

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

**DOCKETED**  
MAR 10  
FEB 12 2004

**DOCUMENT  
FOLDER**

C-20031128

SECRETARY'S BUREAU

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MAR 11 11:58

INTERIM ORDER REGARDING MOTION TO COMPEL

The Equitable Gas Company has moved to compel Peoples Natural Gas Company to provide more complete answers to interrogatory 9 of its Third Set. Both parties have referred to this Commission's policy statement found at 52 Pa Code §69.192. I note that the Commonwealth Court has held that a statement of policy is neither a rule nor adjudication, but is an announcement to the public of the policy that the agency hopes to implement in the future. *UGI Utilities, Inc. v. PA. P.U.C.*, 677 A.2d 882, 886 (Pa. Cmwlth. 1996).

I believe that 52 Pa. Code §69.192 provides a framework for resolving the dispute among Peoples and Equitable. Subsection 1 provides that the local distribution company ("LDC") should apply its tariffs in a nondiscriminatory manner. This is, in essence, a restatement of the requirements of Section 1304 of the Public Utility Code, 66 Pa. C.S.A. §1304. Subsections 2, 3 and 4 are amplifications of subsection 1. Subsection 5 states as follows

(5) The LDC should maintain a chronological log of tariff provisions for which it has granted waivers. Entries should include the name of the party receiving the waiver, the date and time of the request, the specific tariff provision waived and the reason for the waiver. Any chronological log should be open for public inspection during normal business hours.

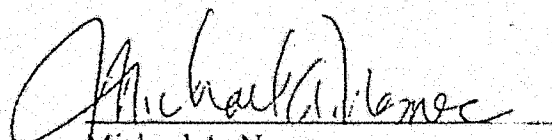
52 Pa. Code §69.192(5)

RJP

I assume that "retainage" is the subject of a tariff provision for each company. I also assume that each company has endeavored to comply with this Commission's direction in its policy statement.

With those thoughts in mind, I direct the companies to cooperate with each other in arranging for a visit by their respective representatives to inspect their respective chronological logs within ten days following the date of this order. Following the inspections, counsel for both parties should confer and then contact me regarding the date and time for an informal telephonic conference to discuss their respective positions on the remaining discovery issues, if any.

Dated: February 17, 2004

  
Michael A. Nemec  
Administrative Law Judge

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

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ORIGINAL

CHARLES E. THOMAS  
(1975-1998)

February 23, 2004

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

DOCUMENT  
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SECRETARY'S BUREAU

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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

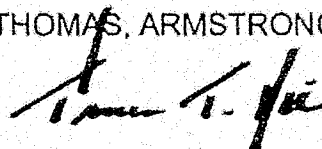
Dear Secretary McNulty:

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 Objections to Dominion Peoples' Interrogatories and Request for Production of Documents (Set II). Copies of Equitable's Objections are being served upon the persons and in the manner set forth on the Certificate of Service attached to the Objections.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By



Thomas T. Niesen

Encl.

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

040223-McNulty.wpd

BTI

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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  
OBJECTIONS TO DOMINION PEOPLES'  
INTERROGATORIES AND REQUEST FOR  
PRODUCTION OF DOCUMENTS (SET II)

DOCKETED  
MAY 7 2005

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 II) 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 the afternoon of February 13, 2004, Equitable received Dominion Peoples' Interrogatories and Requests for Production of Documents (Set II) Nos. 1 through 30.

**Objection to Set II Interrogatories Nos. 13, 14 and 15**

3. Equitable objects to Dominion Peoples' Set II Interrogatories Nos. 13, 14 and 15 which state as follows:

13. Provide full and complete copies of any operating procedures followed by Equitable during the period 1965 to the present,

involving the termination, abandonment or cessation of service to an existing customer for any reason, excluding for the nonpayment of bills or upon the request of the customer

14. Provide full and complete copies of any regulatory filing made by Equitable during the period 1965 to the present, involving the termination, abandonment or cessation of service to an existing customer for any reason, excluding for the non-payment of bills or upon the request of the customer. Provide copies of any and all orders, letters or other documents issued by the Commission related thereto.
15. Identify each and every instance during the period 1965 to the present where Equitable transferred customers to Dominion Peoples. Provide full and complete copies of any regulatory filing made by Equitable and copies of any and all orders, letters or other documents issued by the Commission related thereto.

4. Interrogatories Nos. 13, 14 and 15 are part of several of Peoples Set II Interrogatories distributed by Dominion Peoples in response to Equitable's Count V - Lack Of Service Authority filed with the Commission on January 22, 2004. In its Count V, Equitable avers that Dominion Peoples abandoned its service in the Golden Triangle Area in 1971 and transferred its Golden Triangle Area customers to Equitable.

5. Dominion Peoples' Set II Interrogatories Nos. 13, 14 and 15 seek information concerning Equitable's operating procedures from 1965 to the present, regulatory filings from 1965 to the present and instances in which Equitable transferred customers to Dominion Peoples from 1965 to the present. This information has no relevance or materiality to any claim presented in Count V. It, likewise, has no relevance or materiality to any defense that Dominion Peoples might have with respect to Count V.

6. Count V and any legitimate defense Dominion Peoples may assert will depend upon *its* actions, not Equitable's, concerning Dominion Peoples' service to the Golden Triangle Area. No reasonable argument can be made that Equitable's operating procedures, regulatory filings or customer transfers could lead to relevant and material information concerning Count V. A response to Set II Interrogatories Nos. 13, 14 and 15

as stated would, moreover, be unreasonably burdensome and require an unreasonable investigation for a 40 year period. In addition, the information requested by Interrogatory No. 15, if there were any transfers, would already be in the possession of Dominion Peoples.

**Objection to Set II Interrogatories Nos. 16, 17 and 18**

7. Equitable objects to Dominion Peoples' Set II Interrogatories Nos. 16, 17 and 18 which state as follows:

16. Fully and completely state whether Equitable has ever offered to waive retainage to attract a prospective customer or to retain an exiting customer, even if Equitable was ultimately unsuccessful in obtaining or retaining the customer. 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 offered to be waived; the associated annual volumes; and the reason for offering such waiver. Provide any and all documents related thereto.
17. Provide a full and complete listing of all tariff rates, surcharges or other terms that Equitable is entitled to collect from or apply to a transportation customer or natural gas supplier, but which Equitable has waived, declined or otherwise forgone during the last five (5) calendar years. For each such category of item listed, identify: the number of affected customers and suppliers; the associated annual volumes; and the reason for foregoing the item. Provide any and all documents related thereto.
18. Provide a full and complete listing of all tariff rates, surcharges or other terms that Equitable is entitled to collect from or apply to a transportation customer or natural gas supplier, but which Equitable has offered to waive, decline or otherwise forgo during the last five (5) calendar years, to attract a prospective customer or to retain an exiting customer, even if Equitable was ultimately unsuccessful in obtaining or retaining the customer. For each such category of item listed, identify: the number of affected customers and suppliers for whom the item was proposed to be waived, declined or forgone; the associated annual volumes that were or would have been associated; and the reason for waiving, declining or foregoing the item. Provide any and all documents related thereto.

8. The information requested in Interrogatories Nos. 16, 17 and 18 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." The last sentence of Interrogatories Nos. 16, 17 and 18 would, moreover, result in the disclosure of customer identity information. Equitable objects to the requested disclosure of documents on even a confidential basis.

**Objection to Set II Interrogatories Nos. 24, 25, 26, 27 and 28**

9. Equitable objects to Dominion Peoples' Set II Interrogatories Nos. 24, 25, 26, 27 and 28 which state as follows:

24. Fully and completely identify the scope of Mr. Richard E. Stinneford's and Mr. Paul H. Raab's retention as a "consultant[s] of Equitable Gas "
25. If Equitable intends to call Mr. Stinneford and/or Mr. Raab as witnesses, fully and completely state the anticipated subject matter of any such testimony.
26. Provide copies of any and all documents provided by Equitable to Mr. Stinneford and/or Mr. Raab that relate to this proceeding.
27. Provide full and complete copies of any and all notes, memoranda and other documents prepared by Mr. Stinneford and/or Mr. Raab that relate to the issues raised by Equitable in this proceeding.
28. Provide full and complete copies of any testimony previously prepared and/or presented in any jurisdiction by Mr. Stinneford and/or Mr. Raab that relate to the issues raised by Equitable in this proceeding.

10. Dominion Peoples' Set II Interrogatories Nos. 24, 25, 26, 27 and 28 arise because Equitable has submitted written acknowledgments to Dominion Peoples for Mr.

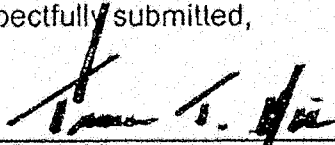
Stinneford and Mr. Raab pursuant to Paragraph 7 of the Protective Order dated December 4, 2003. Resumes of both Mr. Stinneford and Mr. Raab were provided to Dominion Peoples in connection with the written acknowledgments. While Mr. Stinneford and Mr. Raab have been retained as consultants by Equitable in respect to this matter, the "scope" of their retention is neither relevant nor material, nor has it been finalized.

