



ATTORNEYS AT LAW

Christopher M. Arfaa
Office: 717 236-1300
Direct: 717 703-0806
cmarfaa@hmslegal.com

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

June 24, 2013

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor (filing room)
Harrisburg, PA 17120

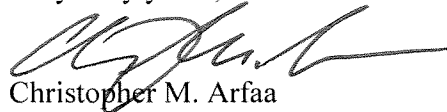
Re: Joint Application of Peoples Natural Gas Company LLC, Peoples TWP LLC, and Equitable Gas Company, LLC for All of the Authority and the Necessary Certificates of Public Convenience (1) to Transfer All of Issued and Outstanding Limited Liability Company Membership Interest of Equitable Gas Company, LLC to PNG Companies LLC, (2) to Merge Equitable Gas Company, LLC with Peoples Natural Gas Company LLC, (3) to Transfer Certain Storage and Transmission Assets of Peoples Natural Gas Company LLC to Affiliates of EQT Corporation, (4) to Transfer Certain Assets between Equitable Gas Company, LLC and Affiliates of EQT Corporation, (5) for Approval of Certain Ownership Changes Associated with the Transaction, (6) for Approval of Certain Associated Gas Capacity and Supply Agreements, and (7) for Approval of Certain Changes in the Tariff of Peoples Natural Gas Company LLC; Docket Nos.: A-2013-2353647, A-2013-2353649 and A-2013-2353651; **MOTION OF DOMINION TRANSMISSION, INC. TO DISMISS OBJECTION AND COMPEL PRODUCTION OF DOCUMENTS IN RESPONSE TO DISCOVERY REQUEST**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is a Motion of Dominion Transmission, Inc. to Dismiss Objection and Compel Production of Documents in Response to Discovery Request in the referenced matter. Copies of this document have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact my office.

Very truly yours,



Christopher M. Arfaa

Counsel for Dominion Transmission, Inc.,

CMA/das
Enclosures
cc: Per Certificate of Service

MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Application of Peoples Natural Gas
Company LLC, Peoples TWP LLC, and
Equitable Gas Company, LLC, etc.

A-2013-2353647
A-2013-2353649
A-2013-2353651

NOTICE TO PLEAD

To: Peoples Natural Gas Company LLC, Peoples TWP LLC, and Equitable Gas Company, LLC:

PLEASE TAKE NOTICE that, pursuant to the Prehearing Order issued on May 14, 2013 in this matter, an answer to the within motion to dismiss objection shall be filed within three (3) calendar days of service of the motion. Please be advised that if no answer is timely filed the Presiding Officer or the Commission may grant the requested relief without further notice.

MARGARET H. PETERS (I.D. No. 63509)
Assistant General Counsel
LOIS M. HENRY (*pro hac vice* mot. pending)
Senior Counsel
Dominion Resources Services, Inc.
120 Tredegar Street
Richmond, VA 23219
margaret.h.peters@dom.com
lois.m.henry@dom.com



KEVIN J. MCKEON (I.D. No. 30428)
CHRISTOPHER M. ARFAA (I.D. No. 57047)
Hawke McKeon & Sniscak LLP
P.O. Box 1778
100 N. Tenth Street
Harrisburg, PA 17105-1778
(717) 236-1300
(717) 236-4841 (fax)
kjmckeon@hmslegal.com
cmarfaa@hmslegal.com

Counsel for Dominion Transmission, Inc.

DATED: June 24, 2013

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Application of Peoples Natural Gas
Company LLC, Peoples TWP LLC, and
Equitable Gas Company, LLC, etc.

A-2013-2353647
A-2013-2353649
A-2013-2353651

**MOTION OF DOMINION TRANSMISSION, INC. TO DISMISS OBJECTION AND
COMPEL PRODUCTION OF DOCUMENTS IN RESPONSE TO DISCOVERY
REQUEST**

Pursuant to 52 Pa. Code §§ 5.103, 5.342(g) and 5.349(d) and the Prehearing Order issued in this matter on May 14, 2013, Intervenor Dominion Transmission, Inc. (“DTI”) respectfully moves for entry of an order dismissing the Joint Applicants’ objection to DTI Discovery Request 2.c. and compelling production of the documents requested. A copy of the objection is attached hereto as Exhibit A. In support of the motion, DTI states as follows:

