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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Equitable Gas Company, a Division of
Equitable Resources, Inc.

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C-20031128

v.

The Peoples Natural Gas Company d/b/a
Dominion Peoples

PREHEARING ORDER

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Before
Michael A. Nemec
Administrative Law Judge

HISTORY OF THE PROCEEDING

The complaint of the Equitable Gas Company ("Equitable") against the Peoples Natural Company ("Peoples"), alleging *inter alia* duplication of facilities, predatory pricing, unfair competition and rate discrimination, was filed on August 29, 2003. People filed an answer and motion to dismiss for failure to join an indispensable party, the Pittsburgh Allegheny County Thermal, LTD., ("PACT") on September 23, 2003. Other pleadings have been filed, including a Petition to Intervene by PACT on October 2, 2003. The Commission's Office of Trial Staff ("OTS") has intervened and commenced discovery. The proceeding was assigned to me as presiding officer by hearing notice dated November 5, 2003, that set November 20, 2003, as the date for a prehearing conference.

The prehearing conference was held as scheduled in Pittsburgh on November 20, 2003. Counsel appeared for Equitable, Peoples, PACT and OTS. Equitable and Peoples filed

prehearing memoranda. This prehearing order memorializes the matters discussed, decided and/or agreed to by the parties during the prehearing conference.

ORDER

The following discovery and litigation schedule was established. All due dates are for service "in hand"; electronic or FAX service will satisfy the "in hand" requirement.

1. Preliminary discovery will be completed on or before January 30, 2004. Responses to preliminary discovery requests are due in 15 days.
2. Equitable's direct, prepared testimony and exhibits are due February 27, 2004.
3. Responses to discovery requests direct to matters raised in prepared testimony are due in 10 days.
4. Peoples and Interveners direct, prepared testimony and exhibits are due April 16, 2004.
5. Equitable's rebuttal testimony and exhibits are due May 7, 2004.
6. Peoples and Interveners outlines of surrebuttal testimony are due May 14, 2004.
7. Evidentiary hearings will be held in Pittsburgh on May 18, 19 and 20, 2004.
8. The schedule for briefing will be established upon the close of the record.

This Commission's requirements for the preparation and filing of written testimony and related exhibits are set forth in 52 Pa. Code §5.412.

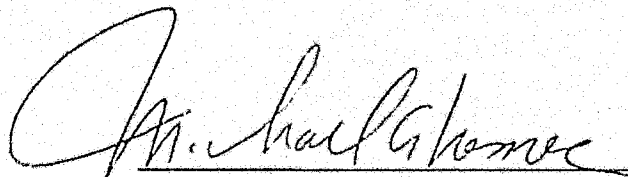
All parties are urged to engage in informal discovery whenever possible. This Commission's procedures for discovery are set forth in 52 Pa. Code §§5.321 *et seq.* The parties should not send me discovery material or cover letters unless attached to a motion to compel. All motions to compel must contain a certification from counsel setting forth the informal steps taken to resolve the dispute.

This Commission encourages settlements. 52 Pa. Code §5.231(a). The encouragement has been extended to urging the parties to agree to the terms of a proposed protective order.

The petition of PACT to intervene in this proceeding is granted, and PACT may file an answer to Equitable's complaint within 20 days of the date of the prehearing conference.

Finally, any provision of this Prehearing Order may be modified upon motion and cause shown by any party.

Dated: November 21, 2003



Michael A. Nemecek
Administrative Law Judge

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November 21, 2003

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
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Harrisburg, PA 17105-3265

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

In Re: Docket No. C20031128
Equitable Gas Company, a Division of Equitable
Resources, Inc., Complainant
v.
The Peoples Natural Gas Company, d/b/a
Dominion Peoples, Respondent

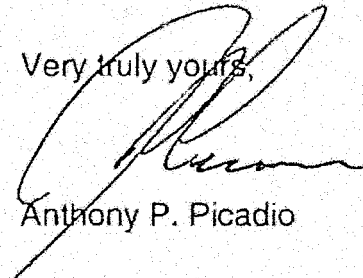
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Dear Secretary McNulty:

Enclosed for filing on behalf of Pittsburgh Allegheny County Thermal, Ltd., are the original and three (3) copies of our Answer to the Complaint of Equitable Gas Company. I have also enclosed an extra cover sheet for the Answer, which I would appreciate your date stamping and returning to me in the enclosed self-addressed, stamped envelope.

We are also enclosing copies for the Commissioners that were shown as receiving copies of Equitable's Complaint.

Very truly yours,


Anthony P. Picadio

APP/lrk

Enclosures

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James J. McNulty, Secretary

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November 21, 2003

cc(w/enc.): Office of Trial Staff
Office of Consumer Advocate
Office of Small Business Advocate
Honorable Terrance J. Fitzpatrick
Honorable Robert K. Bloom
Honorable Aaron Wilson, Jr.
Honorable Glen R. Thomas
Honorable Kim Pizzingrilli
Charles E. Thomas, Jr., Esquire
Daniel L. Frutchey, Esquire
Norman James Kennard, Esquire
Susan G. George, Esquire
Randall L. Crawford

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EQUITABLE GAS COMPANY
Complainant

v.

THE PEOPLES NATURAL GAS
COMPANY d/b/a DOMINION PEOPLES
Respondent

Complaint Docket No. C-20031128

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ANSWER of PITTSBURGH ALLEGHENY COUNTY THERMAL, LTD.
to COMPLAINT of EQUITABLE GAS COMPANY

This is Answer is being filed on behalf of Pittsburgh Allegheny County Thermal, Ltd. (PACT), pursuant to leave granted by the Administrative Law Judge on November 20, 2003.

1. Admitted in part. In addition to Equitable having customers who are some of the most economically disadvantaged residential customers in Pittsburgh, as docs The Peoples Gas Company, PACT provides steam service to governmental agencies who provide benefits for all the most economically disadvantaged residential customers and agencies who provide service to them, throughout all of the service areas of both Equitable Gas and The Peoples Gas Company, and whose budgets will be adversely affected, and hence their ability to continue to provide governmental services to all the disadvantaged will be adversely affected, if Equitable is allowed the "relief" it seeks.

2. Admitted.

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3. Denied. PACT does not "provide steam heat service to several business entities." as alleged by Equitable Gas, but rather provides steam service to the owners/operators of approximately 85 buildings in the Golden Triangle section of Pittsburgh.¹ By way of further answer, by alleging that PACT only serves "several businesses." Equitable Gas is either woefully unfamiliar with PACT, its customer of many years, or alternatively is attempting to mislead this Commission as to who PACT is, while not joining PACT as a party defendant to these proceedings.

4. Admitted in part and denied in part. The "Equitable/PACT Agreement," by its terms, terminates at the end of September 30, 2003, and in December, 2002, Equitable Gas advised PACT that it would not renew the same agreement with PACT for another term unless PACT agreed to a 67% increase in rates. It is denied that at all times Equitable's service to PACT has been adequate, in that under the agreement in effect between PACT and Equitable Gas preceding the "Equitable/PACT Agreement" identified by PACT, Equitable Gas interrupted service to PACT on a commercially unreasonable short notice, requiring PACT to temporarily curtail service while it switched to oil from gas, resulting in the paragraph numbered 1.06 in the "Equitable/PACT Agreement" being added to the "Equitable/PACT Agreement," at PACT's insistence, to enable PACT to prevent the total physical destruction of its system if Equitable Gas should ever do the same thing again without adequate prior notice to PACT. On less than 24 hours' notice, Equitable curtailed service to PACT for the periods of January 19 through January 21, 1994; March 8 through March 11, 1996, February 4 and February 5, 1999, and March 1

¹Including but not limited to the City County Building, the new Allegheny County Jail, Allegheny County Morgue, the new Convention Center, U.S. Post Office, Federal Reserve Building, Federal Court House, State Office Building, hotels, restaurants, large and small office buildings, etc.

through March 4, 2003. The order to curtail beginning on March 1, 2003 was for immediate curtailment. None of the curtailments appeared to PACT to have occurred as a result of any shortage of supply or system failure, and PACT believes that the 1996 curtailment was for the purpose of allowing Equitable to sell gas that was otherwise deliverable to PACT, to third parties at record high spot prices, and for no other reason. If PACT does not have an adequate and continuous supply of fuel to the extent that its system starts to cool down, the steam lines owned by PACT would begin to contract, at times tearing steam line anchors out of the walls in the tunnels owned by PACT, and potentially causing catastrophic damage to PACT's system, potentially shutting down downtown Pittsburgh.

Furthermore, in addition to providing steam heat, as pointed out by Equitable, PACT provides steam for absorption air conditioning to facilities including the new Allegheny County Jail and the Benedum Center. Equitable Gas only provided PACT with interruptible transportation service, and not the firm gas transportation service as Peoples will provide PACT after September 30, 2003.

5. It is denied that Equitable charged PACT a "discounted" transportation rate. To the contrary the rate finally charged PACT was a negotiated rate that is lower than the rates Equitable tried to charge PACT during the negotiation of the "Equitable/PACT Agreement". Equitable obtained consideration for giving PACT the negotiated rate that it did, as more fully set forth in the Equitable/PACT Agreement, including but not limited to having had PACT as one of its customers for the term(s) set forth therein. It is admitted that in the "Equitable/PACT Agreement," PACT and Equitable both contemplated and agreed that PACT might seek gas transportation services from Peoples, the only other existing gas distribution company whose

service territory includes the location of PACT's system for service, to begin upon termination of the "Equitable/PACT Agreement." Being in the gas transportation business, Equitable knew that if PACT would seek such service from Peoples, PACT would have to make decisions and commitments relating thereto long before the expiration date of the Equitable/PACT Agreement, and therefore the parties made no restrictions on the date upon which PACT could obtain an offer from Peoples to supply transportation services, which Equitable could attempt to match. It is denied that PACT negotiated the Equitable/PACT Agreement with the intent to "preserve Equitable's market position for gas transportation in the Pittsburgh area," as evidenced in the express wording of the Agreement: that both parties to the Equitable/PACT Agreement specifically contemplated a real possibility and right in PACT, to seek gas transportation services from Peoples at the end of the term of the Agreement.

While PACT's promise not to give any third party an easement or right of way to run a gas line along PACT's steam distribution corridors was part of the consideration to Equitable in negotiating the final price in the Equitable/PACT Agreement, it is denied that the provision in any way amounted to a future guarantee that it would never happen. If Equitable had wanted to prevent PACT itself from building its own gas line, it could have so provided in the agreement which it drafted, but it did not so provide because PACT would never have agreed to it. By way of further answer, PACT has not granted ANY third party ANY easements or right of ways to run any gas line along PACT's steam distribution corridors. PACT never had power or control over anyone who might wish to run a gas line through the streets of Pittsburgh. PACT could only restrict access to its own tunnels, and not access in the streets of the City. It was only in its own tunnels that PACT had power to decide whether ANYONE could run a gas line along its steam

distribution system. Furthermore, by way of further answer, the gas service line built by PACT to connect with the Peoples system runs through the streets of Pittsburgh, and not through PACT's tunnels, being a path not covered by the "Equitable/PACT Agreement."

6. Denied in part. Equitable knew in December, 2002, that PACT contemplated obtaining service from Peoples when Equitable refused to even make an offer to PACT for gas transportation service commencing upon the termination of the "Equitable/PACT Agreement," and Equitable was repeatedly and frequently advised that PACT was seeking such alternative service from Peoples from then on through July 2, 2003, when PACT and Peoples entered into their transportation agreement. Equitable refused to extend the term of the Equitable/PACT Agreement in December, 2002. It is admitted that Equitable submitted a letter to PACT dated July 11, 2003, which was 9 days after PACT had signed the transportation agreement with Peoples, though the letter does not reveal that even then that Equitable did, or could, match Peoples' offer. In fact, Mr. Delana of Equitable Gas told PACT that Equitable could not, in any way, match the Peoples offer, particularly with respect to the issue of the "basis" that would be charged for gas delivered through the gas distribution systems and the suppliers available to PACT on the two distribution systems. Equitable was never able to, and still cannot, in any way, match the Peoples' offer so that PACT would be in the same position with either local gas distribution company.

By way of answer to the footnotes to paragraph 6, PACT does not believe, and therefore denies, that the offer from Peoples, which PACT accepted, was in any way "unrealistic and non-competitive". To the contrary, Peoples will gain PACT's transportation business for at least the next 15 years, with a relatively insignificant investment on its part, and considering its marginal

costs of simply accepting PACT's desire to transport through the Peoples' system, Peoples will have better served itself and its other customers, unlike what Equitable achieved through its commercially unreasonable treatment of PACT and its actions/inactions. It is further denied that PACT had any obligation to wait until September 30, 2003, to plan for its future gas transportation needs, as asserted by Equitable during PACT's attempts to obtain a commercially reasonable offer from Equitable, there being no such time requirement in the "Equitable/PACT Agreement," which was drafted by Equitable. On July 3, 2003, Equitable Gas received the agreement that had been signed by Peoples and PACT on July 2, 2003, contrary to the suggestions of the allegations of paragraph 6.

COUNT I - DUPLICATION OF FACILITIES

7. PACT incorporates by reference the averments set forth in the foregoing answers to paragraphs 1 through 6 of Equitable's Complaint, as if fully set forth herein.

8. Denied in part. The gas line built by PACT is not public utility property. Peoples does not own the gas line and did not finance PACT's gas line. The reference to "wasteful duplication of facilities" in the Commission's decision has no application in this case, in as much as PACT, and not Peoples, engineered, financed and built the gas service line in question. Contrary to the intimations of Equitable's Complaint, if this Commission restricts or disallows the use of the gas service line that was built by PACT, through PACT's financing the construction through a loan from PNC Bank, NA, with the line itself being the collateral for the loan, this Commission will have taken non-public utility property, and will have created economic waste, where Equitable waited until the line was almost completely built before commencing any actions against Peoples or PACT, and would amount to an unconstitutional taking of PACT's property

without just compensation, as well as the taking of PNC Bank, NA's security interest in the line which must have a market value if it is to have any value as security for the loan already made to PACT and expended on the gas line. If anything, the public interest would be damaged by granting Equitable's request to destroy the market value of the line, and deny its usability, and/or to destroy the economic benefits to the Pittsburgh area community by granting any of the relief sought by Equitable. If anything, Equitable Gas has intentionally created such barriers to gas transportation by its customers on its system that Equitable has effectively destroyed the ability to achieve the ends of the Natural Gas Choice and Competition Act, by institutionalizing its tariff restrictions and practices for gas transporters such as PACT.

9. The relevancy of paragraph 9 of the Complaint is denied in that this case does not involve any public utilities "expending substantial resources" to expand service territory. Here, PACT, and not Peoples, risked invested funds in building the line, to essentially no risk to Peoples. And Peoples is not expanding its service territory, as referred to in the testimony quoted in Equitable's paragraph 9. To the extent that Equitable loses only PACT as its customers, it is entirely of Equitable's own making, and this Commission should not reward or protect Equitable from the results of its commercially and civilly unreasonable treatment of one of its largest customers. The results to Equitable are entirely a result of its own cavalier arrogance in dealings with PACT, with no concern whatsoever to the impact of Equitable's demands upon the governmental and other bodies that would bear the brunt of Equitable's demands and practices.

10. As an answer to paragraph 10 of the Complaint, if and to the extent that Equitable's customers' well being has been damaged by PACT entering into an agreement with Peoples, all of that result is solely a result of Equitable's management's practices, and the

Equitable shareholders, and not Equitable's customers, should pay the full price of the abusive and improper actions by Equitable that are described herein and in PACT's Petition to Intervene. Considering the marginal costs to Peoples of providing service to PACT under the agreement between them, Peoples' customers will be better off than without having PACT transport through Peoples' existing distribution system. Equitable Gas should have given thought to the public interest before it started to abuse one of its biggest customers, PACT, rather than after the fact of the natural results directly flowing from Equitable's commercially unreasonable behavior.

11. Denied. Before Equitable even attempted to take any legal action against PACT and/or Peoples, PACT had almost completed the construction of its gas service line to the Peoples' system, and by now the line has been completely constructed and will be available for full service by the end of September 30, 2003, without Peoples having had to build the line.

12. It is admitted that actual field construction started August 3, 2003, a month after the signing of the agreement between PACT and Peoples, and that it could not have started any later, as Equitable knew at all times during its relationship with PACT. By way of further answer, during the entire construction, Equitable had its representatives on site, watching all the construction, knowing the degree of almost complete construction before it undertook any litigation against PACT or Peoples in reference thereto. Equitable's beliefs are not proof. Disbelief on the part of Equitable with respect to everything told to it by PACT helped lead it to the posture that it is now in, the results of which should fall on the shoulders of Equitable's stockholders, and not its customers.

13. The pipeline constructed by PACT is indeed a 12" line, that PACT's engineers decided was necessary to supply the POTENTIAL volume of gas that PACT MIGHT need

sometime over the next 15 years, and that it had to be sized as such to assure sufficient pressure at PACT's plant, and for no other reason.

14. It is denied that the only conclusion that can be reached is the one that Equitable Gas desires the Commission to reach. To the contrary, in keeping with good business practices, given the relative cost of doing so, PACT made reasonable decisions in the design of its gas pipeline to cover the needs it might have if its sales should grow over the next 15 years, so that it will not find itself in a position of having to renegotiate any new gas transportation agreement during that time period. It is denied that PACT has any intent to supply gas to any customer of Equitable. If PACT should ever think of providing gas transportation services to the public, it would necessarily have to petition the PUC for a certificate of public convenience to do so, as well as amend its Articles of Incorporation, a copy of which is hereto attached as **Exhibit 1**. This Commission should deny Equitable's request that the Commission shall presume that PACT will not comply with the law in the future. Peoples has no right to utilize PACT's gas line for anything except using it as PACT's service line for supplying gas to PACT. PACT believes, and therefore avers, that the statement that "PACT has described the pipeline to an Equitable employee as not just a customer service line but as a money generator for PACT" is untrue and a falsehood. To the contrary, Equitable was specifically orally told by PACT that PACT would NOT supply any gas to Equitable's customers, and had no plans to do so, well before Equitable started any litigation against Equitable or Peoples.

15. Denied in its entirety. While PACT designed and built the gas service line as if it were a gas distribution line, and not a gas service line, as shown in PACT's agreement with its contractor who installed the line, a copy of which is hereto attached as **Exhibit 2**, PACT

demanded such standards to assure public safety as well as to construct a system that would comply with all governmental regulations and the demands of the City of Pittsburgh, as well as to assure that the line would have a marketable value to entities such as Peoples AND Equitable, in the event that PACT should fail in its business and not be able to pay off its loan. If PACT should default on its loan for the construction, it is not unlikely that Equitable itself would be interested in purchasing the line in order to protect its market share from, say, Peoples. The gas line was engineered after due considerations of the physical attributes of the gas line installed, as described by its manufacturer, as well as calculations of heat flow in the event of any breakage of any steam line in PACT's tunnels in which the lines are contained, in such a fashion as to somehow breach the walls of the tunnels, an unlikely scenario, especially given PACT's constant monitoring of all aspects and operations of its complete system. The line, as installed, poses no danger to the public or anyone else. Equitable's "worry" that it will "invariably (be drawn into)" such a situation is unreasonable speculation, which, even if true, is typical of the "possibilities" that everyone in the world faces every day, the "possibility" of being drawn into something that should not have involved them. The gas service line installed by PACT is properly spaced and protected against the dangers Equitable intimates in its paragraph 15.

16. All of the allegations of paragraph 16 of the Complaint are restatements of unfounded assertions made by Equitable in other parts of the Complaint, all of which have been denied by PACT. Peoples did not build and does not own the line that PACT built. There is no "collusion" between PACT and Peoples, which Equitable alleges without any allegation of specific facts to support the false conclusion. The public interest will be more damaged by this Commission granting any of the relief requested by Equitable Gas, than if the Commission left

Equitable Gas with the rational results any businessman should foresee if he dealt with PACT the way that Equitable Gas did as described herein and in PACT's Petition to Intervene. Contrary to impeding the competition envisioned by the Natural Gas and Choice and Competition Act, the actions of PACT have, instead furthered the ends of that Act, as more specifically described in the New Matter below.

17. It is denied that PACT could have used the same gas suppliers while remaining on the Equitable Gas system, for reasons more fully set forth in the following New Matter.

WHEREFORE, PACT respectfully requests that this Commission allow PACT to continue to operate on and after October 1, 2003, under its existing agreement with The Peoples Natural Gas Company, and that this Commission find that it is in the public interest to do so, and that this Commission not bar Peoples from providing gas service to PACT pursuant to the terms of the agreement between Peoples and PACT, and that the Commission not act in mere presumption of the existence of some nefarious dealings between Peoples and PACT, as Equitable Gas asks it to do, and that this Commission take no action whatsoever about who MIGHT have an opportunity to purchase PACT's gas service line if it should ever be available for sale, especially given PNC Bank, NA's security interest therein, and deny any and all other relief sought by Equitable to offset the results of its own bad business dealings and practices.

COUNT II - PREDATORY PRICING

18. PACT incorporates by reference the averments set forth in the foregoing answers to paragraphs 1 through 17 of the Complaint, as if more fully set forth herein at length.

19. The agreement between Peoples and PACT speaks for itself, and any interpretation thereof added by Equitable Gas is specifically denied.

20. Given that Peoples did not have to make any major investment to gain PACT as a customer, and being that PACT sought Peoples' service out on its own volition because of the inappropriate actions of Equitable Gas, and because if PACT's load does grow in the coming years, Peoples will greatly benefit from such growth, and because of marginal pricing, Peoples has minimal costs to provide the contracted-for services to PACT, it is denied that the agreement between PACT and Peoples is in any way unreasonable or indefensible. To the contrary, forcing PACT to accept the inappropriate actions of Equitable, as described herein and in PACT's Petition to Intervene, would be "indefensible under any reasonable test of commercial propriety."

21. The allegations contained in paragraph 21 of the Complaint entails a requirement of knowledge not in PACT's possession, and therefore the allegations are denied and strict proof thereof is demanded at a hearing. In any case, given the unique happenings in the interactions between PACT and Equitable, and under the circumstances of this case, the result that flowed directly from Equitable's commercially unreasonable and abusive behavior towards PACT, alone, makes the results entirely defensible and reasonable under any test of commercial propriety and/or civil propriety.

WHEREFORE, PACT respectfully requests that this Commission dismiss Equitable's Complaint in its entirety and deny all relief requested by Equitable Gas.

COUNT III – UNFAIR COMPETITION

22. PACT incorporates by reference the averments set forth in the foregoing Answers to paragraphs 1 through 21 of Equitable Gas's Complaint as if more fully set forth herein at length.

23. It is denied that Peoples participated in any way in constructing PACT's gas service line, other than by providing the interconnect with its own system and the metering, all as required by Peoples' tariff filings approved by the PUC. It is denied that Peoples acquired any business from PACT through competition with Equitable. To the contrary, all that Peoples did was grant PACT its requested service, without knowledge or awareness of the problems that PACT was having with Equitable Gas as described herein and in PACT's Petition to Intervene. Peoples acquired PACT's business completely as a result of Equitable's commercially unreasonable behavior with PACT and for reasons set forth in the following New Matter. It is further denied that Peoples incurred any risks that will be borne by its customers, given that Peoples has invested very little to acquire the business from PACT, with its potential to grow in the future.

24. PACT has no knowledge of the financial matters of Peoples or Equitable Gas, and hence denies all the allegations contained in paragraph 24 and demands proof at trial.

25. It is denied that Equitable is "not afraid of competition", its action now before this Commission speaking for itself. Additionally, in fear of competition, Equitable has done everything in its power to deny its customers a full and fair access to gas suppliers on commercially reasonable terms and conditions, resulting in there now being only one supplier on the Equitable system who can provide PACT's full gas requirements, while that same supplier, delivering through the Peoples' system, can supply PACT's full gas requirements at cheaper rates because of Peoples' more reasonable terms for transportation of gas and greater co-operation with independent gas suppliers than Equitable offers. As a result of there being a number of other suppliers who can also supply PACT's full gas requirements only through the Peoples' system,

PACT was able to lower its gas supply even lower from the same supplier. PACT's entry into the gas market available only on the Peoples' system adds to competition in the gas supply market, which has been destroyed by Equitable on its own system.

The "New Rules" that should be conveyed to Equitable, as it requests, is to treat its customers with at least common courtesy or suffer the natural consequences, and to stop trying to prevent competition in the natural gas supply market, in contravention of the Natural Gas Choice and Competition Act.

Equitable's argument that Peoples "could have negotiated price" is unreasonable, in as much as during its negotiations with PACT, Peoples had no knowledge whatsoever of the difficulties that PACT was having with Equitable Gas, or the price that Equitable Gas had offered PACT in December, 2002. Equitable's complaint that Peoples might have negotiated for a higher price also ignores PACT's own economic limitations, being that it intended to fully fund the construction of its own gas service line, all of which Equitable is ignoring.

In further contradiction to Equitable's allegation that Peoples "knew" that Equitable had a right to "match" any offer made by Peoples, PACT specifically denies that it so advised Peoples of Equitable's right before completing all negotiations on its new agreement with Peoples. Again, Equitable's Complaint contains nothing more than shrill speculations and "what-if's", in an attempt to damage PACT even more than it already tried to do. As a further answer to Equitable's allegations of the unreasonableness of PACT demanding a 15 year contract with Peoples, as early as December, 2002, Equitable Gas advised PACT that it believed that Peoples did not have the financial wherewithal to construct a gas pipeline to PACT, and that in fact, Equitable was taking customers away from Peoples, and stated that perhaps Equitable might be able to buy The Peoples

Gas Company because of its falling market share. This comment by Equitable also impelled PACT, at the outset of its negotiations with Peoples, to demand a long-term service agreement from Peoples to not only spread its investment over the long term but also to avoid the danger of the total elimination of the competition between Equitable and Peoples in the near term. But for obtaining a 15-year term agreement with Peoples, PACT would most likely not have entered into any gas transportation with Peoples. Peoples had no choice but to give PACT a long-term transportation agreement, if it wanted PACT's business at a very minimal cost to itself.