11. In addition, discovery of expert testimony, such as that which Mr. Stinneford and/or Mr. Raab may ultimately present in this matter, is governed by 52 Pa. Code §5.324. In substance, Section 5.324 provides that the discovery obligation is satisfied by the distribution of the written direct testimony of the expert. Equitable will distribute any testimony of Mr. Stinneford and/or Mr. Raab in accordance with the established litigation schedule. No more is required by either Section 5.324, Judge Nemeč's Prehearing Order dated November 21, 2003, or Judge Nemeč's Modified Prehearing Order dated February 9, 2004. The discovery requested in Dominion Peoples' Set II Interrogatories Nos. 24, 25, 26, 27 and 28 is unreasonable and inconsistent with Commission Regulations.

WHEREFORE, Equitable Gas Company objects to The Peoples Natural Gas Company, d/b/a Dominion Peoples, Interrogatories and Requests for Production of Documents (Set II) as aforesaid.

Respectfully submitted,

By



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

February 23, 2004

Objections to Peoples' Second Set of Interrogatories.wpd

SECRETARY'S BUREAU

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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 23<sup>rd</sup> day of February, 2004, served a true and correct copy of Equitable Gas Company's Objections to Dominion Peoples' Interrogatories and Requests for Production of Documents (Set II) upon the persons and in the manner set forth below:

**FIRST CLASS MAIL, POSTAGE PREPAID**

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

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Norman James Kennard, Esquire  
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Susan G. George, Esquire  
The Peoples Natural Gas Company  
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Pittsburgh, PA 15222

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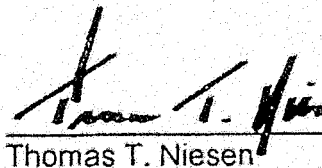
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Harrisburg, PA 17105-3265

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Kevin J. Moody, Esquire  
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CHARLES E. THOMAS  
(1913 - 1998)

ORIGINAL

February 23, 2004

James J. McNulty  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
P. O. Box 3265  
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

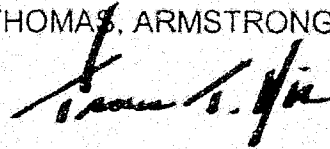
Dear Secretary McNulty:

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 Objections to Pittsburgh Allegheny County Thermal 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 the Objections.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By



Thomas T. Niesen

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

SECRETARY'S BUREAU

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EQUITABLE GAS COMPANY'S  
OBJECTIONS TO PITTSBURGH ALLEGHENY COUNTY THERMAL'S  
FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF  
DOCUMENTS

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 Pittsburgh Allegheny County Thermal's First Set of Interrogatories and Request for Production of Documents 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 February 13, 2004, Equitable received PACT's First Set of Interrogatories and Request for Production of Documents Nos. 1 through 31.

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### Objection to Interrogatories Nos. 1, 2 and 3

3. Equitable objects to PACT's Interrogatories Nos. 1, 2 and 3 which state as follows:

1. State separately for each of the calendar years 1998 through 2003 the lowest transportation rates charged by Equitable to any one or more of its non-affiliated customers, indicating the identity of the customer and the time period during which such rates were charged.
2. State separately for each of the calendar years 1998 through 2003 the lowest transportation rate you charged to each of your affiliates to which you provided gas transportation services, indicating the identify of each such affiliate, the time period involved, and the identify of the affiliate customer.
3. Identify each new commercial, institutional or industrial customer for gas transportation services which Equitable began serving during the period January 1, 1999 to date, indicating for each:
  - (a) the transportation rate and all other terms of the transportation agreement;
  - (b) the identity of the company which previously provided gas transportation services; and
  - (c) the extent to which the revenues from the new customer affected, or are expected to affect, rates charged by Equitable to residential customers.

4. PACT is an intervenor in this proceeding. Its interest here is in the rates and services it - PACT - receives, not the rates Equitable charges to other customers. It cannot turn the proceeding into a fishing expedition for the purpose of trying to negotiate lower rates. Presently, moreover, PACT is not even a customer of Equitable. The information requested in Interrogatories Nos. 1, 2 and 3 is neither relevant nor material to any claim or defense of interest to PACT in this proceeding. Equitable would object to providing the requested information to PACT on even a confidential basis.

### **Objection to Interrogatories Nos. 4 and 5**

5. Equitable objects to PACT's Interrogatories Nos. 4 and 5 which state as follows:

4. Please produce all documents relating to your offer to provide gas transportation services to your affiliate NORESCO for proposals it made to the Pittsburgh Convention Center.
5. Did you offer to provide gas transportation service to NORESCO at below your cost for the Pittsburgh Convention Center?
6. This proceeding concerns the Complaint of Equitable against Dominion Peoples concerning displacement of Equitable's service to PACT. PACT cannot, as an intervenor, expand the complaint to include matters related to NORESCO, nor turn the discovery phase of this proceeding into a fishing expedition without limits. If PACT believes it has a claim related to NORESCO, it should file the appropriate complaint in the appropriate forum. Equitable and/or NORESCO will respond as appropriate. The information requested in Interrogatories Nos. 4 and 5 is neither relevant nor material to this proceeding.

### **Objection to Interrogatories Nos. 22, 23, 24 and 25**

7. Equitable objects to PACT's Interrogatories Nos. 22, 23, 24 and 25 which state as follows:

22. Identify the current customers of Equitable who were not customers of Equitable, but were customers of Peoples or Columbia Gas five years ago.
23. Provide all documents that reveal how the former customers of Equitable identified in the foregoing Interrogatory became customers of Equitable.
24. Identify all present customers of Equitable for whom Equitable provided contributions in aid in construction and state the amount of contributions in aid of construction that Equitable provided to such customers.

25. Identify the current customers of Equitable who were not customers of equitable, but were customers of Peoples or Columbia Gas five years ago, for whom Equitable and/or the customer built a service line to Equitable's system in order to begin to take service from Equitable.

8. PACT is an intervenor in this proceeding. Its interest here is in the rates and services it - PACT - receives, not the rates Equitable charges to other customers, contributions to other customers or whether other customers were once customers of other distribution utilities. PACT cannot turn the proceeding into a fishing expedition for the purpose of trying to negotiate lower rates. Presently, moreover, PACT is not even a customer of Equitable. Similar to the information requested in Interrogatories Nos. 1, 2 and 3 which are objected to above, the information in Interrogatories nos. 22, 23, 24 and 25 is neither relevant nor material to any claim or defense of interest to PACT in this proceeding. Equitable would object to providing the requested information to PACT on even a confidential basis.

9. Equitable notes further in regard to Interrogatories Nos. 22, 23, 24 and 25 generally that similar information was requested in Dominion Peoples' Set I Interrogatory No. 22 concerning existing customers of Equitable that were previously served by another gas distribution company. Equitable advised Dominion Peoples that it does not maintain records which would indicate whether a customer has been served by another natural gas distribution company. Dominion Peoples moved to compel a further response. In his Interim Order Denying Motion to Compel dated January 22, 2004, Judge Nemec concluded that Equitable had satisfactorily responded to the request and denied Dominion Peoples' motion to compel.

Objection to Interrogatories Nos. 26, 27, 28, 29, 30 and 31

10. Equitable objects to PACT's Interrogatories Nos. 26, 27, 28, 29, 30 and 31 which state as follows:

26. Regarding the last sentence in paragraph 2.01 of the PACT/Equitable Agreement dated August 11, 2000, which reads:

"Prior to the expiration of this Agreement, Customer agrees to extend the Company the opportunity to match competitive offers from other natural gas distribution companies",

state the following:

- (a) whether such provision has been included in any tariff filed by Equitable with the Pennsylvania PUC;
- (b) whether Equitable has sought the approval or permission from the PUC to include the provision in its contract with PACT or other customers; and
- (c) whether the PUC has approved such provision for inclusion in agreements between Equitable and its customers.

27. Regarding the last sentence in paragraph 2.01 of the PACT/Equitable Agreement dated August 11, 2000, which reads:

"Prior to the expiration of this Agreement, Customer agrees to extend the Company the opportunity to match competitive offers from other natural gas distribution companies",

state the following:

- (a) The date you first used this provision in any of your contracts with customers;
- (b) The date of, and the identity of all parties to, every other Equitable agreement containing this provision;
- (c) The details of any communication or dispute between Equitable and any customer concerning the meaning, interpretation or enforceability of this provision; and,

(d) The identity of each and every document which relates to or supports your answer to subparagraphs (a), (b) and (c).

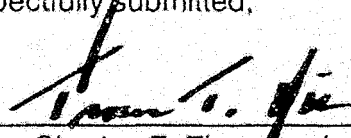
28. Identify each and every e-mail, memorandum, report, letter or other document which discusses the meaning, interpretation or enforceability of the provision set forth in the last sentence of paragraph 2.01 of the PACT/Equitable Agreement dated August 11, 2000.
29. Have you ever taken the position with any customer other than PACT that the provision set forth in the last sentence of paragraph 2.01 was a legally enforceable right of first refusal?
30. If your answer to the immediately preceding interrogatory is other than an unqualified negative, identify each such customer and the approximate time period involved.
31. Identify the Equitable officer or employee who first drafted and/or used the provision set forth in the last sentence of paragraph 2.01 in an Equitable contract.

