

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

Case 15-G-0098 - In the Matter of the Application of Leatherstocking Gas Company, LLC, under Section 68 of the Public Service Law, for a Certificate of Public Convenience and Necessity and for Approval of, and Permission to Exercise, a New Gas Franchise Granted said Company by the Town of Windsor, in the County of Broome, State of New York, Including the Right to Transmit and Distribute Gas throughout said Town and to Construct Gas Plant as Necessary in said Town.

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SUPPLEMENTAL DIRECT TESTIMONY OF MICHAEL I. GERMAN

Date: April 17, 2015

Michael I. German

1 Q. Would you please state your name and address?

2 A. Michael I. German, 330 West William Street, Corning, New York 14830.

3 Q. Are you the same Michael I. German whose direct testimony on behalf of
4 Leathertstocking Gas Company, LLC (“Leatherstocking” or the “Company”) was
5 filed in these proceedings on February 20, 2015?

6 A. Yes, I am.

7 Q. What is the purpose of your Supplemental Direct Testimony?

8 A. I am responding to a letter dated March 18, 2015 (the “March 18 Letter”) and a
9 subsequent e-mail dated March 19, 2015 (the “March 19 E-Mail”), both of which
10 are on file in these proceedings, in which the Staff of the Department of Public
11 Service (“Staff”) enumerated what it considered to be deficiencies in the
12 February 20, 2015 Petition (the “Petition”) and supporting papers in these
13 proceedings. Leatherstocking does not necessarily concur that all of the
14 enumerated items constitute deficiencies within the meaning of the Public Service
15 Law (“PSL”) and the regulations of the Public Service Commission (the
16 “Commission”) thereunder. Indeed, the Company discussed its concerns with
17 Staff and, as a consequence, I believe that we successfully sharpened the focus of
18 inquiry to those items as to which there is a legitimate basis for requiring the
19 submission of additional information to assist Staff in its analysis and the

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1 Commission in making its decision. I will address each of those subject areas in
2 the testimony that follows. I would also like to point out that, where it appears
3 that the information requested by Staff has already been provided in these
4 proceedings, or where it is otherwise available (*e.g.*, in a related proceeding), I
5 will provide specific references to such information. Likewise, where requested
6 information appears to be unnecessary in these proceedings, I will explain why.
7 In addition, the Company has received a number of interrogatories from Staff in
8 these proceedings. This testimony will address some of those questions; but
9 others will be addressed in Leatherstocking's individual responses to the
10 interrogatories.

11 Q. Please enumerate the specific topics you are discussing in your testimony.

12 A. By way of preface, I am following the general order in which the Staff
13 correspondence refers to each subject, although, in some cases where it makes
14 sense to do so, I am combining items or discussing them in a different order from
15 how they were posed by Staff. Accordingly, I am addressing the following:
16 (1) corporate organizational documentation and the relationship of
17 Leatherstocking to affiliates; (2) documentation regarding Leatherstocking's
18 financial condition, the Company's ability to finance the gas plant to be
19 constructed, and the manner in which construction will be financed; (3) the rates

1 to be charged for different classes of service and whether those rates are just and
2 reasonable; (4) the customer survey data relied upon to determine numbers of
3 customers to be served; (5) the availability of, and commitments regarding,
4 pipeline and storage capacity required to serve anticipated load; (6) the ability to
5 render safe and reliable service, including the nature of the workforce that will be
6 responsible for operation and maintenance of the system; (7) the schedule for
7 commencement of construction and commencement of service; (8) whether it may
8 be necessary to employ eminent domain to acquire rights-of-way and, if so, how
9 that power would be obtained; and (9) whether the relief sought in these
10 proceedings meets all of the criteria under the Public Service Law and the
11 Commission's regulations to warrant the granting of a certificate of public
12 convenience and necessity.

13 **ORGANIZATION/AFFILIATION**

14 Q. The March 18 Letter states that it is necessary for Leatherstocking to provide "[a]
15 certified copy of the certificate of incorporation of every corporation directly
16 interested in presenting the petition, together with a certified copy of each
17 amendment to such certificate" and that "[t]he petitioner must provide the
18 certificates of incorporation and certificate amendments of its parents and
19 affiliates." What has Leatherstocking provided in this regard?