INTRODUCTION

1. The Joint Applicants’ objection is not well-founded and should be dismissed. The essence of the objection is that documents evidencing the course of Peoples’ negotiation of the Sunrise Transportation Agreement are “irrelevant to any issue associated with the Agreement pending before the Commission.” Objection at 2. According the Joint Applicants, the only issue “associated with the Agreement” that is “pending before the Commission” is whether the Agreement should be approved pursuant to Code Section 2204(e)(4) as a contract “necessary to ensure sufficient capacity to meet current and projected customer requirements.” Objection at 3. They assert that the materials sought by DTI “have no bearing on the Section 2204(e)(4) finding

the Commission is being requested to make in this proceeding and is not likely to lead to the discovery of admissible evidence.” *Id.* The Joint Applicants thus fundamentally misconstrue the scope of discovery before the Commission, *see* 52 Pa. Code § 5.321(c), as well as the scope of the matters they themselves have placed at issue in this proceeding.

BACKGROUND

2. The Joint Applicants have requested all of the authority and certificates of public convenience necessary (1) to transfer all of the issued and outstanding limited liability company membership interest of Equitable Gas Company, LLC to PNG Companies LLC, (2) to Merge Equitable Gas Company, LLC with Peoples Natural Gas Company LLC, (3) to transfer certain storage and transmission assets of Peoples Natural Gas Company LLC to affiliates of EQT Corporation, (4) to transfer certain assets between Equitable Gas Company, LLC and Affiliates of EQT Corporation, (5) for approval of certain ownership changes associated with the transaction, (6) for approval of certain associated gas capacity and supply agreements, and (7) for approval of certain changes in the Tariff of Peoples Natural Gas Company LLC (collectively, the “Proposed Transaction”).

3. As part of the Proposed Transaction, the Joint Applicants request permission to replace Applicant Peoples Natural Gas Company LLC’s (“Peoples”) existing interstate pipeline capacity and storage contract with DTI with an interstate pipeline capacity contract with Sunrise Pipeline, an interstate pipeline operated by Applicant Equitable Gas Company, LLC ’s affiliate, Equitrans, L.P. (the “Sunrise Transportation Agreement” or the “Agreement”).

4. On June 7, 2013, DTI propounded its first set of discovery requests on the Joint Applicants. Request no. 2.c. seeks documents evidencing the course of negotiation of the Sunrise Transportation Agreement:

2. Referencing Joint Applicants Statement No. 5 (Nehr Direct) at 5:17,

- c. Please provide copies of documents, including without limitation communications between Joint Applicants, evidencing or referring or relating to the negotiation of the “negotiated rates for service under the Sunrise Transportation Agreement”

5. On Monday, June 10, 2013, counsel for Peoples notified counsel for DTI that the Joint Applicants intended to object to this request. On June 14, 2013, after efforts by counsel to resolve the objection informally, the Joint Applicants filed the written objection to DTI’s discovery request no. 2.c. that is the subject of this motion¹ The sole ground for the objection is described as follows:

The Joint Applicants object to the foregoing written interrogatory on the ground that that documents revealing negotiations and related communications on the Sunrise Transportation Agreement (“Agreement”) are irrelevant to any issue associated with the Agreement pending before the Commission in this proceeding and are not reasonably likely to lead to the discovery of admissible evidence. As such the subject interrogatory exceeds the permissible scope of discovery authorized by Section 5.321(c) of the Commission’s regulations, 52 Pa. Code § 5.231(c).

Objection at 2.

6. Pursuant to agreement of counsel, DTI was provided an extension of time until June 24, 2013 to move to dismiss the objection so that DTI could determine whether to file such a motion in light of the Joint Applicants’ responses to the rest of set I of DTI’s discovery requests.²

¹ Pursuant to agreement of counsel, the Joint Applicants were provided an extension of time until noon, June 14, 2013 to lodge a written objection due to the efforts of counsel to resolve the matter informally.

² Joint Applicants’ responses to DTI’s discovery requests were due June 24, 2013. At time of filing, DTI has not received those responses. Joint Applicants have not objected to any other DTI discovery request.

ARGUMENT

7. Section 5.321(c) of the Commission's Rules of Administrative Practice and Procedure specifically provides that “a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.” 52 Pa Code § 5.321(c). Discovery is permitted regardless of whether the information sought “relates to the claim or defense of the party seeking discovery or to the claim or defense of another party.” *Id.* Information may be discoverable, even if it would be inadmissible at a hearing: “It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” *Id.* “Consistently, the Commission has allowed participants wide latitude in discovery matters.” *Application of Nabil Nasr and Wael Hafez, etc.*, Docket No. A-2012-2295813, Initial Decision, slip op., 2012 WL 6763606 (Nov. 28, 2012) (citing *Pa. P.U.C. v. The Peoples Natural Gas Company*, 62 Pa. P.U.C. 56 (1986); *Pa. P.U.C. v. Equitable Gas Company*, 61 Pa. P.U.C. 468 (1986)).

