

**STATE OF NEW YORK
BEFORE THE
PUBLIC SERVICE COMMISSION**

CASE 11-G-_____ - Joint Petition of Corning Natural Gas Corporation and Mirabito Holdings, Inc. for Approval, Pursuant to Section 70 of the Public Service Law, of Stock Acquisition

**JOINT PETITION OF
CORNING NATURAL GAS CORPORATION
AND MIRABITO HOLDINGS, INC.
FOR APPROVAL, PURSUANT TO SECTION 70 OF THE
PUBLIC SERVICE LAW, OF STOCK ACQUISITION**

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. PETITION.....	2
A. Mirabito’s Business.....	2
B. Mirabito’s Current Holdings	2
C. Mirabito’s Current Relationship with Corning	3
D. Public Interest.....	3
III. CONCLUSION.....	5

APPENDIX A

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I. INTRODUCTION

Mirabito Holdings, Inc. ("Mirabito") currently owns less than 10 percent of the voting capital stock of Corning Natural Gas Corporation ("Corning" or the "Company"). Mirabito proposes to acquire additional shares of Corning voting capital stock to increase its ownership position to a level not exceeding 15 percent. Mirabito anticipates that it will increase its capital stock position by open market purchases; but, if the Company were to make stock offerings in the future, Mirabito might make purchases through such offerings. Because Section 70(4) of the Public Service Law ("PSL") requires approval by the Public Service Commission (the "Commission") of the acquisition by certain entities, including corporations, of more than 10 percent of the voting capital stock of "any gas corporation or electric corporation organized or existing under or by virtue of the laws of [New York State]," Corning and Mirabito (collectively, the "Joint Petitioners") herein seek Commission authorization for the proposed acquisition by Mirabito of up to 15 percent of the Company's voting capital stock.

II. PETITION

In support of their Petition, the Joint Petitioners state as follows:

A. Mirabito's Business

Mirabito, a New York corporation doing business as Mirabito Energy Products ("MEP"), provides energy products for families and businesses in upstate New York. It offers heating oil, propane, natural gas, electricity, coal, gasoline, diesel fuels, biodiesel, commercial fuels, kerosene, and lubricants for home and business owners. Mirabito also owns and operates 54 convenience stores in central New York. In addition, it offers home heating equipment and air conditioning equipment, as well as installation and service. Mirabito was founded in 1927 and is based in Binghamton, New York, with regional offices in Vestal, Norwich, Oneonta, Syracuse, Greene, Walton, and Albany.

MEP serves approximately 500 natural gas and electric customers as a broker for other Energy Services Companies ("ESCOs"). All 500 customers are within New York State in the Iberdrola and National Grid service areas. In the fall of 2010, Mirabito created a new subsidiary, Mirabito Natural Gas LLC ("MNG"). MNG is currently completing ESCO Electronic Data Interchange testing and is planning on serving customers on the Iberdrola, National Grid and Corning systems prior to the winter of 2011-12.

B. Mirabito's Current Holdings

Mirabito currently owns 9.58% of Corning's outstanding common shares or 167,222 shares. The four largest shareholders of Corning, of which Mirabito is one, are shown in Appendix A. As indicated in that Appendix, Mirabito is currently the third largest shareholder and its ranking would not change with the acquisition of additional shares proposed here.

Mirabito does not hold common stock of any other gas, electric or combination utility in New York State.

C. Mirabito's Current Relationship with Corning

Officers of Mirabito currently hold two seats on Corning's Board of Directors. Mr. Joseph Mirabito, the Chief Executive Officer of Mirabito, is a member of the Corning Board Compensation Committee and Nominating Committee. Mr. William Mirabito, the Vice President of Mirabito, is a member of the Corporate Governance and Community Relations Committee, as well as the Audit Committee, of the Corning Board of Directors.

Mirabito has entered into a joint venture, Leatherstocking Gas Company, LLC, with Corning to acquire and develop natural gas franchises in communities not currently served with natural gas that are beyond fifty miles from Corning's existing franchise area.

D. Public Interest

The Joint Petitioners respectfully submit that the proposed increase in ownership by Mirabito is in the public interest in that it encourages investment in Corning's stock, consistent with the Commission's and the Company's longstanding objectives of increasing equity investment in Corning, thereby improving the Company's overall equity-to-debt ratio. Specific directives in Commission rate orders dating back to at least 2002 require the Company to increase the equity component of its capitalization.¹ Virtually *any* infusion of equity capital into the Company's financial structure is consistent with the Commission's directives and in the public interest. Indeed, the Commission's own pronouncements in the context of Corning's

¹ See, e.g., Case 02-G-0003, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Corning Natural Gas Corporation for Gas Service*, Order Adopting the Terms of a Joint Proposal issued December 23, 2002, at 2 (requirement to raise additional \$1.5 million in equity).

financing proposals have been particularly supportive of this view. In approving the Company's proposal to issue warrants for the purchase of stock, for example, the Commission emphasized the importance of providing Corning "with the flexibility to access the equity markets in all its forms."² Corning management is committed to fostering investment in the Company by equity investors and has taken every opportunity to follow through on its commitment. Such investment is critical to the Company's ability to continue to make necessary and mandated improvements to its distribution infrastructure. Likewise, this proposed investment helps to align the interests of the Company and its Board of Directors. Increased investment by Mirabito in Corning elevates the interest of the Mirabito officers, who are Corning Board members, in the well-being of the Company. As a matter of principle, and in practice, such enhanced interest is a highly beneficial aspect of an increased position in the Company such as that proposed here.