1 A. In the Petition, Leatherstocking provided a certified copy of the Articles of
2 Organization of the Company as Schedule A. We believe that this document is
3 fully responsive to the requirement of 16 NYCRR §17.2, cited in the March 18
4 Letter, that a petition include “the certificate of incorporation of every corporation
5 directly interested in presenting the petition, together with a certified copy of each
6 amendment to such certificate.” This requirement does not extend to “parents and
7 affiliates.” Leatherstocking is the only “corporation *directly* interested” in this
8 matter. To read the requirement as extending beyond Leatherstocking would read
9 the word “directly” out of the regulation. Accordingly, the Company sees no
10 requirement or other need for providing the certificates of incorporation for all
11 parents and other affiliates. I would just add that, to the extent that the inquiry
12 was intended to obtain information on how Leatherstocking interacts with
13 affiliated interests, I believe that the Commission has established clear rules
14 regarding affiliate relations in several recent orders involving Leatherstocking’s
15 regulated affiliate, Corning Natural Gas Corporation and its parent, Corning
16 Natural Gas Holding Corporation. These orders include the Commission’s Order
17 Adopting Terms of a Joint Proposal and Approving Formation of a Holding
18 Company, with Modifications and Conditions, issued May 17, 2013 in
19 Cases 12-G-0141 and 11-G-0417, and the Commission’s “Order Adopting

1 Affiliate Standards, issued October 19, 2012 in Case 11-G-0280. I want to
2 emphasize that, by declining to provide the certificates of incorporation for
3 entities that are not directly interested in this proceeding, Leatherstocking is not
4 attempting to be uncooperative; the Company merely believes that it has satisfied
5 the relevant requirement and there is no purpose to be served by reviewing
6 certificates of incorporation of entities that are not directly concerned in these
7 proceedings.

8 **FINANCIAL CONDITION, ABILITY, AND MANNER OF FINANCING**

9 Q. The March 18 Letter requests “[p]ertinent books, papers and documents,”
10 indicating that Leatherstocking “must provide financial statements” with audited
11 statements being preferable. The Letter also states that the Company “must
12 provide documents demonstrating that it will be able to finance the gas plant to be
13 constructed.” Further, the Letter requests “[e]vidence of the manner in which the
14 project cost is to be financed,” adding that Leatherstocking “must provide
15 documents such as bank guarantees, certified documents from the municipalities
16 concerning financial backing, etc.” How does Leatherstocking respond to these
17 asserted requirements?

18 A. On February 27, 2015, seven days after filing the Petition in these proceedings,
19 Leatherstocking filed a Petition for Authority to Issue Long-Term Debt to finance

1 the construction of the facilities required to render service in the Town and Village
2 of Windsor (the "Financing Petition"), and the Commission instituted
3 Case 15-G-0128 to consider that financing petition. Leatherstocking believes that
4 the Financing Petition provides the necessary information and that consideration
5 of that Petition will encompass the financing issues identified in the March 18
6 Letter.

7 Q. Do you have any comments on these financing issues beyond what is contained in
8 the Financing Petition?

9 A. Yes. Leatherstocking and a local lender recently negotiated a Term Sheet for a
10 loan of up to \$2.8 million to fund the Company's construction of facilities. The
11 terms are consistent with those described in the Financing Petition and will
12 ultimately be embodied in a definitive loan agreement. Also, I would like to
13 emphasize that, in starting up operations in Pennsylvania and in building out its
14 franchises to serve gas to five boroughs/townships in that state, Leatherstocking
15 successfully obtained debt financing from a local bank to cover 60% of the cost of
16 constructing the system, with the remaining 40% comprised of equity
17 contributions by the two members of the Company. Thus, Leatherstocking has
18 had experience in successfully financing operations that are substantially similar
19 to those for which financing is required in New York.

1 **RATES**

2 Q. Staff has requested that Leatherstocking provide the “rates to be charged for the
3 classes of service rendered and proof of the petitioner’s ability to provide just and
4 reasonable rates.” What rates will Leatherstocking charge for the service to be
5 provided in the Town and Village of Windsor?

6 A. Exhibit 5 to my direct testimony shows the projected revenues, by customer class,
7 from proposed operations in the Town and Village of Windsor. These revenues
8 are derived in conventional fashion by determining the cost of service, including
9 an appropriate rate of return (to be achieved over several years), and expected unit
10 sales from which the cost of service will be recovered. The statistical and cost
11 elements considered in our analysis are presented in Exhibit 4 to my direct
12 testimony and the rates that produce the necessary revenues to cover those costs
13 are reflected in Exhibit 5.

