

1 STATE OF NEW YORK
2 PUBLIC SERVICE COMMISSION
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3 In the Matter of

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

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

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

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

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

14 BEFORE: KEVIN J. CASUTTO, ALJ

16 PRESENT: GARRY BROWN, Complainant, PCC

17

18 APPEARANCES: For PSC Staff:
BRIAN OSSTAS ESO

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

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

1 APPEARANCES, Cont'd:

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4 For Multiple Intervenors:
5 COUCH, WHITE, LLP
540 Broadway, PO Box 2222
Albany, New York 12201
6 BY: JAMES S. KING, ESQ.

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8 For Bath Electric, Gas & Water Systems
9 READ AND LANIADO, LLP
25 Eagle Street
Albany, New York 12207-1901
9 BY: KEVIN BROCKS, ESQ.

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14 REPORTED BY: BETH S. GOLDMAN, RPR
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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1 STATE OF NEW YORK)
2 COUNTY OF ALBANY)
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4 I, BETH S. GOLDMAN, Certified
5 Shorthand Reporter, Registered Professional
6 Reporter and Notary Public in and for the
7 County of Albany and the State of New York,
8 hereby certify that the proceedings recorded
hereinabove were recorded stenographically
by me and reduced to computer-generated
transcription.

9

10 I FURTHER CERTIFY that the foregoing
transcript of said proceedings is a true and
correct transcript as stenographically recorded
at the time and place specified hereinbefore.

11

12 I FURTHER CERTIFY that I am not a
13 relative or employee, attorney, or counsel
14 of any of the parties, nor a relative or
employee of such attorney or counsel, or
15 financially interested either directly or
indirectly in this action.

16

17 IN WITNESS WHEREOF, I have
hereunto set my hand this 22nd day of
February, 2012.

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21 BETH S. GOLDMAN
22 Certified Shorthand Reporter
23 Registered Professional Reporter
24 Notary Public

25