11. Interrogatories Nos. 26, 27, 28, 29, 30 and 31 concern PACT's August 11, 2000, Agreement with Equitable and the enforceability of certain of its terms and provisions. The enforcement of the PACT/Equitable Agreement is a matter currently pending before the Allegheny Court of Common Pleas at G.D. No. 03-16436. Interrogatories Nos. 26, 27, 28, 29, 30 and 31 are neither relevant nor material to this Commission matter. Equitable further objects to Interrogatories Nos. 26, 27, 28, 29, 30 and 31 to the extent that they request information concerning other Equitable customers. Equitable would object to providing such information about other customers to PACT on even a confidential basis.

WHEREFORE, Equitable Gas Company a division of Equitable Resources, Inc.,  
objects to Pittsburgh Allegheny County Thermal's First Set of Interrogatories and  
Requests for Production of documents as aforesaid

Respectfully submitted,

By



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

February 23, 2004

Objections to FAC's First Set of Interrogatories wpd

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Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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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	:	
	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 23<sup>rd</sup> day of February, 2004, served a true and correct copy of Equitable Gas Company's Objections to Pittsburgh Allegheny County Thermal's First Set of Interrogatories and Request for Production of Documents, upon the persons and in the manner set forth below:

**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

Dennis S. Shilobod, General Counsel  
PACT  
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Pittsburgh, PA 15219

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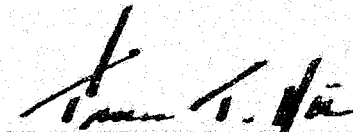
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Susan G. George, Esquire  
The Peoples Natural Gas Company  
d/b/a Dominion Peoples  
625 Liberty Avenue  
Pittsburgh, PA 15222

Johnnie E. Simms, Senior Prosecutor  
Office of Trial Staff  
Pennsylvania Public Utility Commission  
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Thomas T. Niesen

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

February 26, 2004

**BY FACSIMILE  
AND FIRST CLASS MAIL**

Honorable Michael A. Nemeo  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
1103 Pittsburgh State Office Building  
300 Liberty Avenue  
Pittsburgh, PA 15222-1210

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; REQUEST FOR AN EXTENSION OF TIME REGARDING INTERIM ORDER DATED FEBRUARY 17, 2004

Dear Judge Nemeo:

In your February 17, 2004 Interim Order Regarding Motion to Compel you directed the complainant and respondent "to cooperate with each other in arranging for a visit by their respective representatives to inspect their respective chronological logs within ten days following the date of this order." The parties have been cooperating, but due to scheduling conflicts involving proceedings in other jurisdictions as well as preparations for upcoming Section 1307(f) proceedings, the parties have been unable to meet to exchange logs, and therefore are requesting an extension of time to comply with your Interim Order. I have spoken with Charles Thomas, Jr. who joins in this request.

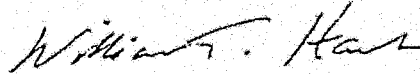
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Honorable Michael A. Nemeo  
February 26, 2004  
Page 2

While we still have not set a date, it is our current intention to do so prior to the Prehearing Conference scheduled for March 15, 2004. Therefore, we are requesting a two week extension of the ten day timeframe set in your February 17, 2004 Interim Order.

Very truly yours,



William T. Hawke  
Counsel for The Peoples Natural Gas Company  
d/b/a Dominion Peoples

WTH/das  
Enclosures

cc: Per Certificate of Service  
James J. McNulty, Secretary  
Susan G. George, Esquire

## 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.

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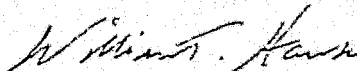
Daniel L. Frutchey  
Senior Vice President and General Counsel  
Equitable Gas Company,  
a division of Equitable Resources, Inc.  
200 Allegheny Center Mall  
Pittsburgh, PA 15212

Johnnie E. Simms, Director  
Office of Trial Staff  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

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Daniel Clearfield, Esquire  
Kevin J. Moody, Esquire  
Wolf, Block, Schorr & Solis-Cohen LLP  
Locust Court Building, Suite 300  
212 Locust Street  
Harrisburg, PA 17101



William E. Hawke

DATED: February 26, 2004

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COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION



Office of Administrative Law Judge  
1103 Pittsburgh State Office Building, 300 Liberty Avenue, Pittsburgh, PA 15222

Tel: 412-565-3550  
Fax: 412-565-5692  
IN REPLY PLEASE  
REFER TO OUR FILE

February 27, 2004

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

**DOCKETED**  
MAR 09 2004

SECRETARY'S BUREAU

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

Dear Mr. Hawke:

Your request for a two-week extension to the schedule set forth in the February 17,  
2004 Interim Order is granted

Sincerely yours,

Michael A. Nemeč  
Administrative Law Judge

**DOCUMENT  
FOLDER**

MAN:aje

cc: Service List  
Docketing Section ✓

**H**awke  
 **M**cKeon  
  **S**niscak &  
   **K**ennard LLP  
ATTORNEYS AT LAW

William T. Hawke  
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February 27, 2004

**BY HAND DELIVERY**

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

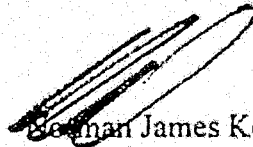
Re: Equitable Gas Company, a Division of Equitable Resources, Inc. v. The Peoples Natural Gas Company d/b/a Dominion Peoples, Docket No. C-20031128;  
**Dominion Peoples' Interrogatories and Requests for Production of Documents (Set III)**

Dear Mssrs. Thomas and Niesen:

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

Should you have any questions or need clarification concerning these Interrogatories and Request for Production of Documents, please do not hesitate to contact me at your convenience.

Very truly yours,



Norman James Kennard

NJK/tap  
Enclosure  
cc: Susan G. George, Esquire

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Dominion Peoples' Interrogatories and Requests for Production of Documents (Set III) upon the person and in the manner indicated below.

**BY FIRST CLASS MAIL**

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

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212 Locust Street, Suite 300  
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Norman James Kennard

Dated: February 27, 2004

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Hawke

ORIGINAL

McKeon

Sniscak &

Kennard LLP

ATTORNEYS AT LAW

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Lillian Smith Harris  
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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

March 3, 2004

VIA HAND DELIVERY

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

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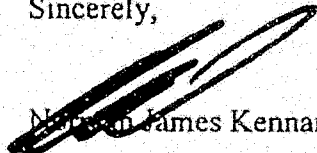
Re: Equitable Gas Company v. The Peoples Natural Gas Company d/b/a Dominion Peoples; Docket No. C-20031128; **DOMINION PEOPLES' RESPONSES TO EQUITABLE GAS COMPANY'S THIRD SET OF INTERROGATORIES**

Dear Mr. Thomas:

Enclosed please find certain Dominion Peoples' Responses to Equitable Gas Company's Set III Interrogatories 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: James J. McNulty, Secretary (without enclosure)

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RJP

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

48

**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 FIRST CLASS MAIL**

Daniel L. Frutchey  
Senior Vice President and General Counsel  
Equitable Gas Company,  
a division of Equitable Resources, Inc.  
200 Allegheny Center Mall  
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Johnnie E. Simms, Director  
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Locust Court Building, Suite 300  
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Harrisburg, PA 17101

  
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Notary James Kennard

DATED: March 3, 2004

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**H**awke  
 **M**ckeon  
  **S**niscak &  
   **K**ennard LLP  
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William Smith Harris  
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March 5, 2004

*By Hand Delivery*

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

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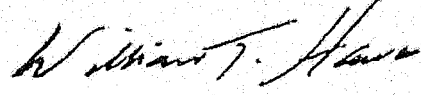
Re: Equitable Gas Company, a Division of Equitable Resources, Inc. v. The Peoples Natural Gas Company d/b/a Dominion Peoples; Docket No. C-20031128; ANSWER TO AMENDMENT TO COMPLAINT ADDING COUNT V - LACK OF SERVICE TERRITORY

Dear Secretary 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' ("Dominion Peoples") Answer to Amendment to Complaint Adding Count V - Lack of Service Territory filed in the above-captioned matter. A copy of this document has been served in accordance with the attached Certificate of Service.

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,



William T. Hawke

WTH/das  
Enclosure

cc: Per Certificate of Service  
Susan G. George, Esquire

DOCUMENT  
FOLDER

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

59

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Complainant

v.

Docket No. C-20031128

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

Respondent

**DOCKETED**  
MAR 16 2004

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**ANSWER OF THE PEOPLES NATURAL GAS COMPANY  
d/b/a DOMINION PEOPLES TO  
AMENDMENT TO COMPLAINT ADDING  
COUNT V – LACK OF SERVICE TERRITORY**

---

And now, this 5<sup>th</sup> day of March, 2004, comes The Peoples Natural Gas Company d/b/a Dominion Peoples ("Dominion Peoples"), by its attorneys in this proceeding, Hawke McKeon Sniscak & Kennard LLP, and submits its Answer to Equitable Gas Company, a Division of Equitable Resources, Inc.'s ("Equitable") Amendment to its original Complaint at this docket by adding Count V.

1. It is ADMITTED that on August 29, 2003, Equitable filed the above-captioned Complaint. By way of further answer, however, Dominion Peoples incorporates by reference the averments of its Answer to that Complaint which was filed with the Commission on September 23, 2003.

