

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

At a session of the Public Service
Commission held in the City of
Albany on June 14, 2012

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
Robert E. Curry, Jr.
James L. Larocca

CASE 09-G-0252 - Petition of Corning Natural Gas Corporation to
Amend a Certificate of Public Convenience and
Necessity to Exercise Further a Gas Franchise
in the Town of Virgil, County of Cortland.

ORDER ADOPTING SETTLEMENT

(Issued and Effective June 14, 2012)

INTRODUCTION

By petition dated March 29, 2009, Corning Natural Gas Corporation (Corning or the Company) requested approval, pursuant to Public Service Law (PSL) §68, to exercise a gas franchise in the Town of Virgil, Cortland County (Town).¹ The Commission's approval of Corning's Certificate of Public Convenience and Necessity (CPCN), however, was limited to Corning's request to serve specific areas in the Town which included potential residential, public authority and commercial

¹ Case 09-G-0252, Corning Natural Gas Corporation, Order Granting a Certificate of Public Convenience and Necessity (issued June 19, 2009).

customers.² We granted Corning's CPCN on, among other things, the condition that if Corning plans to serve customers outside of the proposed service area, it must file a petition seeking to amend its CPCN.

Subsequently, on September 23, 2011, Corning requested Commission approval, under PSL §68, to amend its CPCN to serve the entire Town. During its field inspection of the proposed expansion, Staff determined that Corning attached as many as 32 residential customers outside of its previously approved service area in violation of PSL §68 and the Commission's June 19, 2009 Order. Staff met with Company representatives to determine how the unauthorized construction occurred, how to prevent recurrences and the appropriate remedy for the violation of the PSL and Commission order.

In lieu of a penalty action, Staff and the Company entered into a proposed settlement. The proposed settlement that Staff and Corning have agreed to as a remedy for the unauthorized construction is that Corning's shareholders will contribute \$25,000 over a three-year period to connect schools or municipal buildings to natural gas in Corning's service territory. As part of the Settlement Agreement, Corning will also outline the steps it will take to prevent future non-compliance by filing its procedure with staff within 30 days of the adoption of the Settlement Agreement.

² Specifically, customers located along South Cortland-Virgil Road, West State Road and State Route 392 to Greek Peak Ski Resort (Resort). The pipeline could also branch off down Church Street to supply a school and a couple of municipal buildings. At the Resort, the pipeline could branch off to supply approximately 110 condominiums along the following routes: Alpha Circle, Arcadia Drive, Beta Drive and Darius Drive.

DISCUSSION

The settlement Agreement entered into between Staff and Corning as a remedy for the unauthorized construction outside of Corning's approved service area is reasonable and we will adopt it in lieu of authorizing the pursuit of a penalty action provided Corning fulfills all the obligations set forth therein. Failure by Corning to comply with the Settlement Agreement will constitute a breach of the Settlement Agreement and a breach of a Commission order. If necessary, the Commission may seek enforcement of this Settlement Agreement by application to the Supreme Court of the State of New York, Albany County or pursue any other available remedy.

Under PSL §25(1), all utilities must obey the PSL and Commission orders. It appears that Corning violated PSL §25(1) by constructing facilities without Commission approval pursuant to PSL §68 and Case 09-G-0252. Therefore, we could pursue a penalty action against Corning. However, Corning's unauthorized construction appears to be in the nature of a technical violation and there was no apparent harm Corning's customers.

CONCLUSION

The proposed settlement agreement is reasonable and should be approved subject to the foregoing conditions.

The Commission orders:

1. The Settlement Agreement, attached to this Order is adopted and Corning Natural Gas Corporation shall comply with all the undertakings and commitments contained therein. Failure by Corning Natural Gas Corporation to comply with the Settlement Agreement will constitute a breach of the Settlement Agreement and a breach of a Commission order. If necessary, the

Commission may seek enforcement of this settlement Agreement by application to the Supreme Court of the State of New York, Albany County or pursue any other available remedy.

2. This proceeding is continued.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary