

4                   CASE 11-G-0280  
                  In Relation to                   Matter No. 11-01133

6 A PROCEEDING on Motion of the  
Commission as to Rates, Rules  
7 and Regulations of Corning  
Natural Gas Corporation for  
Gas Service.  
8 =====

9 February 15, 2012  
2:00 p.m.

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10     Empire State Plaza
11     Agency Building 3
12     3rd floor conference room
13     Albany, New York 12223

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13 STENOGRAPHIC RECORD of an Evidentiary Hearing in  
the above encaptioned matter pursuant to notice.

15                   BEFORE:   KEVIN J. CASUTTO, ALJ  
                      DAVID L. PRESTEMON, ALJ

16 PRESENT: GARRY BROWN, Commissioner, PSC

18 APPEARANCES: For PSC Staff:  
BRIAN OSSIAS, ESQ.

PRESENT: ELIZABETH KATZ  
20 HIEU CAM  
JOHANNA MILLER  
21 AFERDITA BARDHI  
ARIC RIDER, OEGW-GRT, DPS

23 For the Company:  
NIXON, PEABODY, LLP  
24 1300 Clinton Square  
Rochester, New York 14604  
25 BY: STANLEY W. WIDGER, JR., ESQ.

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APPEARANCES, Cont'd:

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For Multiple Intervenors:

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COUCH, WHITE, LLP

540 Broadway, PO Box 2222

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Albany, New York 12201

BY: JAMES S. KING, ESQ.

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For Bath Electric, Gas & Water Systems

READ AND LANIADO, LLP

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25 Eagle Street

Albany, New York 12207-1901

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BY: KEVIN BROCKS, ESQ.

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REPORTED BY: BETH S. GOLDMAN, RPR

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Certified Shorthand Reporter

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1                   P R O C E E D I N G S

2                   ALJ CASUTTO: Good afternoon. I call  
3 Case Number 11G-0280, proceeding on motion of the  
4 Commission as to the rates, charges, rules, and  
5 regulations of Corning Natural Gas Corporation for  
6 gas service.

7                   This hearing is held pursuant to a  
8 notice issued January 26, 2012. And, the  
9 beginning time for today's hearing was revised by  
10 notice dated February 14, 2012.

11                  This is an evidentiary hearing, and the  
12 primary purpose for today's hearing is to receive  
13 the parties' Joint Proposal into evidence and to  
14 address related matters.

15                  I am Kevin Casutto, Administrative Law  
16 Judge with the Department of Public Service. To  
17 my left is Judge Prestemon. And, to my right, we  
18 are fortunate to have the Chairman of the  
19 Commission, Garry Brown with us today.

20                  COMM. BROWN: Thank you. Good  
21 afternoon.

22                  ALJ CASUTTO: At this time I would like  
23 to have the appearances of the parties. For  
24 Department staff?

25                  MR. OSSIAS: On behalf of the New York

1 State Department of Public Service, Brian Ossias,  
2 Staff Counsel. With me is Aric Rider, Chris  
3 Simon, Mike Augstell, Ron Calkins. And, I will  
4 let the people at the table in the back make their  
5 own appearances.

6 MS. KATZ: Elizabeth Katz.

7 MS. MILLER: Johanna Miller.

8 MS. BARDHI: Aferdita Bardhi.

9 MR. CAM: Hieu Cam.

10 ALJ CASUTTO: And, for the Company, for  
11 Corning Gas?

12 MR. WIDGER: Yes, Your Honor. For  
13 Corning Natural Gas Corporation, the firm Nixon,  
14 Peabody, LLP, by Stanley W. Widger, Jr. Also  
15 appearing with me is L. Mario DeValentino of  
16 Moonstone Consulting.