2. Equitable's allegation that Dominion Peoples abandoned service to a portion of the City of Pittsburgh is a legal conclusion to which no response is required. By way of further

answer, it is DENIED that Dominion Peoples abandoned service to any portion of its service territory, which includes the City of Pittsburgh, among many other places. It is further DENIED that any area which may be locally referred to as the "Golden Triangle" constitutes a distinctly defined portion of Dominion Peoples' service territory. On the contrary, Dominion Peoples' service territory is described in charters and certificates of public convenience in terms of counties, cities (including the City of Pittsburgh), boroughs and townships.

3. It is ADMITTED that, prior to 1971, Equitable and Dominion Peoples provided natural gas distribution service to certain customers located in the City of Pittsburgh, including that area which is locally known as the "Golden Triangle." It is further ADMITTED that in 1971 Dominion Peoples served as many as sixty (60) accounts in that area of the City of Pittsburgh generally referred to as the "Golden Triangle." It is DENIED that the "Golden Triangle" constitutes a distinct portion of Dominion Peoples' service territory; on the contrary, Dominion Peoples service territory is described in charters and certificates of public convenience in terms of counties, cities (including the City of Pittsburgh), boroughs and townships.

4. For the reasons set forth in paragraph nos. 2 and 3, above, it is DENIED that Dominion Peoples abandoned service in any area known locally as the "Golden Triangle." It is ADMITTED that Dominion Peoples transferred customers to Equitable in 1971 due to anticipated capital expenditures needed to maintain service to existing customers. It is DENIED that the transfer of customers is in any manner unusual or, in any way, constitutes an abandonment of service territory. It is further DENIED that Dominion Peoples ceased providing public utility service in the area locally known as the "Golden Triangle" for thirty-two (32) years. On the contrary, for example, on February 22, 1999, Dominion Peoples entered into two agreements to provide natural gas service to Mellon Bank's headquarters at 501 Grant Street, Pittsburgh, PA 15219 from November 1, 1999 through October 31, 2005. This location falls

within the area described in the letter of J. B. Livingston dated March 22, 1971. Dominion Peoples fully intended to provide service to Mellon Bank for the six-year period covered by the agreements referenced above. Mellon Bank, however, contacted Dominion Peoples in the summer of 1999 to attempt to negotiate a buyout of the two agreements with Dominion Peoples. Mellon Bank informed Dominion Peoples that it was pursuing this course of action because a high-ranking representative of Equitable Gas had threatened to withdraw all of Equitable's deposits from Mellon Bank if Mellon Bank took natural gas service from Dominion Peoples. Subsequently, Dominion Peoples and Mellon Bank entered into an agreement dated June 30, 1999 in which Mellon Bank agreed to pay \$159,000 to Dominion Peoples in exchange for terminating the agreements for service. Upon execution of the termination agreement, Mellon Bank presented Dominion Peoples with a check for \$159,000; Dominion Peoples currently is providing service to the Mellon Bank Service located behind Mellon Bank's Headquarters. Further, in 1987 and 1994 Pittsburgh Allegheny County Thermal Ltd requested service from Dominion Peoples, and Dominion Peoples agreed to provide service through its own line extension; however, PACT elected to remain an Equitable Gas Company customer. In addition, Dominion Peoples received requests from the William Penn Hotel, Point Park College, U.S. Steel and the Ramada Inn, and responded by offering to provide service upon receipt of a contribution in aid of construction necessary to economically justify extension of its facilities to provide service to each applicant; however, these proposed customers did not accept Dominion Peoples conditions of service. Further, upon a reasonable search of its records, Dominion Peoples is unaware of any customer request to provide service in the area locally known as the "Golden Triangle" after 1971, prior to the discussions with PACT in 1987, when Dominion Peoples offered to provide service; except, it is believed and therefore averred that in 1983 Dominion Peoples filed statements in Allegheny County Steam Heating Company's ("ASHCO")

(PACT's predecessor) 1980s abandonment proceeding concerning its willingness to provide service to ASHCO's customers in downtown Pittsburgh.

5. The documents attached as Attachment A to the Amended Complaint speak for themselves and no further answer is required. It is DENIED that an application by Dominion Peoples either was required or appropriate. In the alternative, by way of further answer, while it is true that the March 22, 1971 letter references that Peoples (Dominion Peoples) would be filing an application with the Commission to discontinue service, it is ADMITTED that no application to discontinue service was filed. By way of further answer, the March 22, 1971 letter from J.B. Livingston, Peoples Chief Engineer, to Mr. William F. Goffe, Jr., Manager, Engineering Department, Equitable Gas Company, dated March 22, 1971, also states that the transfer of facilities by Peoples (Dominion Peoples) and the acquisition by Equitable will require a joint certificate application by Peoples (Dominion Peoples) and Equitable; to the best of Dominion Peoples' knowledge, no such application was filed by Dominion Peoples and Equitable. By way of further answer, the internal memorandum dated August 16, 1971, from W.F. Goffe, Jr., Manager, Engineering Department, Equitable Gas Company, tabulating the customers of Peoples (Dominion Peoples) that were to be transferred, notes that certain transfers were completed as of that date; further by a hand written note at the bottom of page 1 of the August 16, 1971 Memorandum it is stated that "WCW" (presumably W.C. Washburn, an employee of Equitable Gas Company) was told to "hold everything until Peoples Law Dept. had worked out question on PUC approval."

It is ADMITTED that the Legal Department review resulted in no application being filed, and therefore there was no abandonment of service territory. Likewise, no application was needed to abandon service at a customers request. It is DENIED that Dominion Peoples' May, 1968 Application is noteworthy in any manner. It is further DENIED that the 1968 application

sought approval of the abandonment of service to thirty-four (34) customers. On the contrary, as stated in the Application, Commission approval was sought to abandon service to one customer who, unlike 33 other customers, had expressed an unwillingness to file an application for service from Equitable Gas Company.

6. For the reasons set forth in the preceding paragraphs of this Answer, it is DENIED that Dominion Peoples ceased providing public utility service to that area generally known as the "Golden Triangle" in 1971. Dominion Peoples lacks knowledge whether Equitable became the sole provider of natural gas distribution service for more than 30 years, and currently has 700 customers; and, accordingly, proof is demanded.

7. The allegations of this paragraph are conclusions of law to which no response is required. However, by way of further response, it is DENIED that Dominion Peoples abandoned its service territory to provide public utility service for all the reasons set forth previously in this Answer.

8. It is DENIED that Dominion Peoples abandoned its service territory in any area known as the "Golden Triangle;" accordingly, it had no obligation to file an application to obtain approval of an abandonment.

9. The allegations of this paragraph are conclusions of law to which no response is required. By way of further answer, however, it is noted that the certification provisions of the Public Utility Code (and its predecessor) have a number of exceptions, one of which provides that certification for the abandonment or surrender of service "is not applicable to discontinuance of a service to a patron for nonpayment of a bill, or upon request of a patron." 66 Pa. C.S. § 1102(a)(2). (emphasis added).

10. Dominion Peoples lacks knowledge whether the largest end-user of natural gas in the area locally referred to as the "Golden Triangle" is Pittsburgh Allegheny County Thermal

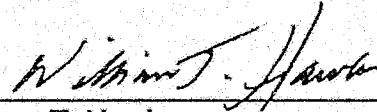
("PACT"); therefore, Dominion Peoples demands proof of this allegation. It is ADMITTED that a pipeline approximately 4,000 feet in length was constructed by PACT to connect it with facilities of Dominion Peoples and that the point of delivery of Dominion Peoples' service is at a point outside of the area locally known as the "Golden Triangle." It is DENIED that Dominion Peoples abandoned service territory for all the reasons set forth previously in this Answer.

11. The allegations in this paragraph are conclusions of law, and furthermore are redundant; therefore, no further answer is required. By way of further answer, however, it is DENIED that Dominion Peoples was involved in any "cherry picking." On the contrary, as noted in Dominion Peoples' Answer to Equitable's original Complaint and PACT's Answer, PACT sought out Dominion Peoples' service due to price and quality of service considerations. It is DENIED that Dominion Peoples' service to PACT is contrary to the public interest for all of the reasons set forth in Dominion Peoples' Answer filed September 23, 2003.

12. Equitable's request for an extension of the discovery and litigation schedule now is moot as having been granted.

WHEREFORE, The Peoples Natural Gas Company d/b/a Dominion Peoples requests the Commission to deny the amendment to the Complaint adding Count V – Lack of Service Territory.

Respectfully submitted,



---

William T. Hawke  
Norman James Kennard  
Hawke McKeon Sniscak & Kennard LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
717.236.1300

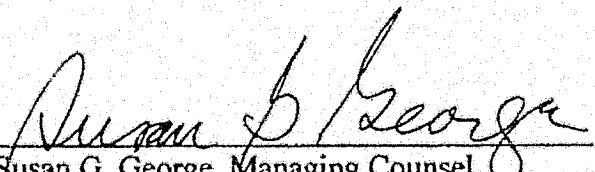
Susan G. George  
Managing Counsel  
Dominion Resources  
625 Liberty Avenue, 19<sup>th</sup> Floor  
Pittsburgh, PA 15222-3197

DATED: March 5, 2004

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2004 MAR -5 PM 3: 15  
SECRETARY'S BUREAU

VERIFICATION

I, Susan G. George, Managing Counsel, The Peoples Natural Gas Company, dba Dominion Peoples, hereby state that facts set forth in the foregoing Answer to Amendment To Complaint Adding Court V - Lack Of Service Territory Complaint 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 any hearing which may be required in this matter. I understand that the statements made herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification authorities).