14 Q. Can you confirm that the rates you have used are just and reasonable?

15 A. Yes. The components of the rates to be charged are presented in detail in
16 Exhibits 4 and 5. I believe that, for the most part, these values are straightforward
17 and do not require additional comment.

18 Q. Are there any that you wish to discuss further in this context?

1 A. Yes. As I noted in my initial direct testimony (p. 13), Leatherstocking has
2 assumed a 10% return on equity ("ROE"). We recognize that the Commission is
3 currently setting ROE at levels below 10%; however, as I explained, it is
4 important to reflect the greater risk associated with start-up operations such as
5 those involved here. (This topic is also addressed in a more detailed Staff
6 interrogatory, DPS-5, to which we will respond separately.)

7 Q. In your direct testimony, you mentioned that Leatherstocking had prepared a draft
8 tariff and would be filing it with the Commission after providing a draft for Staff's
9 review. What is the status of that tariff?

10 A. As I mentioned in my direct testimony, the draft is based on the existing, approved
11 tariff of Leatherstocking's affiliate, Corning. We are working to edit and
12 streamline the current draft to eliminate archaic provisions and others that do not
13 apply to Leatherstocking. We expect to complete that task within a matter of a
14 few days.

15 **CUSTOMER SURVEY DATA**

16 Q. The March 18 Letter states that it is necessary to provide "[a]n estimate made
17 from an actual survey of the Town and Village of the number of prospective
18 customers at the end of the first, second and third years of service, showing for
19 each date the number of prospective customers in the residential, commercial and

1 industrial classes of service” and to “provide the customer survey and all back-up
2 information and work papers.” What is your response to this stated requirement?

3 A. Exhibit 5 to my direct testimony shows the customer forecast in each Service
4 Classification over a 10-year period, 2015 through 2024. As I explained in that
5 testimony (p. 5), the proposed build-out of the system in the Town and Village of
6 Windsor was largely determined by the proximity of potential customers to the
7 route between the Millennium Pipeline and High/Middle School complex. In
8 other words, we looked at the required route and determined the feasibility of
9 hooking up nearby residences and businesses. The Company determined the total
10 number of potential customers along the pipeline route and assumed that 80% of
11 those potential customers would request gas service. That assumption is
12 consistent with experience in other “new” franchise areas. To confirm that
13 understanding, however, we are currently working with officials from the Town
14 and Village of Windsor to conduct a formal customer survey via direct mailings
15 and public meetings that will be conducted shortly. A copy of the survey form,
16 calling for responses by May 31, 2015, is contained in Exhibit 6. We anticipate
17 that the results of the survey will be available within the next two months. We
18 recognize that, in some cases involving franchise approval, applicants have
19 provided detailed survey results as part of their application. In this case, however,

1 Leatherstocking believes that, while the more detailed survey may help to add
2 precision to the process, it will not change the basic premises underlying the
3 Company's petition. This is so because of the predominance of the large public
4 customers that will anchor the system. In the first year of operation (2016), for
5 example, the largest four customers are expected to constitute approximately 80%
6 of the revenues (\$294,000) and 90% of the load (40,000 Mcf) of the system. That
7 base revenue stream remains relatively constant over the next five years as more
8 customer, primarily residential and small commercial, are added. With such a
9 large base, the need for more refined customer survey data is not as pronounced as
10 it might otherwise be. This observation is consistent with Leatherstocking's
11 experience in Pennsylvania and Corning's experience in Virgil where large
12 customers have anchored system establishment/expansion. Moreover, even
13 without a detailed survey of prospective customers, the need for gas as the only
14 practicable alternative to current fuel use is overwhelmingly clear in the portions
15 of the Village and Town of Windsor that will be served by the project, if approved
16 by the Commission. Leatherstocking will certainly proceed to complete the
17 survey as quickly as practicable to fine-tune the accuracy of the Company's
18 market penetration projections; but it is not reasonable to expect that the results

1 will have a material impact on the outcome of the Commission's analysis for
2 decision-making purposes.

