas Corporation for Gas Service.

RULING ADOPTING PROTECTIVE ORDER

(Issued October 20, 2016)

SEAN MULLANY, Administrative Law Judge:

On June 17, 2016, Corning Natural Gas Corporation (Corning or the Company) filed a request for an increase in base rate delivery revenues beginning June 1, 2017. The Company's filing also provided information supporting increases in each of the two succeeding 12-month periods. The parties are presently engaged in discovery. Some of the information provided by Corning to Department of Public Service trial staff (Staff) in the context of this proceeding has been submitted subject to claims of confidentiality under the State's Freedom of Information Law (FOIL), Public Officers Law §§84-90.

While no rulings have yet been issued in response to such claims, the information considered in this proceeding may include information that is ultimately entitled to protection against disclosure under one of the exceptions set forth in FOIL. Adoption of a protective order would facilitate pre-hearing discovery, preserve the rights of parties asserting claims of protection against public disclosure, and preserve the ability of parties seeking to challenge such claims. The protective order would also reduce the risks of duplicative, piecemeal, or unnecessary administrative litigation.

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Accordingly, the protective order attached hereto as
ATTACHMENT 1 is adopted.

(SIGNED)

SEAN MULLANY

ATTACHMENT 1
PROTECTIVE ORDER

Protected Information

1. "Protected Information" is information that is asserted to be protected from public disclosure under the Freedom of Information Law (FOIL), Public Officers Law, §§84 et seq., as implemented by Part 6 of the Rules of the Public Service Commission, 16 NYCRR §6-1.1 et seq.. The purpose of this Protective Order is to make Protected Information available to the parties promptly, in order to facilitate party participation and the expeditious administration of this proceeding, without adversely affecting any legitimate interest of any party in either maintaining or challenging the confidentiality of such Protected Information.

Requests for Protected Status

2. Information becomes Protected Information when it is submitted by a party ("Providing Party") to the Administrative Law Judge, clearly and specifically identifying what information it believes should receive such treatment, together with a brief description of how the information meets the criteria for exemption from public disclosure under the Commission's rules and the State Freedom of Information Law. Protected Information is subject to and must be treated in accordance with the terms of this Protective Order by all persons who are given access to such information unless and until 15 days after the Providing Party's claims of protected status are rejected by an administratively final order or withdrawn by the Providing Party.

3. If there is a request for public disclosure or a challenge to the claim of exemption from disclosure under FOIL or if the Administrative Law Judge in his discretion wishes to rule on the confidentiality claim, the Providing Party will be

given an opportunity to provide a more detailed brief justifying its claim before the Administrative Law Judge rules.

Access to Protected Information

4. The following parties are entitled to access to Protected Information: any party that (a) has requested the information or would normally be entitled to be served with it under the Commission's Rules of Procedure; (b) has acknowledged in writing its familiarity with the terms of this Protective Order by executing a copy of the protection agreement ("Protection Agreement") set forth in **Attachment A** to this Protective Order; and (c) is not a party that would benefit from access to the Protected Information by reason of being a competitor or having an adverse business interest to the Providing Party. Parties may be found to be prohibited from accessing Protected Information for competitive reasons. Department of Public Service ("DPS Staff") and the Utility Intervention Unit, Division of Consumer Protection, New York State Department of State (UIU), are subject to and familiar with the provisions of §15 of the Public Service Law, §74 of the Public Officers Law, or both, which provide for disciplinary action, fine, or prosecution for the disclosure of confidential information. Therefore, DPS Staff and UIU are not required to execute the Protection Agreement in this Protective Order to have access to Protected Information. The above-listed parties are "Receiving Parties."

5. To access Protected Information, an authorized representative of the party seeking access must execute the Protection Agreement, file the signed Protection Agreement with the Secretary to the Commission, and serve it on all other parties. All parties, including officers, principals, employees, and agents, are bound by this Protective Order with

respect to Protected Information submitted by any Providing Party at any time during these proceedings. Counsel or other authorized representative that has signed the Protection Agreement on behalf of the Receiving Party is responsible for ensuring compliance of that party, including its officers, principals, employees, agents, and consultants, with the terms of this Protective Order. Except as provided under this Protective Order, no party will disclose, copy or otherwise reproduce, and/or use Protected Information for any purpose other than that authorized by this Protective Order.