Equitable argues, in contradiction to its earlier accusations that Peoples somehow financed the construction of PACT's gas line, that "Generally long-term agreements are offered when a utility must expend considerable initial costs to connect a customer." It therefore recognizes that long-term agreements are desired by those who are investing a lot of money at the outset. PACT invested a lot of money at the outset of the performance of its contract with Peoples, when it borrowed to build its new gas service line. There is no less reason for PACT to demand a long-term agreement than if the investment shoe was on Peoples' foot. Furthermore, public utilities usually view such long-term contracts as beneficial to them. Here Peoples was able to obtain a long-term lock up of PACT as a customer, which Equitable had refused to do, without having to make any significant financial investment. It is therefore denied that there is anything unreasonable about the agreement between PACT and Peoples. Equitable attributes to Peoples its own belief that the local gas distribution company is the sole dictator of terms of negotiated contracts with its customers. That has now been shown by PACT to be quite untrue. It is denied that Peoples "gave away" any bargaining leverage that it knew it had, and Peoples and PACT

should not thereafter have to surrender the results obtained through arms length bargaining to satisfy Equitable's need for revenge.

WHEREFORE, PACT respectfully requests that Equitable Gas' requests for relief be denied and its Complaint dismissed.

COUNT IV – RATE DISCRIMINATION

26. PACT herein incorporates by reference the foregoing answers to paragraphs 1 through 25 of Equitable Gas' Complaint, the same as if more fully set forth herein at length.

27. IF Equitable Gas has standing in the first place, to raise the issue of whether another public utility has discriminated in rates charged to its customers, PACT denies that it obtained any "preference or advantage" in violation of Section 1304 of the Public Utility Code, in as much as the rates charged and to be charged by Peoples to PACT are permitted under Peoples' Commission approved tariff, and such action by Peoples will help open up the natural gas supply market for consumers of natural gas that Equitable Gas tried to, and does, discourage. The natural result that occurred as a result of Equitable Gas' commercially unreasonable treatment of one of its major customer is beneficial to the unfortunate customers who remain on the Equitable system, in that Equitable will have learned to treat its remaining and new customers with greater respect and commercially proper behavior.

WHEREFORE, PACT respectfully requests that Equitable Gas' requests for relief be denied and its Complaint dismissed.

NEW MATTER

AND NOW comes PACT, by way of further answer and defense to Equitable Gas' Complaint, and asserts the following New Matter:

28. PACT herein incorporates the allegations contained in its Petition to Intervene, the same as if fully set forth at length.

29. In as much as Peoples has not duplicated ANY of the facilities of Equitable Gas, and being that Peoples Gas is not expanding its service territory to anywhere where it was not already authorized to serve, in providing service to PACT, Count I of Equitable's Complaint, "Duplication of Facilities," should be dismissed, in as much as any material facilities built to enable Peoples to serve PACT were provided by PACT, a non-regulated, non-profit entity operating in the nature of a co-operative.

30. Equitable Gas Company has no standing to raise the issue contained in Count IV of its Complaint, "Rate Discrimination." The issue of Peoples discriminating in rates charged to its customers is a matter to be settled between Peoples, its customers and the PUC, and Equitable Gas has no legitimate stake in the issue and lacks standing to complain thereof, and Count IV should therefore be immediately dismissed.

31. Granting any of the relief requested will damage all of the taxing bodies that are Members of PACT, whose costs of operations will be significantly increased by any such action by the Commission, all to the detriment of all persons and entities served by such taxing bodies, which far exceeds those poorer residents who are served by Equitable Gas. The "cure" requested by Equitable will do more damage than any of the harm that Equitable claims to be done already, which was the result of the commercially unreasonable actions of Equitable Gas itself.

32. Equitable Gas is guilty of laches in awaiting until PACT constructed its gas service line before it filed this action with this Commission to deprive PACT of the benefit of the bargain that enabled PACT to justify its investment in the gas service line. Equitable Gas knew of

PACT's intentions months before the beginning of the construction of the line, but waited until PACT spent its investment in the line before trying to destroy the benefit of PACT's bargain, all with the intent and purpose and effect of harming PACT, with whom Equitable, through its related company, NORESCO, unfairly competed with PACT in the past for customers, through the offer of predatory pricing to PACT members, as more fully set forth below.

33. Equitable Gas Company is seeking equitable relief from this Commission, when it, itself and through its affiliated company, NORESCO, has engaged in damaging predatory pricing and unfair competition harmful to PACT and others, as more fully set forth below. Equitable Gas has unclean hands, and therefore should be denied the relief it seeks.

34. Equitable Gas Company itself, and additionally through its sister-affiliated company, NORESCO, has engaged in unfair competition practices with PACT and others in the Pittsburgh area, by offering equipment, services and gas supplies to members of PACT and others at prices far below the market price for gas and/or services available to others, with the intent and effect of damaging PACT and others, as more fully set forth below.

35. The Convention Center in Pittsburgh was a Member of PACT since 1983, when PACT began to do business. When the Pittsburgh Convention Authority decided to build a new facility on the site of its old facility, NORESCO offered the Convention Center a fixed price, 10-year gas supply requirements contract at prices far below the prices that PACT could acquire for gas from anyone, including but not limited to Equitable Gas, which at the same time was refusing to provide even a quote to supply PACT's natural gas requirements, all of which resulted in PACT having to severely lower its price to the new Convention Center to retain it as a Member of PACT, at a price far below that charged to any other Member of PACT, thereby resulting in an

increased cost for steam to all other PACT Members that would not have occurred but for Equitable/NORESCO's unfair trade practices and predatory pricing policies and practices.

36. PACT believes, and therefore avers, that Equitable Gas, by itself and/or with or through its affiliated company, NORESCO, engaged in similar illegal practices of offering services to customers of others, such as the new Mellon Center and others, at below-cost-pricing, all with the intention of damaging any entity that might, in any way, be a competitor of Equitable Gas Company.

37. The entity that engages in predatory and below cost pricing and discriminatory rates to customers is Equitable Gas, and not Peoples.

38. This Commission should not destroy the economic investment that PACT legally made in constructing its new, non-public utility property gas service line by granting any of the requests for relief requested by Equitable Gas. To do otherwise would be a taking of non-public utility property not only from PACT, but also from its financing entity, PNC Bank, NA, who should be made an indispensable party to these proceedings which may affect the security value of their property right (also non-public utility property) in the gas service line built by PACT.

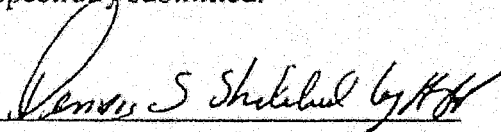
39. Equitable Gas Company along with its affiliated company, Equitrans, have structured terms and conditions and practices that discourage gas marketers and/or producers from providing full gas requirements to Equitable's customers to the extent that there is now no competition whatsoever for such sales to end users on Equitable's system.

40. Equitable Gas elected to engage in practices to discourage the competitive sales of natural gas requirements by marketers and suppliers who would use Equitable's system as the local distribution company, and Equitable Gas should live by the results of its successful attempts

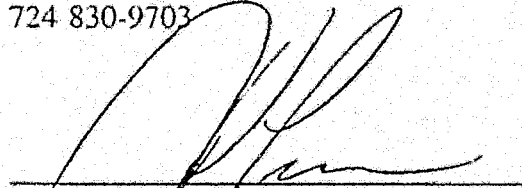
to frustrate the ends sought as expressed in the acts of the federal and state government to encourage competition in the sale of the natural gas product, and Equitable should therefore be required to live with the natural results of its inappropriate actions designed to prevent a free competitive market in the sale of natural gas.

WHEREFORE, PACT respectfully requests that all the relief requested by Equitable Gas be denied and Equitable's Complaint be dismissed, or that PNC Bank, NA be joined immediately as an indispensable party to these proceedings before any hearings are held on the Complaint.

Respectfully submitted.



Dennis S. Shilobod, General Counsel
Pa. I.D. No. 10039
PACT
806 Law & Finance Building
Pittsburgh, PA 15219
724 830-9703



Anthony P. Picadio, Esquire
Pa. I.D. No. 01342
Picadio Sneath Miller & Norton, P.C.
Suite 4710 U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
412-288-4010

FORM 1024

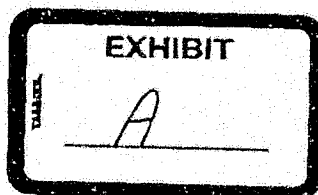
Pittsburgh Allegheny County Thermal, Ltd.
535 Smithfield St., Suite 302
Pittsburgh, PA 15222

25-1414595

Completion Date: AUG 30 1983

EXHIBIT A

ARTICLES OF INCORPORATION



Alleggheny County Thermal, Ltd.
535 Smithfield St., Suite 302 25-1414595
Pittsburgh, PA 15222 Completion Date: AUG 3

Filed 23 1982 A.D.
Commonwealth of Pennsylvania
Department of State

Filing Fee: \$35
Art 6

Articles of
Incorporation—
Domestic Nonprofit Corporation

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
CORPORATION BUREAU

William L. Davis

Secretary of the Commonwealth

slg

In compliance with the requirements of 15 Pa. S. 57316 (relating to articles of incorporation) the undersigned, desiring to be incorporated as a nonprofit corporation, hereby certifies (certify) that:

1. The name of the corporation is:
PITTSBURGH ALLEGHENY COUNTY THERMAL, LTD.

2. The location and post office address of the initial registered office of the corporation in this Commonwealth is:

Fulton Building	Sixth Street
(NUMBER)	(STREET)
Pittsburgh	Pennsylvania 15222
(CITY)	(ZIP CODE)

3. The corporation is incorporated under the Nonprofit Corporation Law of the Commonwealth of Pennsylvania for the following purpose or purposes:

Section A. Specific Purpose of the Corporation. The specific purpose of the corporation is to manufacture and deliver steam heat solely and exclusively to members of the Corporation which shall be operated as a "cooperative" within the meaning of the Pennsylvania Public Utility Law.

Section B. Irrevocable Nonprofit Purpose of the Corporation. The corporation is irrevocably dedicated to, and operated exclusively for, nonprofit purposes; and no part of the income or assets of the corporation shall be distributed to, nor inure to the benefit of, any individual. The corporation does not contemplate pecuniary gain or benefit incidental or otherwise.

Section C. Powers of the Corporation. The corporation is hereby empowered to specifically perform, but is not limited to, the following acts:

(a) to buy, own, sell, convey, assign, mortgage or lease any interest in real estate and personal property and to construct, maintain and operate improvements thereon necessary or incident to the accomplishment of its purposes.

(b) to borrow money and issue evidence of indebtedness and furtherance of any or all of the objects of its business and to secure the same by mortgage, pledge or other lien on the corporation's property.

(c) to engage in any other activity which the Board of Directors deems useful or necessary in fulfilling the foregoing purposes; and

(d) to do and perform all acts reasonably necessary to accomplish the purposes of the corporation.

EXHIBIT "A"

The corporation does not contemplate pecuniary gain or profit, incidental or otherwise.

4. The term for which the corporation is to exist is: perpetual

5. The corporation is organized upon a nonstock basis.

6. ~~(Strike out if inapplicable)~~

7. (Strike out if inapplicable) The incorporators constitute a majority of the members of the committee authorized to incorporate Pittsburgh Allegheny County Thermal, Ltd.
(NAME OF UNINCORPORATED ASSOCIATION)

by the requisite vote required by the organic law of the association for the amendment of such organic law.

8. The name(s) and post office address(es) of each incorporator(s) is (are):

NAME	ADDRESS (Including street and number, if any)
<u>Ralph Lynch, Jr.</u>	<u>Baskin and Sears, P.C., 10th Floor, Friok Building, Pittsburgh, PA 15219</u>

9. Any person executing a contract to purchase steam from the Corporation shall automatically become a member of the Corporation.

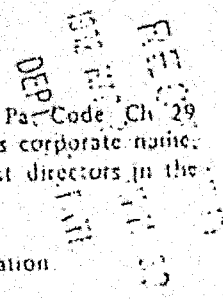
IN TESTIMONY WHEREOF, the incorporator(s) has (have) signed and sealed these Articles of Incorporation this

26 day of February, 19 82

(SEAL) Ralph Lynch, Jr. (SEAL)
Ralph Lynch, Jr. (SEAL)

INSTRUCTIONS FOR COMPLETION OF FORM:

- A. For general instructions relating to the incorporation of nonprofit corporations see 19 Pa. Code, Ch. 29 (relating to nonprofit corporations generally). These instructions relate to such matters as corporate name; stated purposes, term of existence, authorized share structure, inclusion of names of first directors in the Articles of Incorporation, provisions on incorporation of unincorporated associations, etc.
- B. One or more corporations or natural persons of full age may incorporate a nonprofit corporation.
- C. If the corporation is to be organized upon a stock share basis Paragraph 5 should be modified accordingly.
- D. Optional provisions required or authorized by law may be added as Paragraphs 8, 9, 10 . . . etc.
- E. The following shall accompany this form:
 - (1) Any necessary copies of Form DSCB:17.2 (Consent to Appropriation of Name) or Form DSCB:17.3 (Consent to Use of Similar Name)
 - (2) Any necessary governmental approvals
- F. 15 Pa. S. 57317 (relating to advertisement) requires that the incorporators shall advertise their intention to file or the corporation shall advertise the filing of articles of incorporation. Proofs of publication of such advertising should not be delivered to the Department, but should be filed with the minutes of the corporation.



Page 2

Articles of Incorporation - Domestic Nonprofit Corporation

NAME OF CORPORATION: PITTSBURGH ALLEGHENY COUNTY THERMAL, LTD.

10. The initial directors shall be:

Ralph Lynch, Jr.
Thomas Michalek
Richard R. Kay

CONSTRUCTION AGREEMENT

MADE THE ____ day of July, 2003;

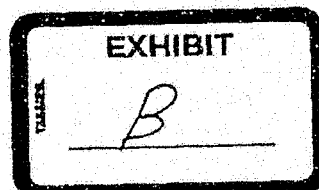
By and Between PITTSBURGH ALLEGHENY COUNTY THERMAL, LTD
("PACT"), with corporate offices at 806 Law & Finance Building, Pittsburgh, PA 15219, and

M O'HERRON CO ("Contractor"), with offices at 4002 Lorigan Street; Pittsburgh, PA
15224

The parties hereto agree as follows, each intending to be hereby legally bound

I. DEFINITIONS

- 1.1 "Project" is the Service Line Installation Project, to install a natural gas service line from PACT's Plant at Cecil Way to Ross Street in the city of Pittsburgh.
- 1.2 "Inspector" is Dave Lonabaugh, whose address is _____,
Home telephone number 724-327-7105 and cell phone number 412-496-4494.
- 1.3 "Engineer" is the Loftus Engineers, with offices at 555 N. Bell Avenue, Carnegie,
PA 15106, with telephone number 412-429-1396 and fax number 412-429-6474,
to the attention of Mike Ober unless Contractor is advised otherwise.
- 1.4 "Contract Documents" include
 - i. This Construction Contract,
 - ii. The booklet entitled "Service Line Installation Specifications for Pittsburgh Allegheny County Thermal, Ltd." prepared by Loftus Engineers, dated June 17, 2003 and all documents, drawing and references contained therein. The title page and the "Table of Contents" of the booklet are hereto attached.
 - iii. "Section 00310 - PRIME CONTRACT PROPOSAL FORM" submitted and



signed by Contractor, dated June, 2003

- 1.5 "Contract Price" is \$1,169,129.81, subject to such changes as may be made pursuant to the Contract documents

II. CONTRACTORS DUTIES

- 2.1 Contractor shall provide the supervision, labor and materials for, and construct the natural gas service line for PACT as provided in the Contract Documents in a good and workman like manner
- 2.2 Contractor's duties shall include, but not be limited to, the obligation to construct the natural gas service line pursuant to and in compliance with the regulations issued by the United States Department of Transportation's Office of Pipeline Safety Standards, as contained in 49 Code of Federal Regulations, the same as if the natural gas service line being installed by Contractor for PACT was instead a gas distribution line owned by a Public Utility subject to said regulations. Contractor represents that it has the knowledge, know-how, experience, expertise and qualified personnel to provide and properly install gas distribution lines and will provide the same in installing the gas service line for PACT as though it were a gas distribution line.
- 2.3 Contractor shall provide the Inspector with correct information setting forth the pipe location at all points, depth of installation and distance from the curb to the natural gas service line, so that the Engineer will be able to prepare a full and complete set of "as-built" drawings for PACT upon completion of the Project.
- 2.4 Contractor shall recognize the Inspector and Engineer as PACT's agents as set forth herein, but in the event there is any disagreement between Contractor and the Inspector or Engineer relating to installation of the gas service line, Contractor shall refer all such disputes to Robert Druga, of PACT, for final determination and

settlement of the dispute. Failure of Contractor to refer any such matters to Robert Druga will not relieve Contractor of its obligations under the Contract Documents, particularly including the foregoing section 2.2.

- 2.5 In the event of the discovery of any unexpected major problems, obstructions or especially the need to change the routing of the natural gas service line during construction, Contractor shall consult with Robert Druga of PACT before proceeding with making any changes in the planned installation of the gas service line.
- 2.6 Contractor shall proceed with all deliberate speed to complete the Project by September 29, 2003, including but not limited to final pressure testing, recognizing that PACT requires the gas service line to be in full service transporting gas to its Plant by the end of the day of September 30, 2003.

III. EARLY TERMINATION OF PROJECT

- 3.1 Contractor recognizes and agrees that PACT retains and shall have the right to terminate the Project at any time for any reason, in which event PACT's liability to Contractor shall be limited to payment of the unit costs set forth in the Contract Documents applied to the work completed and materials purchased for the Project but not returnable to the supplier, and any special actual out-of-pocket costs, if any, not covered by the unit costs, incurred by the Contractor solely as a result of the early termination. Any purchased materials that are uninstalled but not returnable to the supplier for which PACT must pay Contractor shall then be delivered to PACT for its ownership upon payment so made.

IV. PAYMENTS TO CONTRACTOR

- 4.1 Contractor shall apply for progress payments, on account of the Contract Price, by submitting to the Inspector an A.I.A. form "Application for Payment" for work properly completed. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.
- 4.2 Provided that the Application for Payment is received by the Inspector not later than the 5th day of a month, PACT shall make payments to Contractor approved by the Inspector and Engineer not later than the 10th day¹ of the following month. If an Application for Payment is received by the Inspector after the application date fixed above, payment shall be made by the Owner not later than 40 days after the Inspector receives the Application for Payment.
- 4.3 Applications for Payment shall indicate the percentage of completion of each portion of the work as of the end of the period covered by the Application for Payment.
- 4.4 Each Application for Payment shall be based upon the Schedule of Values composing the Contract Price (as it may be adjusted as provided in the Contract Documents). The Schedule of Values shall allocate the entire Contract Sum among the various portions of the work, and be prepared in such form and supported by such data to substantiate its accuracy as PACT may require. This Schedule of Values shall be used as a basis for reviewing the Contractor's Applications for Payment.
- 4.5 Applications for Payment shall indicate the percentage of completion of each portion of the work as of the end of the period covered by the Application for Payment.
- 4.6 Subject to the provisions of the Contract Documents, the amount of each progress

payment shall be computed as follows:

- 4.6.1 Take that portion of the Contract Sum properly allocable to Completed Work as determined by multiplying the percentage completion of each portion of the work by the share of the total Contract Sum allocated to that portion of the work in the Schedule of Values, less retainage of ten per cent (10%).
- 4.6.2 Add that portion of the Contract Sum properly allocable to material and equipment delivered and suitably stored at PACT's Plant for subsequent incorporation in the completed construction (or, if approved in advance by PACT, suitably stored off the site at a location agreed upon in writing), less retainage of 10%.
- 4.6.3 Subtract the aggregate of previous payments made by the Owner; and
- 4.6.4 Subtract amounts, if any, that the Inspector or Engineer has withheld or nullified as properly payable under the Application for Payment.
- 4.7 PACT shall have the right and power to withhold from all payments due Contractor as provided above to cover any costs that PACT anticipates incurring in the event that Contractor fails or refuses to perform the work as provided in the Contract Documents in a good and workmanlike manner or as the result of any other material breach of this Construction Contract.
- 4.8 The full retainage shall be paid to Contractor upon completion of the Project as determined by the Inspector and the Engineer.

V. MISCELLANEOUS

- 5.1 This is the full and complete agreement between the parties.
- 5.2 No changes to this agreement shall be recognized unless it is in writing and signed by all the parties.

IN WITNESS WHEREOF, the parties hereunto set their hands and seals:

M. O'Herron Co.

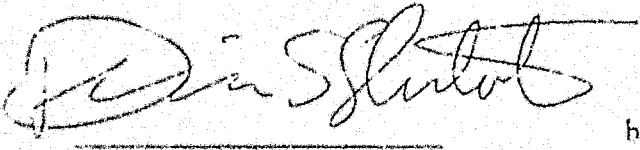
ATTEST

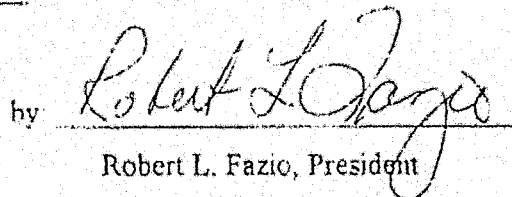
by 

Thomas P. Kissane, President

PACT

ATTEST



by 

Robert L. Fazio, President

VERIFICATION

I, Robert L. Fazio, President of Pittsburgh Allegheny County Thermal, Ltd ("PACT"), the undersigned, hereby state and verify that I am duly authorized to act for and in behalf of PACT, and that the facts contained in the foregoing "Answer of Pittsburgh Allegheny County Thermal, Ltd. To Complaint of Equitable Gas Company" in the above captioned Public Utility Commission action are true and correct to the best of my knowledge, information and belief. I understand that making any false statements in said Answer would be and are subject to the penalties of 18 Pa. C.S.A. §4901 relating to unsworn falsification to authorities.

11/20/03
Date: _____

Robert L. Fazio
Robert L. Fazio, President of PACT

RECEIVED

NOV 21 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU
ANSWER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing
PITTSBURGH ALLEGHENY COUNTY THERMAL, LTD. TO COMPLAINT OF
EQUITABLE GAS COMPANY was served upon the following persons via overnight mail, this
21st day of November 2003, addressed as follows:

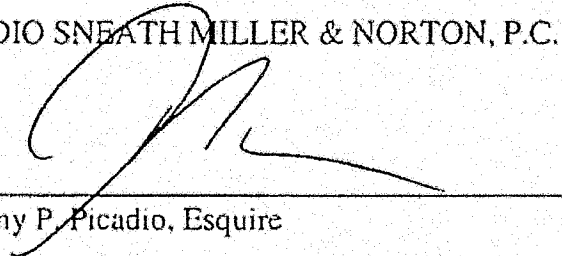
Charles E. Thomas, Jr., Esquire
Thomas T. Niesen, Esquire
Thomas, Thomas, Armstrong & Niesen
212 Locust Street, Suite 500
P. O. Box 9500
Harrisburg, PA 17108-9500

Norman James Kennard, Esquire
Hawke McKeon Sniscak & Kennard LLP
100 North Tenth Street
Harrisburg, PA 17101

and via First Class United States Mail, postage prepaid, addressed as follows:

Daniel L. Frutchey, Esquire
Senior Vice President and General Counsel
Equitable Gas Company
200 Allegheny Center Mall
Pittsburgh, PA 15212

PICADIO SNEATH MILLER & NORTON, P.C.



Anthony P. Picadio, Esquire

212 Locust Street, Suite 300, Harrisburg, Pennsylvania 17101
Tel: (717) 237-7160 ■ Fax: (717) 237-7161 ■ www.WolfBlock.com

Kevin J. Moody
Direct Dial: (717) 237-7187
Direct Fax: (717) 237-2767
E-mail: kmoody@wolfblock.com

ORIGINAL

November 25, 2003

James McNulty
Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg., 2nd
Floor, 400 North Street P.O. Box 3265
Harrisburg, PA 17105-3265

DOCUMENT

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PA PUC
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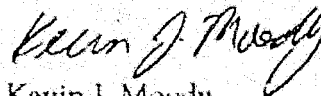
Re: Equitable Gas Company, a Division of Equitable
Resources, Inc. v. The Peoples Natural Gas Company d/b/a
Dominion Peoples, Docket No. C-20031128

Dear Secretary McNulty:

Enclosed for filing are the original and three copies of NRG Energy Center-Pittsburgh LLC's Petition to Intervene in the above-referenced matter. As evidenced by the attached Certificate of Service all parties have been served in the manner indicated.

If you have any questions regarding this filing, please contact me.

Sincerely,



Kevin J. Moody

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

KJM/jls
Enclosures

cc: Certificate of Service (w/enc)

DSH 38947 1/999999-999999

50

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of NRG Energy Center-Pittsburgh LLC's Petition to Intervene upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

VIA FIRST CLASS MAIL

Charles E. Thomas, Jr., Esquire
Thomas T. Niesen, Esquire
Thomas, Thomas, Armstrong & Niesen
212 Locust Street, Suite 500
P.O. Box 9500
Harrisburg, PA 17108-9500


Daniel L. Frutchey, Esquire
Senior Vice President and General Counsel
Equitable Gas Company
200 Allegheny Center Mall
Pittsburgh, PA 15212

William T. Hawke, Esquire
Norman J. Kennard, Esquire
Hawke McKeon Sniscak & Kennard LLP
100 North Tenth Street
Harrisburg, PA 17101

Susan G. George, Esquire
Managing Counsel
Dominion Resources
625 Liberty Avenue, 19th Floor
Pittsburgh, PA 15222-3197

Anthony P. Picadio, Esquire
4170 USX Tower
600 Grant Street
Pittsburgh, PA 15219-2702

Date: November 25, 2003



Kevin J. Moody, Esquire

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PA PUBLIC
SECRETARY'S BUREAU

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Equitable Gas Company, a Division of
Equitable Resources, Inc.,

Complainant

v.

The Peoples Natural Gas Company d/b/a
Dominion Peoples,

Respondent

Docket No. C-20031128

DOCKETED
DEC 18 2003

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SECRETARY'S BUREAU

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**PETITION OF
NRG ENERGY CENTER-PITTSBURGH LLC
TO INTERVENE**

NRG Energy Center-Pittsburgh LLC ("NRG Pittsburgh"), by its counsel, and pursuant to the Commission's regulation at 52 Pa. Code § 5.72, petitions the Commission to intervene in this proceeding and, in support of this Petition, represents the following:

BACKGROUND

DOCUMENT

1. NRG Pittsburgh is a Pennsylvania limited liability company with its principal business office located at 111 South Commons, Pittsburgh, PA 15212. NRG Pittsburgh is engaged in the supply and distribution of steam and chilled water to the public for compensation in the 21st and 22nd Wards of the City of Pittsburgh and, for that reason, is a "public utility," as that term is defined in Section 102 of the Public Utility Code, 66 Pa. C.S. § 102.