3 **ECONOMIC FEASIBILITY (PIPELINE AND STORAGE CAPABILITY)**

4 Q. Staff's March 18 Letter requests "[e]vidence of the economic feasibility of the
5 petitioner and of the enterprise" and specifically states that the "petitioner must
6 provide any contracts or letter of commitment with Millennium Pipeline Company
7 and documentation that the petitioner has both the pipeline capacity and storage
8 capacity necessary to service its prospective load." Does Leatherstocking have
9 evidence responsive to this request?

10 A. Yes. With regard to the economic feasibility of Leatherstocking and the proposed
11 distribution system, I believe that the data already provided in this proceeding,
12 together with that contained in the Financing Petition, provides ample evidence of
13 Leatherstocking's capability of financing the build-out. In addition,
14 Leatherstocking's responses to some of Staff's detailed interrogatories regarding
15 the financing of the system (*see, e.g.*, DPS-4) will support the conclusion that this
16 project is economically sound.

17 Q. What support do you have for Leatherstocking's ability to service its load?

18 A. Leatherstocking has pre-existing North American Energy Standards Board, Inc.
19 supply agreements with Southwestern Energy, Cabot Oil and Gas, DTE Energy

1 Trading and several other suppliers. These suppliers have indicated that they will
2 provide firm gas under a full requirements supply agreement to the new Windsor
3 delivery point on the Millennium Pipeline (“Millennium”). Leatherstocking is
4 currently purchasing supply from the identified suppliers for its Pennsylvania
5 operations under the same arrangement without contracting for interstate pipeline
6 or storage capacity. Leatherstocking has not yet entered into written agreements
7 for transportation and supplies of natural gas for the New York system; but the
8 Company has had discussions with Millennium and several suppliers.
9 Millennium’s facilities for the interconnection with the Leatherstocking system
10 are already in place and will not constitute an additional cost for the Company.
11 Leatherstocking anticipates no difficulty regarding the availability or cost of
12 capacity on Millennium. Likewise, based on discussions to date with the potential
13 suppliers, the Company is confident that there are ample, reasonably priced
14 supplies available and that it will not be necessary to contract for storage.

15 **ABILITY TO RENDER SAFE AND RELIABLE SERVICE**

16 Q. The March 18 Letter seeks “[p]roof of the petitioner’s ability to render safe,
17 adequate and reliable service” and, more specifically, states that the “petitioner
18 must explain whether it plans to perform normal operation and maintenance
19 functions by hiring contractors, hiring local personnel as employees, or using

1 employees of affiliates. It must also explain what personnel will be responsible to
2 respond to emergency situations.” Please describe how Leatherstocking will
3 address these operational matters.

4 A. As a regulated natural gas distribution company, Leatherstocking will operate the
5 new distribution system in compliance with all applicable laws, regulations and
6 orders pertaining to safe, adequate and reliable service. The Company’s
7 *Operations and Maintenance Manual* for New York Operations (Exhibit 7)
8 provides detailed procedures for operation of the system. O&M and emergency
9 activities will be performed by Leatherstocking employees, using contractor
10 personnel as a back-up, as needed. For major emergencies, the workforce may be
11 supplemented by use of Corning employees, as permitted by the affiliate rules
12 applicable to Corning.

13 Q. Do you have any additional comments on the handling of O&M work?

14 A. Yes. As I noted in my direct testimony (pp. 17-18), there is an opportunity to
15 realize significant efficiencies and savings through coordination of the use of
16 operational employees between Corning and Leatherstocking. While we will
17 observe the restrictions that currently exist on employee sharing so long as they
18 are in force, I urge the Commission to modify the current affiliate relations rules
19 applicable to Corning to permit those efficiencies to be realized. Such easing of

1 the restrictions would not only facilitate the development of the Leatherstocking
2 franchises, but it would also further the Commission's policies on expansion of
3 natural gas service generally in the State.

4 **SCHEDULE FOR CONSTRUCTION AND SERVICE**

5 Q. Staff's March 19 E-Mail states that the "petitioner must provide evidence on the
6 dates when construction will begin and service will be provided." Can you
7 provide that information?