8. The “subject matter of the pending action” in this case is obviously not limited to approval of the Sunrise Transportation Agreement pursuant to Section 2204(c)(4). The Joint Applicants themselves describe the purpose of this proceeding as follows, in pertinent part:

Through this Application, the Applicants seek Commission approval of a multifaceted transaction that will better align the assets of PNG and EQT with their respective principle [sic] business interests. Upon closing, PNG will focus on the regulated distribution utility businesses of Peoples, Peoples TWP, and Equitable; while EQT will focus on its transportation, storage, gathering, exploration, and production businesses. To accomplish this new focus, it is necessary for the Applicants to engage in a series of related transactions that transfer and realign assets and establish new contractual relationships so that, among other things, Applicants may continue to provide safe and reliable service to all distribution customers in a cost-effective manner after closing of the proposed transaction. (Jt. App. ¶ 4.)

9. The “subject matter involved in this action,” 52 Pa. Code § 5.321(c), thus includes whether the Sunrise Transportation Agreement, as one of the “new contractual relationships” the Joint Application seeks to “establish” is “necessary” to Peoples’ provision of service “in a cost effective manner after closing of the proposed transaction.” (Jt. App. ¶ 4.) Peoples’ witness Nehr claims that the Sunrise Transportation Agreement will produce annual savings of \$800,000 for Peoples’ customers. (Jt. App. St. No. 5 (Nehr Direct) at 5:22-5:23.) This testimony begs the question whether the \$800,000 claimed savings was offset by payments or other consideration Peoples agreed to provide to Equitable as part of the “multifaceted” Proposed Transaction. Mr. Nehr claims that the rates to be paid by Peoples under the Sunrise Transportation Agreement were “negotiated,” (Jt. App. St. No. 5 (Nehr Direct) at 5:17), thus implying that the proposed rates are market-based and the result of bargaining between entities with some negotiating leverage. However, the Joint Applicants themselves aver that the proposed agreements between Peoples and EQT’s subsidiaries – which include the Sunrise Transportation Agreement – are in part “necessary to facilitate the transition of ownership” – a consideration that would be exogenous to a bilateral negotiation for transportation services. (Jt. App. at ¶ 77.)

10. Whether the Sunrise Transportation Agreement was truly “negotiated,” as claimed by Mr. Nehr, and what was negotiated, are thus relevant to whether Peoples really entered into the agreement in order to improve cost effectiveness (as claimed in paragraph 4 of the Joint Application), or whether it did so “to facilitate the transition of ownership” (as averred in paragraph 77). The course of negotiations will show the degree to which Peoples simply accepted Sunrise Pipeline’s rates as opposed to holding out for further cost savings. It may show whether the purpose of the agreement is merely to serve as additional consideration for Peoples’ purchase of Equitable. These facts are clearly “relevant” to the Commission’s determination whether and to what degree the “multifaceted transaction” of which the Sunrise Transportation

Agreement is an integral part is in the public interest, and whether any adjustments should be made to its constituent parts to ensure that the ultimate beneficiaries of the Proposed Transaction are the Commonwealth and the Joint Applicants' ratepayers. The discovery requested by DTI – documents evidencing the course of negotiation of the so-called “negotiated rates” in the proposed Sunrise Transportation Agreement – are thus clearly relevant to the “subject matter involved” in this action and may lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c).

11. Joint Applicants' assertion that the scope of the discovery to which DTI is entitled is limited to the Commission's approval of the Sunrise Transportation Agreement as “necessary” (Objection at 2-3) fails for two independent reasons.

12. First, and dispositive for purposes of this discovery dispute, in proceedings before the Commission discovery is permitted regardless of whether the information sought “relates to the claim or defense of the party seeking discovery or to the claim or defense of another party.” 52 Pa Code § 5.321(c). Therefore, even if the Joint Applicants were correct in their position that the “only” issue relevant to the Sunrise Transportation Agreement is whether it is “necessary” to provide sufficient capacity to serve Peoples' customers (and, as set forth below, they are not), DTI is nevertheless entitled to discovery concerning the course of Peoples' negotiation of the Sunrise Transportation Agreement. *See id.* Such information is relevant to the “multifaceted transaction” pending before the Commission as discussed above, and thus falls within the “wide latitude in discovery matters” allowed by the Commission and Section 5.321(c). *Application of Nabil Nasr and Wael Hafez, etc.*, Docket No. A-2012-2295813, Initial Decision, slip op. (citing cases).