6. When executing the Protection Agreement, a party may indicate that it does not want to receive all Protected Information automatically. The purpose of this provision is to relieve parties with limited interests in these proceedings from the obligation to safeguard unwanted information. In lieu of the Protected Information itself, Providing Parties will send parties that have elected this option a notice of the availability and brief description of the nature of the information. Parties that have received such a notice may request all or some of the described information at any time during these proceedings. The Providing Party has no obligation to make it available until such a request is received.

7. Counsel of record or authorized representative of a Receiving Party may, on a need-to-know basis and solely for the purposes of these proceedings, provide access to Protected Information to the following persons, subject to the conditions set forth in this Protective Order: (a) persons not employed by the Receiving Party or its affiliates but who are identified by that party as Outside Experts participating in these proceedings on behalf of that party, provided that each such person has executed the Protection Agreement and a copy of that agreement

has been filed with the Secretary to the Commission and served on all other parties; and (b) employees of the Receiving Party or its affiliates.

8. To facilitate the review and inspection of Protected Information subject to this Protective Order, a Receiving Party will be provided with Protected Information promptly by electronic means. If it is impractical to provide that Protected Information by electronic means, it must be provided by overnight mail. The provisions of this paragraph do not limit or change in any way the provisions of the Commission's rules relating to the time within which interrogatories or other discovery requests must be answered.

Labeling Protected Documents

9. Whenever documents or other materials containing Protected Information are to be provided to a Receiving Party, the Providing Party must designate such documents as containing Protected Information by placing the following designation on the cover page of any document or report covered by this Protective Order: "CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER IN NY PSC CASE 16-G-0369" and each subsequent page should be clearly marked "CONFIDENTIAL - CONTAINS PROTECTED INFORMATION." Where it would be unreasonably difficult to place this notation on each page of the document on which Protected Information appears, because the document is voluminous or for other good cause shown, the notation may be placed only on the first page of that document. Any document produced with such notation will be deemed to be subject to the terms of this Protective Order.

Discovery

10. Any response to an information request that requires the production of Protected Information will be supplied only to parties entitled to receive the information

pursuant to paragraph 4. An unredacted copy of the response, together with the request for protected status, must be served on the Administrative Law Judge.

11. (a) A Providing Party may opt to not supply Protected Information to parties that have executed the Protection Agreement if the Providing Party has a good faith belief that such parties are not qualified to be Receiving Parties, as described in Paragraph 4 of this Protective Order. In exercising such an option, the Providing Party shall provide a written statement of justification for its belief that such parties are among the persons for whom exceptions to disclosure of the particular Protected Information are or should be established. If such parties have objections to the withholding of the Protected Information, and the Providing Party and such parties have attempted to resolve the objections on an informal basis but cannot reach agreement, the matter may be brought to the Administrative Law Judge for resolution.

(b) In the event a Providing Party has a good faith belief that the existing provisions of this Order are insufficient to protect the confidentiality of Protected Information, or to protect against misuse of Protected Information as defined in paragraph 18 herein, and that the provisions of paragraph 4 ("Parties may be prohibited from accessing Protected Information for competitive reasons.") are similarly insufficient, it may make application to the Judge for such additional protections as are warranted. Until the Judge rules on such motion, the Providing Party will not be required to provide the information.

12. If there is a condition placed upon the disclosure of responsive information produced by an outside consultant in order to protect the confidentiality of the

consultant's proprietary model, or for some other similar reason necessary to protect the consultant's legitimate commercial interests, the Providing Party may condition the release of the information to the other parties, except DPS Staff and UIU, upon their agreement to sign a separate confidentiality agreement designed to protect the consultant's legitimate commercial interests. Any such agreement shall not impose unreasonable restrictions on the ability of the parties to use such information in these proceedings. If any parties have objections to any such agreement, and the Providing Party and such objecting parties have attempted to resolve the objections on an informal basis but cannot reach agreement, the matter may be brought to the Administrative Law Judge for resolution.