17 ALJ CASUTTO: Thank you. And, for the  
18 Village of Bath?

19 MR. BROCKS: For Bath Electric, Gas and  
20 Water Systems, the firm of Read and Laniado, LLP  
21 by Kevin Brocks.

22 ALJ CASUTTO: Thank you. And, for  
23 Multiple Intervenors?

24 MR. KING: For multiple intervenors, the  
25 law firm of Couch, White LLP, James S. King.

1                   ALJ CASUTTO: Thank you. I will note  
2 that the New York State Department of State also  
3 is a party in this proceeding. Mr. Rigberg, the  
4 attorney for Department of State has indicated  
5 previously that he was called to provide testimony  
6 to the Legislature today and, therefore, would not  
7 be able to attend this session. And, we will  
8 address the Department of State exhibits in due  
9 course. In fact, I will turn to the exhibits now.

10                   The parties prior to today's hearing  
11 have provided by e-mail a list of the exhibits  
12 that represent their litigation positions in this  
13 proceeding. And, I have basically given exhibit  
14 numbers to those proposed exhibits. So, beginning  
15 with the Joint Proposal as revised on February 10,  
16 2012:

17                   Exhibit 1 is the Joint Proposal cover  
18 letter.

19                   Exhibit 2 is the Joint Proposal.

20                   Exhibit 3 are the exhibits -- or  
21 appendices; excuse me -- to the Joint Proposal.

22                   Exhibits 4 through 41 are the Company's  
23 38 exhibits that were identified in an e-mail on  
24 February 14, 2012.

25                   Exhibits 42 through 102 are staff

1 exhibits identified in an e-mail on February 14,  
2 2012.

3 And, also included in the staff exhibits  
4 are the Information Request, DPS 282 as updated.  
5 That would be Exhibit 101.

6 And the Johanna data request as updated,  
7 that will be Exhibit 102.

8 Exhibits 103 and 104 are Multiple  
9 Intervenor's direct testimony of Richard Baudino  
10 and the one exhibit that accompanied that  
11 testimony.

12 Exhibits 105 through 112 are the  
13 testimony of Frank Radigan for Bath and the seven  
14 exhibits that accompanied that testimony.

15 In Mr. Rigberg's absence, for Department  
16 of State, Exhibit 113 is the testimony of Gregg  
17 Collar. I believe that was submitted in public  
18 testimony. And, Exhibit 114 is the accompanying  
19 exhibit to that testimony.

20 In addition, on February 10th the  
21 Company filed a contract dated February 1, 2012  
22 between the Company and Bath. That contract has  
23 been marked as Exhibit 115.

24 Lastly, on February 14, 2012, the  
25 Company and Staff jointly filed a response to the

1 ALJ's questions. And, that response is identified  
2 as Exhibit 116.

3 Do the parties wish to make any comments  
4 on the exhibits, or do you have any objection to  
5 any of the exhibits?

6 Let the record reflect no one has so  
7 responded.

8 At this time, the exhibits are moved  
9 into evidence. I will note that for Exhibits 4  
10 through 114 comprising the parties' litigation  
11 positions, those exhibits are admitted for the  
12 limited purpose of identifying the parties'  
13 litigation positions. Exhibits 1 through 3 and  
14 Exhibits 115 and 116 are admitted into evidence  
15 without limitation.

16 (Exhibits were received in whole or  
17 in part)

18 ALJ CASUTTO: Now, Judge Prestemon, do  
19 you have any questions for the parties?

20 ALJ PRESTEMON: Yes. We sent out some  
21 questions to the parties that the response has  
22 been marked as an exhibit. The sole purpose of  
23 the question was to try to make sure that we  
24 understood some of the provisions of the Joint  
25 Proposal. And, your answers, for the most part,

1 were very helpful and clear on most of the issues.  
2 We had a couple of follow-up questions just to  
3 make sure we understand the answer, and I will go  
4 through those now.

5               With respect to the operation of the  
6 earnings sharing mechanism, your response to our  
7 questions provide an example of how the carrying  
8 charges would be calculated on shared earnings of  
9 shortfall and excess shared earnings. And, so, my  
10 question, I guess, is simple. First of all, does  
11 everybody agree that the example given in the  
12 response was correctly calculated?