13. Second, the Sunrise Transportation Agreement obviously is integral to the consideration Peoples is paying to acquire Equitable, and by structuring their transaction to

include the Agreement, and seeking Commission approval of it, Joint Applicants necessarily have placed at issue whether the Agreement is in the public interest from a gas cost prudence perspective. Negotiations that led to the Sunrise Transportation Agreement, which may shed light on a number of issues raised, thus are relevant. Joint Applicants themselves have recognized that the commercial agreements that are a material part of the proposed transaction should be evaluated pursuant to gas cost prudence provisions in Code Sections 1307(f), 1317 and 1318. (*See* Jt. App. ¶¶ 78-81.) Among the agreements for which approval is sought are the Peoples NAESB Agreement and the Equitable Gas NAESB Agreement. (Jt. App. ¶ 80.) After noting the relevance of these agreements to the Commission’s natural gas cost determinations under Code Sections 1307(f), 1317 and 1318 (*see* Jt. App. ¶ 80), the Joint Applicants expressly seek approval of the agreements pursuant to Code Section 1317:

Although the Peoples and Equitable NAESB Agreements are subject to Commission review in their respective annual Code Section 1307(f) proceedings, these agreements are a material part of the Proposed Transaction that is the subject of this Application. Accordingly, Peoples and Equitable are seeking Commission approval of the Peoples NAESB Agreement and the Equitable Gas NAESB Agreement pursuant to Code Section 1317(d).

Jt. App. ¶ 81.

14. The same rationale applies to the Sunrise Transportation Agreement. As used in Code Sections 1307, 1317 and 1318, the term “natural gas costs” includes “costs paid for transporting natural gas” to Peoples’ system. 66 Pa. C.S. §§ 1307(h), 1317(e), 1318(f). The Commission’s least cost fuel procurement determination requires a finding that “[t]he utility has taken all prudent steps necessary to obtain lower cost gas supplies . . . , including the use of gas transportation arrangements with pipelines” 66 Pa. C.S. § 1318(a)(3). The “negotiated rates” paid by Peoples under the Sunrise Transportation Agreement are thus part of the natural gas costs subject to Commission review under Code Sections 1307(f), 1317(c) and (d), and

1318(a). Like the Peoples NAESB Agreement and the Equitable Gas NAESB Agreement, the Sunrise Transportation Agreement comprises a material part of the proposed transaction. (*See, e.g.,* Jt. App. at ¶¶ 4, 77.) Therefore, the Sunrise Transportation Agreement should be evaluated under the provisions of the Code governing least cost fuel procurement policies, 66 Pa. C.S. §§ 1307(f), 1317 and 1318, for the same reason Joint Applicants have sought approval of the NAESB Agreements pursuant to those provisions.

15. The materials sought by DTI Discovery Request 2.c. – documents demonstrating the course of negotiation of the rates set forth in the Sunrise Transportation Agreement – are directly relevant to whether Peoples “has taken all prudent steps necessary to obtain lower cost gas supplies . . . , including the use of gas transportation arrangements with pipelines . . . ,” 66 Pa. C.S. § 1318(a)(3), and thus to whether the agreement should be approved as a material part of the proposed transaction. Transportation costs are part of natural gas supply costs. Peoples cannot, on the one hand, request approval of the NAESB agreements pursuant to Section 1317, which requires a Commission finding with respect to the prudence of the steps Peoples has taken, “**including** the use of gas transportation arrangements with pipelines,” to reduce natural gas supply costs, while on the other, deny the relevance of the negotiation of one of those transportation agreements.

CONCLUSION

For all of the foregoing reasons, DTI respectfully requests that the Presiding Officer issue an order granting this motion, dismissing Joint Applicants' objection to DTI Discovery Request No. 2.c., and compelling DTI to provide documents responsive to the request.

Respectfully Submitted,

MARGARET H. PETERS (I.D. No. 63509)
Assistant General Counsel
LOIS M. HENRY (*pro hac vice* mot. pending)
Senior Counsel
Dominion Resources Services, Inc.
120 Tredegar Street
Richmond, VA 23219
margaret.h.peters@dom.com
lois.m.henry@dom.com



KEVIN J. MCKEON (I.D. No. 30428)
CHRISTOPHER M. ARFAA (I.D. No. 57047)
Hawke McKeon & Sniscak LLP
P.O. Box 1778
100 N. Tenth Street
Harrisburg, PA 17105-1778
(717) 236-1300
(717) 236-4841 (fax)
kjmckeon@hmslegal.com
cmarfaa@hmslegal.com

Counsel for Dominion Transmission, Inc.