8 A. Yes. Leatherstocking intends to commence construction of the distribution system
9 in the Town and Village of Windsor as soon as feasible after the Commission
10 grants the authority sought in these proceedings. It is our hope that a decision will
11 be made promptly so that we can commence and conclude construction during the
12 construction season this year. As I indicated in my Direct Testimony (p. 7), we
13 plan to construct the system in two phases. Assuming that construction can
14 continue without interruption for weather or other reasons, we estimate that the
15 entire process required to provide the initial phase of the build-out, consisting of a
16 total of approximately 4.6 miles, will take approximately five months and service
17 can begin at that time. If, for example, approval is received in the June 2015 time
18 frame, initial phase construction could begin in July 2015 and be completed by the
19 end of November 2015. The second phase of the build-out would not begin until

1 the spring of 2016 and would continue on a pace commensurate with the number
2 of applications received. In any event, it is anticipated that such extension would
3 take place during the construction season of each of the four years of phase two,
4 as necessary.

5 **EMINENT DOMAIN AUTHORITY**

6 Q. The March 18 Letter refers to the recital in the two Franchise Agreements that
7 Leatherstocking “shall provide gas service piping and a meter and regulator to all
8 properties within the [Municipalities] within 10 years of the execution of this
9 franchise, provided that it is economically viable and in accordance with NYPS
10 main and service extension rules, unless the property owner refuses to sign a
11 commitment letter with the Company,” and requires that the “petitioner must
12 explain any circumstances under which it would have to obtain and exercise the
13 power of eminent domain in order to carry out this obligation, and how it would
14 obtain such power.” Can you explain Leatherstocking’s expectations regarding
15 property acquisition for the distribution system and whether eminent domain
16 authority would be necessary and obtainable?

17 A. Yes. In setting up the Leatherstocking joint venture, the participants determined
18 to establish it as a Limited Liability Company (“LLC”) largely for the reason that
19 the LLC form provides the flexibility of a traditional partnership in permitting the

1 pass-through of taxation to the joint venture participants while, at the same time,
2 retaining the other attributes, such as limited liability, of a traditional corporate
3 form. The participants were aware that the exercise of eminent domain authority
4 is facilitated considerably by organization as a gas corporation under the
5 Transportation Corporations Law ("TCL"). At the same time, the exercise of such
6 authority is viewed with suspicion and resentment by many individuals and their
7 representatives in local government. As part of Leatherstocking's effort to avoid
8 the potential for those concerns to become a distraction from its endeavor to bring
9 gas service to unserved areas, the Company decided to forgo the benefits of being
10 a gas corporation under the TCL and, instead, to establish Leatherstocking as a
11 LLC. (The comparison of the LLC to the TCL form is also addressed in our
12 response to a Staff interrogatory, DPS-7).

13 Q. Do you have any concerns about Leatherstocking's being able to honor the
14 commitment to provide service under the Franchise Agreements if it is not a TCL
15 gas corporation?

16 A. No. The configuration of the proposed distribution system is such that the vast
17 majority of the property it will occupy is within public rights-of-way (*i.e.*, where
18 the right-of-way is owned by the governmental entity in fee, as opposed to being a
19 right-of-way based on use), rather than on private property, where eminent domain

1 could be necessary in the event that property acquisition negotiations proved
2 unsuccessful. In addition, the fact that virtually none of the system would traverse
3 the property of individuals or entities that are unlikely to want natural gas service,
4 helps to ensure cooperation in easement acquisition. Moreover, we do not believe
5 that there are any areas along the proposed route of distribution lines where a
6 single landowner or small group of landowners who refuse to come to reasonable
7 terms on easement acquisition could prevent the Company's ability to locate its
8 facilities in such a way as to be able to serve the remaining customers. In short,
9 we believe that the benefit of not organizing Leatherstocking as a TCL gas
10 corporation outweighs any minimal potential difficulty in easement acquisition.

11 **COMPLIANCE WITH PSL AND REGULATIONS**

12 Q. In your direct testimony, you stated your conclusion that the granting of a
13 Certificate of Public Convenience and Necessity and authority to exercise the gas
14 franchises in the Town and Village of Windsor was in the public interest. Can
15 you identify where in the Company's filings in these proceedings the specific
16 requirements of PSL Section 68 and the regulations thereunder have been
17 addressed?

18 A. Yes. Exhibit 8 lists the requirements for the granting of a CPCN and approval of
19 franchises, together with references to Leatherstocking's filings where compliance

1 is demonstrated. Consistent with the Commission's regulations (16 NYCRR
2 §17.3), this Exhibit confirms that compliance has been had with all relevant
3 requirements for determining that granting the petition in these proceedings is in
4 the public interest.

5 Q. Does that conclude your supplemental direct testimony?

6 A. Yes, it does.