13               MR. OSSIAS: On behalf of New York State  
14 Department of Public Service, yes, Your Honor.

15               MR. WIDGER: For the Company, also yes.

16               ALJ CASUTTO: Thank you.

17               ALJ PRESTEMON: Could somebody just very  
18 briefly walk through the steps as to how the  
19 calculation was performed?

20               MR. OSSIAS: The Company is free to jump  
21 in in case I get this wrong. I am going to let  
22 Ron Calkins from our Office of Accounting and  
23 Finance explain the calculations.

24               MR. CALKINS: On earnings shortfall,  
25 \$50,000, and assume that there was a sharing of



1 fifty-fifty between shareholders and rate bearers.  
2 If we stop right there, let's assume that we just  
3 looked at regular one in isolation, there would be  
4 no carrying costs because you don't have a  
5 carrying cost on recovery. But, this is a  
6 three-year agreement that we are going to. So,  
7 for example purposes, for the first year we put in  
8 carrying costs on the share of 2615. That's a  
9 negative. The second year there's a \$65,000  
10 fifty/fifty sharing. 32.5 would go to be the rate  
11 payer, and there would be a carrying charge on  
12 that. It's capped at 34. If you stopped at the  
13 end of year two -- let's say we didn't have to use  
14 it -- the carrying cost would be the net of the  
15 two, 26115 versus the 3400. If you go to the  
16 third year projected earnings of thirty split at  
17 fifteen, again a carrying charge of 1569. So, the  
18 total carrying charge shown there for the three  
19 years is the 2615 minus the 3400 plus the 1569.  
20 Now, the way the agreement reads is that we are  
21 going to be looking at this on the third year  
22 because you have to see what is happening in years  
23 one, two, and three. So, basically, when year  
24 three comes around, that's when you do the  
25 carrying cost calculation. And you would have to

1 go back and say, okay, in this example, in year  
2 one there would be no carrying costs. For year  
3 two there would be and for three there would be.  
4 But for example purposes we show the net. I don't  
5 know if that clarifies it for you.

6 ALJ PRESTEMON: I guess my confusion is  
7 with why the shortfall in rate year one wouldn't  
8 incur carrying charges in both the next two years  
9 rather than just once.

10 MR. CALKINS: Normally, the think is if  
11 you have a shortfall there is no carrying cost.  
12 You don 't put a carrying cost on a shortfall,  
13 only on an element where you have earnings. So  
14 that you could have done this example another way.  
15 So, you could have taken zero in year one and  
16 netted the two in year two, and then show the  
17 carrying charge. You get to the same place.

18 ALJ PRESTEMON: All right. I think I  
19 understand the problem. The shortfall is not like  
20 a deferred amount. It's not like a liability.  
21 That's the fundamental answer. I understand that.  
22 I just wanted to make sure that was clear.

23 The second one is pretty simple. On the  
24 deferral of externally imposed obligations, there  
25 is a provision in the Joint Proposal that says

1 that if the cost of service for the company is  
2 increased by five percent by some externally  
3 imposed obligation due to regulation, law, or  
4 county changes, that the amount may be deferred.  
5 But your response said that the Commission's  
6 traditional three-prong test is not waived. So,  
7 my question is: Does the five percent at least  
8 constitutionally meet the third prong of  
9 materiality? Is that the intention?

10 MR. OSSIAS: Yes. I think basically  
11 what you have indicated is what we were trying to  
12 convey; that the JP does not suggest that the  
13 three-prong test is met. However, assuming that  
14 the Commission is going to apply the five percent  
15 rule for materiality as part of the three-prong  
16 test, then yes. We would agree that the five  
17 percent would be the amount -- above the five  
18 percent would be the amount that would be required  
19 for deferral.

