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Secretary

Three Empire State Plaza, Albany, NY 12223-1350  
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August 9, 2016

VIA E-MAIL

Hon. Sean Mullany & Ben Wiles,  
Administrative Law Judges  
New York State Department of Public Service  
Three Empire State Plaza  
Albany, NY 12223-1350

Re: 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.

Dear ALJs Mullany & Wiles:

This letter is to inform your honors of the concerns that the Department of Public Service Staff (Staff) has with Corning Natural Gas Corporation's (Corning) untimely responses to discovery requests thus far in the above captioned rate proceeding. Corning's delay in responding to the majority of the 179 "pre-filing" interrogatories (IRs) and the 78 IRs Staff has issued thus far in this proceeding has significantly compromised Staff's ability to effectively review Corning's filing to date and undermines Staff's efforts to formulate effective testimony in a timely fashion.<sup>1</sup> If this situation continues, the development of a complete record upon which the Commission can base a decision in this proceeding will suffer.

Since at least 2011,<sup>2</sup> Staff has been providing utilities with a series of "pre-filing" IRs while the utility is developing its rate filing. The pre-filing IRs are a compilation of IRs that Staff would generally ask early in the discovery process. The utility is expected to provide responses to the pre-filing IRs at the same time it submits its filing. In this proceeding, Corning was provided with a list of 179 pre-filing IRs in advance of its filing

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<sup>1</sup> Additionally, although the Company provided workpapers, the presentation is difficult to navigate, further hindering staff's review.

<sup>2</sup> See Case 11-E-0408, Orange and Rockland Utilities, Inc. – Electric Rates.

on April 4, 2016,<sup>3</sup> however Corning only provided responses to, at most, 25 of the 179 questions at the time it submitted its filing.<sup>4</sup> Moreover, the responses provided in its pre-filed Exhibit\_\_ (13) did not correspond directly to the questions or numbering in the list of 179 questions provided to Corning. Consequently, the information in that exhibit was of limited value. Corning provided additional responses on July 15th, July 18th, and July 19th, approximately 28, 31, and 32 days, respectively, after submitting its filing on June 17th in this proceeding. This month long delay in answering standard IRs unacceptably undermined Staff's ability to conduct effective discovery, as much of the information sought in these first 179 IRs, together with the information in a utility's filing, helps Staff to focus its efforts during the discovery phase of a rate proceeding.

In addition to the pre-filing IRs, Staff has asked 78 additional IRs to date. Pursuant to the Commission's rules, Corning is required to answer IRs within ten days following service. If a response cannot be prepared within ten days following service, 16 NYCRR §5.3(d) requires that Corning notify the interrogating party (Staff) and provide a statement as to when the response will be forthcoming. Of the 78 IRs, the Company has provided answers to 48, 28 of which were timely.<sup>5</sup> Of the responses provided thus far 19 were late, with one late by 13 days, two late by 11 days, 11 late by 8 days, three late by seven days, one late by six days and one late by one day. Of the IRs for which responses have not yet been provided, 20 are overdue, with five late by 17 days, two late by 12 days, two late by 11 days, eight late by nine days, one late by eight days and two late by one day. Additionally, at this time 13 of the unanswered IRs are within the ten day period prescribed in the regulations.

Staff has taken actions to cajole Corning into providing responses expeditiously. During the first week of July, Staff Counsel had a conversation with Corning's Counsel, Stanley Widger, regarding the unanswered pre-filing IRs. During this conversation, Mr. Widger represented that he anticipated Corning would send out some responses by Friday, July 8, 2016, however none were sent that week. On July 11, 2016, Staff Counsel sent an email to Mr. Widger following up on the status of the delinquent pre-filing IR responses. On Friday, July 29, 2016, Staff Counsel sent an email to Mr.

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<sup>3</sup> As stated on pages 4-5 of Corning Witnesses Sarhangi and DiValentino's pre-filed testimony: "We would just add that, in the course of preparing this filing, we consulted with Staff and Staff shared with us its list of approximately 180 questions, many of which are multi-part, that are designed to achieve essentially the same objectives as our FAQs and answers. Although we believe that Exhibit CNG-13 covers the subject matter at which Staff's questions are aimed, we will, of course, supplement the information provided as necessary."

<sup>4</sup> See Corning's pre-filed Exhibit\_\_(CNG-13).

<sup>5</sup> Staff also has some concerns with the Company's responses to some of the IRs thus far, but is working with the Company to resolve them. However, it bears noting at this time that a response, such as that provided for DPS-184, which was provided on the due date, included "to be supplied" as the response to one part of the question. This places Staff in an even more untenable position than statistics based simply on response times would suggest.

Widger identifying 19 past-due IR responses. These unanswered IRs include eight of the pre-filing IRs, responses to which, at that point, were six weeks overdue. Staff Counsels had a further conversation with Mr. Widger on August 4, 2016 regarding overdue IR responses, which to-date has resulted in some improvement, however many of the IRs were provided well past the ten day period provided for in the regulations. Thus, Staff has undertaken more than reasonable efforts to secure responses to the IRs it has asked of Corning, to little avail at this point. This situation has harmed Staff's ability to conduct a thorough and timely review of the Company's filing, and likely will impinge on the timely administration of this proceeding under the standard 11 month statutory schedule. Staff hopes that the situation improves this week, and looks forward to discussing our concerns with your honors and the parties at the procedural conference scheduled for August 15, 2016, or earlier.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brandon F. Goddrich", written over a horizontal line.

Brandon F. Goddrich  
Joseph Dowling  
Staff Counsels

cc: Active Party List