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Via E-Mail

Hon. Sean Mullany
Hon. Ben Wiles
Administrative Law Judges
New York Department of Public Service
Three Empire State Plaza
Albany, New York 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 - Request for Confidential Treatment of Portions of Rebuttal Testimony

Dear Judges Mullany and Wiles:

The proposed rebuttal evidence being filed today by Corning Natural Gas Corporation (“Corning” or the “Company”) includes the rebuttal testimony of Russell S. Miller, the Company’s Vice President of Gas Supply and Marketing. In his testimony, Mr. Miller describes potential changes in the local gas production operations of Repsol, one of the entities whose production is transported on the Corning system. Information (the “Confidential Information”) pertaining to those operations was provided to Corning under a non-disclosure agreement with Repsol that prohibits public disclosure of the subject matter. Such information on the business plans of Repsol is sensitive commercial information that warrants protection from disclosure as “confidential commercial information” and/or “trade secrets” under the Public Service Commission’s (the “Commission”) regulations (16 NYCRR § 6-1.3).

The Commission’s regulations define “trade secrets” to include “any formula, pattern, device or compilation of information which is used in one’s business, and which provides an opportunity to obtain an advantage over competitors who do not know or use it” (16 NYCRR Section 6-1.3(a)). While “confidential commercial information” is not specifically defined in the regulations, the term is commonly understood to include information that gives the possessor an advantage over others and that would be valuable to others, if they could obtain it, in the context of commercial relationships. For purposes of the showing required of the person seeking to avoid disclosure, “trade secrets” and “confidential commercial information” are treated nearly identically in the regulations.

A person seeking protection from disclosure of data as a “trade secret” or as “confidential commercial information”

must show the reasons why the information, if disclosed, would cause substantial injury to the competitive position of the subject commercial enterprise. Factors to be considered include, but are not necessarily limited to:

- (i) the extent to which the disclosure would cause unfair economic or competitive damage;
- (ii) the extent to which the information is known by others and can involve similar activities;
- (iii) the worth or value of the information to the person and the person’s competitors;
- (iv) the degree of difficulty and cost of developing the information;
- (v) the ease or difficulty associated with obtaining or duplicating the information by others without the person’s consent; and
- (vi) other statute(s) or regulations specifically excepting the information from disclosure.

16 NYCRR Section 6-1.3(b)(2).

Consideration of the factors pertaining to the information on Repsol’s business plans contained in Mr. Miller’s testimony underscores the competitive sensitivity of the subject Confidential Information, and the prejudice that could result to Repsol upon disclosure of such Confidential Information to a public that would include competitors, counterparties or other entities seeking an advantage in their dealings with Repsol.

The Confidential Information is sensitive from a competitive standpoint in that its disclosure would provide a basis for competitors, counterparties and others to gain insight into Repsol’s business plans, financial circumstances and other factors having a bearing on its bargaining power. Such Confidential Information is not otherwise readily available publicly and could only be obtained or replicated by others with great difficulty and at great cost or, more likely, not at all.

Plainly, disclosure of the Confidential Information would risk “substantial injury to the competitive position” of Repsol within the meaning of Section 6-1.3(b)(2).

Providing the Confidential Information subject to protection, as requested herein, will enable Staff and the Commission itself to review the Confidential Information contained in the Miller testimony. Beyond serving that limited purpose, there is simply no further need for the Confidential Information and there is certainly no need for it to be publicly disclosed. Indeed, there is no benefit and, more likely, much harm to be derived from public disclosure of that information. Thus, the Confidential Information warrants protection from disclosure.

A complete copy of the Miller testimony is attached to this letter in the form of a PDF file. The portion of the testimony for which protection is sought is clearly designated within the text of the document. The remaining portions of the testimony are not considered confidential and, in fact, are being filed today as a redacted version of the testimony.

We are providing a copy of this letter, without the testimony, to Secretary Burgess and to the parties to this proceeding. We ask that Your Honors make the Confidential Information available to Staff as promptly as possible, subject to the protective measures sought herein.

If Your Honors should have any questions regarding this matter, please contact me.

Very truly yours,



Stanley W. Widger, Jr.

Enclosure

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