  
Susan G. George, Managing Counsel  
On behalf of The Peoples Natural Gas Company  
dba Dominion Peoples

DATED: 3/5/04

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## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Answer to Amendment to the Complaint Adding Count V – Lack of Service Territory upon the person and in the manner indicated below.

### BY FACSIMILE AND FIRST CLASS MAIL

Honorable Michael A. Nemeec  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
1103 Pittsburgh State Office Building  
300 Liberty Avenue  
Pittsburgh, PA 15222-1210

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

### BY FIRST CLASS MAIL

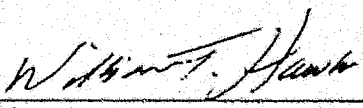
Daniel L. Frutchey  
Senior Vice President and General Counsel  
Equitable Gas Company,  
a division of Equitable Resources, Inc.  
200 Allegheny Center Mall  
Pittsburgh, PA 15212

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\_\_\_\_\_  
William E. Hawke

DATED: March 5, 2004

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Hawke

McKeon

Sniscak &

Kennard LLP

ATTORNEYS AT LAW

ORIGINAL

William T. Hawke  
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March 5, 2004

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

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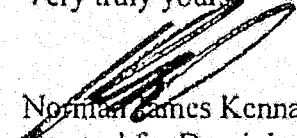
Re: Equitable Gas Company, a Division Of Equitable Resources, Inc., v. The Peoples Natural Gas Company d/b/a Dominion Peoples; Docket No. C-20031128; **MOTION OF THE PEOPLES NATURAL GAS COMPANY D/B/A DOMINION PEOPLES TO COMPEL RESPONSES TO INTERROGATORIES SET II BY EQUITABLE GAS COMPANY, A DIVISION OF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

RJP

57

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

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

DOCKETED  
MAR 19 2004

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 II  
BY EQUITABLE GAS COMPANY, A DIVISION OF  
EQUITABLE RESOURCES, INC.**

DOCUMENT  
FOLDER

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 II.

**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. On February 13, 2004, Dominion Peoples served its Interrogatories And Requests For Production Of Documents (Set II) upon Equitable.

4. On February 23, 2004, Equitable filed objections to certain of Dominion Peoples' Interrogatories Set II.

5. On February 27, 2004, counsel for Dominion Peoples contacted counsel for Equitable regarding potential resolution of the objections. Counsel for Equitable has stated that Equitable objects to the discovery on the basis of relevance and is not willing to voluntarily provide responses. Dominion Peoples believes that the information sought is relevant and should be provided. Therefore, the parties are unable to resolve the relevancy objections to the discovery.

## II. STANDARDS OF DISCOVERY

6. 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).

7. 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).

8. 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.

9. 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. 4<sup>th</sup> 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

10. Dominion Peoples' Interrogatory Set II, Nos. 13, 14 and 15:

A. Dominion Peoples' Interrogatory Set II, Nos. 13, 14 and 15:

13. Provide full and complete copies of any operating procedures followed by Equitable during the period 1965 to the present, involving the termination, abandonment or cessation of service to an existing customer for any reason, excluding for the non-payment of bills or upon the request of the customer.
14. Provide full and complete copies of any regulatory filing made by Equitable during the period 1965 to the present, involving the termination, abandonment or cessation of service to an existing customer for any reason, excluding for the non-payment of bills or upon the request of the customer. Provide copies of any and all orders, letters or other documents issued by the Commission related thereto.
15. Identify each and every instance during the period 1965 to the present where Equitable transferred customers to Dominion Peoples. Provide full and complete copies of any regulatory filing made by Equitable and copies of any and all orders, letters or other documents issued by the Commission related thereto.

B. Equitable's Objection:

Equitable has objected to Dominion Peoples' Interrogatory Set II, Nos. 13, 14 and 15 on the ground that "[t]his information has no relevance or materiality to any claim presented in Count V [and]..., likewise, has no relevance or materiality to any defense that Dominion Peoples might have with respect to Count V." Equitable also claims the request for information is "unduly burdensome."

C. Dominion Peoples' Motion to Compel:

In Count V, Equitable argues that the transfer of customers by Dominion Peoples to Equitable in 1971 was an "abandonment of service" and, therefore, Dominion Peoples is no longer authorized to provide service in the downtown area of Pittsburgh locally known as the "Golden Triangle." Equitable seeks the assessment of fines upon Dominion Peoples for failing to seek a certificate in 1971 before transferring the customers to Equitable.

Dominion Peoples strongly disagrees with these assertions. The transfer of customers from one utility to another is a commonplace event which is neither noteworthy nor legally significant. Dominion Peoples believes that *Equitable, itself, has transferred customers without relinquishing service territory and without requesting a certificate* from the Commission prior to doing so.

Equitable continues to lambaste Dominion Peoples for practices in which Equitable also participates and which are common practice in the natural gas industry. Self-righteous indignation is not a basis for allegation nor prosecution of Dominion Peoples.

Clearly, discovery focused upon whether Equitable also transfers customers and has done so without first filing an application for a certificate with the Commission, bears directly and persuasively in rebutting Equitable's claim that transfer of customers is the equivalent of abandonment of service territory. The documents presented as part of Attachment A to the Amended Complaint directly refer to the potential of a certificate filing by Equitable as part of that same 1971 transfer, but none is provided with the Complaint. Equitable now refuses to allow discovery on the subject. Yet, on the other hand, Equitable's complaint goes so far as to claim that Dominion Peoples should be sanctioned for failing to file a certificate. Is it not probative evidence that Equitable did not and has not filed applications for certificates either? Therefore, Dominion

Peoples is entitled to pursue discovery directed at Equitable's own transfer of customers and regulatory filings.

With respect to Equitable's claim of "burdensomeness," Equitable presents no estimate of the cost or time involved, only the claim that the inquiry would be burdensome. Equitable clearly spent a substantial amount of time developing a record of regulatory filings and transactions involving Dominion Peoples going back to 1968 in presenting its Count V to Your Honor and the Commission. It is Equitable's Count V that raises the spectre of past history and Equitable should not now be permitted to claim that doing research into its own records for purposes of discovery is burdensome simply because the information is now sought by Dominion Peoples.

Dominion Peoples requests that Your Honor compel Equitable to reply to Interrogatory Set II Nos. 13, 14 and 15.

11. Dominion Peoples' Interrogatory Set II, Nos. 16, 17 and 18:

A. Dominion Peoples' Interrogatory Set II, Nos. 16, 17 and 18:

16. Fully and completely state whether Equitable has ever offered to waive retainage to attract a prospective customer or to retain an exiting customer, even if Equitable was ultimately unsuccessful in obtaining or retaining the customer. 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 offered to be waived; the associated annual volumes; and the reason for offering such waiver. Provide any and all documents related thereto.
17. Provide a full and complete listing of all tariff rates, surcharges or other terms that Equitable is entitled to collect from or apply to a transportation customer or natural gas supplier, but which Equitable has waived, declined or otherwise forgone during the last five (5) calendar years. For each such category of item listed, identify: the number of affected customers and suppliers; the associated annual volumes; and the reason for forgoing the item. Provide any and all documents related thereto.
18. Provide a full and complete listing of all tariff rates, surcharges or other terms that Equitable is entitled to collect from or apply to a transportation

customer or natural gas supplier, but which Equitable has offered to waive, decline or otherwise forgo during the last five (5) calendar years, to attract a prospective customer or to retain an exiting customer, even if Equitable was ultimately unsuccessful in obtaining or retaining the customer. For each such category of item listed, identify: the number of customers and suppliers for whom the item was proposed to be waived, declined or forgone; the annual volumes that were or would have been associated; and the reason for waiving, declining or forgoing the item. Provide any and all documents related thereto.

B. Equitable's Objection:

Equitable has objected to Dominion Peoples' Interrogatories Set II, Nos. 16, 17 and 18 on the ground that its Complaint is against Dominion Peoples and Equitable's activities are irrelevant. Unlike prior discover on the question of Equitable's waiver of tariff provisions, Equitable has not asserted that it "does not maintain records" which would provide the information sought, as it did in Dominion Peoples' Motion to Compel an Answer to Set I, No. 22. Equitable's sole objection here is one of relevance.

C. Dominion Peoples' Motion to Compel:

Equitable's Complaint asserts that transportation rate discounting, retainage waiver, capital contributions, and longer contract terms are "illegal" and "anticompetitive." Dominion Peoples, for its part, states 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, to the best of Dominion Peoples' knowledge, also has discounted transportation rates, waived retainage, waived other tariff provisions, paid capital contributions, etc. Discovery directed to Equitable on the very same causes of action claimed by Equitable, 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.