Pleadings

13. Subject to any special protection granted, parties may refer to Protected Information in briefs, motions, testimony, exhibits, or other materials filed in these proceedings (collectively, "Pleadings"), provided that separate versions of such Pleadings are prepared that include and omit the Protected Information ("the Unredacted Version" and "the Redacted Version," respectively). The versions must be identical in pagination and formatting, differing only in the presence or absence of the Protected Information. If the filing party is a registered user of the DPS Document and Matter Management ("DMM") system, then both the Redacted and Unredacted Versions of the Pleading are to be filed electronically. If the Protected Information included in a pleading has not previously been the subject of a request for protected status, the Providing Party must include such a request with its pleading, consistent with Paragraph 2 of this Protective Order. If the filer is not registered for electronic filing within DMM, only

the Redacted Version of the Pleading and the request for protected status are to be filed with the Secretary. Under no circumstances should Protected Information be included in copies of Pleadings that are filed with the Secretary to the Commission for inclusion in the Commission's public files. The Unredacted Version, together with a copy of the request for protected status, where applicable, must be served on the Administrative Law Judge. The Unredacted Version of a Pleading must bear a conspicuous notation on the cover page and on each page bearing Protected Information, as set forth in Paragraph 9 of this Protective Order. The Unredacted Version of any Pleading will be treated as Protected Information pursuant to this Protective Order. The Unredacted Version should be served only upon those parties entitled to receive Protected Information under the terms of this Protective Order, while the Redacted Version, and the request for protected status, should be served on all other parties.

14. If a party intends to include Protected Information in Pleadings, the party will notify the Administrative Law Judge, and, where applicable, the Providing Party, on a confidential basis at least seven days prior to including the information in Pleadings.

Hearings/Conferences

15. At any hearing or conference in these proceedings, no witness may be questioned with respect to any Protected Information unless that person would be entitled to access to Protected Information pursuant to the terms of this Protective Order. In order to facilitate the management of such disclosures, counsel or the authorized representative of a party will advise the parties and the Administrative Law Judge as far in advance as possible, and no less than 72 hours, if reasonably

possible, that particular testimony, questioning, discussions or presentations are expected to include Protected Information. If Protected Information is included in Pleadings that have been pre-filed and are subject to cross-examination, the Administrative Law Judge will consider the extent to which such information must be protected in the context of public hearings and methods for providing such protection if needed.

16. No person other than those who would be entitled to access to Protected Information pursuant to the terms of this Protective Order may be permitted to hear or review testimony given or discussion held with respect to Protected Information.

Safeguarding Protected Information

17. No duplication or reproduction of the Protected Information may be made beyond that which is necessary to give access to the persons authorized by the provisions of this Protective Order. Persons who are provided with access to Protected Information pursuant to this Protective Order may take limited notes regarding such information to the extent necessary in connection with these proceedings. The protections afforded to Protected Information apply not only to the originally provided document or file in which it was contained, but also to any subsequent documents, notes, recordings, electronic files, or other media in which it may be recorded, including copies generated by automated back-up systems for computer workstation and network data storage devices.

18. No person entitled to receive or afforded access to any Protected Information by reason of this Protective Order may either use or disclose the Protected Information for any purpose other than preparation for and conduct of these proceedings and then solely as contemplated in this Protective Order. Each such person must use her or his best efforts to

keep the Protected Information secure in accordance with the terms, purposes, and intent of this Protective Order. To this end, persons having custody of any Protected Information must keep all copies and notes of Protected Information segregated physically under lock, electronically under password protection or encryption, and otherwise properly secured when they are not being reviewed and must not disclose Protected Information except as permitted by the provisions of this Protective Order, unless and until such Protected Information is released from the restrictions of this Protective Order, either through agreement of the parties or pursuant to a ruling of the Administrative Law Judge. If requested by the Providing Party, the Receiving Party shall provide to the Providing Party a written description of the methods that will be used to safeguard the Protected Information by each individual receiving the Protected Information.

Unauthorized Release of Protected Information

19. If a party believes that it may have disclosed Protected Information to a person not entitled to receive it under the terms of this Protective Order, it will notify the Providing Party immediately and will give detailed information concerning all steps taken or being taken to reverse or minimize the impacts of the improper release. If the Providing Party agrees to share its Protected Information with persons not previously entitled to receive it, it will inform the Administrative Law Judge promptly.