Obviously, the foregoing interest in encouraging investment is subject to the condition that such investment not otherwise be deleterious to Corning or its customers. The modest increase in stock ownership proposed here is not sufficient to alter control of Corning. Similarly, Corning and its customers remain well protected against any potential negative impacts of possible transactions involving Mirabito businesses. Any relationships between Mirabito and the Company will be governed by Section 110 of the PSL, which is designed to assure fair dealing in even the remotest of affiliate relationships. Finally, neither Mirabito's nor Corning's share of their respective markets is so great as to present a danger of unfair competition that could operate

² Case 07-G-0445, *Petition of Corning Natural Gas Corporation to Issue and Sell up to 760,754 Shares of \$5 Par Value Common Stock to Support a Rights Offering for Investment Units Consisting of 506,918 Shares of Common Stock and One Warrant to Purchase One Share of Common Stock Aggregating 506,918 Shares*, Order Amending Order Authorizing Issuance of Common Stock issued December 13, 2007, at 3. See also Case 10-G-0224, *Petition of Corning Natural Gas Corporation for Declaratory Ruling or, in the Alternative, Approval Pursuant to Public Service Law §70, Order Denying Declaratory Ruling and Granting Alternative Relief* issued August 20, 2010, at 7; Order Denying Clarification and Granting Rehearing issued November 19, 2010 at 3.

to the detriment of Corning's customers or the competitors of either Mirabito or Corning. In short, there is no potentially negative impact of the proposed stock acquisition that is sufficient to offset the positive elements discussed above.

III. CONCLUSION

The Joint Petitioners respectfully request that the Commission approve, as being in the public interest pursuant to Section 70 of the PSL, the proposed acquisition by Mirabito of additional voting capital stock of Corning sufficient to increase Mirabito's total holdings up to, but not to exceed, 15 percent of such stock and that the Commission grant such authority as soon as feasible so as to permit such investment to be made promptly.

Respectfully submitted,

A handwritten signature in cursive script that reads "Nixon Peabody LLP".

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Dated: August 8, 2011

Case 11-G-_____

Appendix A

**Corning Natural Gas Corporation
Major Shareholders**

**Corning Natural Gas Corporation
Major Shareholders**

<u>Holdings at June 30, 2011</u>	<u>No. Shares</u>	<u>% Owned</u>	<u>DRIP (5)</u>	<u>No. Shares With DRIP</u>	<u>% Owned</u>
Gabelli Group (1)	391,804	22.47%	-	391,804	22.41%
Michael I German (2)	342,555	19.65%	2,825	345,380	19.75%
Mirabito Holdings, Inc. (3)	167,222	9.59%	-	167,222	9.56%
Mitchell Partners, L.P. (4)	120,421	6.91%	-	120,421	6.89%
All others	<u>721,442</u>	<u>41.38%</u>	<u>2,313</u>	<u>723,755</u>	<u>41.39%</u>
Total Shares Outstanding	1,743,444	100.00%	5,138	1,748,582	100.00%

- (1) Includes 311,304 shares of common stock held by Gabelli Funds, LLC and 80,500 shares held by Teton Advisors, Inc. Each of the Gabelli Funds and Teton Advisors have sole voting and dispositive powers over the shares of common shares held by it. Based solely on information in Amendment No. 11 to Schedule 13D filed with the SEC on August 30, 2010 and assuming 2 for 1 stock dividend in April 2011
- (2) Includes 29,029 shares jointly owned by Mr. German and two other individuals and 7,660 shares owned by Mr. German's son. Mr. German disclaims these shares of common stock except to the extent of his pecuniary interest. If these shares are excluded from the above table Mr. German's ownership percentage would be 17.7%
- (3) Includes 164,823 shares owned by Mirabito Holdings, Inc.; 622 shares held by William Mirabito, who holds a 21% ownership interest in Mirabito Holdings, Inc. and 1,155 shares held jointly by Joseph P. Mirabito and spouse and 622 shares held solely by Joseph P. Mirabito, who holds a 20% ownership interest in Mirabito Holdings, Inc.
- (4) Based solely on information in Amendment No. 3 to Schedule 13G filed with the SEC on December 31, 2010 and assuming a 2 for 1 stock dividend in April 2011
- (5) Current DRIP participation is minimal. 1,220 shares were issued last quarter including the 2 for 1 stock dividend. Individual shareholders participating in DRIP can not be identified since transactions are conducted by brokers and stocks are held in street name. However, Mr. German has 51,471 shares that participated in the DRIP of the 1,220 shares issued and received approx 605 shares last quarter.