20 ALJ PRESTEMON: So, the intention is  
21 that if the Company demonstrates that the amount  
22 is more than five percent of the cost of service,  
23 that it was unexpected and it is incremental and  
24 the intention is that staff would support the  
25 request for deferral.

1                   MR. OSSIAS: Again, under the assumption  
2 that the Commission is using the five percent to  
3 reflect materiality. We can assume that for  
4 purposes of this conversation. But, the  
5 Commission is, obviously, free to choose a  
6 different percentage. You can go ten percent.  
7 You can go three percent. That's why we were  
8 probably a little more concise in our answer than  
9 you probably wanted us to be.

10                  ALJ PRESTEMON: So, you are simply  
11 reserving the possibility that the Commission may  
12 decide, notwithstanding this JP, that some  
13 externally imposed obligation that's more than  
14 five percent might not be deferrable in its  
15 entirety. It's the intention of the parties that  
16 such a deferral would be supportive, but the  
17 Commission always has discretion to decide.

18                  MR. OSSIAS: That's correct.

19                  ALJ PRESTEMON: All right. That  
20 explains that one. On the Part 230 procedures,  
21 you pretty much answered that. When you look at  
22 Part 230 of the Rules, it covers a whole lot of  
23 things. And I was pretty sure most of those  
24 things were not in dispute in this case. So, I  
25 wonder -- and you said it wasn't intended to

1   require the Company to revise procedures for  
2   everything under those Rules.  So, would you just  
3   briefly describe what is expected of the Company  
4   under this provision.

5               MR. OSSIAS:  All right.  I will  
6   certainly try to do that, Your Honor.  The  
7   intention in the JP as far as staff is concerned  
8   was to cover what we thought was a deficiency in  
9   the Company's practices with regards to Section  
10  230.3, which is charges for additional facilities.  
11  I think it goes without saying that the Company  
12  has to adhere to these rules and regulations that  
13  have been promulgated by the Commission.  However,  
14  because we uncovered a deficiency with regard to  
15  that specific section, we reflected in the JP our  
16  expectation that the company would file something  
17  with staff that updated its procedures,  
18  specifically with regard to Section 230.3.

19              ALJ PRESTEMON:  And, that is the  
20  Company's understanding as well?

21              MR. WIDGER:  Yes, Your Honor.

22              ALJ PRESTEMON:  And, that will be due  
23  September 1st?

24              MR. OSSIAS:  That's right, Your Honor.

25              ALJ PRESTEMON:  All right, thank you.

1 That's all I have. Otherwise, your responses  
2 cleared up the questions we had.

3 ALJ CASUTTO: Commissioner Brown, do you  
4 have any questions?

5 COMM. BROWN: No thank you.

6 ALJ CASUTTO: Does any one of the  
7 parties wish to say anything further before we  
8 conclude the evidentiary hearing?

9 (Pause)

10 ALJ CASUTTO: All right. Let me make  
11 some concluding remarks, then.

12 I want to thank you all for your  
13 participation and cooperation in going through the  
14 settlement process. Although the judges were not  
15 participating in that process, we do appreciate  
16 your efforts.

17 As the hearing is coming to closure,  
18 this also is a good demarkation in the process  
19 between the parties' Joint Proposal process and  
20 the deliberative process of the Commission. So,  
21 because this is an uncontested Joint Proposal, we  
22 will not make a schedule for any closing briefs.  
23 And, we do not intend to issue a recommended  
24 decision. But, instead, after today, Judge  
25 Prestemon and I will be preparing the case for

1 presentation to the Commission for the  
2 Commission's consideration. So, the next event  
3 that you will see scheduled in this matter will be  
4 a Commission session at which this matter will be  
5 considered.

6                   So, with that, I want to thank you for  
7 your attendance today. And, that concludes the  
8 evidentiary hearing.

9                   MR. OSSIAS: Thank you, Your Honor.

10                   (The proceeding was concluded at  
11 approximately 2:20 p.m.)

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