20. Persons who use or disclose Protected Information contrary to the terms of this Protective Order will be subject to such sanctions as may be imposed by the Administrative Law Judge or the Commission, which may include limitation or termination of the responsible individual's, or party's,

participation in these proceedings. Such persons and the parties they represent may also be liable criminally or civilly under relevant federal and State statutes and regulations.

Return or Destruction of Protected Information

21. The obligation of a party in possession of Protected Information to safeguard it from public disclosure does not end with these proceedings.

22. Within one year following completion of these proceedings, including the periods for administrative or judicial review thereof, a person in possession of Protected Information will certify to the Providing Party that it has been destroyed. The certification will describe how the Protected Information was destroyed and address the destruction of any subsequent documents, notes, recordings, electronic files, or other media in which it may be recorded, including copies generated by automated back-up systems for computer workstations and network data storage devices. Notwithstanding the foregoing, DPS Staff may retain Protected Information provided that confidentiality is maintained consistent with the terms and conditions of the Protective Order. Other parties may retain Protected Information beyond the one-year period only if given express permission to do so by the Providing Party.

23. Nothing in this Protective Order imposes any obligations upon a Providing Party with respect to the handling of its own Protected Information.

Rights Not Waived by Acceptance of this Protective Order

24. This Protective Order does not constitute a substantive ruling that the Protected Information is entitled to confidential status pursuant to FOIL, POL §§ 84 et seq. or 16 NYCRR Part 6.

25. Nothing in this Protective Order limits in any way the right of any party to question, challenge, or object to the admissibility of any or all Protected Information furnished under the terms of this Protective Order on any grounds available by law, including relevancy and materiality.

26. Nothing in this Protective Order limits or expands in any way the applicable law concerning the permissible scope of discovery.

27. This Protective Order shall in no way constitute any waiver of the rights of any party in these proceedings to contest any assertion, or to appeal any finding, that specific information is or is not Protected Information or that such information should or should not be subject to the protective requirements of this Protective Order. This Protective Order in no way constitutes any waiver of the rights of a party to appeal, in accordance with 16 NYCRR §6-1.4 or Freedom of Information Law §87, a ruling of the Administrative Law Judge or to appeal a final order of the Commission as to the status as Protected Information of any information sought in connection with these proceedings.

ATTACHMENT A

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 16-G-0369 - Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Corning Natural Gas Corporation for Gas Service.

PROTECTION AGREEMENT

On behalf of:

Party: _____

I acknowledge receipt of a copy of, and have read, the protective order adopted in a ruling issued October 20, 2016, in Case 16-G-0369 before the Public Service Commission of the State of New York (Protective Order) and affirm that I have read and understand its contents, terms and conditions.

I understand that certain information to which the party I represent is to be given access is Protected Information within the meaning of that term under the Protective Order and that the use or disclosure of that Protected Information, other than as permitted by the Protective Order, may cause substantial commercial harm to a Providing Party.

Check one:

_____ I certify that I am an attorney for or other authorized representative of the party identified above and have full authority to execute this document on its behalf. I understand the party I represent is bound by the terms and conditions of the Protective Order and, except as specifically permitted in the Protective Order, its officers, employees, and agents understand they cannot disclose Protected Information to any person, firm, or corporation, copy or otherwise reproduce Protected Information, or use Protected Information for any purpose for its benefit or the benefit of any other person, firm, or corporation. I assume responsibility for ensuring such compliance.

_____ I certify that I, and any firm identified below in which I am a principal or employee, have been retained by the party identified above as a consultant for the purposes of participating in this proceeding and I have full authority to execute this document on behalf of any firm identified below. I and any firm identified below will comply with and be bound by the terms and conditions of the Protective Order and, except as specifically permitted in the Protective Order, will not disclose Protected Information to any person, firm, or corporation, or copy or otherwise reproduce such information, or use such information for any purpose for its benefit or the benefit of any other person, firm, or corporation. I assume responsibility for ensuring such compliance.

NAME (PRINTED): _____

TITLE (PRINTED): _____

FIRM (if applicable):

SIGNATURE: _____

DATE: _____