DATED: June 24, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party) and the Prehearing Order entered in this matter on May 14, 2013.

VIA ELECTRONIC AND FIRST CLASS MAIL

Allison C. Kaster, Esquire
Carrie B. Wright, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265
akaster@pa.gov
carwright@pa.gov

Steven C. Gray, Esquire
Sharon E. Webb, Esquire
Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17101
sgray@pa.gov
swebb@pa.gov

John F. Povilaitis, Esquire
Alan M. Seltzer, Esquire
Buchanan Ingersoll & Rooney P.C.
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
John.Povilaitis@bipc.com
Alan.Seltzer@bipc.com

Michael W. Gang, Esquire
Christopher T. Wright, Esquire
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
mgang@postschell.com
cwright@postschell.com

David W. Gray, General Counsel
Equitable Gas Company LLC
225 North Shore Drive
Pittsburgh, PA 15212
dgray@equitablegas.com

Jennedy S. Johnson, Esquire
Darryl Lawrence, Esquire
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
jjohnson@paoca.org
dlawrence@paoca.org

Thomas J. Sniscak
William E. Lehman
Hawke McKeon & Sniscak LLP
100 North Tenth Street
PO Box 1778
Harrisburg, PA 17105-1778
tjsniscak@hmslegal.com
welehman@hmslegal.com

Scott J. Rubin
333 Oak Lane
Bloomsburg, PA 17815-2036
Scott.j.rubin@gmail.com

Amanda M. Fisher
Assistant General Counsel
United Steelworkers, Legal Department
Five Gateway Center, Suite 807
60 Boulevard of the Allies
Pittsburgh, PA 15222
afisher@usw.org

Carl J. Zwick, Esquire
Hopkins Heltzel LLP
100 Meadow Lane, Suite 5
DuBois, PA 15801
cj@hopkinsheltzel.com

Derrick Price Williamson, Esquire
Barry A. Naum, Esquire
Spilman Thomas & Battle PLLC
1100 Bent Creek Blvd., Suite 101
Mechanicsburg, PA 17050
dwilliamson@spilmanlaw.com
bnaum@spilmanlaw.com

Kevin J. Moody, Esquire
Pennsylvania Independent Oil and Gas
Association (PIOGA)
212 Locust Street, Suite 300
Harrisburg, PA 17101-1510
kevin@pioga.org

Ethan Cline
Fixed Utility Valuation Engineer
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street, 2nd Floor West
PO Box 3265
Harrisburg, PA 17105-3265
etcline@pa.gov

Heather M. Langeland, Esquire
Citizens for Pennsylvania's Future
200 First Avenue, Suite 200
Pittsburgh, PA 15222
Langeland@pennfuture.org

Pamela C. Polacek, Esquire
Vasiliki Karandrikas, Esquire
Elizabeth P. Trinkle, Esquire
McNees Wallace & Nurick, LLP
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
ppolacek@mwn.com
vkandrikas@mwn.com
etrinkle@mwn.com

Todd S. Stewart, Esquire
Hawke McKeon & Sniscak, LLP
100 North Tenth Street
PO Box 1778
Harrisburg, PA 17105-1778
tsstewart@hmslegal.com

Brian Kalcic
Excel Consulting
225 S. Meramec Avenue
Suite 720-T
St. Louis, MO 63105
Excel.consulting@sbcglobal.net

Debra J. Backer
Fixed Utility Financial Analyst
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street, 2nd Floor West
PO Box 3265
Harrisburg, PA 17105-3265
dbacker@pa.gov

Joseph Kubas
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street, 2nd Floor West
PO Box 3265
Harrisburg, PA 17105-3265
jkubas@pa.gov

Richard Hahn
Melissa Whitten
Alexander Cochis
LaCapra Associates
One Washington Mall
9th Floor
Boston, MA 02108
rhahn@lacapra.com
mwhitten@lacapra.com
acochis@lacapra.com

Nancy Brockway
10 Allen Street
Boston, MA 02131
nbrockway@aol.com

Randall S. Rich, Esquire
Pierce Atwood LLP
900 17th Street N.W.
Suite 350
Washington, DC 20006
rrich@pierceatwood.com



Christopher M. Arfaa

Dated: June 24, 2013