2. NRG Pittsburgh generates steam and chilled water through the use of other fuels, including natural gas. NRG Pittsburgh consumes, on average, 850,000 Mcf of natural gas a year to generate steam and chilled water.

3. NRG Pittsburgh purchases natural gas supply service from a "natural gas supplier," as that term is defined in Section 2202 of the Public Utility Code, 66 Pa. C.S. § 2202, and purchases natural gas distribution service from a "natural gas distribution company," as that term is defined in the same Section of the Public Utility Code.

4. As a "direct purchaser of natural gas supply services [and] natural gas distribution services," NRG Pittsburgh is a "retail gas customer," as that term is defined in Section 2202 of the Public Utility Code, 66 Pa. C.S. § 2202.

5. The natural gas distribution company from which NRG Pittsburgh currently is purchasing distribution service is Equitable Gas Company ("Equitable"), the Complainant in this proceeding.

6. NRG Pittsburgh purchases natural gas distribution service from Equitable under its Rate GDS, a Rate that sets forth maximum charges below which Equitable and its customers may negotiate.

7. As a "public utility," NRG Pittsburgh only may charge its customers rates that are "just and reasonable," 66 Pa. C.S. § 1301, and that are specified in a tariff that is approved by and on file with the Commission, 66 Pa. C.S. § 1303. NRG Pittsburgh's Tariff that has been approved by and that is on file with the Commission is its Tariff Heating and Cooling – Pa. P.U.C. No. 3 ("Tariff No. 3").

8. The rates that are specified in NRG Pittsburgh's Tariff No. 3 are designed to recover NRG Pittsburgh's costs to provide steam and chilled water service. Those costs of service include NRG Pittsburgh's costs to purchase natural gas distribution service.

9. Under the rates contained in its Tariff No. 3, NRG Pittsburgh recovers its costs of service in one of two ways: (a) either through so-called "base rates" that recover a normalized

and annualized or “test year” level of costs under Section 1308 of the Public Utility Code, 66 Pa. C.S. § 1308; or (b) through an “automatic adjustment mechanism” that recovers costs on a dollar-for-dollar or “reconcilable” basis under Section 1307 of the Public Utility Code, 66 Pa. C.S. § 1307.

10. NRG Pittsburgh’s “automatic adjustment mechanism” has two components, a Steam Cost Rate (“SCR”) and a Chilled Water Cost Rate (“CWCR”).

11. NRG Pittsburgh’s costs to purchase natural gas distribution service are among the costs of service that it recovers on a dollar-for-dollar or “reconcilable” basis through its SCR and CWCR.

12. The recovery of NRG Pittsburgh’s costs to purchase natural gas distribution services through its SCR and CWCR means that any reductions in these costs are flowed through “automatically” to its customers.

THIS PROCEEDING

13. On August 29, 2003, Equitable filed a Complaint with the Commission against The Peoples Natural Gas Company d/b/a Dominion Peoples (“Dominion Peoples”), another “natural gas distribution company” as that term is defined in Section 2202 of the Public Utility Code, 66 Pa. C.S. § 2202.

14. In its Complaint, Equitable has asked the Commission, *inter alia*, to prohibit Dominion Peoples from providing natural gas distribution service to Pittsburgh Allegheny County Thermal, Ltd. (“PACT”).

15. Like NRG Pittsburgh, PACT is a current “retail gas customer” of Equitable’s natural gas distribution services – at about the same average annual consumption level as NRG Pittsburgh – and is engaged in the supply and distribution of steam.

16. Unlike NRG Pittsburgh, PACT supplies and distributes steam as an *unregulated* “bona fide cooperative association” and not as a Commission-regulated “public utility.” See 66 Pa. C.S. § 102 (definition of “public utility”, (2)(ii)).

17. On September 23, 2003, Dominion Peoples filed an Answer to Equitable’s Complaint. In its Answer, Dominion Peoples claimed, *inter alia*, that it is authorized under the Natural Gas Companies Act of 1885 to provide natural gas distribution service throughout the City of Pittsburgh. Dominion People’s Answer at pp. 3-4.

18. If Dominion Peoples’ claim is correct – and there is nothing in Equitable’s Complaint that suggests otherwise – then NRG Pittsburgh, like PACT, also would have the opportunity to purchase natural gas distribution service from Dominion Peoples instead of from Equitable and, through that opportunity, to lower its costs of that service and its rates to its own customers.

19. If Equitable prevails in its Complaint, however, that opportunity almost certainly will be foreclosed.

NRG PITTSBURGH’S ELIGIBILITY TO INTERVENE

20. The Commission’s regulation at 52 Pa. Code § 5.72(a) recognizes two different and independent “interests” that allow a person to intervene in the Commission’s proceedings.¹ Insofar as this proceeding is concerned, NRG Pittsburgh has not just one, but both of those interests.

21. First, for the reasons that follow, NRG Pittsburgh has an “interest which may be directly affected and which is not adequately represented by existing participants, and as to which [it] may be bound by the action of the Commission.” 52 Pa. Code § 5.72(a)(2):

¹ § 5.72(a) also recognizes a “right” to intervene where conferred by statute.

- (a) The Commission's decision on Equitable's Complaint will determine whether NRG Pittsburgh, as a "retail gas customer," has the opportunity to purchase natural gas distribution services from Dominion Peoples instead of from Equitable – that is, whether NRG Pittsburgh may choose between two natural gas distribution companies that apparently are authorized legally to serve it;
- (b) If NRG Pittsburgh has that opportunity, then it may be able to negotiate more favorable rates for distribution service that it pays Equitable today;
- (c) NRG Pittsburgh, therefore, has an economic interest which may be affected directly by the Commission's action here; and,
- (d) Neither of the existing parties to this proceeding, Equitable and Dominion Peoples, adequately represents NRG Pittsburgh's interest as a "retail gas customer".²

22. Second, for additional reasons that follow, NRG Pittsburgh also has an "interest of such nature that [its participation] may be in the public interest." 52 Pa. Code § 5.72(a)(3):

- (a) NRG Pittsburgh is itself a "public utility";
- (b) As such, NRG Pittsburgh has a statutory obligation to charge rates that are "just and reasonable" and, in order to satisfy that statutory obligation, to incur costs of service that are as low as is reasonably possible;

² Interestingly, Equitable has suggested the possibility that a Commission decision in favor of PACT's right to purchase natural gas distribution service from Dominion Peoples could result in higher rates to Equitable's remaining customers, including, therefore, NRG Pittsburgh. Equitable Complaint as Paragraph 10, p. 6. Equitable's suggestion demonstrates that NRG Pittsburgh's interests might be affected in a number of ways by the Commission's decision in this proceeding.

- (c) The costs that NRG Pittsburgh incurs for natural gas distribution service are among the costs of service that it recovers through its public utility rates;
- (d) Moreover, any reductions in its costs of natural gas distribution service that NRG Pittsburgh is able to achieve will be flowed through automatically to its own customers through its SCR and CWCR; and
- (e) The Commission's decision in this proceeding almost certainly will determine whether NRG Pittsburgh may look to natural gas distribution service from Dominion Peoples as a means to produce reductions in its costs of natural gas distribution service and, as a result, reductions in its own rates for public utility service.³

WHEREFORE, NRG Energy Center-Pittsburgh LLC requests that the Pennsylvania Public Utility Commission grant this Petition and permit it to intervene in this proceeding.

Respectfully submitted,

Kevin J. Moody
 Daniel C. Clearfield, Esquire
 Kevin J. Moody, Esquire
 Wolf, Block, Schorr and Solis-Cohen
 212 Locust Street, P.O. Box 32
 Harrisburg, PA 17101
 (717) 237-7160

Date: November 25, 2003

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³ NRG Pittsburgh's status as a "public utility" also distinguishes its interest from that of the other "retail gas customer" that has an interest in this proceeding, PACT.

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Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Equitable Gas Company, a Division	:	Docket No. C-20031128
of Equitable Resources, Inc.,	:	
Complainant	:	
	:	
v.	:	
	:	
The Peoples Natural Gas Company,	:	
d/b/a Dominion Peoples,	:	
Respondent	:	

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**EQUITABLE GAS COMPANY'S
PREHEARING CONFERENCE MEMORANDUM**

AND NOW, comes Equitable Gas Company, a division of Equitable Resources, Inc., by its attorneys, and submits this Prehearing Conference Memorandum in connection with the Initial Prehearing Conference scheduled to be held in the above matter on November 20, 2003.

I. Introduction

1. This proceeding concerns the Complaint of Equitable Gas Company, a division of Equitable Resources, Inc., ("Equitable") against The Peoples Natural Gas Company, d/b/a Dominion Peoples ("Dominion Peoples") concerning Dominion Peoples' displacement of Equitable's service to Pittsburgh Allegheny County Thermal ("PACT"). Equitable is engaged in the purchase, distribution, sale and transportation of natural gas. It serves over 258,000 residential, commercial and industrial customers in the City of Pittsburgh and adjacent territories in Allegheny, Armstrong, Butler, Clarion, Fayette, Greene, Indiana, Jefferson, Washington and Westmoreland Counties in Southwestern Pennsylvania. Equitable's principal offices are located at 200 Allegheny Center, Pittsburgh, PA 15212.

2. The names, mailing and e-mail addresses, telephone and fax numbers of Equitable's counsel for this matter are as follows:

Charles E. Thomas, Jr., Esquire
cthomasjr@ttanlaw.com
Thomas T. Niesen, Esquire
tniesen@ttanlaw.com
Thomas, Thomas, Armstrong & Niesen
212 Locust Street
P. O. Box 9500
Harrisburg, PA 17108-9500

Tel. No.: (717) 255-7615
Fax No.: (717) 236-8278

Daniel L. Frutchey
Senior Vice President and General
Counsel
Dfrutchey@eqt.com
Equitable Gas Company, a division of
Equitable Resources, Inc.
200 Allegheny Center Mall
Pittsburgh, PA 15212

Tel. No.: (412) 395-3202
Fax No.: (412) 395-3155

II. Background and History of Proceeding

3. PACT was an Equitable customer from PACT's formation in 1982 through September 30, 2003, a period of more than 20 years. PACT was one of Equitable's largest transportation customers during this time, transporting 900,000 Mcf annually. Most recently, Equitable's natural gas transportation service to PACT was provided under an Agreement for Natural Gas Transportation Service, dated August 11, 2000 ("Equitable/PACT Agreement"). At all times, Equitable's service to PACT was safe, adequate, and fully compliant with the terms of the Equitable/PACT Agreement, the Pennsylvania Public Utility Code and the regulations of this Commission.

4. Pursuant to Section 2.01 of the Equitable/PACT Agreement, Equitable charged a discounted transportation rate in consideration of PACT's agreement that it would deliver its full natural gas requirements through Equitable's distribution facilities. Section 2.01 of the Equitable/PACT Agreement also provided that prior to the expiration of the Agreement, Equitable would have the opportunity to match any competitive offers from other gas distribution companies to provide transportation services to PACT.

PACT's agreement to utilize only Equitable's transportation system, plus Equitable's right to match any competitive offers, preserved Equitable's ability to be a primary gas transporter to commercial customers in the City of Pittsburgh and the surrounding area. The Agreement's intent of preserving Equitable's market position for gas transportation services in the Pittsburgh area was reinforced by Section 5.06 of the Equitable/PACT Agreement, which provided that PACT could not grant to any party permission, easements or rights-of-way along its steam distribution corridors to construct any natural gas pipeline bypass of Equitable's natural gas service.

5. Subsequently, PACT notified Equitable that it had received an offer from Dominion Peoples to provide gas transportation services to PACT after expiration of the Equitable/PACT Agreement. Following exchanges of information regarding the Dominion Peoples' offer, Equitable indicated, by letter dated July 11, 2003, that it was willing and able to match the Dominion Peoples offer as finally provided by PACT to Equitable. Although Equitable's offer to match the Dominion Peoples' proposal was made well before the September 30, 2003 expiration of the Equitable/PACT Agreement, and although meetings were held between Equitable and PACT representatives on July 17 and 18, 2003, PACT refused to enter into a new agreement with Equitable.

6. Instead, PACT entered into an agreement with Dominion Peoples, dated as of July 2, 2003, whereby Dominion Peoples will transport all of PACT's natural gas requirements and PACT will tender up to a maximum daily volume of 11,000 Mcf per day to Dominion Peoples for a 15 year period beginning October 1, 2003 and continuing until September 30, 2018 ("Dominion Peoples/PACT Agreement"). In response to OTS Interrogatories in this proceeding, PACT disclosed a Supplemental Agreement, also

dated July 2, 2003, but never previously disclosed to Equitable, pursuant to which Dominion Peoples made a contribution of \$100,000 "in aid of PACT's construction of the gas pipeline that yields a transportation charge of \$0.17 [per Mcf], as reflected in the Transportation Agreement." The Supplemental Agreement further provides that "[a]dditional contributions in aid of the same construction may be made by the Company [i.e. Dominion Peoples] in increments of \$75,000.00 up to \$400,000.00, such that \$175,000.00 will yield a \$0.19 transportation charge, \$250,000.00 will yield a \$0.21 transportation charge, \$325,000.00 will yield a \$0.23 transportation charge and \$400,000.00 will yield a \$0.25 transportation charge "

7. On August 25, 2003, Equitable filed a Complaint in Equity for Declaratory and Injunctive Relief in the Court of Common Pleas of Allegheny County at No. G.D. 03-16436 seeking declaratory and injunctive relief that would direct PACT to (1) enter into a new gas transportation agreement with Equitable per the right of first refusal and (2) cease construction of the by-pass line. On August 29, 2003, PACT filed Preliminary Objections to Equitable's Complaint. On September 2, 2003, the Court, per Judge O'Brien, entered an order continuing Equitable's request for a preliminary injunction pending disposition of the preliminary objections. On September 19, 2003, Equitable filed a First Amended Complaint adding a claim against PACT for damages arising out of PACT's breach of the Equitable/ PACT Agreement as well as a claim for damages against Dominion Peoples arising out of Dominion Peoples' tortious interference with the Equitable/ PACT Agreement. On September 25, 2003, PACT filed Preliminary Objections to the First Amended Complaint. The next day, Judge O'Brien entered an order again continuing hearing on the request for preliminary injunction until disposition

of the preliminary objections. On October 17, 2003, Peoples filed an Answer and New Matter to the First Amended Complaint. On October 29, 2003, Equitable served First Sets of Interrogatories and Requests for Production of Documents upon PACT and Dominion Peoples in the Civil Action.

8. On August 29, 2003, Equitable filed this Complaint with the Public Utility Commission. The Complaint raises four specific counts, namely, Duplication of Facilities (Count I), Predatory Pricing (Count II), Unfair Competition (Count III) and Rate Discrimination (Count IV) concerning Peoples' service to PACT.

In Count I, Equitable contends *inter alia*, that the pipeline that is being constructed as a service line for PACT is not really a service line at all, but rather in collusion with Dominion Peoples is a duplication of Equitable's distribution line.

In Count II, Equitable contends *inter alia*, that the Dominion Peoples' transportation rate of \$0.17 per Mcf is indefensible under any reasonable test of commercial propriety inasmuch as it would not even be sufficient to make a reasonable contribution to the cost of the fuel to bring PACT's gas through the Dominion Peoples' system to the PACT premises.

In Count III, Equitable contends *inter alia*, that the Dominion Peoples/PACT Agreement and Dominion Peoples' participation in the construction of an interconnecting pipeline are indicative of a pattern of unfair competition engaged in by Dominion Peoples.

Finally, in Count IV, Equitable contends *inter alia*, that the 15 year, \$0.17 per Mcf rate for PACT constitutes an unreasonable "preference or advantage."

9. Dominion Peoples filed an Answer to the Complaint on September 23, 2003, and a Motion to Dismiss the Complaint for Failure to Join An Indispensable Party. On October 2, 2003, PACT filed a Petition to Intervene in the Commission Complaint proceeding. Thereafter, Dominion Peoples filed a letter request to withdraw its Motion to Dismiss. On October 27, 2003, Equitable filed an Answer to PACT's Petition to Intervene in which it did not oppose PACT's intervention provided it is not used as a means for expanding the scope of this Complaint proceeding against Dominion Peoples.

10. By notice dated November 5, 2003, the Commission scheduled an Initial Prehearing Conference for November 20, 2003, before Administrative Law Judge Michael A. Nemeec.

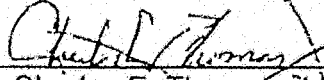
III. Proposed Scheduling

11. Equitable believes that several months must be reserved for the completion of discovery prior to the determination of the witnesses for each party and the preparation of testimony. A further prehearing conference would appear to be advisable following the completion of discovery at which time dates can be established for the submission of Equitable direct testimony, the testimony of other parties, rebuttal testimony and surrebuttal testimony and any discovery related thereto. Equitable anticipates that hearings would be scheduled to commence approximately two weeks after the receipt of surrebuttal testimony, most likely in the Summer of 2004. After discussions with counsel for Dominion Peoples, Equitable does not believe that such a schedule is different from that anticipated by Respondent. Equitable notes again that it has already served initial discovery in the Civil Action upon both Dominion Peoples

and PACT and that Trial Staff has propounded interrogatories to Equitable, Dominion Peoples and PACT in this Complaint proceeding.

Respectfully submitted,

By



Charles E. Thomas, Jr.

Thomas T. Niesen

THOMAS, THOMAS, ARMSTRONG & NIESEN

212 Locust Street, Suite 500

P. O. Box 9500

Harrisburg, PA 17108-9500

Daniel L. Frutchey

Senior Vice President and General Counsel

EQUITABLE GAS COMPANY,

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200 Allegheny Center Mall

Pittsburgh, PA 15212-5352

Attorneys for Complainant

Equitable Gas Company,

a division of Equitable Resources, Inc

DATE: November 19, 2003

Prehearing Conference Memorandum wpd

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Equitable Gas Company, a Division
of Equitable Resources, Inc.,

Complainant

v.

The Peoples Natural Gas Company
d/b/a Dominion Peoples,

Respondent

Docket No. C-20031128

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PROTECTIVE ORDER

Upon consideration of the Motion for Protective Order filed by The Peoples Natural Gas Company, d/b/a Dominion Peoples ("Dominion Peoples"), and the subsequent agreement reached between Dominion Peoples and the Equitable Gas Division ("Equitable") of Equitable Resources, Inc., following the Prehearing Conference held in the matter on November 20, 2003:

IT IS ORDERED THAT:

1. A Protective Order is hereby granted with respect to all materials and information identified in Paragraph 2 below, which are filed with the Commission, produced in discovery, or otherwise presented during these proceedings by any party. All persons now and hereafter granted access to the materials and information identified in Paragraph 2 of this Protective Order shall use and disclose such information only in accordance with this Order.

2. The materials subject to this Order are all correspondence, documents, data, information, studies, methodologies and other materials which a party or an

affiliate of a party furnishes in this proceeding pursuant to Commission rules and regulations, discovery procedures, testimony or oral examination, or provided as a courtesy to a party to this proceeding, which are claimed to be of a proprietary or confidential nature and which are designated "PROPRIETARY INFORMATION" or "CONFIDENTIAL AND PROPRIETARY"(hereinafter collectively referred to as "Proprietary Information").

In addition, the parties may designate extremely sensitive Proprietary Information as "HIGHLY CONFIDENTIAL INFORMATION" or "HIGHLY CONFIDENTIAL MATTER" (hereinafter referred to as "Highly Confidential Information") and thus secure the additional protections set forth in this Order pertaining to such material. Such Highly Confidential Information shall be only such Proprietary Information that constitutes or describes the producing party's (i) customers' or customer prospects' names, addresses, annual volumes of gas usage, or other customer-identifying information, (ii) marketing plans, (iii) competitive strategies, (iv) market share projections, and (v) marketing materials that have not yet been used.

3. If a producing party believes a discovery request seeks Proprietary and/or Highly Confidential Information, it shall notify the requesting party within three (3) business days of service of the discovery that it believes the information requested is Proprietary and/or Highly Confidential and if provided should be made subject to a Protective Order. If the requesting party is in agreement as to the Proprietary and/or Highly Confidential nature of the requested information, it shall agree that the information be labeled Proprietary/Highly Confidential - subject to Protective Order or in the alternative it shall work with the producing party to develop a format, either through redaction, coding or the like, whereby the information can be provided in a Non-

Proprietary/Non-Highly Confidential form. If the requesting and producing parties cannot agree as to whether the information is indeed Proprietary/Highly Confidential, they shall jointly seek a ruling from the presiding Administrative Law Judge no later than six (6) business days from the date of service of the discovery.

4. Proprietary Information and Highly Confidential Information shall be made available to the Commission and its Staff (including the Office of Trial Staff) for use in this proceeding. For purposes of filing, to the extent that Proprietary Information is placed in the Commission's report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Proprietary Information or Highly Confidential Information is placed in the Commission's testimony or document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Order. Public inspection of Proprietary Information and Highly Confidential Information shall be permitted only in accordance with this Protective Order.

5. Proprietary Information and Highly Confidential Information shall be made available to counsel of record in this proceeding pursuant to the following procedures:

a. Proprietary Information. To the extent required for participation in this proceeding, a party's counsel may afford access to Proprietary Information made available by the producing party to the requesting party's expert(s) and witness(es), subject to the following restrictions.

i. Such experts and witnesses may not hold any of the following positions with any competitor of the producing party: (a) an officer, board member, stockholder, partner, owner, or an employee, who is primarily involved in the

pricing, development, and/or marketing of products or services that are offered in competition with those of the producing party; or (b) an officer, board member, stockholder, partner, owner of any affiliate of a competitor of the producing party; provided, however, that any expert shall not be disqualified on account of being a stockholder, partner, or owner unless his/her interest in the business constitutes a significant potential for violation of the limitations of permissible use of the Proprietary Information.

ii. If a party's independent expert, another member of the independent expert's firm or the independent expert's firm generally also serves as an expert for, or as a consultant or advisor to a competitor or any affiliate of a competitor of the producing party, said independent expert must: (1) advise the producing party of the competitor's or affiliate's name(s); (2) make reasonable attempts to segregate those personnel assisting in the expert's participation in this proceeding from those personnel working on behalf of a competitor or any affiliate of a competitor of the producing party; and (3) if segregation of such personnel is impractical, the independent expert shall give to the producing party written assurances that the lack of segregation will in no way jeopardize the interests of the producing party. The producing party retains the right to challenge the adequacy of the written assurances that its interests will not be jeopardized.

iii. Any information provided under this provision may be used only for and to the extent that it is necessary for participation in this proceeding; any person obtaining information disclosed through this provision may not use that information to gain any commercial advantage and any person obtaining information may not forward it to any person to gain commercial advantage.

b Highly Confidential Information Highly Confidential Information shall be produced for inspection by party's counsel of record only. If the inspecting lawyer desires copies of such material, or desires to disclose its contents to persons other than counsel of record, she or he shall submit a written request to the producing party's counsel. If requesting and producing parties are unable to reach agreement with respect to such a request, they shall submit the issue to the presiding Administrative Law Judge within two (2) days of their failure to reach agreement.

6. No other persons, other than those identified in paragraphs 4 and 5 above, shall have access to the Proprietary or Highly Confidential Information except as authorized by order of the Commission or of the presiding Administrative Law Judge. No person who may be entitled to receive, or who is afforded access to any Proprietary or Highly Confidential Information shall use or disclose such information for the purposes of business or competition, or any purpose other than the preparation for and conduct of this proceeding or any administrative or judicial review thereof.

7. Prior to making Proprietary or Highly Confidential Information available to any person as provided in paragraphs 4 and 5 of this Protective Order, counsel shall deliver a copy of this Order to such person and shall receive a written acknowledgment from that person in the form attached to this Order and designated as Appendix A. Counsel shall promptly deliver to the producing party a copy of the executed acknowledgment form.

8. A producing party shall designate data or documents as constituting or containing Proprietary or Highly Confidential Information by affixing an appropriate proprietary stamp or typewritten designation on such data or documents. Where only part of data compilations or multi-page documents constitutes or contains Proprietary

or Highly Confidential Information, the producing party shall designate only the specific data or pages of documents which constitute or contain Proprietary or Highly Confidential Information.

9. Any public reference to Proprietary or Highly Confidential Information by counsel or persons afforded access thereto shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary or Highly Confidential Information to fully understand the reference and not more. The Proprietary or Highly Confidential Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

10. Part of any record of this proceeding containing Proprietary or Highly Confidential Information, including but not limited to all exhibits, writings, testimony, cross examination, argument and responses to discovery, and including reference thereto as mentioned in Ordering paragraph 9 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary or Highly Confidential Information is released from the restrictions of this Order, either through the agreement of the parties or pursuant to order of the Administrative Law Judge, the Commission or appellate court. Unresolved challenges arising under paragraph 11 shall be decided on motion or petition by the presiding officer or the Commission as provided by 52 Pa. Code §5.423(a). All such challenges will be resolved in conformity with existing rules, regulations, orders, statutes, precedent, etc., to the extent that such guidance is available.

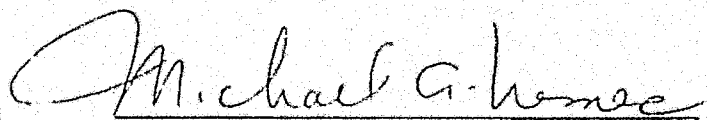
11. The parties affected by the terms of this Order shall retain the right to question or challenge the confidential or proprietary nature of Proprietary or Highly Confidential information; to question or challenge the admissibility of Proprietary or

Highly Confidential Information; to refuse or object to the production of Proprietary or Highly Confidential Information on any proper ground, including but not limited to irrelevance, immateriality or undue burden; to seek an order permitting disclosure of Proprietary or Highly Confidential Information beyond that allowed in this Order; and to seek additional measures of protection of Proprietary or Highly Confidential Information beyond those provided in this Order. If a challenge is made to the designation of a document or information as Proprietary Confidential, the party claiming that the information is Proprietary or Highly Confidential retains the burden of demonstrating that the designation is necessary and appropriate.

12. Upon completion of this proceeding, including any administrative or judicial review, all copies of all documents and other materials, including notes, which contain any Proprietary or Highly Confidential information shall be immediately returned upon request to the party furnishing such Proprietary or Highly Confidential Information. In the alternative, parties may provide an affidavit of counsel affirming that the materials containing or reflecting Proprietary or Highly Confidential Information have been destroyed.

Dated

12/04/03



Michael A. Nemec
Administrative Law Judge

The undersigned has read and understands the Protective Order deals with the treatment of Proprietary and Highly Confidential Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Order. In the case of an independent expert, the undersigned represents that he/she has complied with the provisions of paragraph 3(a)(ii) of the Order prior to submitting this Affidavit.

SIGNATURE

PRINT NAME

ADDRESS

DATE: _____

EMPLOYER

Hawke
McKeon
Sniscak &
Kennard LLP
ATTORNEYS AT LAW

William T. Hawke
Kevin J. McKeon
Thomas J. Sniscak
Norman James Kennard
Lillian Smith Harris
Scott T. Wyland
Todd S. Stewart
Craig R. Burgraff
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Rikardo J. Hull

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

December 8, 2003

BY HAND DELIVERY

Charles E. Thomas, Jr.
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Thomas, Thomas, Armstrong & Niesen
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FEB 12 2004
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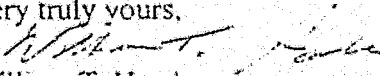
Re: Equitable Gas Company, a Division of Equitable Resources, Inc. v. The Peoples Natural Gas Company d/b/a Dominion Peoples, Docket No. C-20031128; Dominion Peoples' Interrogatories and Requests for Production of Documents (Set I)

Dear Mssrs Thomas and Niesen:

Enclosed please find Dominion Peoples' Interrogatories and Request for Production of Documents (Set I) in the above captioned proceeding. Pursuant to the agreed to schedule, answers are to be provided within 15 days of today's date.

Should you have any questions concerning these Interrogatories and Request for Production of Documents, please do not hesitate to contact Norman Kennard or me.

Very truly yours,


William T. Hawke
Norman James Kennard

WTH/tap
Enclosure

cc: Per Certificate of Service
Susan G. George, Esquire
Honorable Michael Nemecek (cover letter only)
James J. McNulty (cover letter only)

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

JJP

Thomas, Thomas, Armstrong & Niesen
Attorneys and Counsellors at Law

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ORIGINAL

CHARLES E THOMAS
(1913 - 1998)

December 9, 2003

DOCUMENT
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PA P.U.C. SECRETARY'S BUREAU
CHARLES E THOMAS JR
Direct Dial (717) 255-7615
E-mail: cthomasjr@ttanlaw.com

BY HAND DELIVERY

William T. Hawke, Esquire
Hawke, McKeon Sniscak & Kennard LLP
100 North Third Street
Harrisburg, PA 17101

In re: Docket No. C-20031128
Equitable Gas Company v. The Peoples Natural Gas Company

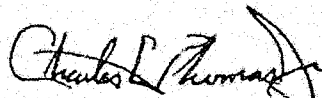
Dear Mr. Hawke:

Enclosed are Equitable Gas Company's First Set of Interrogatories to The Peoples Natural Gas Company in the above referenced proceeding. Please provide answers to the Interrogatories within 15 days. Call me at your convenience if you wish to discuss the Interrogatories.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By


Charles E. Thomas, Jr.

Encl.

cc: Susan G. George, Esq. (w/encl.)
Dennis S. Shilobod, Esq. (w/encl.)
Anthony P. Picadio, Esq. (w/encl.)
Johnnie E. Simms, Esq. (w/encl.)
Honorable Michael Nemec (w/o encl.)
James J. McNulty (w/o encl.)

031203Hawke wpd



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Office Of Administrative Law Judge
P.O. Box 3265, Harrisburg, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

December 9, 2003

In Re: C-20031128

(See letter dated 11/05/03)

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Equitable Gas Company, a Division of Equitable Resources, Inc.
v.

The Peoples Natural Gas Company d/b/a Dominion Peoples

Disputing Duplication of Facilities, Predatory Pricing, Unfair
Competition and Rate Discrimination and Prohibit Dominion from
Participating in Construction of Pipe Line.

Hearing Notice

This is to inform you that a hearings on the above-captioned
case will be held as follows:

Type: Initial and further hearings

Date: Tuesday, May 18, 2004 - Initial
Wednesday, May 19, 2004 - Further
Thursday, May 20, 2004 - Further

Time: 10:00 a.m.

Location: 11th floor hearing room
Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, Pennsylvania

Presiding: Administrative Law Judge Michael A. Nemeo
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222
Telephone: (412) 565-3550
Fax: (412) 565-5692

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JAN 06 2004

Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.

If you intend to file exhibits, 2 copies of all hearing exhibits to be presented into evidence must be submitted to the reporter. An additional copy must be furnished to the Presiding Officer. A copy must also be provided to each party of record.

Individuals representing themselves do not need to be represented by an attorney. All others (corporation, partnership, association, trust or governmental agency or subdivision) must be represented by an attorney. An attorney representing you should file a Notice of Appearance before the scheduled hearing date.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call the scheduling office at the Public Utility Commission:

- Scheduling Office: (717) 787-1399.
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1-800-654-5988.

pc: Judge Nemeč
Judy W. Springer
Beth Plantz
Docket Section
Calendar File

ORIGINAL

Thomas, Thomas, Armstrong & Niesen

Attorneys and Counsellors at Law

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CHARLES E. THOMAS
(717) 255-7600

December 11, 2003

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
P. O. Box 3265
Harrisburg, PA 17105-3265

DOCUMENT
FOLDER

In re: Docket No. C-20031128
Equitable Gas Company, a Division of Equitable Resources, Inc., Complainant
v. The Peoples Natural Gas Company, d/b/a Dominion Peoples, Respondent

Dear Secretary McNulty:

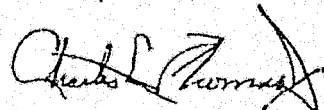
Enclosed for filing on behalf of the Equitable Gas Company Division ("Equitable") of Equitable Resources, Inc. are an original and three (3) copies of Equitable's Reply to the New Matter contained in Pittsburgh Allegheny County Thermal's Answer to Equitable's Complaint against The Peoples Natural Gas Company, d/b/a Dominion Peoples.

Copies of Equitable's Reply are being served upon the persons and in the manner set forth on the Certificate of Service attached to it.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By



Charles E. Thomas, Jr.

Encl.

cc: Certificate of Service
Daniel L. Frutchey (w/encl.)

031211McNulty.wpd

ORIGINAL

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Equitable Gas Company, a Division
of Equitable Resources, Inc.,
Complainant

v.

The Peoples Natural Gas Company,
d/b/a Dominion Peoples,
Respondent

Docket No. C-20031

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EQUITABLE GAS COMPANY'S REPLY TO
NEW MATTER OF PITTSBURGH ALLEGHENY COUNTY THERMAL

AND NOW, comes Complainant Equitable Gas Company, a division of Equitable Resources, Inc. ("Equitable") and, pursuant to 52 Pa. Code §5.62, files this *seriatim* Reply to the New Matter of Pittsburgh Allegheny County Thermal ("PACT") contained in its Answer to Equitable's Complaint against The Peoples Natural Gas Company, d/b/a Dominion Peoples ("Dominion Peoples"). In support thereof, Equitable respectfully submits the following:

28. Paragraph 28 of PACT's New Matter incorporates the allegations contained in its Petition to Intervene. In reply, Equitable incorporates herein its Answer to PACT's Petition to Intervene.

29. Denied. At the time of the filing of Equitable's Complaint, Dominion Peoples had no service or other connection with PACT. Since then a connecting pipeline from PACT to the existing facilities of Dominion Peoples has been constructed. In Paragraph 12 of its Complaint, Equitable averred that Dominion Peoples is advising and assisting PACT in respect to the pipeline in spite of PACT's attempt to characterize the pipeline as a PACT facility. Initial discovery shows that Dominion Peoples is not only advising and assisting PACT but paying, at least in part, for the pipeline as well. In response to OTS Interrogatories in this proceeding, PACT has disclosed a Supplemental Agreement, dated July 2, 2003, but never previously disclosed to Equitable, pursuant to which Dominion Peoples made a contribution of \$100,000 "in aid of PACT's construction of the gas pipeline that yields a transportation charge of \$0.17 [per

Mcf], as reflected in the Transportation Agreement." The Supplemental Agreement further provides that "[a]dditional contributions in aid of the same construction may be made by the Company [i.e. Dominion Peoples] in increments of \$75,000.00 up to \$400,000.00." In addition, in a letter from a PACT Director to Mayor Murphy of the City of Pittsburgh, dated September 8, 2003, the PACT Director stated that "[e]ventually, Dominion Peoples may *buy back* the 'installation'" (Emphasis added). The location of the meter at PACT's Plant at Cecil Way per the Supplemental Agreement further suggests that the pipeline is something other than a PACT service line facility. The developing record does not support PACT's contention that the pipeline is a PACT facility in which Dominion Peoples is not participating.

30. Denied. Paragraph 30 of PACT's New Matter presents a conclusion to which no answer is required. If answer is deemed necessary, Equitable denies that it has no standing to raise the issue of discrimination presented in Count IV of its Complaint. Section 701 of the Public Utility Code, 66 Pa. C.S. §701, allows any public utility concerned to complain about any thing done by any public utility in violation of the Public Utility Code. Equitable has lost a customer of more than 20 years, PACT, because of the discriminatory pricing policies of Dominion Peoples. Equitable's has a direct, substantial and immediate interest in the rate charged by Dominion Peoples to PACT. Equitable has standing with respect to Count IV of the Complaint.

31. Denied. Equitable is without knowledge or information sufficient to form a belief as to the truth of the assertions presented in Paragraph 31 of the New Matter and, therefore, they are denied. By way of further response, Equitable denies that its Commission-approved rates are negatively affecting governmental budgets. If relevant, proof thereof is demanded. Equitable's Agreement with PACT for Natural Gas Transportation Service and the discounts reflected therein assure PACT that Equitable's prices are competitive. Equitable denies that its actions were ever commercially unreasonable.

32. Denied. Paragraph 32 of PACT's New Matter presents a conclusion to which no answer is required. If answer is deemed necessary, Equitable denies that it is guilty of laches. It was PACT that rushed to complete construction despite Equitable's matching offer and protests. PACT well knows that it was the dilatory party, waiting months without taking any action on Equitable's January 17, 2003 offer, and then demanding that within nine days Equitable match an "offer", the validity of which was never verified by PACT and which Equitable believed was not a true competitive offer and which, as a consequence of the discovery discussed in response to Paragraph 29, Equitable now knows was not the complete offer made by Dominion Peoples. At the time it imposed the deadline, PACT had not fully disclosed all the costs associated with the "offer," nor, despite Equitable's requests, did it attempt to verify the *bona fides* of such "offer." Equitable filed this Complaint against Dominion Peoples with all due dispatch. If PACT is ultimately impacted by the Commission decision, it will have no one but itself to blame. Moreover, it was PACT which refused to accept Equitable's offer to match the gas transportation service offer made by Dominion Peoples. In doing so, it acted at its own peril. As set forth below, Equitable further denies that it through NORESKO has unfairly competed with PACT.

33, 34, 35 and 36. Denied. Equitable denies that it, by itself and/or with its NORESKO affiliate, has engaged in damaging predatory pricing, unfair competition or illegal practices. NORESKO's offers are independent of any Equitable service as is apparent from Paragraph 35 of the New Matter where PACT avers that NORESKO was offering to supply gas to the Pittsburgh Convention Authority's new facility while Equitable, at the same time, was declining to offer natural gas supply service. Equitable denies further that it is seeking equitable relief from the Commission such that PACT may through its intervention in this proceeding raise the equitable defense of "unclean hands" in opposition to Equitable's Complaint against Dominion Peoples. PACT's attempt to expand this proceeding to include grievances it believes it has

against NORESCO is inappropriate because the grievances are irrelevant to Equitable's Complaint against Dominion. By way of further response, Equitable denies that its actions were ever commercially unreasonable.

37. Denied. Equitable does not engage in predatory, below cost or discriminatory pricing.

38. Denied. For the reasons stated in response to the preceding Paragraphs of this Reply to New Matter and in Equitable's Answer to PACT's Petition to Intervene, there is no basis for PACT's assertions as to what this Commission "should not" do. Equitable is without knowledge or information sufficient to form a belief as to the truth of the assertions presented in Paragraph 38 of the New Matter concerning destruction of PACT's "economic investment" in the pipeline and the ownership interest of PNC Bank, NA, in the pipeline and, therefore, those assertions are denied. If relevant, strict proof thereof is demanded. By way of further response, Equitable denies that PNC Bank, NA, is an indispensable party to this Complaint proceeding.

39 and 40. Denied. Equitable denies that either it or Equitrans has structured terms and conditions and practices that discourage gas marketers and/or producers from providing full gas requirements to Equitable's customers and further denies that it engages in practices to discourage the competitive sales of natural gas requirements by marketers and suppliers. Moreover, the terms and conditions of Equitable's transportation services were approved by this Commission. Equitable currently has six non-affiliated suppliers marketing natural gas on its system and has a greater number of customers utilizing the services of natural gas suppliers than several natural gas distribution companies much larger than Equitable.¹ If PACT has experienced any disinterest on the part of suppliers to meet its full natural gas supply

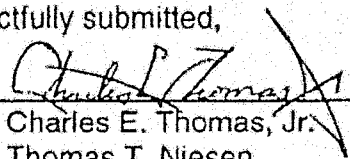
¹ The Pennsylvania Public Utility Commission's Autumn 2003 *Keystone Competition* newsletter indicates that Equitable has the third largest number of customers served by alternative suppliers in the Commonwealth and more than National Fuel Gas, PECO Gas, PG Energy, PGW, PPL Gas, TW Phillips and UGI Gas.

requirements, it is because PACT's usage is highly heat sensitive and subject to wide daily and monthly swings.

WHEREFORE, Equitable Gas Company, a division of Equitable Resources, Inc., prays that the Pennsylvania Public Utility Commission sustain its Complaint against The Peoples Natural Gas Company, d/b/a Dominion Peoples, at Docket No. C-20031128 and grant the relief requested therein.

Respectfully submitted,

By



Charles E. Thomas, Jr.
Thomas T. Niesen
THOMAS, THOMAS, ARMSTRONG & NIESEN
212 Locust Street, Suite 500
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Harrisburg, PA 17108-9500

Daniel L. Frutchey
Senior Vice President and General Counsel
EQUITABLE GAS COMPANY,
a division of Equitable Resources, Inc.
200 Allegheny Center Mall
Pittsburgh, PA 15212-5352

Attorneys for Complainant
Equitable Gas Company,
a division of Equitable Resources, Inc.


DATE: December 11, 2003

Reply to PACT New Matter w23

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VERIFICATION

I, FREDERICK K. DALENA, Senior Vice President – Commercial Operations for Equitable Gas Company a division of Equitable Resources, Inc., hereby state that the facts above set forth in the foregoing Reply to New Matter are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.



FREDRICK K. DALENA
SENIOR VICE PRESIDENT –
COMMERCIAL OPERATIONS

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Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Equitable Gas Company, a Division : Docket No. C-20031128
of Equitable Resources, Inc., :
:
Complainant :
:
v. :
:
The Peoples Natural Gas Company :
d/b/a Dominion Peoples, :
:
Respondent :

CERTIFICATE OF SERVICE

I hereby certify that I have this 11th day of December, 2003, served a true and correct copy of Equitable Gas Company's Reply to New Matter of Pittsburgh Allegheny County Thermal, upon the persons and in the manner set forth below:

FIRST CLASS MAIL, POSTAGE PREPAID

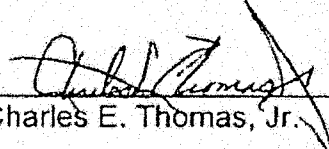
William T. Hawke, Esquire
Norman James Kennard, Esquire
Hawke McKeon Sniscak & Kennard LLP
100 North Tenth Street
Harrisburg, PA 17101

Susan G. George, Esquire
The Peoples Natural Gas Company
d/b/a Dominion Peoples
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Pittsburgh, PA 15222

Johnnie E. Simms, Senior Prosecutor
Office of Trial Staff
Pennsylvania Public Utility Commission
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Dennis S. Shilobod, General Counsel
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Anthony P. Picadio, Esquire
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Pittsburgh, PA 15219



Charles E. Thomas, Jr.

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SECRETARY'S BUREAU

Thomas, Thomas, Armstrong & Niesen
Attorneys and Counsellors at Law

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FAX (717) 236-8278

CHARLES E. THOMAS
(1913 - 1998)

December 11, 2003

BY TELEFAX AND FIRST CLASS MAIL

William T. Hawke, Esquire
Norman James Kennard
Hawke McKeon Sniscak & Kennard LLP
100 North Third Street
Harrisburg, PA 17101

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In re: Docket No. C-20031128
Equitable Gas Company v. The Peoples Natural Gas Company

Gentlemen:

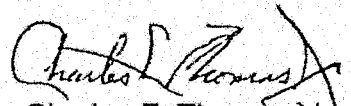
Equitable Gas Company ("Equitable") is presently reviewing its files in connection with the preparation of responses to The Peoples Natural Gas Company, d/b/a Dominion Peoples, Set I Interrogatories to Equitable ("Set I Interrogatories") in the above matter. We believe that several of the interrogatories are objectionable on various grounds including relevancy, materiality and undue burden. We will be contacting you next week to identify the specific Set I Interrogatories, which Equitable believes are objectionable and to see whether we can resolve our objections.

In the meantime, in accordance with Paragraph 3 of the Protective Order, dated December 4, 2003, please be advised that based on its preliminary review of the Set I Interrogatories, Equitable believes that the information requested by Interrogatories Nos. 2, 3, 4, 5, 9, 10, 11, 12, 13, 22, 23, 24, 25, 26, 30, 31, 32 and 33 is Proprietary and/or Highly Confidential, either in whole or in part. We would like to discuss the matter of Proprietary/Highly Confidential treatment with you next week, as well.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By


Charles E. Thomas, Jr.

RJP

William T. Hawke
Norman James Kennard
December 11, 2003
Page 2

cc: Susan G. George, Esq.
Dennis S. Shilobod, Esq.
Anthony P. Picadio, Esq.
Johnnie E. Simms, Esq.
Honorable Michael Nemeo
James J. McNulty

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THOMAS T. NIESEN

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CHARLES E. THOMAS
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December 12, 2003

BY HAND DELIVERY

William T. Hawke, Esquire
Hawke, McKeon Sniscak & Kennard LLP
100 North Third Street
Harrisburg, PA 17101

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In re: Docket No. C-20031128
Equitable Gas Company v. The Peoples Natural Gas Company

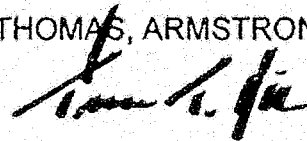
Dear Mr. Hawke:

Enclosed are Equitable Gas Company's Second Set of Interrogatories to The Peoples Natural Gas Company in the above referenced proceeding. Please provide answers to the Interrogatories by December 31, 2003, which is a four day extension to the otherwise applicable due date for the answers in recognition of the holiday season. Call me at your convenience if you wish to discuss the Interrogatories.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By



Thomas T. Niesen

Encl.

cc: Susan G. George, Esq. (w/encl.)
Dennis S. Shilobod, Esq. (w/encl.)
Anthony P. Picadio, Esq. (w/encl.)
Johnnie E. Simms, Esq. (w/encl.)
Honorable Michael Nemec (w/o encl.)
James J. McNulty (w/o encl.)

031212Hawke wpd

RJP

Thomas, Thomas, Armstrong & Niesen
Attorneys and Counsellors at Law

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CHARLES E. THOMAS
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December 15, 2003

James J. McNulty
Secretary
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400 North Street
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Harrisburg, PA 17105-3265

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In re: Docket No. C-20031128
Equitable Gas Company, a Division of Equitable Resources, Inc., Complainant
v. The Peoples Natural Gas Company, d/b/a Dominion Peoples, Respondent

Dear Secretary McNulty:

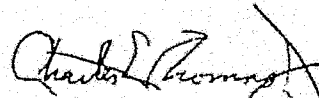
Enclosed for filing on behalf of the Equitable Gas Company Division ("Equitable") of Equitable Resources, Inc. are an original and three (3) copies of Equitable's Answer in Opposition to the Petition of NRG Energy Center-Pittsburgh LLC to Intervene.

Copies of the foregoing Answer are being served upon the persons and in the manner set forth on the Certificate of Service attached to it.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By


Charles E. Thomas, Jr.

Encl.

cc: Certificate of Service
Daniel L. Frutchey (w/encl)

031215McNulty.wpd

R.I.P

76

ORIGINAL

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Equitable Gas Company, a Division : Docket No. C-20031128
of Equitable Resources, Inc.,
Complainant

v.

The Peoples Natural Gas Company
d/b/a Dominion Peoples,
Respondent

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EQUITABLE GAS COMPANY'S
ANSWER IN OPPOSITION TO THE PETITION OF
NRG ENERGY CENTER-PITTSBURGH LLC TO INTERVENE

AND NOW, comes Complainant Equitable Gas Company ("Equitable"), a division of Equitable Resources, Inc., and, pursuant to 52 Pa. Code §5.66, files this Answer in Opposition to the Petition to Intervene (the "Petition") filed by NRG Energy Center-Pittsburgh LLC ("NRG Pittsburgh"), as follows:

1. Admitted in part and denied in part. Equitable admits that NRG Pittsburgh is engaged in the supply and distribution of steam and chilled water in the 21st and 22nd Wards of the City of Pittsburgh. However, Equitable is without knowledge or information sufficient to form a belief as to the truth of the remaining averments of Paragraph 1 of the Petition, and, therefore, they are denied. If relevant, strict proof thereof is demanded. The averment that NRG Pittsburgh is a public utility is a conclusion of law to which no response is required.

2. Admitted. Equitable admits that NRG Pittsburgh transports, on average, 850,000 Mcf annually.

3. Admitted in part. Equitable admits that NRG Pittsburgh purchases natural gas distribution service from Equitable and that Equitable is a natural gas distribution

company. The remaining averment of Paragraph 3 of the Petition is a conclusion of law to which no response is required.

4. The averments presented in Paragraph 4 of the Petition are conclusions of law to which no response is required.

5. Admitted as stated.

6. Admitted as stated.

7. Paragraph 7 of the Petition is a mixed statement of fact and law. Equitable is without knowledge or information sufficient to form a belief as to the truth of the factual averments of Paragraph 7 of the Petition concerning NRG Pittsburgh's Tariff, and, therefore, they are denied. If relevant, strict proof thereof is demanded. The remaining averments of Paragraph 7 are conclusions of law to which no response is required.

8. Denied. Equitable is without knowledge or information sufficient to form a belief as to the truth of the averments presented in Paragraph 8 of the Petition, and, therefore, they are denied. If relevant, strict proof thereof is demanded.

9. Denied. Equitable is without knowledge or information sufficient to form a belief as to the truth of the averments presented in Paragraph 9 of the Petition, and, therefore, they are denied. If relevant, strict proof thereof is demanded.

10. Denied. Equitable is without knowledge or information sufficient to form a belief as to the truth of the averments presented in Paragraph 10 of the Petition, and, therefore, they are denied. If relevant, strict proof thereof is demanded. To the extent Paragraph 10 of Petition is an identification of the component parts of NRG Pittsburgh's Tariff, said Tariff is a writing which speaks for itself.

11. Denied. Equitable is without knowledge or information sufficient to form a belief as to the truth of the averments presented in Paragraph 11 of the Petition, and, therefore, they are denied. If relevant, strict proof thereof is demanded.

12. Denied. Equitable is without knowledge or information sufficient to form a belief as to the truth of the averments presented in Paragraph 12 of the Petition, and, therefore, they are denied. If relevant, strict proof thereof is demanded.

13. Admitted in part. Equitable admits that it filed a Complaint against The Peoples Natural Gas Company, d/b/a Dominion Peoples, on August 29, 2003. The further averment in Paragraph 13 of the Complaint that Dominion Peoples is a natural gas distribution company as defined in the Public Utility Code is a conclusion of law to which no response is required.

14. Denied. The averments in Paragraph 14 of the Petition characterize Equitable's Complaint, which being a writing speaks for itself. Therefore, the averments of Paragraph 14 of the Petition are denied.

15. Denied. PACT is not presently a customer of Equitable Gas Company.

16. The averments presented in Paragraph 16 of the Petition are conclusions of law to which no response is required.

17. Admitted in part and denied in part. Equitable admits that Dominion Peoples filed an Answer to Equitable's Complaint on or about September 23, 2003. The remaining averments in Paragraph 17 of the Petition characterize Dominion Peoples' Answer, which being a writing speaks for itself. Those averments are, therefore, denied.

18. The averments presented in Paragraph 18 of the Petition are conclusions to which no response is required.

19. The averments presented in Paragraph 19 of the Petition are conclusions to which no response is required.

20. Denied. The Commission's regulation at 52 Pa Code §5.72(a) speaks for itself. The averments presented in Paragraph 20 of the Petition which paraphrase Section 5.72(a) are, therefore, denied. The further averment that NRG Pittsburgh has two interests in this proceeding is a conclusion of law to which no response is required. If answer is deemed necessary, Equitable denies that NRG Pittsburgh has the interests required by 52 Pa. Code §5.72 and standing to participate in this proceeding. Coincident with the filing of this Answer in Opposition, Equitable is filing a Motion to Dismiss the Petition to Intervene of NRG Pittsburgh for Lack of Standing.

21. Denied. The averments presented in Paragraph 21 of the Petition are conclusions to which no response is required. If answer is deemed necessary, Equitable denies that NRG Pittsburgh has a direct interest in this proceeding, which is not adequately represented by other parties. NRG Pittsburgh lacks standing to participate in this proceeding. Coincident with the filing of this Answer in Opposition, Equitable is filing a Motion to Dismiss the Petition to Intervene of NRG Pittsburgh for Lack of Standing. If relevant, Equitable demands strict proof of the averments in Paragraph 21 of the Petition.

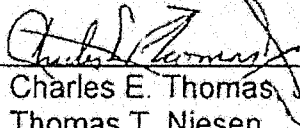
22. Denied. The averments presented in Paragraph 22 of the Petition are conclusions to which no response is required. If answer is deemed necessary, Equitable denies that NRG Pittsburgh has an interest in this proceeding. The rate schedule under which NRG Pittsburgh takes service from Equitable has been in place for several years and was found by the Commission to be just and reasonable. The rate schedule is a Commission approved rate and is not at issue in this proceeding. Equitable denies that NRG Pittsburgh has standing to participate in this proceeding.

Coincident with the filing of this Answer in Opposition, Equitable is filing a Motion to Dismiss the Petition to Intervene of NRG Pittsburgh for Lack of Standing. If relevant, Equitable demands strict proof of the averments in Paragraph 22 of the Petition.

WHEREFORE, Equitable Gas Company, a division of Equitable Resources, Inc., prays that the Pennsylvania Public Utility Commission deny the Petition of NRG Energy Center-Pittsburgh LLC to Intervene.

Respectfully submitted,

By



Charles E. Thomas, Jr.

Thomas T. Niesen

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212 Locust Street, Suite 500

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Daniel L. Frutchey

Senior Vice President and General Counsel

EQUITABLE GAS COMPANY,

a division of Equitable Resources, Inc.

200 Allegheny Center Mall

Pittsburgh, PA 15212-5352

Attorneys for Complainant

Equitable Gas Company,

a division of Equitable Resources, Inc.

DATE: December 15, 2003

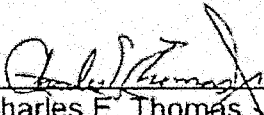
Answer to NRG Petition to Intervene.wpd

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Anthony P. Picadio, Esquire
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Charles E. Thomas, Jr.

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Attorneys and Counsellors at Law

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In re: Docket No. C-20031128
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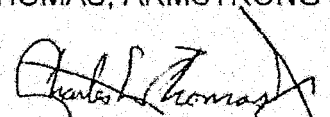
Enclosed for filing on behalf of the Equitable Gas Company Division ("Equitable") of Equitable Resources, Inc. are an original and three (3) copies of Equitable's Motion to Dismiss the NRG Petition to Intervene for Lack of Standing and accompanying Notice to Plead.

Copies of the foregoing Motion are being served upon the persons and in the manner set forth on the Certificate of Service attached to it.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By


Charles E. Thomas, Jr.

Encl.
cc: Certificate of Service
Daniel L. Frutchey (w/encl.)
031215A-McNulty.wpd

RJP 77

ORIGINAL

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Equitable Gas Company, a Division	:	Docket No. C-20031128
of Equitable Resources, Inc.,	:	
Complainant	:	
	:	
v.	:	
	:	
The Peoples Natural Gas Company,	:	
d/b/a Dominion Peoples,	:	
Respondent	:	

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141th
SECRETARY'S BUREAU

NOTICE TO PLEAD

TO: Daniel C. Clearfield, Esquire
Kevin J. Moody, Esquire
Wolf, Block, Schorr and Solis-Cohen, LLC
212 Locust Street, P. O. Box 3265
Harrisburg, PA 17101
(Attorneys for NRG Energy Center-Pittsburgh LLC)

YOU ARE HEREBY NOTIFIED to file a written response to the enclosed Motion to Dismiss within ten (10) days from service hereof in accordance with 52 Pa. Code §5.101, or the Motion may be granted without your response.

Respectfully submitted,

By Charles E. Thomas, Jr.
Charles E. Thomas, Jr.
Thomas T. Niesen
THOMAS, THOMAS, ARMSTRONG & NIESEN
212 Locust Street, Suite 500
P. O. Box 9500
Harrisburg, PA 17108-9500

Daniel L. Frutchey
Senior Vice President and General Counsel
EQUITABLE GAS COMPANY,
a division of Equitable Resources, Inc.
200 Allegheny Center Mall
Pittsburgh, PA 15212-5352

Attorneys for Complainant
Equitable Gas Company,
a division of Equitable Resources, Inc.

DATE: December 15, 2003

ORIGINAL

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Equitable Gas Company, a Division : Docket No. C-20031128
of Equitable Resources, Inc., :
Complainant :
: :
: :
: :

v.

The Peoples Natural Gas Company, :
d/b/a Dominion Peoples, :
Respondent :
: :
: :

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**EQUITABLE GAS COMPANY'S
MOTION TO DISMISS THE PETITION TO INTERVENE
OF NRG ENERGY CENTER-PITTSBURGH
FOR LACK OF STANDING**

DOCUMENT

AND NOW, comes Complainant Equitable Gas Company ("Equitable"), a division of Equitable Resources, Inc., and, pursuant to 52 Pa. Code §5.101, files this Motion to Dismiss the Petition of NRG Energy Center-Pittsburgh LLC ("NRG Pittsburgh") for Lack of Standing, as follows:

1. This proceeding concerns the above docketed Complaint of Equitable against The Peoples Natural Gas Company, d/b/a Dominion Peoples ("Dominion Peoples") concerning Dominion Peoples' displacement of Equitable's service to Pittsburgh Allegheny Thermal ("PACT").

2. On or about November 25, 2003, NRG Pittsburgh filed a petition seeking permission to intervene in the Complaint proceeding claiming a cognizable interest in the matter under Section 5.72 of the Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code §5.72.

3. Section 5.101(a)(3) of the Commission's Rules and Regulations, 52 Pa. Code §5.101(a)(3), provides that the Commission may dismiss a pleading that does not indicate on its face the standing of the party to participate in the proceeding.

4. Section 5.72 provides that a petition to intervene may be filed by a person claiming a right to intervene or an interest of such a nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. It further states that the right or interest may be a right conferred by statute or an interest which may be directly affected and which is not adequately represented and which will be binding on the petitioner or an interest of such a nature that participation may be in the public interest. Here, there is no right confirmed by statute for NRG Pittsburgh's participation, nor does NRG Pittsburgh have an interest which is directly affected. The scope of this complaint proceeding is a narrow one involving Dominion Peoples' displacement of Equitable's service by means of a line financed by Dominion Peoples which directly connects PACT and Dominion Peoples. There is no line connecting NRG Pittsburgh and the rate schedule under which NRG Pittsburgh takes service from Equitable is not at issue. That rate schedule has been in place for several years and was previously found by this Commission to be just and reasonable.

5. In addition, our courts have held that there are three requirements for a party to have standing to litigate an issue: the party must have a substantial interest in the subject matter of the litigation, the interest must be direct; and the interest must be immediate and not a remote consequence. *George v. Pa. P.U.C.*, 735 A.2d 1282, appeal denied 758 A.2d 1202 (1999). The requirements for these interests are quite clear:

- i. A "substantial interest," as a requirement for a party to have standing to litigate an issue, is an interest in the outcome of the

litigation which surpasses the common interest of all citizens in procuring obedience to the law.

- ii. A "direct interest," as a requirement for a party to have standing to litigate an issue, requires a showing that the matter complained of caused harm to the party's interest.
- iii. An "immediate interest," as a requirement for a party to have standing to litigate an issue, involves the nature of the causal connection between the action complained of and the injury to the party challenging it and is shown where the interest the party seeks to protect is within the zone of interests sought to be protected by the statute or the constitutional guarantee in question.

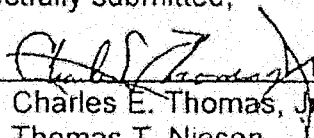
6. Here, NRG Pittsburgh meets none of the standing criteria. It has not been harmed in any way. It has no interest of any kind, either substantial, direct or immediate, and, thus, no standing to litigate an issue before the Commission. Although it claims an interest in the issue raised by Equitable in this proceeding, its claim depends entirely on the outcome of the proceeding and then only if Dominion Peoples ultimately should offer to serve NRG Pittsburgh. This is not a direct or public interest as required by Section 5.72. It is, rather, a remote and speculative interest depending not only upon the outcome of the proceeding, but also a future decision by Dominion Peoples to serve NRG Pittsburgh's facility which presently is not connected to Dominion Peoples' facilities.

7. Equitable's claim is against Dominion Peoples. PACT was allowed to intervene in the proceeding because it is the consuming entity involved with the connecting pipeline. Any interest of NRG Pittsburgh is too remote. NRG Pittsburgh's interest in this proceeding is no greater than the interest of the general public. In addition, inasmuch as the interest alleged by NRG Pittsburgh is based on the opportunity for service from Dominion Peoples, said interest is adequately represented by Dominion Peoples.

WHEREFORE, Equitable Gas Company, a division of Equitable Resources, Inc.,
prays that the Pennsylvania Public Utility Commission grant this Motion to Dismiss the
Petition to Intervene of NRG Energy Center-Pittsburgh LLC for lack of standing.

Respectfully submitted,

By



Charles E. Thomas, Jr.
Thomas T. Niesen
THOMAS, THOMAS, ARMSTRONG & NIESEN
212 Locust Street, Suite 500
P. O. Box 9500
Harrisburg, PA 17108-9500

Daniel L. Frutchey
Senior Vice President and General Counsel
EQUITABLE GAS COMPANY,
a division of Equitable Resources, Inc.
200 Allegheny Center Mall
Pittsburgh, PA 15212-5352

Attorneys for Complainant
Equitable Gas Company,
a division of Equitable Resources, Inc.

DATE: December 15, 2003
Motion to Dismiss NRG Petition to Intervene wpd

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Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Equitable Gas Company, a Division : Docket No. C-20031128
of Equitable Resources, Inc., :
Complainant :
v. :
The Peoples Natural Gas Company, :
d/b/a Dominion Peoples, :
Respondent :

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of December, 2003, served a true and correct copy of Equitable Gas Company's Motion to Dismiss the Petition to Intervene of NRG Energy Center-Pittsburgh LLC for Lack of Standing, upon the persons and in the manner set forth below:

HAND DELIVERY

Daniel C. Clearfield, Esquire
Kevin J. Moody, Esquire
Wolf, Block, Schorr and Solis-Cohen, LLP
212 Locust Street
P. O. Box 3265
Harrisburg, PA 17101

FIRST CLASS MAIL, POSTAGE PREPAID

William T. Hawke, Esquire
Norman James Kennard, Esquire
Hawke McKeon Sniscak & Kennard LLP
100 North Tenth Street
Harrisburg, PA 17101

Susan G. George, Esquire
The Peoples Natural Gas Company
d/b/a Dominion Peoples
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Pittsburgh, PA 15222

Johnnie E. Simms, Senior Prosecutor
Office of Trial Staff
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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Dennis S. Shilobod, General Counsel
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Anthony P. Picadio, Esquire
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Suite 4710 U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219



Charles E. Thomas, Jr.

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Hawke RECEIVED
McKeon
S
K
KENNARD LLP
ATTORNEYS AT LAW

William T. Hawke
Kevin J. McKeon
Thomas J. Sniscak
Norman James Kennard
Lillian Smith Harris
Scott T. Wyland

Todd S. Stewart
Craig R. Burgraff
Janet L. Miller
Steven K. Haas
William E. Lehman
Rikardo J. Hull

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

December 16, 2003

VIA HAND DELIVERY

Charles E. Thomas, Jr.
Thomas, Thomas, Armstrong & Niesen
212 Locust Street
Harrisburg, PA 17108-9500

DOCKETED
FEB 09 2004
DOCUMENT

Re: Equitable Gas Company v. The Peoples Natural Gas Company d/b/a
Dominion Peoples; Docket No C-20031128;

Dear Mr. Thomas:

We are in receipt of your letter dated November 11, 2003 regarding the Set 1 Interrogatories and Request for Production of Documents of the Peoples Natural Gas Company. As of today's date, we have not received a call from you regarding these matters and are available when you do.

In the meantime, given the procedural timeframes set forth in the Protective Order we would agree that the following Interrogatories are Proprietary or Highly Confidential:

Proprietary - 2, 3, 4, 5 (to the extent the documents are not public) and 9; and

Highly Confidential - 23, 24 (to the extent the answer would identify the customer), 25, 26, 30 (to the extent response would identify a customer) and 32.

It would not appear that the other Interrogatories you mentioned fall into either category of Proprietary or Highly Confidential. The intent of Interrogatory Nos. 10, 11, 12 and 13 is to obtain system wide information, e.g., total throughput, total number of customers for whom retainage is waived, total number of customers for whom transportation was discounted, etc. It is not our intention to obtain any customer identity information. Interrogatory No. 22 expressly states that the customer's name and location

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

Charles E. Thomas, Jr
December 16, 2003
Page 2

and associate annual volumes should be excluded, so we are uncertain as to why this Interrogatory would involve Proprietary or Highly Confidential information. Finally, as to Interrogatory No. 31, we are uncertain on what grounds Equitable Gas would claim that conversations with the Office of Trial Staff and Office of Consumer Advocate, which are expressly referred to in the Complaint, would be other than public information.

Thank you for your attention to this matter. Again, we look forward to your call.

Sincerely,

Norman James Kennard

NJK/tap

cc: Administrative Law Judge Michael A. Nemeč
James J. McNulty, Secretary
Susan George
Johnnie Simms
Dennis Shilobod
Anthony Picadio

RECEIVED

2003 DEC 17 AM 9:18

PA P.U.C.
SECRETARY'S BUREAU

Thomas, Thomas, Armstrong & Niesen
Attorneys and Counsellors at Law

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CHARLES E. THOMAS, JR.

Direct Dial: (717) 255-7615

E-Mail: cthomasjr@ttanlaw.com

CHARLES E. THOMAS
(1913 - 1998)

December 16, 2003

DOCKETED
FEB 09 2004

BY TELEFAX AND FIRST CLASS MAIL

Anthony P. Picadio, Esquire
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4710 US Steel Tower
600 Grant Street
Pittsburgh, PA 15219-2702

DOCUMENT

In re: Docket No. C-20031128
Equitable Gas Company v. The Peoples Natural Gas Company

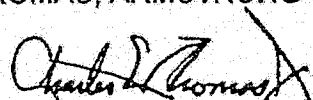
Dear Mr. Picadio:

Enclosed are Equitable Gas Company's First Set of Interrogatories to Pittsburgh Allegheny County Thermal, Ltd. in connection with the above matter. Please provide answers to the Interrogatories by January 2, 2004, which is a three day extension to the otherwise applicable 15 day answering period. In the meantime, if you wish to discuss the Interrogatories, please call either the undersigned (717-255-7615) or Thomas T. Niesen (717-255-7641) at your convenience.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By


Charles E. Thomas, Jr.

Encl.

cc: Dennis S. Shilobod, Esquire (w/encl.)
Susan G. George, Esquire (w/encl.)
William T. Hawke, Esquire (w/encl.)
Norman J. Kennard, Esquire (w/encl.)
Johnnie E. Simms, Esquire (w/encl.)
Honorable Michael Nemecek (w/o encl.)
James J. McNulty, Secretary (w/o encl.)
Daniel L. Frutchey, Esquire (w/encl.)
John M. Quinn, Director of Rates (w/encl.)

Hawke
McKeon
Sniscak &
Kennard LLP
ATTORNEYS AT LAW

William T. Hawke
Kevin J. McKeon
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December 17, 2003

VIA HAND DELIVERY

Charles E. Thomas, Jr.
Thomas, Thomas, Armstrong & Niesen
212 Locust Street
Harrisburg, PA 17108-9500

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Re: Equitable Gas Company v. The Peoples Natural Gas Company d/b/a
Dominion Peoples; Docket No. C-20031128; DISCOVERY MATTERS

Dear Mr. *Thomas*:

With respect to the proprietary discovery answers, please be advised that the responses to Set I, to the extent they request cost analysis, may be deemed proprietary. With respect to Set II, we anticipate that the response to 2a (PACT burn rates) may also be proprietary.

As I advised you yesterday, Dominion Peoples will not be able to meet the deadline you set of December 31, 2003 for the responses to Set II. Dominion Peoples general counsel is leaving shortly for a holiday vacation and will not return until January 5, 2004. Witnesses and other persons working on the Interrogatories also will not be returning until January 5, 2004.

At the prehearing conference, we expressly requested that discovery periods not fall over the holidays. Despite this, Equitable has timed its discovery so that the reply to Equitable Set I is due on Christmas Eve and the reply to Set II is due on New Year's Eve. We will do the best we can to get responses to you by January 9, 2004.

RJD

Thank you for your attention to this matter.

Sincerely,



Norman James Kennard

NJK/tap

cc: Administrative Law Judge Michael A. Nemeč
James J. McNulty, Secretary
Susan George
Johnnie Simms
Dennis Shilobod
Anthony Picadio

ORIGINAL

Thomas, Thomas, Armstrong & Niesen
Attorneys and Counsellors at Law

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CHARLES E. THOMAS
(1913-1998)

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December 18, 2003

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
P. O. Box 3265
Harrisburg, PA 17105-3265

DOCUMENT

In re: Docket No. C-20031128
Equitable Gas Company, a Division of Equitable Resources, Inc., Complainant
v. The Peoples Natural Gas Company, d/b/a Dominion Peoples, Respondent

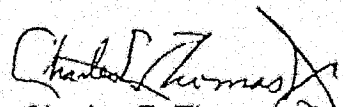
Dear Secretary McNulty:

Enclosed for filing on behalf of the Equitable Gas Company Division ("Equitable") of Equitable Resources, Inc. are an original and three (3) copies of Equitable's Objections to Dominion Peoples' First Set of Interrogatories. Copies of Equitable's Objections are being served upon the persons and in the manner set forth on the Certificate of Service attached to it.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By


Charles E. Thomas, Jr.

Encl.
cc: Certificate of Service
Daniel L. Frutchey (w/encl.)
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Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Equitable Gas Company, a Division
of Equitable Resources, Inc.,
Complainant

v.

The Peoples Natural Gas Company,
d/b/a Dominion Peoples,
Respondent

Docket No. C-20031128

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EQUITABLE GAS COMPANY'S
OBJECTIONS TO DOMINION PEOPLES'
FIRST SET OF INTERROGATORIES

DOCUMENT

AND NOW, comes Equitable Gas Company, a division of Equitable Resources, Inc., by its attorneys, and, pursuant to 52 Pa. Code §5.342, objects to The Peoples Natural Gas Company, d/b/a Dominion Peoples, Interrogatories and Requests for Production of Documents (Set I) as follows:

1. This proceeding concerns the Complaint of Equitable Gas Company, a division of Equitable Resources, Inc., ("Equitable") against The Peoples Natural Gas Company, d/b/a Dominion Peoples ("Dominion Peoples") and Dominion Peoples' displacement of Equitable's service to Pittsburgh Allegheny County Thermal ("PACT").

2. On December 8, 2003, Equitable received Dominion Peoples Interrogatories and Requests for Production of Documents (Set I) Nos. 1 through 37.

Objection to Interrogatories Nos. 3, 4, 5, 7 and 8

3. Equitable objects to Dominion Peoples' Set I Interrogatories Nos. 3, 4, 5, 7 and 8 to the extent that these Interrogatories request information "since 1982." Interrogatories Nos. 3, 4, 5, 7 and 8 are as follows:

3. Identify and provide a full and complete copies of any and all agreements, past or present between PACT and Equitable

4. Identify and provide full and complete copies of any and all correspondence or other documents exchanged between Equitable and PACT since 1982.
5. Identify and provide any and all documents relating to the provision of service by Equitable to PACT.
7. Identify each and every instance that service to PACT was interrupted or curtailed, the duration of such interruption or curtailment and the cause thereof since 1982.
8. Identify each and every former or current employee or agent of Equitable that has had any measure of marketing/sales responsibility relative to PACT since 1982. For each such individual identified, state the title, scope of responsibility and the duration of such responsibility.

4. The information requested "since 1982" is neither relevant nor material to any claim or defense in this proceeding. Equitable will respond to the above limited to the past five calendar years. This proposed limitation is reasonable and consistent with the limitation included by Dominion Peoples in its Interrogatories Nos. 9, 10, 11, 12 and 22. A response to Interrogatories Nos. 4 and 5 as stated would, moreover, be unreasonably burdensome and require an unreasonable investigation.

Objection to Interrogatories Nos. 12 and 13

5. Equitable objects to Dominion Peoples' Set I Interrogatories Nos. 12 and 13 to the extent that these Interrogatories request "all documents related thereto." Interrogatories Nos. 12 and 13 are as follows:

12. State whether Equitable has ever waived retainage for any transportation customer(s). If the response is anything other than an unqualified negative, identify for each of the last five (5) calendar years: the number of customers for whom retainage was waived; the associated annual volumes; and the reason for such waiver. Provide any and all documents related thereto.
13. State whether Equitable has ever discounted the transportation rate for any transportation customer(s). If the response is anything other than an unqualified negative, identify for each of the last five (5) calendar years: the number of customers for whom the transportation rate was discounted; the associated annual volumes; and the reason for such waiver. Provide any and all documents

related thereto.

6. In his letter of December 16, 2003, counsel for Dominion Peoples explained that the intent of Interrogatories Nos. 12 and 13 is to obtain system wide information and not to obtain any customer identity information. The last sentence of Interrogatories Nos. 12 and 13 is inconsistent with counsel's stated limitation and Equitable objects to the provision of "all documents." The information requested in the last sentence is neither relevant nor material to any claim or defense in this proceeding. A response to the last sentence of Interrogatories Nos. 12 and 13 as stated would, moreover, be unreasonably burdensome and require an unreasonable investigation. Equitable would, moreover, object to the provision of this information on even a confidential basis.

Objection to Interrogatory No. 22

7. Equitable objects to Dominion Peoples' Set I Interrogatory No. 22 which is as follows:

22. For the most recent five (5) year period, fully and completely identify each and every customer served by Equitable that was previously served by another natural gas distribution company. Exclude the customer's name and location and the associated annual volumes and for each such customer identify
- (a) the transportation rate charged by Equitable;
 - (b) whether retainage was waived;
 - (c) any and all additional charges by Equitable separately broken out;
 - (d) any and all capital investment made by Equitable to serve the customer,
 - (e) the length of the contract;
 - (f) the identity of the natural gas distribution company previously providing service; and
 - (g) the claimed legal authority for Equitable's provision of service.

8 The information requested in Interrogatory No. 22 is neither relevant nor material to any claim or defense in this proceeding. Equitable's Complaint raises claims of duplication of facilities, predatory and discriminatory pricing and unfair competition against Dominion Peoples. The above information has nothing to do with Equitable's claims against Dominion Peoples. The information, likewise, has nothing to do with any legitimate defense of Dominion Peoples unless it intends to admit the challenged activity and defend itself on the basis of "yes, we do it, but so do you."

Objection to Interrogatories Nos. 25 and 26

9 Equitable objects to Dominion Peoples' Set I Interrogatories Nos. 25 and 26 to the extent that these Interrogatories request information of "each and every instance." Interrogatories Nos. 25 and 26 are as follows:

25. Fully and completely identify each and every instance where Equitable paid a prospective customer or developer of property a fee as an incentive to obtain business from that customer or developer.
26. Fully and completely identify each and every instance where Equitable paid a contribution of any type to a customer or a prospective customer.

10. The information requested in Interrogatories Nos. 25 and 26 is neither relevant nor material to any claim or defense in this proceeding. Equitable's Complaint raises claims of duplication of facilities, predatory and discriminatory pricing and unfair competition against Dominion Peoples. The above information has nothing to do with Equitable's claims against Dominion Peoples. The information, likewise, has nothing to do with any legitimate defense of Dominion Peoples unless it intends to admit the challenged activity and defend itself on the basis of "yes, we do it, but so do you." A response to Interrogatories Nos. 25 and 26 as stated would, moreover, be unreasonably burdensome and require an unreasonable investigation. If any information is to be provided, it must be limited to the past five (5) years.

Objection to Interrogatory No. 33

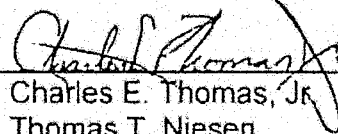
11. Equitable objects to Dominion Peoples' Set I Interrogatory No. 33 to the extent that this Interrogatory requests information for "each and every transportation customer." Interrogatory No. 33 is as follows.

33 For each and every transportation customer served by Equitable, identify the contract duration or term.

12. The information requested in Interrogatory No. 33 is neither relevant nor material to any claim or defense in this proceeding. Equitable's Complaint concerning duplication of facilities and the pricing provided for in a 15 year Agreement between Dominion Peoples and PACT does not justify discovery of the contract duration or term for each and every Equitable transportation customer. In addition, with over 600 non-residential transportation customers and more than 20,000 residential transportation customers, a response to Interrogatory No. 33 would be unreasonably burdensome.

Respectfully submitted

By



Charles E. Thomas, Jr.
Thomas T. Niesen
THOMAS, THOMAS, ARMSTRONG & NIESEN
212 Locust Street Suite 500
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Harrisburg, PA 17108-9500

Daniel L. Frutchey
Senior Vice President and General Counsel
EQUITABLE GAS COMPANY,
a division of Equitable Resources, Inc.
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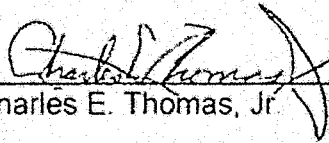
Attorneys for Complainant
Equitable Gas Company,
a division of Equitable Resources, Inc.

December 18, 2003

Objections to Peoples' First Set of Interrogatories.wpd

RECEIVED
2003 DEC 18 PM 4:17
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Charles E. Thomas, Jr

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December 19, 2003

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Harrisburg, PA 17105-3265

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

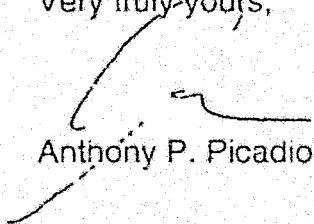
In Re: Docket No. C20031128
Equitable Gas Company, a Division of Equitable
Resources, Inc., Complainant
v.
The Peoples Natural Gas Company, d/b/a
Dominion Peoples, Respondent

DOCUMENT

Dear Secretary McNulty:

Enclosed for filing on behalf of Pittsburgh Allegheny County Thermal, Ltd., are the original and three (3) copies of Objections on Behalf of Pittsburgh Allegheny County Thermal, Ltd. to Petition to Intervene of NRG Energy. I have also enclosed an extra cover sheet for the Petition, which I would appreciate your date stamping and returning to me in the enclosed self-addressed, stamped envelope

Very truly yours,


Anthony P. Picadio

APP/lrk

Enclosures

cc(w/enc.): Certificate of Service

125

ORIGINAL

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

EQUITABLE GAS COMPANY
Complainant

v.

Docket No. C-20031128

THE PEOPLES NATURAL GAS
COMPANY d/b/a DOMINION PEOPLES
Respondent

DOCKETED
FEB 09 2004

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DEC 19 2003

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**OBJECTIONS ON BEHALF OF PITTSBURGH ALLEGHENY COUNTY THERMAL,
LTD. TO PETITION TO INTERVENE OF NRG ENERGY**

AND NOW comes Petitioner, Pittsburgh Allegheny County Thermal, Ltd. ("PACT"), by its General Counsel Dennis S. Shilobod, Esquire and its attorneys, Anthony P. Picadio, Esquire and Picadio Sneath Miller & Norton, P.C., and makes the following Objections to the Petition Intervene of NRG Energy Center ("NRG").

1. PACT was granted permission to intervene in this proceeding as a result of its direct, substantial and immediate interest in the proceedings arising out of its status as the only customer of Dominion Peoples which could be adversely affected by Equitable Gas' claim that the contract between Dominion Peoples and PACT violates certain requirements.

2. NRG has no such interest in these proceedings and will not be adversely affected by any possible outcome.

3. The Complaint filed by Equitable is not for the purpose of instituting a rule making or policy making proceeding. To the contrary, it is solely directed to the validity of the existing agreement between PACT and PACT's local gas distribution company, Peoples Dominion.

DOCUMENT

4. The primary issues before the Commission in these proceedings is (1) whether a public utility, such as Equitable, has standing to challenge the terms and conditions of an existing agreement between a customer and a different public utility (Peoples) whose service territory includes the territory in which the customer (PACT) is located, and/or (2) whether the contract between PACT and Peoples violated the existing law when the contract was made.

5. NRG, another public utility, which has no contract with Peoples, who has not even alleged that it will have any such contract, whose Petition to Intervene seeks what would amount to an advisory opinion to NRG as to what it may or may not do sometime, if it should ever decide to terminate its relationship with Equitable. In effect, NRG seeks a declaratory judgment for its benefit so it can decide what it MIGHT do sometime in the indefinite future.

6. NRG will not be affected as a result of any ruling as to the validity or non validity of PACT's existing contract with its local gas distribution company and therefore lacks the substantial direct and immediate interest necessary to afford it standing to intervene.

7. NRG seeks to turn this complaint proceeding into a policy making or rule making proceeding for prospective determination of rights, which is irrelevant to the validity of PACT's existing agreement with Peoples.

8. Equitable could not legitimately convert this complaint proceeding into a rule making or policy making proceeding that would determine relative rights of customers served by Equitable or Peoples without a permitted intervention of NRG.

9. NRG's intervention will expand the scope of the proceedings permitted in this complaint proceeding and disrupt the schedule already set by the ALJ with respect to litigating Equitable's complaint.

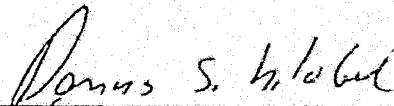
10. NRG is free to seek a declaratory judgment or advisory opinion from this Commission without inserting itself into these proceedings in which it has no direct stake.

11. In order to conduct hearings on policy and/or rule making matters under its own rules this commission is supposed to give affected parties and the public to at least file comments thereon, and to participate in any applicable proceedings, after appropriate advertisements in the Pennsylvania Bulletin. No such advertisements or notices to potentially interested parties has occurred, and it is therefore inappropriate to conduct rule making and/or policy making proceedings under the umbrellas of this complaint proceeding.

12. It would be an abuse of discretion and an abuse of the law to allow NRG's intervention in this case.

WHEREFORE, PACT respectfully requests that NRG's Petition to Intervene be denied.

Respectfully submitted,



Dennis S. Shilobod, General Counsel
Pa. I.D. No. 10039
PACT
806 Law & Finance Building
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724-830-9703



Anthony P. Picadio, Esquire
Pa. I.D. No. 01342
Picadio Sneath Miller & Norton, P.C.
Suite 4710 U.S. Steel Tower, 600 Grant Street
Pittsburgh, PA 15219
412-288-4010

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

EQUITABLE GAS COMPANY :
Complainant :

v. :

Docket No. C-20031128

THE PEOPLES NATURAL GAS :
COMPANY d/b/a DOMINION PEOPLES :
Respondent :

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Objections on Behalf of Pittsburgh Allegheny County Thermal, Ltd. to Petition to Intervene of NRG Energy has been served upon the following persons this 19th day of December 2003, via first-class United States Mail, postage prepaid, addressed as follows:

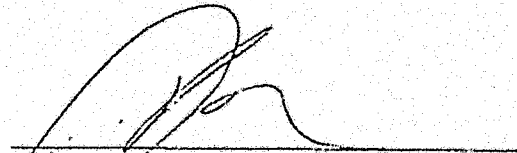
Daniel C. Clearfield, Esquire
Kevin J. Moody, Esquire
Wolf, Block, Schorr and Solis-Cohen, LLP
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Norman James Kennard, Esquire
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Susan N. George, Esquire
The Peoples Natural Gas Company
d/b/a Dominion Peoples
625 Liberty Avenue
Pittsburgh, PA 15222

Johnnie E. Simms, Senior Prosecutor
Office of Trial Staff
Pennsylvania Public Utility Commission
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2003 DEC 24 AM 12:01
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Attorneys and Counsellors at Law

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CHARLES E. THOMAS
(1913 - 1998)

December 23, 2003

BY HAND DELIVERY

William T. Hawke, Esquire
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Harrisburg, PA 17105

DOCKETED
FEB 09 2004

DOCUMENT

In re: Docket No. C-20031128
Equitable Gas Company, a Division of Equitable Resources, Inc.
v. The Peoples Natural Gas Company, d/b/a Dominion Peoples

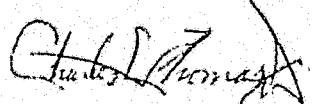
Gentlemen:

Enclosed are Equitable Gas Company's Responses to Dominion Peoples' Set I Interrogatories Nos. 2, 3, 4, 5, 6, 8, 10, 11, 14, 15, 19, 21, 23, 24, 27, 28, 29, 32 and 34 through 37, inclusive. The responses to the remaining Set I Interrogatories are in preparation and we anticipate providing them to you between the Christmas and New Year Holidays. Call us at your convenience if you wish to discuss the responses or if you have any questions.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By


Charles E. Thomas, Jr.

Encl.

cc. Susan G. George, Esquire (w/encl.)
Johnnie E. Simms, Esquire (w/encl.)
Anthony P. Picadio, Esquire (w/encl.-non-proprietary only)
Dennis S. Shilobod, Esquire (w/encl.-non-proprietary only)
Honorable Michael Nemec (w/o encl.)
James J. McNulty, Secretary (w/o encl.)
Daniel L. Frutchey, Esquire (w/encl.)
John M. Quinn, Director of Rates (w/encl.)

Hawke
 McKeon
 Sniscak &
 Kennard LLP
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December 24, 2003

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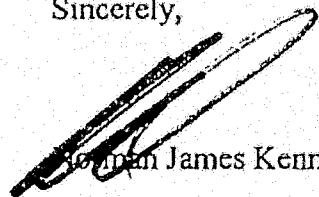
Re: Equitable Gas Company, a Division of Equitable Resources, Inc. v. The Peoples Natural Gas Company d/b/a Dominion Peoples; Docket No. C-20031128; Responses of The Peoples Natural Gas Company, d/b/a Dominion Peoples, to Interrogatories of Equitable Gas Company, a Division of Equitable Gas Resources, Inc., Set I

DOCUMENT

Dear Mr. Thomas:

Enclosed please find the responses of The Peoples Natural Gas Company to Interrogatories of Equitable Gas Company, Set I. Exhibit EGC St I-6 will be provided to you after the holidays.

Sincerely,



Norman James Kennard

NJK/tap

cc: Administrative Law Judge Michael A. Nemecek (w/o enclosure)
James J. McNulty, Secretary (w/o enclosure)
Susan George
Johnnie Simms
Dennis Shilobod
Anthony Picadio

SECRETARY'S BUREAU
03 DEC 26 AM 8:31

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Kevin J. Moody
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ORIGINAL

December 24, 2003

VIA FEDERAL EXPRESS

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Harrisburg, PA 17105-3265

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

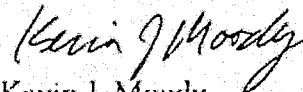
Re: Equitable Gas Company, a Division of Equitable
Resources, Inc. v. The Peoples Natural Gas Company d/b/a
Dominion Peoples, Docket No. C-20031128

Dear Secretary McNulty:

Enclosed for filing are the original and three copies of NRG Energy Center-Pittsburgh LLC's Answer to Equitable Gas Company's Motion to Dismiss in the above-referenced matter. As evidenced by the attached Certificate of Service all parties have been served in the manner indicated.

If you have any questions regarding this filing, please contact me.

Sincerely,



Kevin J. Moody

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DOCUMENT FOLDER

KJM/jls
Enclosures

cc: Certificate of Service (w/enc)

DSH:19287 2/NRG002-217031

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Equitable Gas Company, a Division of
Equitable Resources, Inc.,

Complainant

v.

The Peoples Natural Gas Company d/b/a
Dominion Peoples,

Respondent

Docket No. C-20031128

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ANSWER OF
NRG ENERGY CENTER-PITTSBURGH LLC
TO EQUITABLE GAS COMPANY'S MOTION TO DISMISS

NRG Energy Center-Pittsburgh LLC ("NRG" or "NRG Pittsburgh"), by its counsel, and pursuant to the Commission's regulation at 52 Pa. Code § 5.101, answers Equitable Gas Company's ("Equitable") motion to dismiss NRG Pittsburgh's petition to intervene in this proceeding.

Equitable's assertion that NRG's petition to intervene does not state on its face NRG's standing to participate in this matter is wholly without merit. NRG's petition to intervene shows that, as both a retail gas customer of Equitable and a public utility which generates and distributes steam and chilled water to the public, NRG has an interest that may be directly affected by the outcome of this proceeding and that is not adequately represented by any other party, including Pittsburgh Allegheny County Thermal, Ltd. ("FACT") which is neither a public utility nor a retail gas customer of Equitable. NRG's petition also shows that NRG has a dual interest as both a public utility and a retail gas customer located within Dominion Peoples

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certificated or franchised service territory, and thus has a substantial interest in the outcome of this proceeding that is greater than the interest of the general public in obtaining compliance with the law. Finally, NRG's petition demonstrates that NRG has an immediate interest in the outcome of this proceeding: NRG's interest in assuring its opportunity to obtain the benefits of competitive distribution service, should it continue to be available, consistent with the requirements of the Public Utility Code from natural gas distribution companies authorized legally to serve NRG, as well as in reducing its costs of service for the benefit of its customers, is clearly within the zone of interests protected by the Public Utility Code. In support of this answer, NRG Pittsburgh represents the following:

BACKGROUND

1. On August 29, 2003, Equitable filed a complaint with the Commission seeking to prohibit The Peoples Natural Gas Company d/b/a Dominion Peoples ("Dominion Peoples"), a "natural gas distribution company" as defined in Section 2202 of the Public Utility Code,¹ from providing natural gas distribution service to PACT.

2. On September 23, 2003, Dominion Peoples filed an answer to Equitable's Complaint, asserting that it is authorized under the Natural Gas Companies Act of 1885 to provide natural gas distribution service throughout the City of Pittsburgh.²

3. On October 2, PACT filed a petition to intervene which was granted by the presiding officer by Prehearing Order served November 21, 2003.

¹ 66 Pa. C.S. § 2202.

² Dominion People's Answer at pp. 3-4.

4. On November 25, 2003, NRG Pittsburgh filed its petition to intervene in this proceeding, and on December 15, 2003, Equitable filed an answer to and motion to dismiss NRG's petition.

NRG PITTSBURGH'S STANDING TO PARTICIPATE

5. Contrary to Equitable's assertions, NRG Pittsburgh's petition to intervene demonstrates on its face that NRG has the interest required by the Commission's regulation at 52 Pa. Code § 5.72(a) for intervention in this proceeding.³ The Commission's regulation reflects the standard established by the Pennsylvania Supreme Court: "In order to have standing, a party must (a) have a substantial interest in the subject-matter of the litigation; (b) the interest must be direct; and (c) the interest must be immediate and not a remote consequence."⁴

6. Equitable cites the correct standard but unsurprisingly misapplies it in asserting that NRG satisfies none of criteria.

7. NRG's petition to intervene shows that, as both a retail gas customer and a public utility which generates and distributes steam and chilled water to the public, NRG has an interest that may be directly affected by the outcome of this proceeding.

- (a) NRG's facilities are located within Dominion Peoples' certificated or franchised service territory but not located directly adjacent to Dominion Peoples' distribution facilities. Pennsylvania has traditionally permitted

³ The Commission's regulation requires that the interest be an "interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission," or an "interest of such nature that participation of the petitioner may be in the public interest." 52 Pa. Code § 5.72(a)(2), (3).

⁴ *Ken R. on Behalf of his Daughter, C.R., v. Arthur Z. and Mary Jane Z.*, 682 A.2d 1267 (Pa. 1996) ("Ken R.") (citing *S. Whitehall Tp. Police Service v. S. Whitehall Tp.*, 555 A.2d 793 (Pa. 1980) quoting *Franklin Tp. v. Dept of Environmental Resources*, 452 A.2d 718 (Pa. 1982)).

natural gas distribution companies with overlapping service territories to compete for distribution customers. Accordingly, NRG and its customers could potentially benefit greatly from the continued availability of competitive distribution service or could be harmed if such service is determined not to be available. Natural gas service is a significant portion of the cost of service to NRG's customers (it is a direct pass-through). NRG not only must pursue opportunities to reduce this cost to maintain its competitive position within the bounds of the Public Utility Code, but, as a public utility, has a statutory obligation to do so.⁵ Accordingly, NRG seeks to participate to assure that its opportunity to maintain or reduce its costs for the benefit of its customers is not foreclosed.

- (b) Because NRG purchases natural gas distribution service from Equitable under a Rate ("GDS") that permits NRG to "negotiate" rates below maximum charges, a Commission decision in favor of PACT's right to purchase natural gas distribution service from Dominion Peoples will provide NRG with the opportunity to negotiate more favorable rates for distribution service than it pays Equitable now or which Equitable could charge under Rate GDS.

⁵ Section 1318 of the Public Utility Code provides that "[n]o rates for a natural gas distribution utility shall be deemed just and reasonable unless the commission finds that the utility is a least cost fuel procurement policy, consistent with the utility's obligation to provide safe, adequate and reliable service to its customers." 66 Pa. C.S. § 1318(a). In making this determination, the Commission must find that "the utility has taken all prudent steps necessary to obtain lower cost gas supplies on both short-term and long-term bases both within and outside the Commonwealth, including the use of gas transportation arrangements with pipelines and other distribution companies." 66 Pa. C.S. § 1318(a)(3) (emphasis added); *see also* 66 Pa. C.S. § 1307(h) (defining "gas costs").

- (c) Conversely, if the Commission decides in favor of Equitable, NRG's opportunity to maintain or reduce its costs almost certainly will be foreclosed and, indeed, NRG's costs of transportation could conceivably increase were Equitable, as a result of such a decision, to decide to charge NRG up to the maximum rates permitted under Rate GDS.
- (d) Contrary to Equitable's assertion, NRG's interest in the outcome of this proceeding is not a remote and speculative interest because NRG could realize real, tangible benefits from the availability of competitive alternatives for distribution service, or be harmed if such service is found to no longer be available.⁶
- (e) Thus, NRG's petition shows that its dual interest as both a public utility and retail gas customer is both a substantial interest⁷ that surpasses the interest of the general public in obtaining compliance with the law and a direct interest⁸ that may be harmed by the outcome of this proceeding.

8. NRG's petition to intervene also shows that its substantial and direct interest in the outcome of this proceeding is not adequately represented by any other party.

⁶ Equitable's assertion that NRG's interest is not sufficient because it "depends entirely on the outcome of the proceeding" does not undermine NRG's standing. "A 'substantial' interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law." *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 282 (Pa. 1975) (emphasis added).

⁷ See note 6 above.

⁸ "The requirement that an interest be 'direct' simply means that the person claiming to be aggrieved must show causation of harm to his interest by the matter of which he complains." *Wm. Penn Parking Garage*, 346 A.2d at 282.

- (a) NRG's interest as a public utility in seeking to assure its opportunity to obtain the benefits of competitive distribution service, or to prevent harm if such competitive service is no longer available, is different than the interest of the other public utilities in this proceeding in providing distribution service.
- (b) NRG's interest as a public utility is different than PACT's interest as *unregulated* "bona fide cooperative association."⁹
- (c) Although NRG and PACT are retail gas customers, NRG's interest as an Equitable retail gas customer is different than PACT's interest as a Dominion Peoples retail gas customer.¹⁰

9. NRG's petition also demonstrates that NRG has an immediate interest in the outcome of this proceeding.¹¹

- (a) If the Commission finds that Dominion Peoples' is authorized to provide natural gas distribution service throughout the City of Pittsburgh, then NRG Pittsburgh, like PACT, also would have the right to purchase natural gas distribution service from Dominion Peoples instead of from Equitable and, as a result, will be given a potential opportunity to lower its costs of that service and, in turn, its rates to its own customers.

⁹ See 66 Pa. C.S. § 102 (definition of "public utility", (2)(ii)).

¹⁰ According to Equitable, PACT "was allowed to intervene because it is the consuming entity involved with the connecting pipeline." Equitable Motion at ¶ 7. Thus, PACT is a current "retail gas customer" of Dominion Peoples through PACT's connecting customer line.

¹¹ An immediate interest "is shown where the interest the party seeks to protect is within the zone of interests sought to be protected by the statute or constitutional guarantee in question." *Ken R.*, 682 A.2d at 1270.

- (b) NRG's right to obtain service consistent with the requirements of the Public Utility Code from natural gas distribution companies authorized legally to serve NRG¹² is within the zone of interests protected by the Public Utility Code.¹³
- (c) NRG's interest in reducing its costs of service (and, therefore its rates) to its customers is within the zone of interests protected by the Public Utility Code.¹⁴

10. Accordingly, it is clear that NRG's interest in this proceeding is such that it satisfies the standard established by the Pennsylvania Supreme Court and the Commission's regulation, and that NRG Pittsburgh's participation in this proceeding is in the public interest.¹⁵

¹² See 66 Pa. C.S. § 103(a) (public utility having right to render service on day preceding effective date of Public Utility Code "shall be entitled to the full enjoyment and the exercise of all and every right, power, and privilege which it lawfully possessed on that date").

¹³ See 66 Pa. C.S. §§ 1501 (public utility must furnish and maintain adequate, efficient, safe and reasonable service and facilities as necessary or proper for the accommodation, convenience and safety of its patrons and the public); 2205(b)(2) (nothing in Chapter 22 prevents a natural gas distribution company from upgrading its system to meet retail gas customers requirements consistent with requirements of Section 1501); 2203(4) (Commission shall require natural gas distribution companies to provide distribution service to all retail gas customers in their service territories "on nondiscriminatory rates, terms of access and other conditions").

¹⁴ See NRG's petition to intervene at ¶s 7-12, describing NRG Pittsburgh's charges to its customers and recovery of its costs of service under its PUC-approved tariff and Sections 1301, 1303, 1307 and 1308 of the Public Utility Code.

¹⁵ "The right or interest [to intervene] may be . . . [an] interest of such nature that participation of the petitioner may be in the public interest." 52 Pa. Code § 5.72(a)(3).

WHEREFORE, for the reasons set forth in this answer and in its petition to intervene, NRG Energy Center-Pittsburgh LLC requests that the Pennsylvania Public Utility Commission deny Equitable Gas Company's motion to dismiss NRG's petition to intervene and permit NRG to intervene in this proceeding as a party.

Respectfully submitted,



Daniel C. Clearfield, Esquire
Kevin J. Moody, Esquire
Wolf, Block, Schorr and Solis-Cohen LLP
212 Locust Street, P.O. Box 3265
Harrisburg, PA 17101
(717) 237-7160

Date: December 24, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of NRG Energy Center-Pittsburgh LLC's Answer to Equitable Gas Company's Motion to Dismiss upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

VIA FIRST CLASS MAIL

Charles E. Thomas, Jr., Esquire
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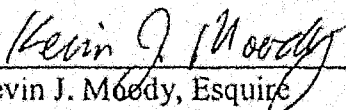
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Managing Counsel
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Dennis S. Shilobod, General Counsel
PACT
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Pittsburgh, PA 15219

Date: December 24, 2003



Kevin J. Moody, Esquire

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Hawke

McKeon

Sniscak &

Kennard LLP

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Scott T. Wyland

Todd S. Stewart
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Janet L. Miller
Steven K. Haas
William E. Lehman
Rikardo J. Hull

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January 9, 2004

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Second Floor, Commonwealth Keystone Building
PO Box 3265
Harrisburg, PA 17105-3265

DOCUMENT

SECRETARY'S BUREAU

2004 JAN -9 PM 4:23

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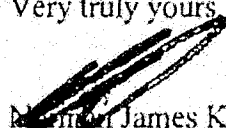
Re. Equitable Gas Company, a Division Of Equitable Resources, Inc., v. The Peoples Natural Gas Company d/b/a Dominion Peoples; Docket No. C-20031128; **MOTION OF THE PEOPLES NATURAL GAS COMPANY D/B/A DOMINION PEOPLES TO COMPEL RESPONSES TO INTERROGATORIES SET I BY EQUITABLE GAS COMPANY, A DIVISION OF EQUITABLE RESOURCES, INC.**

Dear Mr. McNulty:

Enclosed for filing with the Commission are the original and three (3) copies of The Peoples Natural Gas Company d/b/a Dominion Peoples' Motion to Compel Responses to Interrogatories Set I by Equitable Gas Company in the above-captioned proceeding.

If you have any questions with regard to this filing, please direct them to me. Thank you for your attention to this matter.

Very truly yours,


Norman James Kennard
Counsel for Dominion Peoples

NJK/tap
cc: Administrative Law Judge Michael A. Nemeec

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

45

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Equitable Gas Company, a Division
Of Equitable Resources, Inc.,
Complainant
v.
The Peoples Natural Gas Company,
d/b/a Dominion Peoples,
Respondent

Docket No. C-2003128

SECRETARY'S BUREAU

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MOTION OF THE PEOPLES NATURAL GAS COMPANY,
D/B/A DOMINION PEOPLES
TO COMPEL RESPONSES
TO INTERROGATORIES SET I
BY EQUITABLE GAS COMPANY, A DIVISION OF
EQUITABLE RESOURCES, INC.

DOCUMENT

NOW COMES The Peoples Natural Gas Company d/b/a Dominion Peoples, ("Dominion Peoples") by and through its counsel in the above-captioned matter and hereby moves to compel responses by Equitable Gas Company ("Equitable" or "EGC") to Dominion Peoples' Interrogatories Set I.

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I. BACKGROUND

1. On or about August 29, 2003, Equitable filed the above-captioned Complaint, seeking, among other things, an order prohibiting Dominion Peoples from providing gas service to Pittsburgh Allegheny County Thermal, Ltd. ("PACT"), a non-profit corporation providing steam service to its Member/Owners. PACT, which uses gas in the production of steam, is a current

customer of Dominion Peoples, and formerly was a customer of Equitable. The Complaint was served on Dominion Peoples by the Commission on September 3, 2003.

2. On September 23, 2003, Dominion Peoples filed its Answer to Equitable's Complaint essentially denying all pertinent factual and legal allegations that Equitable asserts entitle it to the relief which it seeks in this proceeding.

3. Also on September 23, 2003, the Commission's Office of Trial Staff ("OTS") filed its Notice of Appearance in this proceeding.

4. On or about October 2, 2003, PACT filed a Petition to Intervene.

5. On November 20, 2003, a Prehearing Conference was held and a schedule agreed to by the parties.

6. On December 12, 2004, a Protective Order was entered.

7. On or about December 8, 2003, Dominion Peoples served its Interrogatories And Requests For Production Of Documents (Set I) upon Equitable.

8. On or about December 18, 2003, Equitable filed objections to certain of Dominion Peoples' Interrogatories Set I. Equitable did not attempt to resolve its objections with Dominion Peoples prior to filing the objections.

9. On or about December 23, 2003, Equitable submitted partial answers to Dominion Peoples' Set I, answering 22 of 37 interrogatories and promised to answer the remaining unobjected to discovery "between the Christmas and New Year Holidays."

10. Answers to the remaining unobjected to interrogatories, Set I-Nos. 1, 9, 16, 17, 18, 20, 30, 31 and 37, have been promised by Equitable to be provided on the date of the filing of this Motion.

11. On January 7, 2004, counsel for Dominion Peoples contacted counsel for Equitable and made several offers to resolve Equitable's objections. Those interrogatories that are the subject of this motion are those that the parties could not resolve among themselves.

II. STANDARDS OF DISCOVERY

12. Commission regulations permit for the discovery of "any matter, not privileged, which is relevant to the subject matter involved in the pending action." 52 Pa. Code §5.321(c).

13. Generally speaking, this Commission applies a standard of relevance which is less restrictive than that required by parties in order to present a document into the evidentiary record.

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

52 Pa. Code §5.321(c). This broad approach to discovery is narrowed in certain circumstances. For example, material sought to be discovered must be relevant to the subject matter of the action and must not be privileged. *Id.* Further, materials are not discoverable if sought in bad faith or if the request is of such a nature that it would cause unreasonable annoyance, embarrassment, oppression, burden or expense. 52 Pa. Code §5.361(a)(1), (2).

14. Discovery may be obtained regarding any matter relevant to the subject matter. Relevant evidence is evidence that tends to make a fact at issue more or less probable. Moreover, evidence is relevant if it advances the inquiry in some degree and, thus, has probative value. Although the law does not furnish an absolute test of relevancy, the Pennsylvania Supreme Court follows a two-part analysis for determining relevance. In *Commonwealth v. Stewart*, 461 Pa. 274, 336 A.2d 282 (1975), the Court held that:

It must be determined first if the inference sought to be raised by the evidence bears upon a matter at issue in this case and, second,

whether the evidence renders the desired inference more probable than it would be without the evidence.

Id. at 284

15. Pennsylvania's courts have acknowledged that all discovery comes with some measure of annoyance and burden. *See e.g. Merrifield v. Gavern*, 10 Pa. D. & C. 4th 541 (1991). The mere fact that discovery will be time consuming, burdensome and costly is not grounds for objection if this is the inevitable result of the facts under examination. *See Nardell v. Scranton-Spring Brook Water Service Company*, 24 Pa. D. & C. 2d 663 (1961).

III. MOTION TO COMPEL

16. Dominion Peoples Interrogatory Set I, Nos. 22, 23 and 24

A. Dominion Peoples Interrogatory Set I, Nos. 22, 23 and 24:

22. For the most recent five (5) year period, fully and completely identify each and every customer served by Equitable that was previously served by another natural gas distribution company. Exclude the customer's name and location and the associated annual volumes and for each such customer identify:

- (a) the transportation rate charged by Equitable;
- (b) whether retainage is waived;
- (c) any and all additional charges by Equitable separately broken out;
- (d) any and all capital investment made by Equitable to serve the customer;
- (e) the length of the contract;
- (f) the identity of the natural gas distribution company previously providing service; and
- (g) the claimed legal authority for Equitable's provision of service;

23. To the extent not identified in the preceding Interrogatory, provide the information requested in the preceding Interrogatory for Penn Hills School, Redland Brook and Eastman Chemical, separately.

24. For each and every incidence of customer service identified in response to Interrogatory Nos. 22 or 23, fully and completely compare and contrast that situation with the present provision of service by Dominion Peoples to PACT.

B. Equitable's Objection:

Equitable has objected to Dominion Peoples Interrogatory Set I, No. 22 on the ground that its Complaint is against Dominion Peoples and Equitable's activities are irrelevant. "The information, likewise, has nothing to do with any legitimate defense of Dominion Peoples unless it intends to admit the challenged activity and defend itself on the basis of 'yes, we do it, but so do you.'"

While Equitable did not expressly object to Interrogatory Nos. 23 and 24, the answers provided are non-responsive, stating that the information requested will not be provided, because No. 22 was objected to.

C. Dominion Peoples' Motion to Compel:

Equitable's Complaint asserts that transportation rate discounting, retainage waiver, capital contributions, longer contract terms are "illegal" and "anticompetitive." Dominion Peoples, for its part, asserts that the terms of the contract with PACT are fair, lawful and consistent with industry standards, Equitable's protestations to the contrary notwithstanding.

Competitive, overlapping service territory is a longstanding operative fact in Western Pennsylvania, and the concept of "customer choice," has been repeatedly endorsed by this Commission. The definition of "anticompetitive" is at least in part, a matter of prevailing industry standards.

Equitable for its part, to the best of Dominion Peoples' knowledge, also has discounted transportation rates, waived retainage, paid capital contributions, etc. Discovery directed to Equitable on these same subjects, is relevant to this proceeding for at least two (2) reasons.

First, Equitable's marketing and pricing techniques are relevant to the pattern and practice of the competitive market in western Pennsylvania. While Equitable seeks to focus on Dominion Peoples' behavior in a vacuum, Your Honor and this Commission need to understand more broadly the operation of that market place as you consider this case.

Second, Equitable's practices bear directly on its credibility. Dominion Peoples believes and seeks to discover information relative to the fact that Equitable has acted in a similar fashion to that for which it now seeks to prosecute Dominion Peoples. Credibility is always in issue. How can Equitable argue in good faith that transportation discounting or retainage wavier is anti-competitive or illegal if it does so too?

Moreover, Equitable appears to want it both ways. Equitable has asked interrogatories of Dominion Peoples both about how much documentation Dominion Peoples possesses regarding Equitable's waiver of retainage, as well as the same information of Dominion Peoples that is being sought in Set I, No. 22. Equitable's Interrogatories Second Set, No. 5 asks the following:

For each of the last five (5) calendar years, identify by Natural Gas Distribution Company ("NGDC") competitor (i.e. Columbia Gas, I.W. Phillips, and Equitable) the number of transportation service agreements extended to customers where retainage was equal to 0%, the annual volumes underlying the offers, and the reason for waiving the retainage.

It would be extremely prejudicial to the preparation of Dominion Peoples' defense and the development of a complete record were Your Honor to deny discovery on an issue that Equitable has placed at the center of its complaint.

Therefore, Equitable should be required to fully and completely answer Dominion Peoples Interrogatory Set I, Nos. 22, 23 and 24.

17. Dominion Peoples Interrogatory Set I, Nos. 25 and 26

A. Dominion Peoples Interrogatory Set I, Nos. 25 and 26:

25. Fully and completely identify each and every instance where Equitable paid a prospective customer or developer of property a fee as an incentive to obtain business from that customer or developer.
26. Fully and completely identify each and every instance where Equitable paid a contribution of any type to a customer or a prospective customer.

B. Equitable's Objection:

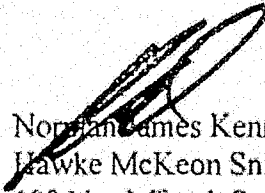
Equitable has objected to Dominion Peoples Interrogatories Set I, No. 25 and 26 on the ground that its Complaint is against Dominion Peoples and Equitable's activities are irrelevant.

C. Dominion Peoples' Motion to Compel:

Dominion Peoples incorporates its Motion to Compel responses to its Interrogatory Set I, Nos. 22, 23 and 24.

WHEREFORE, for the above-stated reasons, The Peoples Natural Gas Company d/b/a
Dominion Peoples requests that Your Honor grant this Motion to Compel.

Respectfully submitted.



Norman James Kennard
Hawke McKeon Sniscak & Kennard LLP
100 North Tenth Street
Harrisburg, PA 17101

Susan G. George
Managing Counsel
Dominion Resources
625 Liberty Avenue, 19th Floor
Pittsburgh, PA 15222-3197

Dated: January 9, 2004

RECEIVED
2004 JAN -9 PM 4:23
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the person and in the manner indicated below.

BY HAND DELIVERY

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Daniel L. Frutchey
Senior Vice President and General Counsel
Equitable Gas Company,
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Norman James Kennard

Dated: January 9, 2004

SECRETARY'S BUREAU

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(1913 - 1998)

January 9, 2004

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DOCKETED
FEB 09 2004

SECRETARY'S BUREAU

01 JAN 12 AM 9:30

In re: Docket No. C-20031128
Equitable Gas Company, a Division of Equitable Resources, Inc.
v. The Peoples Natural Gas Company, d/b/a Dominion Peoples

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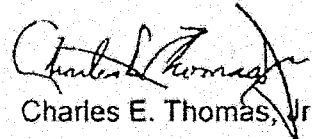
Gentlemen:

Enclosed are Equitable Gas Company's Responses to Dominion Peoples' Set I Interrogatories Nos. 1, 7, 9, 12, 13, 16, 17, 18, 22, Supplemental 27, Supplemental 29 and 30. Call us at your convenience if you wish to discuss the responses or if you have any questions.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By


Charles E. Thomas, Jr.

Encl.

cc: Susan G. George, Esquire (w/encl.)
Johnnie E. Simms, Esquire (w/encl.)
Anthony P. Picadio, Esquire (w/encl.-non-proprietary only)
Dennis S. Shilobod, Esquire (w/encl.-non-proprietary only)
Honorable Michael Nemeo (w/o encl.)
James J. McNulty, Secretary (w/o encl.)
Daniel L. Frutchey, Esquire (w/encl.)
John M. Quinn, Director of Rates (w/encl.)

040100-Kennard wpd

Hawke
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January 12, 2004

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Johnnie E. Simms, Esq.
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DOCUMENT
FOLDER

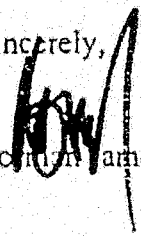
Re. Equitable Gas Company v. The Peoples Natural Gas Company d/b/a Dominion Peoples; Docket No. C-20031128; DOMINION PEOPLES' RESPONSES TO OFFICE OF TRIAL STAFF INTERROGATORIES NOS. 12-16

Dear ^{Johnnie} Mr. Simms:

Enclosed please find certain Dominion Peoples' Responses to Office of Trial Staff Interrogatories Nos. 12-16 regarding the above-captioned matter

Should you have any questions or comments, please do not hesitate to contact me at your convenience.

Sincerely,


Norman James Kennard

NJK/tap

cc: Administrative Law Judge Michael A. Nemeo (without enclosure)
James J. McNulty, Secretary (without enclosure)
Susan George (with enclosure)
Charles E. Thomas, Jr (with enclosure)
Dennis Shilobod (with enclosure)
Anthony Picadio (with enclosure)

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ORIGINAL

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(1913 - 1998)

January 14, 2004

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
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DOCUMENT
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In re: Docket No. C-20031128
Equitable Gas Company, a Division of Equitable Resources, Inc., Complainant
v. The Peoples Natural Gas Company, d/b/a Dominion Peoples, Respondent


Dear Secretary McNulty:

Enclosed for filing on behalf of the Equitable Gas Company Division ("Equitable") of Equitable Resources, Inc are an original and three (3) copies of Equitable's Answer to Dominion Peoples' Motion to Compel Responses to Its Interrogatories Set I. Copies of Equitable's Answer are being served upon the persons and in the manner set forth on the Certificate of Service attached to it

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By


Charles E. Thomas, Jr.

Encl.

cc: Certificate of Service
Daniel L. Frutchey (w/encl.)

040114-McNulty wpd

58

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Equitable Gas Company, a Division
of Equitable Resources, Inc.,
Complainant

Docket No. C-20031128

v.

The Peoples Natural Gas Company,
d/b/a Dominion Peoples,
Respondent

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EQUITABLE GAS COMPANY'S
ANSWER TO DOMINION PEOPLES
MOTION TO COMPEL RESPONSES TO
ITS INTERROGATORIES SET I

DOCKETED

FEB 13 2004

AND NOW, comes Equitable Gas Company, a division of Equitable Resources, Inc. ("Equitable"), by its attorneys, and, pursuant to 52 Pa. Code §5.342, answers the motion of The Peoples Natural Gas Company, d/b/a Dominion Peoples ("Dominion Peoples"), to compel responses to certain of its Interrogatories and Requests for Production of Documents (Set I), as follows.

1. Before your Honor is the motion of Dominion Peoples to compel responses to its Set I Interrogatories to Equitable Nos. 22, 23, 24, 25 and 26.

Interrogatories Nos. 22, 23 and 24

2. Dominion Peoples Set I Interrogatories Nos. 22, 23 and 24 ask as follows:

22. For the most recent five (5) year period, fully and completely identify each and every customer served by Equitable that was previously served by another natural gas distribution company. Exclude the customer's name and location and the associated annual volumes and for each such customer identify:

- (a) the transportation rate charged by Equitable;
- (b) whether retainage is waived;
- (c) any and all additional charges by Equitable separately broken out;
- (d) any and all capital investment made by Equitable to serve the customer;
- (e) the length of the contract;
- (f) the identity of the natural gas distribution company previously providing service;
- (g) the claimed legal authority of Equitable's provision of service.

23. To the extent not identified in the preceding Interrogatory, provide the information requested in the preceding Interrogatory for Penn Hills School, Redland Brook and Eastman Chemical, separately.

24. For each and every incidence of customer service identified in response to Interrogatory Nos 22 or 23, fully and completely compare and contrast that situation with the present provision of service by Dominion Peoples to PACT

3. Equitable has already answered at least in part each of the foregoing Interrogatories Nos. 22, 23 and 24. Equitable's answer to Interrogatory No. 22, which "kicks off" this series of three Interrogatories, was as follows:

As we orally advised counsel for Dominion Peoples, Equitable does not maintain records which would indicate whether a customer has been served by another natural gas distribution company.

4. In short, Equitable cannot answer Interrogatory No. 22 any further because it does not maintain records in a form which would allow the question to be answered. Although Equitable is unable to answer Interrogatory No. 22 any further, it did in its "Highly Confidential" answer to Interrogatory No. 30 identify those instances in which it has agreed to waive retainage.

5. In its answer to Interrogatory No. 23, Equitable explained that neither Redland Brook nor Eastman Chemical is an Equitable customer. The Penn Hills School District is an Equitable customer and Equitable will provide on a Highly Confidential basis as much of the requested information as is available with respect to Penn Hills School.

6. In its answer to Interrogatory No. 24, Equitable stated as follows:

Equitable has filed an objection to Interrogatory No. 22 which obviates the need for responding to this Interrogatory. In addition, Equitable would not be able at this stage of the proceeding to compare and contrast other situations with the service by Dominion Peoples to PACT. Equitable's knowledge of the details of the Dominion Peoples' service to PACT is incomplete. Equitable's discovery concerning Dominion Peoples' service to PACT is outstanding

7. Equitable submits that the above is a fair response to Interrogatory No. 24.

Equitable cannot respond any further to the Interrogatory as stated. It requires comparisons with the information sought by Interrogatory No. 22. However, as explained above, Equitable is unable to respond to Interrogatory No. 22. There are, thus, no identified "other situations" with which to "compare and contrast" Dominion Peoples service to PACT. Equitable, in any event, at this stage of the proceeding does not have complete knowledge of the details of Dominion Peoples' service to PACT. Information about service to PACT is part of the discovery requested of Dominion Peoples by Equitable. This discovery is ongoing. Comparing and contrasting, moreover, would seem to be more a matter of argument for a latter stage of the proceeding than a matter of discovery of relevant and material facts.

Interrogatories Nos. 25 and 26

8. Peoples Set I Interrogatories Nos. 25 and 26 ask as follows:

25. Fully and completely identify each and every instance where Equitable paid a prospective customer or developer of property a fee as an incentive to obtain business from that customer or developer.

26. Fully and completely identify each and every instance where Equitable paid a contribution of any type to a customer or a prospective customer.

9. Contrary to Dominion Peoples' assertion in its Motion to Compel, the grounds for Equitable's Objection to Interrogatories Nos. 25 and 26 were more than just relevance. Equitable's Objection in its entirety stated as follows:

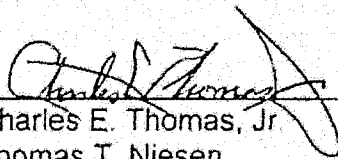
The information requested in Interrogatories Nos. 25 and 26 is neither relevant nor material to any claim or defense in this proceeding. Equitable's Complaint raises claims of duplication of facilities, predatory and discriminatory pricing and unfair competition against Dominion Peoples. The above information has nothing to do with Equitable's claims against Dominion Peoples. The information, likewise, has nothing to do with any legitimate defense of Dominion Peoples unless it intends to admit the challenged activity and defend itself on the basis of "yes, we do it, but so do you." A response to Interrogatories Nos. 25 and 26 as stated would, moreover, be unreasonably burdensome and require an unreasonable investigation. If any information is to be provided, it must be limited to the past five (5) years.

10. Dominion Peoples attempts to support the reasonableness of Interrogatories Nos. 25 and 26 by arguing that Equitable in its Complaint asserts that capital contributions and other considerations are illegal. Equitable's Complaint, however, does not mention capital contributions. Contributions became a consideration at issue after the filing of the Complaint and the disclosure for the first time by PACT and Dominion Peoples of the Supplemental Agreement between them concerning Dominion Peoples contribution to the cost of constructing the By-pass Line. There are limits to the permissible bounds of discovery and the request for information about "each and every" instance is beyond those bounds. Equitable is the complainant in this matter and it has not asked any Interrogatory as broad and unlimited as that presented in Interrogatories Nos. 25 and 26. If Dominion Peoples has a claim against Equitable, it can bring it any time. Defending itself against Equitable's claims does not justify the discovery sought in Interrogatories Nos. 25 and 26.

WHEREFORE Equitable Gas Company, a division of Equitable Resources, Inc., prays that the Public Utility Commission deny the motion of The Peoples Natural Gas Company, d/b/a Dominion Peoples, to compel responses to its Interrogatories and Requests for Production of Documents (Set I).

Respectfully submitted,

By



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Daniel L. Frutchey
Senior Vice President and General Counsel
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a division of Equitable Resources, Inc.
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Attorneys for Complainant
Equitable Gas Company,
a division of Equitable Resources, Inc.

January 14, 2004

Answer to Peoples' Motion to Compel (First Set) wpd

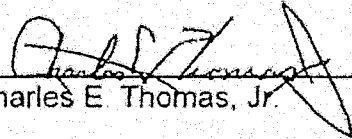
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14:10
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Charles E. Thomas, Jr.

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DOCUMENT
FOLDER

January 15, 2004

VIA HAND DELIVERY

James McNulty, Secretary
PA Public Utility Commission
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Harrisburg, PA 17105-3265

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2004 JAN 15 PM 4:12
SECRETARY'S BUREAU

Re: Equitable Gas Company, a Division of Equitable
Resources, Inc. v. The Peoples Natural Gas Company d/b/a
Dominion Peoples, Docket No. C-20031128

Dear Secretary McNulty:

Enclosed for filing are the original and three copies of NRG Energy Center-Pittsburgh LLC's Answer to the Objections of Pittsburgh Allegheny County Thermal, LTD. in the above-referenced matter. As evidenced by the attached Certificate of Service all parties have been served in the manner indicated.

If you have any questions regarding this filing, please contact me.

Sincerely,

Mark Stewart jls

Mark S. Stewart

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

MSS/jls
Enclosures

cc: Certificate of Service (w/enc)
Hon. Michael A. Nemeck (w/enc) (via email)

DSH-39466 1/NRG002-217031

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCUMENT
FOLDER

Equitable Gas Company, a Division of
Equitable Resources, Inc.,

Complainant

v.

The Peoples Natural Gas Company d/b/a
Dominion Peoples,

Respondent

Docket No. C-20031128

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FEB 13 2004

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ANSWER OF
NRG ENERGY CENTER-PITTSBURGH LLC TO THE OBJECTIONS
OF PITTSBURGH ALLEGHENY COUNTY THERMAL, LTD.

NRG Energy Center-Pittsburgh LLC ("NRG") by its counsel, answers the Objections filed by Pittsburgh Allegheny County Thermal, Ltd. ("PACT") to NRG's petition to intervene in the above-captioned matter. PACT objects to NRG's intervention on two grounds, both of which are erroneous. First, PACT makes a general standing argument, asserting that NRG has no interest in this proceeding and will not be adversely affected by its outcome. Second, PACT claims that NRG is seeking, inappropriately, to convert this complaint proceeding into a policy making or rulemaking proceeding.

As detailed below, on both points, PACT is flatly wrong. NRG has an immediate, direct and substantial interest in this matter both as a retail gas customer of Equitable Gas Company and as a public utility which has an obligation to charge just and reasonable rates and to keep costs of service as low as possible. Moreover, as the Commission has recently held, it has the authority to provide clarification and guidance as to its interpretation of statutes and regulations

it is charged with administering, in the factual context of a specific complaint, without entering the realm of rule or policy making.¹

In further answer to PACT's Objections, NRG states as follows:

1. On August 29, 2003, Equitable filed a complaint with the Commission seeking to prohibit The Peoples Natural Gas Company, d/b/a Dominion Peoples ("Dominion Peoples"), a "natural gas distribution company" as defined in Section 2202 of the Public Utility Code,² from providing natural gas distribution service to PACT.

2. On September 23, 2003, Dominion Peoples filed an answer to Equitable's Complaint, asserting that it is authorized under the Natural Gas Companies Act of 1885 to provide natural gas distribution service throughout the City of Pittsburgh.³

3. On October 2, PACT filed a petition to intervene which was granted by the presiding officer by Prehearing Order served November 21, 2003.

4. On November 25, 2003, NRG filed its petition to intervene in this proceeding, and on December 15, 2003, Equitable filed an answer to and motion to dismiss NRG's petition.

5. On December 24, 2003, NRG filed an answer to Equitable's motion, setting forth the plain grounds upon which it has standing to participate in this proceeding.

6. On or around December 19, 2003, PACT filed Objections to NRG's petition to intervene.⁴

¹ *Mary Frayne v. PECO Energy Company*, Docket No. C-20029005, Opinion and Order (December 18, 2003).

² 66 Pa. C.S. § 2202.

³ Dominion People's Answer at pp. 3-4.

⁴ Counsel for NRG did not receive the Objections until January 2004.

NRG'S STANDING TO PARTICIPATE

7. PACT's Objections claim that NRG lacks standing to participate in this matter.⁵

8. Contrary to PACT's assertions, NRG's petition to intervene demonstrates on its face that NRG has the interest required by the Commission's regulation at 52 Pa. Code § 5.72(a) for intervention in this proceeding.⁶ The Commission's regulation reflects the standard established by the Pennsylvania Supreme Court: "In order to have standing, a "party must (a) have a substantial interest in the subject-matter of the litigation; (b) the interest must be direct; and (c) the interest must be immediate and not a remote consequence."⁷

9. NRG's petition to intervene shows that, as both a retail gas customer and a public utility which generates and distributes steam and chilled water to the public, NRG has an interest that may be directly affected by the outcome of this proceeding.

(a) NRG's facilities are located within Dominion Peoples' certificated or franchised service territory but not located directly adjacent to Dominion Peoples' distribution facilities. Pennsylvania has traditionally permitted natural gas distribution companies with overlapping service territories to compete for distribution customers. Accordingly, NRG and its customers could potentially benefit greatly from the continued availability of competitive distribution service or could be harmed if such service is determined not to be available. Natural

⁵ Objections at ¶¶ 1-2.

⁶ The Commission's regulation requires that the interest be an "interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission," or an "interest of such nature that participation of the petitioner may be in the public interest." 52 Pa. Code § 5.72(a)(2), (3).

⁷ *Ken R. on Behalf of his Daughter, C.R., v. Arthur Z. and Mary Jane Z.*, 682 A.2d 1267 (Pa. 1996) ("Ken R.") (citing *S. Whitehall Tp. Police Service v. S. Whitehall Tp.*, 555 A.2d 793 (Pa. 1980) quoting *Franklin Tp. v. Dept of Environmental Resources*, 452 A.2d 718 (Pa. 1982)).

gas service is a significant portion of the cost of service to NRG's customers (it is a direct pass-through). NRG not only must pursue opportunities to reduce this cost to maintain its competitive position within the bounds of the Public Utility Code, but, as a public utility, has a statutory obligation to do so.⁸ Accordingly, NRG seeks to participate to assure that its opportunity to maintain or reduce its costs for the benefit of its customers is not foreclosed.

(b) Because NRG purchases natural gas distribution service from Equitable under a Rate ("GDS") that permits NRG to "negotiate" rates below maximum charges, a Commission decision in favor of PACT's right to purchase natural gas distribution service from Dominion Peoples will provide NRG with the opportunity to negotiate more favorable rates for distribution service than it pays Equitable now or which Equitable could charge under Rate GDS.

(c) Conversely, if the Commission decides in favor of Equitable, NRG's opportunity to maintain or reduce its costs almost certainly will be foreclosed and, indeed, NRG's costs of transportation could conceivably increase were Equitable, as a result of such a decision, to decide to charge NRG up to the maximum rates permitted under Rate GDS.

(d) Contrary to PACT's assertion, NRG's interest in the outcome of this proceeding is not a remote and speculative interest because NRG could realize real, tangible benefits from the availability of competitive alternatives for distribution service, or be harmed if such service is found to no longer be available.

⁸ Section 1318 of the Public Utility Code provides that "[n]o rates for a natural gas distribution utility shall be deemed just and reasonable unless the commission finds that the utility is a least cost fuel procurement policy, consistent with the utility's obligation to provide safe, adequate and reliable service to its customers." 66 Pa. C.S. § 1318(a). In making this determination, the Commission must find that "the utility has taken all prudent steps necessary to obtain lower cost gas supplies on both short-term and long-term bases both within and outside the Commonwealth, including the use of gas transportation arrangements with pipelines and other distribution companies." 66 Pa. C.S. § 1318(a)(3) (emphasis added); *see also* 66 Pa. C.S. § 1307(h) (defining "gas costs").

(e) Thus, NRG's petition shows that its dual interest as both a public utility and retail gas customer is both a substantial interest⁹ that surpasses the interest of the general public in obtaining compliance with the law and a direct interest¹⁰ that may be harmed by the outcome of this proceeding.

10. NRG's petition to intervene also shows that its substantial and direct interest in the outcome of this proceeding is not adequately represented by any other party.

(a) NRG's interest as a public utility in seeking to assure its opportunity to obtain the benefits of competitive distribution service, or to prevent harm if such competitive service is no longer available, is different than the interest of the other public utilities in this proceeding in providing distribution service.

(b) NRG's interest as a public utility is different than PACT's interest as *unregulated* "bona fide cooperative association."¹¹

(c) Although NRG and PACT are retail gas customers, NRG's interest as an Equitable retail gas customer is different than PACT's interest as a Dominion Peoples retail gas customer.

11. NRG's petition also demonstrates that NRG has an immediate interest in the outcome of this proceeding.¹²

⁹ See note 7 above.

¹⁰ "The requirement that an interest be 'direct' simply means that the person claiming to be aggrieved must show causation of harm to his interest by the matter of which he complains." *Wm. Penn Parking Garage*, 346 A.2d at 282.

¹¹ See 66 Pa. C.S. § 102 (definition of "public utility", (2)(ii)).

¹² An immediate interest "is shown where the interest the party seeks to protect is within the zone of interests sought to be protected by the statute or constitutional guarantee in question." *Ken R.*, 682 A.2d at 1270.

(a) If the Commission finds that Dominion Peoples' is authorized to provide natural gas distribution service throughout the City of Pittsburgh, then NRG Pittsburgh, like PACT, also would have the right to purchase natural gas distribution service from Dominion Peoples instead of from Equitable and, as a result, will be given a potential opportunity to lower its costs of that service and, in turn, its rates to its own customers.

(b) NRG's right to obtain service consistent with the requirements of the Public Utility Code from natural gas distribution companies authorized legally to serve NRG¹³ is within the zone of interests protected by the Public Utility Code.¹⁴

(c) NRG's interest in reducing its costs of service (and, therefore its rates) to its customers is within the zone of interests protected by the Public Utility Code.¹⁵

12. Accordingly, NRG's interest in this proceeding is clearly such that it satisfies the standard established by the Pennsylvania Supreme Court and the Commission's regulation, and therefore its participation in this proceeding is in the public interest.¹⁶

¹³ See 66 Pa. C.S. § 103(a) (public utility having right to render service on day preceding effective date of Public Utility Code "shall be entitled to the full enjoyment and the exercise of all and every right, power, and privilege which it lawfully possessed on that date").

¹⁴ See 66 Pa. C.S. §§ 1501 (public utility must furnish and maintain adequate, efficient, safe and reasonable service and facilities as necessary or proper for the accommodation, convenience and safety of its patrons and the public); 2205(b)(2) (nothing in Chapter 22 prevents a natural gas distribution company from upgrading its system to meet retail gas customers requirements consistent with requirements of Section 1501); 2203(4) (Commission shall require natural gas distribution companies to provide distribution service to all retail gas customers in their service territories "on nondiscriminatory rates, terms of access and other conditions").

¹⁵ See NRG's petition to intervene at ¶s 7-12, describing NRG Pittsburgh's charges to its customers and recovery of its costs of service under its PUC-approved tariff and Sections 1301, 1303, 1307 and 1308 of the Public Utility Code.

¹⁶ "The right or interest [to intervene] may be . . . [an] interest of such nature that participation of the petitioner may be in the public interest." 52 Pa. Code § 5.72(a)(3).

**NRG'S PARTICIPATION WILL NOT CONVERT THIS PROCEEDING
INTO A RULEMAKING OR POLICY MAKING PROCEEDING**

13. PACT also accuses NRG of attempting to convert this matter into a rulemaking or policy making proceeding.¹⁷ However, PACT's accusations are misplaced and directly refuted by a recent holding of the Commission.¹⁸

14. In *Mary Frayne v. PECO Energy Company*, the Commission faced a complaint by a consumer against PECO, alleging a financial inability to pay her bills and appealing the informal decision from the Bureau of Consumer Services that required her to enter a payment arrangement.¹⁹ In the process of ruling on the complaint, the Commission made several general statements designed to provide guidance and clarification to consumers and public utilities regarding its interpretation of its regulations in Chapter 56.²⁰ After the Commission's ruling, the Office of Consumer Advocate ("OCA") intervened in order to seek reconsideration of the decision. The OCA claimed that the Commission had exceeded the scope of the proceeding and entered into policy making without the necessary public notice and comment.²¹

15. The Commission denied OCA's reconsideration, and held that it did not need "to initiate either a rulemaking or policy statement proceeding any time we [wish] to address the general application of existing regulations."²² Instead, the Commission declared that it had

¹⁷ Objections at ¶¶ 3, 7-11.

¹⁸ *Mary Frayne v. PECO Energy Company*, Docket No. C-20029005, Opinion and Order (December 18, 2003).

¹⁹ *Id.* at 2.

²⁰ *Id.* at 2-3.

²¹ *Id.* at 5-7.

²² *Id.* at 7.

ample authority to address existing statutes and regulations it is charged with administering, in the factual context of a complaint proceeding, and to provide interpretations of those laws "that would prevent such situations from occurring in the future."²³

16. PACT's assertions are no different than those of the OCA which the Commission squarely rejected. Equitable is asking the Commission to render a decision involving the interpretation of the Public Utility Code and its prior decisions which will have a direct impact on NRG, as explained above. The Commission has made clear that, in the factual context of this complaint proceeding, it may interpret the Code and its decisions in such a manner as to give guidance to all consumers and utilities so as to avoid the very same factual situations in the future -- situations in which NRG has shown to be equally applicable to itself and its interests. Moreover, the Commission may provide that guidance without engaging in rulemaking or the issuance of policy statements.

17. Accordingly, NRG's participation in this proceeding will not convert it into a rulemaking or policy making proceeding, and PACT's claims to the contrary should be rejected based on the Commission's very recent and clear decision.

²³ *Id.* at 8.

WHEREFORE, for all of the foregoing reasons, NRG respectfully submits that PACT's
Objections to its petition to intervene should be denied.

Respectfully submitted,

Mark Stewart/lls

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Kevin J. Moody, Esquire
Mark S. Stewart, Esquire
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Date: January 15, 2004

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SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of NRG Energy Center-Pittsburgh LLC's Answer to the Objections of Pittsburgh Allegheny County Thermal, Ltd. on the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

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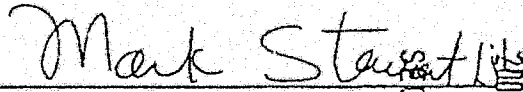
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January 16, 2004

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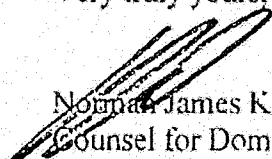
Re: Equitable Gas Company, a Division Of Equitable Resources, Inc., v. The Peoples Natural Gas Company d/b/a Dominion Peoples; Docket No. C-20031128; **MOTION OF THE PEOPLES NATURAL GAS COMPANY D/B/A DOMINION PEOPLES TO COMPEL RESPONSES TO INTERROGATORIES SET I (NOS. 1 & 22) BY EQUITABLE GAS COMPANY, A DIVISION OF EQUITABLE RESOURCES, INC.**

Dear Mr. McNulty:

Enclosed for filing with the Commission are the original and three (3) copies of The Peoples Natural Gas Company d/b/a Dominion Peoples' Motion to Compel Responses to Interrogatories Set I (Nos. 1 & 22) by Equitable Gas Company in the above-captioned proceeding.

If you have any questions with regard to this filing, please direct them to me. Thank you for your attention to this matter.

Very truly yours,



Norman James Kennard
Counsel for Dominion Peoples

NJK/tap

cc: Administrative Law Judge Michael A. Nemeec

91

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

ORIGINAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Equitable Gas Company, a Division :
Of Equitable Resources, Inc., :
Complainant :
v. :
The Peoples Natural Gas Company, :
d/b/a Dominion Peoples, :
Respondent :

Docket No. C-20031128

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**MOTION OF THE PEOPLES NATURAL GAS COMPANY,
D/B/A DOMINION PEOPLES
TO COMPEL RESPONSES
TO INTERROGATORIES SET I (NOS. 1 & 22)
BY EQUITABLE GAS COMPANY, A DIVISION OF
EQUITABLE RESOURCES, INC.**

DOCUMENT

NOW COMES The Peoples Natural Gas Company d/b/a Dominion Peoples, ("Dominion Peoples") by and through its counsel in the above-captioned matter and hereby moves to compel responses by Equitable Gas Company ("Equitable" or "EGC") to Dominion Peoples' Interrogatories Set I, Nos. 1 and 22. This is the second Motion to Compel involving Set I. No. 22.

I. BACKGROUND

1. On or about August 29, 2003, Equitable filed the above-captioned Complaint, seeking, among other things, an order prohibiting Dominion Peoples from providing gas service to Pittsburgh Allegheny County Thermal, Ltd. ("PACT"), a non-profit corporation providing steam service to its Member/Owners. PACT, which uses gas in the production of steam, is a current

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customer of Dominion Peoples, and formerly was a customer of Equitable. The Complaint was served on Dominion Peoples by the Commission on September 3, 2003.

2. On September 23, 2003, Dominion Peoples filed its Answer to Equitable's Complaint essentially denying all pertinent factual and legal allegations that Equitable asserts entitle it to the relief which it seeks in this proceeding.

3. Also on September 23, 2003, the Commission's Office of Trial Staff ("OTS") filed its Notice of Appearance in this proceeding.

4. On or about October 2, 2003, PACT filed a Petition to Intervene.

5. On November 20, 2003, a Prehearing Conference was held and a schedule agreed to by the parties.

6. On December 12, 2004, a Protective Order was entered.

7. On or about December 8, 2003, Dominion Peoples served its Interrogatories And Requests For Production Of Documents (Set I) upon Equitable.

8. On or about December 18, 2003, Equitable filed objections to certain of Dominion Peoples' Interrogatories Set I, including Set I, No. 22. Equitable did not attempt to resolve its objections with Dominion Peoples prior to filing the objections.

9. On January 7, 2004, counsel for Dominion Peoples contacted counsel for Equitable and made several offers to resolve Equitable's objections. Those interrogatories that the parties were unable to resolve among themselves were the subject of Dominion Peoples' Motion to Compel filed on January 9, 2004. The interrogatories objected to included Dominion Peoples Interrogatory, Set I, No. 22.

10. Late in the day on January 9, 2004, Equitable provided answers to the remaining unobjected to interrogatories, including Set I, No. 1.

II. STANDARDS OF DISCOVERY

11. Commission regulations permit for the discovery of "any matter, not privileged, which is relevant to the subject matter involved in the pending action." 52 Pa. Code §5.321(c).

12. Generally speaking, this Commission applies a standard of relevance which is less restrictive than that required by parties in order to present a document into the evidentiary record.

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.

52 Pa. Code §5.321(c). This broad approach to discovery is narrowed in certain circumstances. For example, material sought to be discovered must be relevant to the subject matter of the action and must not be privileged. *Id.* Further, materials are not discoverable if sought in bad faith or if the request is of such a nature that it would cause unreasonable annoyance, embarrassment, oppression, burden or expense. 52 Pa. Code §5.361(a)(1), (2).

13. Discovery may be obtained regarding any matter relevant to the subject matter. Relevant evidence is evidence that tends to make a fact at issue more or less probable. Moreover, evidence is relevant if it advances the inquiry in some degree and, thus, has probative value. Although the law does not furnish an absolute test of relevancy, the Pennsylvania Supreme Court follows a two-part analysis for determining relevance. In *Commonwealth v. Stewart*, 461 Pa. 274, 336 A.2d 282 (1975), the Court held that:

It must be determined first if the inference sought to be raised by the evidence bears upon a matter at issue in this case and, second, whether the evidence renders the desired inference more probable than it would be without the evidence.

Id. at 284.

14. Pennsylvania's courts have acknowledged that all discovery comes with some measure of annoyance and burden. See e.g., *Merrifield v. Gavern*, 10 Pa. D. & C. 4th 541 (1991). The mere fact that discovery will be time consuming, burdensome and costly is not grounds for objection if this is the inevitable result of the facts under examination. See *Nardell v. Scranton-Spring Brook Water Service Company*, 24 Pa. D. & C. 2d 663 (1961).

III. MOTION TO COMPEL

15. Dominion Peoples Interrogatory Set I, No. 1

A. Dominion Peoples Interrogatory Set I, No. 1:

1. Fully and completely identify any and all sources of any and all legal authority held by Equitable to provide service in the City of Pittsburgh. Provide any and all documents related thereto.

B. Equitable's Answer:

"Equitable's legal authority to provide natural gas service to PACT in the City of Pittsburgh emanates from charter rights it has exercised since before 1900. Equitable, in addition, provided unchallenged service to PACT for more than 20 years. Since Equitable's authority is unchallenged, no documents are attached."

C. Dominion Peoples' Motion to Compel:

Equitable did not object to this Interrogatory and, therefore, its unresponsive answer is inappropriate. The Interrogatory specifically asks that Equitable identify "any and all sources of any and all legal authority," as well as asks that all documents related thereto be provided.

The reply falls far short of providing the requested information: 1) There is no specific identification of legal authority. Vague reference to "charter rights it has exercised since 1900" is unresponsive; and 2) The same is true of the refusal to provide documents. Full and complete answers should be provided to unobjected discovery. Equitable is the

Complainant and not the determiner of what is in issue. By failing to object, Equitable has waived whatever objection it may have.

16. Dominion Peoples Interrogatory Set I, No. 22

A. Dominion Peoples Interrogatory Set I, No. 22:

22 For the most recent five (5) year period, fully and completely identify each and every customer served by Equitable that was previously served by another natural gas distribution company. Exclude the customer's name and location and the associated annual volumes and for each such customer identify:

- (a) the transportation rate charged by Equitable;
- (b) whether retainage is waived;
- (c) any and all additional charges by Equitable separately broken out;
- (d) any and all capital investment made by Equitable to serve the customer;
- (e) the length of the contract;
- (f) the identity of the natural gas distribution company previously providing service; and
- (g) the claimed legal authority for Equitable's provision of service;

B. Equitable's Answer:

"As we orally advised counsel for Dominion Peoples, Equitable does not maintain records which would indicate whether a customer has been served by another natural gas distribution company."

C. Dominion Peoples' Motion to Compel

This is the second Motion to Compel that Dominion Peoples has been forced to file relating to this Interrogatory. Equitable's objection, previously stated, was on the grounds of relevance, which arguments Dominion Peoples fully addressed in its first Motion to Compel. Equitable also objected to this Interrogatory previously on the grounds of "burdensomeness," but the associated burden was nowhere specified in its objection. Dominion Peoples incorporates its prior Motion to Compel.

However, through its subsequent "answer," Equitable now has attempted to supplement its stated objections by claiming that it "does not maintain records" which will

allow it to provide a response. This objection is late, inasmuch as it was not included with the original objections

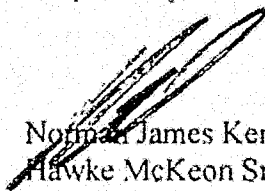
The "answer" is also evasive. Equitable does not state that it cannot identify which of its customers have been previously served by another gas distribution company. It only claims it "does not maintain records." Clearly, if Equitable is doing a good job of marketing, its sales representative should know which customers have the capability of being served and have, in fact, been served previously by another gas company. Otherwise, Equitable is admitting its ineptness in marketing and customer service.

Equitable's "records" in this regard is only one potential source of the information which the Interrogatory requests. Clearly, unless no one at Equitable has any idea of the prior service history of its current customers, those individuals with knowledge should be queried and a list developed of customers whose information should then be presented in response to the Interrogatory.

Discovery carries with an obligation of reasonable inquiry and good faith disclosure.

WHEREFORE, for the above-stated reasons, The Peoples Natural Gas Company d/b/a Dominion Peoples requests that Your Honor grant this Motion to Compel.

Respectfully submitted,



Norman James Kennard
Hawke McKeon Sniscak & Kennard LLP
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Susan G. George
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Dated: January 16, 2004

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the person and in the manner indicated below.

BY HAND DELIVERY

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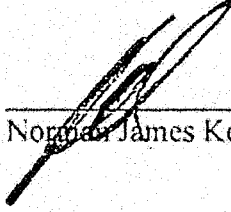
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a division of Equitable Resources, Inc.
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Pittsburgh, PA 15212



Norman James Kennard

Dated: January 16, 2004

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Thomas, Thomas, Armstrong & Niesen
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January 16, 2004

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In re: Docket No. C-20031128
Equitable Gas Company, a Division of Equitable Resources, Inc.
v. The Peoples Natural Gas Company, d/b/a Dominion Peoples

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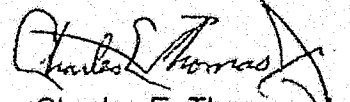
Gentlemen:

Enclosed is Equitable Gas Company's Third Set of Interrogatories to The Peoples Natural Gas Company in the above matter. Call us at your convenience if you wish to discuss the Interrogatories.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By


Charles E. Thomas, Jr.

Encl.

cc: Susan G. George, Esquire (w/encl.)
Dennis S. Shilobod, Esquire (w/encl.)
Anthony P. Picadio, Esquire (w/encl.)
Johnnie E. Simms, Esquire (w/encl.)
Honorable Michael Nemecek (w/o encl.)
James J. McNulty, Secretary (w/o encl.)

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January 21, 2004

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DOCUMENT

In re: Docket No. C-20031128
Equitable Gas Company, a Division of Equitable Resources, Inc., Complainant
v. The Peoples Natural Gas Company, d/b/a Dominion Peoples, Respondent


Dear Secretary McNulty:

Enclosed for filing on behalf of the Equitable Gas Company Division ("Equitable") of Equitable Resources, Inc. are an original and three (3) copies of Equitable's Answer to Dominion Peoples' Motion to Compel Responses to Its Interrogatories Set I (Nos. 1 & 22). Copies of Equitable's Answer are being served upon the persons and in the manner set forth on the Certificate of Service attached to it.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By


Charles E. Thomas, Jr.

Encl.
cc: Certificate of Service
Daniel L. Frutchey (w/encl.)

040121-McNulty.wpd

R.I.D

25

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Equitable Gas Company, a Division
of Equitable Resources, Inc.,
Complainant

v.

The Peoples Natural Gas Company,
d/b/a Dominion Peoples,
Respondent

Docket No. C-20031128

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EQUITABLE GAS COMPANY'S
ANSWER TO DOMINION PEOPLES
MOTION TO COMPEL RESPONSES TO
ITS INTERROGATORIES SET I (Nos. 1 & 22)

AND NOW, comes Equitable Gas Company, a division of Equitable Resources, Inc. ("Equitable"), by its attorneys, and, pursuant to 52 Pa. Code §5.342, answers the motion of The Peoples Natural Gas Company, d/b/a Dominion Peoples ("Dominion Peoples"), to compel responses to its Interrogatories Set I (Nos. 1 and 22), as follows:

1. Before your Honor is the motion of Dominion Peoples to compel further responses to its Set I Interrogatories to Equitable Nos. 1 and 22 which state as follows:

1. Fully and completely identify any and all sources of any and all legal authority held by Equitable to provide service in the City of Pittsburgh. Provide any and all documents related thereto.
22. For the most recent five (5) year period, fully and completely identify each and every customer served by Equitable that was previously served by another natural gas distribution company. Exclude the customer's name and location and the associated annual volumes and for each such customer identify:
 - (a) the transportation rate charged by Equitable;
 - (b) whether retainage is waived;
 - (c) any and all additional charges by Equitable separately broken out.

DOCUMENT

- (d) any and all capital investment made by Equitable to serve the customer;
- (e) the length of the contract;
- (f) the identity of the natural gas distribution company previously providing service.
- (g) the claimed legal authority of Equitable's provision of service;

2. Equitable has already answered the foregoing Set I Interrogatories Nos. 1 and 22, as follows:

1. Equitable interprets this to be a request for legal authority to provide natural gas service to PACT in the City of Pittsburgh. Equitable's legal authority in this regard is unchallenged. In its Answer to Equitable's Complaint, Dominion Peoples argues that this proceeding is one involving a customer's right to elect among natural gas distribution companies with overlapping service territory. Equitable's legal authority to provide natural gas service to PACT in the City of Pittsburgh emanates from charter rights it has exercised since before 1900. Equitable, in addition, provided unchallenged service to PACT for more than 20 years. Since Equitable's authority is unchallenged, no documents are attached. Dominion Peoples, on the other hand, more than thirty (30) years ago, by its own voluntary actions, abandoned whatever service rights it may have had in the Golden Triangle section of the City of Pittsburgh. It cannot now, through wasteful duplication, predatory pricing, unfair competition and rate discrimination, cherry pick individual customers from the area.

22. As we orally advised counsel for Dominion Peoples, Equitable does not maintain records which would indicate whether a customer has been served by another natural gas distribution company.

3. Equitable's answer to Interrogatory No. 1 is a full and fair response to its reasonable interpretation of the question. Dominion Peoples pleadings in this matter make no challenge to Equitable's service authority. In its Answer to Equitable's Complaint, Dominion Peoples avers that this case involves a circumstance of overlapping service territories. Having acknowledged Equitable's authority to serve PACT, Dominion Peoples cannot justify further inquiry through a motion to compel. Equitable provided

unchallenged service to PACT for more than 20 years and its service authority continues to be unchallenged in Dominion Peoples' Answer. A further response beyond that submitted above would be burdensome and the information obtained neither relevant nor material. If Dominion Peoples wants to raise an issue of service authority, it should file a complaint or other appropriate pleading under oath or affirmation challenging Equitable's service authority. We point out, however, that the circumstances concerning Dominion Peoples service authority in the Golden Triangle area of the City of Pittsburgh are markedly different. As noted in Equitable's response to Dominion Peoples' Interrogatory No. 1, Dominion Peoples, more than thirty (30) years ago, by its own voluntary actions, abandoned whatever service rights it may have had in the Golden Triangle. In fact, it asked Equitable to serve any customers which it had in the area and walked away from its public utility service obligations. Having abandoned its service rights and having been able to do so only because of Equitable's willingness to serve, Dominion Peoples cannot now, more than thirty (30) years later, come back and not only wrongfully steal an Equitable customer, but also contest Equitable's service rights in the area. Enough is enough. Equitable will be filing an Amendment to its Complaint by the end of this calendar week concerning Dominion Peoples lack of authority to serve PACT and any other customers in the area it abandoned.

4. Turning to Set I Interrogatory No. 22, although Equitable was unable to answer the Interrogatory any further than set forth above, it did in its "Highly Confidential" answer to Interrogatory No. 30 identify those instances in which it has agreed to waive retainage. In addition, as explained in Equitable's answer to Dominion Peoples prior motion to compel, Equitable, in its answer to Interrogatory No. 23, explained that neither Redland Brook nor Eastman Chemical is an Equitable customer. The Penn Hills School District is an Equitable customer and Equitable has provided on a Highly Confidential

basis as much of the requested information as is available with respect to Penn Hills School.¹

5. Dominion Peoples argues that Equitable should be required to go beyond its company records and survey its employees concerning its 2,000 commercial and industrial accounts, and, from that survey, develop a list of the information requested by the Interrogatory. Equitable's objection was neither "late" or "evasive," nor is there "ineptness in [its] marketing and customer service" as suggested by counsel for Dominion Peoples. The investigation proposed by Dominion Peoples is unreasonable and not required by Section 5.361 of the Commission's Rules and Regulations, 52 Pa. Code §5.361. Equitable has responded to Dominion Peoples discovery as best it can. If Dominion Peoples were a complainant challenging Equitable's marketing activity, the proposed investigation might be appropriate, but it is not. It apparently intends to defend

¹Dominion Peoples Set I Interrogatory No. 22 "kicked off" a series of three Dominion Peoples Set I Interrogatories as follows

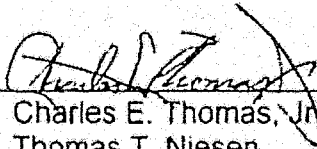
22. For the most recent five (5) year period, fully and completely identify each and every customer served by Equitable that was previously served by another natural gas distribution company. Exclude the customer's name and location and the associated annual volumes and for each such customer identify:
 - (a) the transportation rate charged by Equitable,
 - (b) whether retainage is waived,
 - (c) any and all additional charges by Equitable separately broken out,
 - (d) any and all capital investment made by Equitable to serve the customer,
 - (e) the length of the contract;
 - (f) the identity of the natural gas distribution company previously providing service,
 - (g) the claimed legal authority of Equitable's provision of service,
23. To the extent not identified in the preceding Interrogatory, provide the information requested in the preceding Interrogatory for Penn Hills School, Redland Brook and Eastman Chemical, separately
24. For each and every incidence of customer service identified in response to Interrogatory Nos. 22 or 23, fully and completely compare and contrast that situation with the present provision of service by Dominion Peoples to PACT.

itself by arguing that "we do it, but so do you " That defense does not warrant the kind of investigation proposed by Dominion Peoples.

WHEREFORE Equitable Gas Company, a division of Equitable Resources, Inc., prays that the Public Utility Commission deny the motion of The Peoples Natural Gas Company, d/b/a Dominion Peoples, to compel responses to its Interrogatories Set I (Nos. 1 and 22).

Respectfully submitted,

By



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January 21, 2004

Answer to Peoples' Second Motion to Compel (First Set) w/pd

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Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Equitable Gas Company, a Division	:	Docket No. C-20031128
of Equitable Resources, Inc.,	:	
Complainant	:	
	:	
v.	:	
	:	
The Peoples Natural Gas Company,	:	
d/b/a Dominion Peoples,	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of January, 2004, served a true and correct copy of Equitable Gas Company's Answer to Motion to Compel, upon the persons and in the manner set forth below.

FAX AND FIRST CLASS MAIL, POSTAGE PREPAID

Honorable Michael A. Nemec
Administrative Law Judge
Pennsylvania Public Utility Commission
1103 Pittsburgh State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

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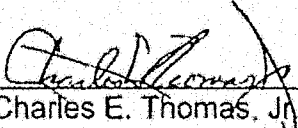
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CHARLES E. THOMAS
(1913 - 1998)

January 21, 2004

BY HAND DELIVERY

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In re: Docket No. C-20031128
Equitable Gas Company, a Division of Equitable Resources, Inc.
v. The Peoples Natural Gas Company, d/b/a Dominion Peoples

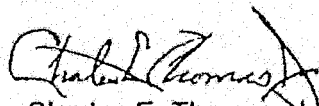
Gentlemen:

Enclosed is Equitable Gas Company's highly confidential response to Dominion Peoples' Set I Interrogatory No. 23. Call us at your convenience if you wish to discuss the response or if you have any questions.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By


Charles E. Thomas, Jr.

Encl.

cc: Susan G. George, Esquire (w/encl.)
Johnnie E. Simms, Esquire (w/encl.)
Anthony P. Picadio, Esquire (w/o encl.)
Dennis S. Shilobod, Esquire (w/o encl.)
Honorable Michael Nemecek (w/o encl.)
James J. McNulty, Secretary (w/o encl.)
Daniel L. Frutchey, Esquire (w/encl.)
John M. Quinn, Director of Rates (w/encl.)

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RJP

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Equitable Gas Company, a Division of
Equitable Resources, Inc.

v.

The Peoples Natural Gas Company d/b/a
Dominion Peoples



FEB 19 2004

C-20031128

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INTERIM ORDER GRANTING PETITION TO INTERVENE

The NRG Center-Pittsburgh LLC ("NRG") filed its petition to intervene in the above-captioned proceeding on November 25, 2003. On December 15, 2003, Equitable Gas Company filed an answer and motion to dismiss. On December 19, 2003, Pittsburgh Allegheny County Thermal, Ltd., ("PACT") filed objections to the intervention. NRG filed an answer to Equitable's motion on December 24, 2003, and an answer to PACT's objections on January 15, 2004. NRG has alleged that it is a retail natural gas customer of Equitable and that it is also a public utility engaged in the sale and distribution of steam heat and chilled water to the public. NRG further alleges that it has a direct interest in the outcome of the litigation between Equitable and The Peoples Natural Gas Company over service to PACT. NRG's interest, as I understand it, is to protect its ability to negotiate the lowest cost for the quantity of gas it uses in its processes. NRG sees its role as different from PACT as PACT is an unregulated association while NRG is a regulated public utility. I conclude that NRG has shown a substantial and direct interest in the outcome of this proceeding. The petition to intervene is granted.

Dated: January 21, 2004

Michael A. Nemec
Administrative Law Judge