One of Dominion Peoples' defenses in this case is that LDC competition in overlapping service territories is perfectly consistent with pronounced Commission law and sound public policy. Dominion Peoples' position further is that Equitable has competed with it for many years and that Equitable, indeed, has the wherewithal to compete with Dominion Peoples. Indeed, Mr. Murry Gerber, Chairman, President and Chief Executive Officer of Equitable Resources, acknowledges, as recently as August 25, 2003 in a letter to Mayor Tom Murphy regarding PACT, that "We recognize that the delivery of natural gas is competitive in Pittsburgh[.]" The service provided by Dominion Peoples to PACT is just another example of the competition that Equitable's chief executive concedes exists. For Equitable to turn around and claim foul is inconsistent with its own practices and that of the natural distribution market in Western Pennsylvania of which Equitable is a part. The Interrogatories simply solicit information to establish the factual basis of Dominion Peoples' position and defense in 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 an issue. How

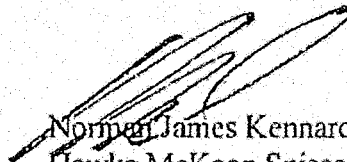
can Equitable argue in good faith that transportation discounting or the wavier of tariff provisions is anti-competitive or illegal if it does so too?

While Dominion Peoples originally objected to discovery by Equitable on tariff waivers, it withdrew its objection and has agreed to provide the information in response to Equitable Set III, No. 9. 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.

Dominion Peoples requests that Your Honor compel Equitable to reply to Interrogatory Set II Nos. 16, 17 and 18.

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, 19<sup>th</sup> Floor  
Pittsburgh, PA 15222-3197

Dated: March 5, 2004

SECRETARY'S BUREAU

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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**

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

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SECRETARY'S BUREAU

**BY FIRST CLASS MAIL**

Johnnie E. Simms, Senior Prosecutor  
Office of Trial Staff  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
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Senior Vice President and General Counsel  
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Pittsburgh, PA 15212

Kevin J. Moody, Esquire  
Wolf, Block, Schorr & Solis-Cohen LLP  
Locust Court Building, Suite 300  
212 Locust Street  
Harrisburg, PA 17101

  
\_\_\_\_\_  
Norman James Kennard

Dated: March 5, 2004

ORIGINAL

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

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FAX (717) 236-8278

CHARLES E THOMAS  
(1913 - 1998)

March 8, 2004

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

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2004 MAR 8 AM 4:21  
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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

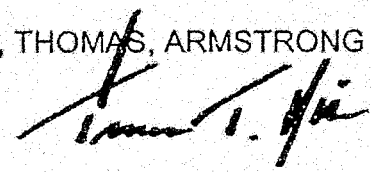
Dear Secretary McNulty:

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 Objections to Dominion Peoples' Interrogatories and Request for Production of Documents (Set III). Copies of Equitable's Objections are being served upon the persons and in the manner set forth on the Certificate of Service attached to the Objections.

Very truly yours,

THOMAS, THOMAS, ARMSTRONG & NIESEN

By



Thomas T. Niesen

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

040308-McNulty.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

SECRETARY'S BUREAU

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EQUITABLE GAS COMPANY'S  
OBJECTIONS TO DOMINION PEOPLES'  
INTERROGATORIES AND REQUEST FOR  
PRODUCTION OF DOCUMENTS (SET III)

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 III) 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 February 27, 2004, Equitable received Dominion Peoples' Interrogatories and Requests for Production of Documents (Set III) Nos. 1 and 2.

Objection to Set III Interrogatories Nos. 1 and 2

3. Equitable objects to Dominion Peoples' Set III Interrogatories Nos. 1 and 2 which state as follows:

1. Reference Tariff Gas-Pa. P.U.C. No. 22, Special Provisions regarding waiver of Balancing Charges. Provide a full and complete listing of all instances where Equitable has waived, declined or otherwise forgone the collection of Balancing Charges during the last five (5) calendar years. For each instance, identify: the number of affected customers and suppliers, by tariffed rate class, for whom Balancing Charges were waived, declined or forgone; the associated volumes; and the reason for waiving, declining or forgoing Balancing Charges. Provide any and all documents related thereto.
2. Reference Tariff Gas-Pa. P.U.C. No. 22, Special Provisions regarding waiver of Balancing Charges. Provide a full and complete listing of all instances where Equitable has offered to waive, decline or otherwise forgo the collection of Balancing Charges during the last five (5) calendar years to attract a prospective customer or to retain an existing customer, even if Equitable was ultimately unsuccessful in obtaining or retaining the customer. For each instance, identify: the number of affected customers and suppliers, by tariffed rate class, for whom Balancing Charges were proposed to be waived, declined or forgone; the associated volumes; and the reason for waiving, declining or forgoing the collection of Balancing Charges. Provide any and all documents related thereto.

4. The information requested in Interrogatories Nos. 1 and 2 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."

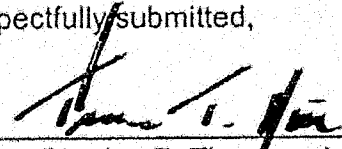
5. The last sentence of Interrogatories Nos. 1 and 2 would, moreover, result in the disclosure of customer identity information. Equitable objects to the requested disclosure of documents on even a confidential basis. In addition, the request in Interrogatory No. 2 for a full and complete listing of all instances where Equitable has *offered* to waive, decline or otherwise forgo the collection of Balancing Charges during

the last five (5) calendar would require an unreasonable burdensome investigation, if, indeed, any answer to the interrogatory could be provided at all.

WHEREFORE, Equitable Gas Company objects to The Peoples Natural Gas Company, d/b/a Dominion Peoples, Interrogatories and Requests for Production of Documents (Set III) as aforesaid.

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.

March 8, 2004

Objectors to Peoples' Third Set of Interrogatories wpd

SECRETARY'S BUREAU

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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 8<sup>th</sup> day of March, 2004, served a true and correct copy of Equitable Gas Company's Objections to Dominion Peoples' Interrogatories and Requests for Production of Documents (Set III), upon the persons and in the manner set forth below:

**FIRST CLASS MAIL, POSTAGE PREPAID**

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

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  
625 Liberty Avenue  
Pittsburgh, PA 15222

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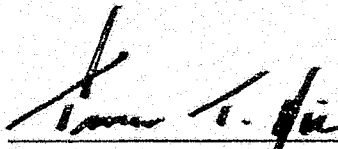
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Johnnie E. Simms, Senior Prosecutor  
Office of Trial Staff  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
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Harrisburg, PA 17105-3265

Dennis S. Shilobod, General Counsel  
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Daniel Clearfield, Esquire  
Kevin J. Moody, Esquire  
Wolf, Block, Schorr and Solis-Cohen, LLP  
212 Locust Street  
Harrisburg, PA 17101

  
\_\_\_\_\_  
Thomas T. Niesen

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

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March 9, 2004

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MAR 10 PM 9:17  
SECRETARY'S BUREAU  
THOMAS (1913-1988)

**BY FAX AND FIRST CLASS MAIL**

William T. Hawke, Esquire  
Norman J. Kennard, Esquire  
Hawke, McKeon Sniscak & Kennard LLP  
100 North Tenth Street  
P. O. Box 1778  
Harrisburg, PA 17105

DOCUMENT  
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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

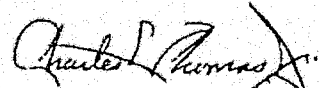
Gentlemen:

Enclosed is Equitable Gas Company's Fifth Set of Interrogatories to The Peoples Natural Gas Company in the above matter. Please 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: Certificate of Service  
James J. McNulty, Secretary (w/o encl.)  
Daniel L. Frutchey (w/encl.)  
John M. Quinn (w/encl.)

040300-Hawke.wpd

RJP

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

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ORIGINAL

(CHARLES E. THOMAS  
1013-1098)

March 10, 2004

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

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SECURITY BUREAU

In re: Docket No. C-20031128  
Equitable Gas Company, a Division of Equitable Resources, Inc., Complainant  
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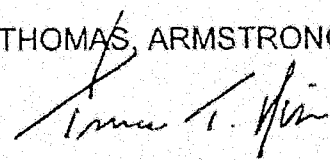
Dear Secretary McNulty:

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 II. 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



Thomas T. Niesen

Encl.

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

042310-McNulty, wpd

RJP

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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

**DOCKETED**

MAR 16 2004

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

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 II), as follows:

1. Before your Honor is the motion of Dominion Peoples to compel responses to its Set II Interrogatories to Equitable Nos. 13, 14, 15, 16, 17 and 18.

Interrogatories Nos. 13, 14 and 15

2. Dominion Peoples Set II Interrogatories Nos. 13, 14 and 15 ask as follows:

- 13. Provide full and complete copies of any operating procedures followed by Equitable during the period 1965 to the present, involving the termination, abandonment or cessation of service to an existing customer for any reason, excluding for the nonpayment of bills or upon the request of the customer.
- 14. Provide full and complete copies of any regulatory filing made by Equitable during the period 1965 to the present, involving the termination, abandonment or cessation of service to an existing customer for any reason, excluding for the non-payment of bills or upon the request of the customer. Provide copies of any and all

orders, letters or other documents issued by the Commission related thereto.

15. Identify each and every instance during the period 1965 to the present where Equitable transferred customers to Dominion Peoples. Provide full and complete copies of any regulatory filing made by Equitable and copies of any and all orders, letters or other documents issued by the Commission related thereto.

3. Interrogatories Nos. 13, 14 and 15 are part of several of Dominion Peoples Set II Interrogatories distributed by Dominion Peoples in response to Equitable's Count V - Lack Of Service Authority. In Count V, Equitable avers that Dominion Peoples abandoned its service in the Golden Triangle Area in 1971 and transferred its Golden Triangle Area customers to Equitable. Unlike the other of Dominion Peoples Set II Interrogatories concerning Count V (Interrogatories Nos. 1 through 12 to which Equitable did not object), Interrogatories Nos. 13, 14 and 15 are unrelated to the issue of Dominion Peoples' abandonment of service in the Golden Triangle Area.

4. Dominion Peoples does not relate the investigation it would require or the information it would obtain in response to Interrogatories Nos. 13, 14 and 16 to any issue raised in either Count V or Dominion Peoples' Answer to it. Instead, Dominion Peoples attempts to support Interrogatories Nos. 13, 14 and 15 by stating, at page 5 of its Motion to Compel, that it "believes that *Equitable, itself, has transferred customers without relinquishing service territory and without requesting a certificate from the Commission prior to doing so.*"

5. Dominion Peoples should not be allowed to use the very specific averments of Count V concerning Dominion Peoples' abandonment of service in the Golden Triangle Area to conduct a fishing expedition into Equitable's operating practices and regulatory filings over the past forty years. If Dominion Peoples believes that Equitable has engaged in the unauthorized transfer of customers, it should file the appropriate complaint under oath or affirmation. Equitable will respond as appropriate. Based on the pleadings

presently before the Commission, there is no justification for Interrogatories Nos. 13, 14 or 15.

6. In further support of its Motion to Compel, Dominion Peoples refers to documents attached as Attachment A to Count V which refer to a possible certificate filing by Equitable as part of Dominion Peoples' transfer of its Golden Triangle Area customers to Equitable in 1971. Dominion Peoples states that Equitable now refuses to allow discovery on this subject. This is simply not the case. Interrogatory No. 11 of Dominion Peoples Set II Interrogatories states as follows:

11. Provide a full and complete copy of any and all application(s) filed by Equitable with the Commission relating to the transfer of customers described at Count V. Provide copies of any and all orders, letters or other documents issued by the Commission related thereto.

7. Dominion Peoples' Interrogatory No. 11 asks for copies of any application filed by Equitable in connection with the Dominion Peoples transfer of customers. Equitable did not object to Interrogatory No. 11 inasmuch as the question seeks information directly related to the Count V claim of Dominion Peoples' abandonment of service to the Golden Triangle Area. It is, thus, simply wrong for Dominion Peoples to claim that Equitable is refusing to allow discovery on this subject. Equitable is, however, attempting to limit discovery to that which is relevant to the issues at hand. In this regard the difference between the focused request of Interrogatory No. 11 and the broad, unfocused requests of Interrogatories Nos. 13, 14 and 15 is noteworthy. Interrogatories Nos. 13, 14 and 15 which embark on a forty year fishing expedition are properly objectionable.

**Interrogatories Nos. 16, 17 and 18**

8. Dominion Peoples Set II Interrogatories Nos. 16, 17 and 18 ask as follows:
  16. Fully and completely state whether Equitable has ever offered to waive retainage to attract a prospective customer or to retain an

exiting customer, even if Equitable was ultimately unsuccessful in obtaining or retaining the customer. 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 offered to be waived; the associated annual volumes; and the reason for offering such waiver. Provide any and all documents related thereto.

17. Provide a full and complete listing of all tariff rates, surcharges or other terms that Equitable is entitled to collect from or apply to a transportation customer or natural gas supplier, but which Equitable has waived, declined or otherwise forgone during the last five (5) calendar years. For each such category of item listed, identify: the number of affected customers and suppliers; the associated annual volumes; and the reason for foregoing the item. Provide any and all documents related thereto.
18. Provide a full and complete listing of all tariff rates, surcharges or other terms that Equitable is entitled to collect from or apply to a transportation customer or natural gas supplier, but which Equitable has offered to waive, decline or otherwise forgo during the last five (5) calendar years, to attract a prospective customer or to retain an exiting customer, even if Equitable was ultimately unsuccessful in obtaining or retaining the customer. For each such category of item listed, identify: the number of affected customers and suppliers for whom the item was proposed to be waived, declined or forgone; the associated annual volumes that were or would have been associated; and the reason for waiving, declining or foregoing the item. Provide any and all documents related thereto.

9. Contrary to Dominion Peoples' assertion in its Motion to Compel, the grounds for Equitable's Objection to Interrogatories Nos. 16, 17 and 18 were more than just relevance. Equitable's Objection in its entirety stated as follows:

The information requested in Interrogatories Nos. 16, 17 and 18 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." The last sentence of Interrogatories Nos. 16, 17 and 18 would, moreover, result in the disclosure of customer identity information. Equitable objects to the requested disclosure of documents on even a confidential basis.

10. Dominion Peoples attempts to support the reasonableness of Interrogatories Nos. 16, 17 and 18 by arguing that Equitable in its Complaint asserts that transportation rate discounting, retainage waiver, capital contributions and longer contract terms are illegal and anticompetitive. This characterization is inaccurate. Equitable's Complaint alleges a pattern of conduct by Dominion Peoples which is very different from the characterization of the Complaint offered by Dominion Peoples' in its Motion to Compel.

11. Waiver of retainage is illustrative. Waiver of retainage is, certainly, an important part of Count II - Predatory Pricing. Dominion Peoples, however, did more than just discount retainage to PACT. It waived retainage in its entirety. It waived the charge without economic justification, the result being a below cost, predatory rate. As presented in Count II, applying Dominion Peoples presently effective retainage rate of 5.3% to the current cost of gas supply produces a rate of \$0.28 per Mcf which exceeds the \$0.17 per Mcf rate offered for 15 years by Dominion Peoples by 65%. The rate being charged by Dominion Peoples to PACT, thus, does not even cover the cost of the fuel to bring PACT's gas through the Dominion Peoples' system to the PACT premises.

12. Count III - Unfair Competition presents further explanation of Equitable's Complaint. In Count III, Equitable avers that the Dominion Peoples actions are indicative of a pattern of unfair competition, examples of which are:

- a. Dominion Peoples on a consistent and continuing basis has offered to waive retainage in its entirety for certain transportation customers, including customers currently served by Equitable whose contracts are about to expire. As a consequence, in a limited number of situations, the only way that Equitable could retain the load was to likewise waive retainage.
- b. Dominion Peoples is also:
  - (i) Discounting transportation charges to such a degree that it appears that economic considerations were ignored;

- (ii) Entering into long term contracts for as long as 15 years with no provision for reopening transportation rates; and
- (iii) Structuring contracts so all the revenue goes to Dominion Peoples and the risk of under recovery is borne by its other customers.

13. Equitable provided still further explanation for its Complaint in Count III where it averred that there was no rational reason for Dominion Peoples to offer such a deep transportation discount or waiver of retainage to PACT. Equitable had been charging PACT a rate of \$ .35 per Mcf for the first 750,000 Mcf and \$ .25 per Mcf for all additional volumes, plus retainage of 3.5%. Equitable had offered to renew the agreement at a higher, but still discounted, transportation rate of \$.59 per Mcf plus 3.5% retainage. At \$.30 per Mcf for the cost of gas, the total cost per Mcf to PACT under Equitable's initial offer was roughly \$.76 per Mcf. Therefore, Dominion Peoples' offer to PACT was less than one-fourth of the rate offered by their only other competition. Clearly, Dominion Peoples could have offered a much higher rate. More telling, however, is the undeniable truth that there was no valid reason to waive retainage with so much room left between Equitable's proposed rate and Dominion Peoples' offer.

14. The foregoing is helpful in establishing the boundaries of relevant discovery in this matter. The issues presented by Equitable's Complaint are not whether Dominion Peoples or Equitable discounts its discountable rates and charges. Clearly, both companies do. What is at issue here is whether Dominion Peoples (not Equitable) is engaged in a pattern of conduct and pricing unrelated to economic theory and without underlying cost justification. Certainly, the circumstances and pricing that has occurred in respect to PACT leads to the conclusion that Dominion Peoples is engaged in such a pattern.

15. If Dominion Peoples believes that Equitable has engaged in a similar pattern of conduct, it should file the appropriate complaint under oath or affirmation. Equitable will respond as appropriate. In the absence of such a pleading, Dominion

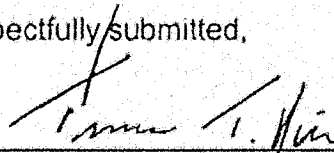
Peoples should not be allowed to ask and Equitable should not be required to submit to discovery as broad as that presented in Interrogatories Nos. 16, 17 and 18 which goes beyond anything asked by Equitable to date of Dominion Peoples. The discovery sought in Interrogatories Nos. 16, 17 and 18 is not relevant or material to the issues at hand. Of equal importance, Dominion Peoples should not be allowed to use unwarranted discovery as a means to obtain copies of "all documents" along with knowledge of Equitable's marketing practices related to the matters that are the subject of Interrogatories Nos. 16, 17 and 18.

16. Equitable would point out further in regard to Interrogatories Nos. 16, 17 and 18 that some of the requested information is old ground. Interrogatories Nos. 16, 17 and 18, for example, seek information concerning any offers by Equitable to waive retainage and other tariff rates to attract a prospective customer or retain an existing customer. Dominion Peoples Set I Interrogatory No. 22 asked a similar question in the context of customers previously served by another natural gas distribution company. In response to Dominion Peoples' Set I Interrogatory No. 22, Equitable explained that it does not maintain records which would indicate whether a customer has been served by another gas distribution company. Although Equitable was unable to answer Set I 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. In an Interim Order Denying Motion to Compel dated January 22, 2004, Judge Nemec concluded that Interrogatory No. 22 had been satisfactorily answered. Equitable has no other information it could provide in response to Interrogatory No. 16 and Equitable does not, in any event, keep a record of unaccepted offers which would enable it to respond to Interrogatory No. 18.

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 II).

Respectfully submitted,

By



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

March 10, 2004

Answer to Peoples' Motion to Compel (Second Set) wpc

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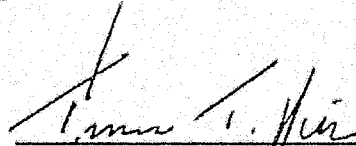


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March 10, 2004

Administrative Law Judge Michael A. Nemec  
1103 Pittsburgh State Office Building  
300 Liberty Avenue  
Pittsburgh, PA 15222

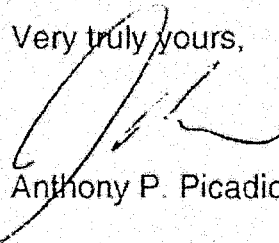
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In Re: Docket No. C20031128  
Equitable Gas Company, a Division of Equitable  
Resources, Inc., Complainant  
v.  
The Peoples Natural Gas Company, d/b/a  
Dominion Peoples, Respondent

Dear Judge Nemec:

With respect to the telephone conference to take place on March 15, 2004, at 10:00 A.M., please be advised that I will be in my office and will have with me Dennis S. Shilobod, PACT's co-counsel, as well as Robert Fazio, President of Pittsburgh Allegheny County Thermal, Ltd. Please dial 412-288-4000.

Very truly yours,



Anthony P. Picadio

APP/lrk

cc: Charles E. Thomas, Jr., Esquire  
Norman J. Kennard, Esquire  
Johnnie E. Simms, Esquire  
Daniel L. Frutchey, Esquire  
James McNulty  
Mark S. Stewart, Esquire

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March 11, 2004

VIA HAND DELIVERY

**DOCUMENT  
FOLDER**

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

Re: Equitable Gas Company v. The Peoples Natural Gas Company d/b/a Dominion Peoples; Docket No. C-20031128; **DOMINION PEOPLES' RESPONSE TO EQUITABLE GAS COMPANY'S SET II INTERROGATORY NOS. 5 and 8 AND SET III INTERROGATORY NO. 9**

Dear Mr. Thomas.

Enclosed please find Dominion Peoples' Responses to Equitable Gas Company's Set II Interrogatory Nos. 5 and 8 and Set III, No. 9 in 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: James J. McNulty, Secretary (without enclosure)  
Susan George (without enclosure)

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

**CERTIFICATE OF SERVICE**

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

**BY FIRST CLASS MAIL**

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

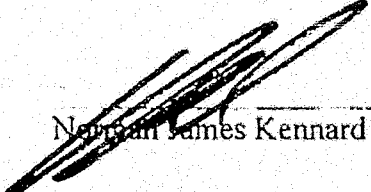
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Nathan James Kennard

Dated: March 11, 2004

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

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CHARLES E. THOMAS  
(1913 - 1998)

March 11, 2004

**BY HAND DELIVERY**

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Norman J. Kennard, Esquire  
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100 North Tenth Street  
P. O. Box 1778  
Harrisburg, PA 17105

**DOCUMENT  
FOLDER**

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

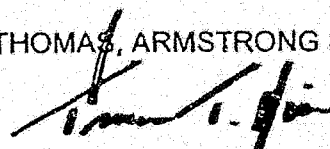
Gentlemen:

Enclosed are Equitable Gas Company's Responses to Dominion Peoples' Set II Interrogatories Nos. 2, 4, 7, 10, 11, 12, 29 and 30, inclusive. I hope to have the remainder of the responses to you tomorrow. 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



Thomas T. Niesen

Encl.

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

Hawke

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McKeon

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March 12, 2004

VIA FACSIMILE  
AND FIRST CLASS MAIL

Honorable Michael Nemeč  
Pennsylvania Public Utility Commission  
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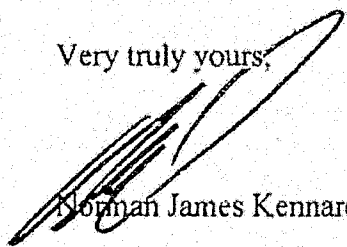
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Re: Equitable Gas Company, a Division of Equitable Resources, Inc. v. The Peoples Natural Gas Company d/b/a Dominion Peoples: Docket No. C-20031128;  
**DOMINION PEOPLES' SECOND PREHEARING CONFERENCE MEMORANDUM**

Dear Administrative Law Judge Nemeč:

Enclosed is a copy of The Peoples Natural Gas Company d/b/a Dominion Peoples' Second Prehearing Conference Memorandum. This filing has been served in accordance with the attached Certificates of Service.

Very truly yours,



Norman James Kennard

NJK/WTI/tap  
Enclosure

cc: James J. McNulty, Secretary  
Susan G. George, Esquire

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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**THE PEOPLES NATURAL GAS COMPANY  
t/d/b/a DOMINION PEOPLES'  
SECOND PREHEARING CONFERENCE MEMORANDUM**

AND NOW, this 12<sup>th</sup> day of March 2003, comes The Peoples Natural Gas Company d/b/a Dominion Peoples ("Dominion Peoples"). by its counsel, and submits its Second Prehearing Conference Memorandum in this matter.

**I. Case Status**

This proceeding commenced with a Complaint filed by Equitable Gas Company, a division of Equitable Resources, Inc. ("Equitable") on August 29, 2003, objecting to the provision of gas distribution by Dominion Peoples service to Pittsburgh Allegheny County Thermal Ltd. ("PACT"), a non-profit district steam heat company serving an area in downtown Pittsburgh. The original counts were four; Duplication of Facilities (Count I); Predatory Pricing (Count II); Unfair Competition (Count III); and Rate Discrimination (Count IV).

In its Answer filed September 23, 2003, Dominion Peoples responded by stating that PACT requested Dominion Peoples' service as a result of numerous complaints about the service limitations and costs imposed upon PACT by Equitable. PACT competes against Equitable Gas Service for heating load in downtown Pittsburgh, and PACT sought lower cost, greater reliability, and enhanced supply availability from Dominion Peoples. PACT constructed a pipeline to interconnect with Dominion Peoples at a point of delivery located at Ross Street and Forbes Avenue.

Under Pennsylvania law, Dominion Peoples has an obligation to provide service to members of the public and it is the Commission's policy that it is in the public interest to recognize the customer's right to elect among natural gas distribution companies with overlapping service territories,<sup>1</sup> a determination which is unaffected by the Natural Gas Customer Choice and Competition Act. For example, in 1994, this Commission found that it is in the public interest for natural gas distribution companies to compete in overlapping service territories and that such a policy would not "result in the parade of horrors set forth by Equitable."

Further, Dominion Peoples' Answer avers that the rates and terms contained in its Agreement with PACT are fully and completely in compliance with Commission-approved and currently effective tariffs. As is also the case with Equitable, Dominion Peoples' tariff permits it to forego collection of various terms and rates. In summary, Dominion Peoples' Answer asserted that Equitable's Complaint completely has failed to allege any act or thing done in violation of statute, regulation or order.

Subsequently, Equitable amended its Complaint by filing a new Count V, which asserted that, based upon the transfer of certain customers and facilities to Equitable by Dominion Peoples in 1971, Dominion Peoples should be deemed to have abandoned its authority to provide service in the area of Pittsburgh colloquially referred to as the "Golden Triangle." Dominion Peoples answered the

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<sup>1</sup> *Equitable Gas Company v. T.W. Phillips Gas and Oil Company*, 82 Pa. PUC 615 at 622 (1994).

new Count on March 5, 2004, stating that its charter authority to provide service in the City of Pittsburgh, or any subpart thereof, was not abandoned by the 1971 transfer of customers, inasmuch as no service territory was surrendered as part of that transaction. Dominion Peoples has continued to receive requests for service and to make responsive offers to provide service in the downtown Pittsburgh area including in the 1980s. Moreover, even were Equitable's dubious legal theories correct, the point of delivery with PACT is outside of what Equitable defines as the "Golden Triangle."

The first prehearing conference was held on November 20, 2003, and a schedule was developed for the presentation of testimony and hearings. Subsequently, Equitable requested, by a Motion dated January 23, 2004, that the schedule be extended by sixty (60) days. Dominion Peoples stipulated to this request, and it was approved by Your Honor. This second prehearing conference has been established for the purpose of rescheduling those testimony and hearing dates.

## **II. Outstanding Discovery Issues**

Earlier this week, Equitable and Dominion Peoples exchanged the remaining outstanding answers to Equitable's Sets II and III and Dominion Peoples' Set II. Discovery is progressing on other pending discovery.

However, there is one discovery dispute that requires Your Honor's immediate attention. This pressing discovery issues involves Equitable's continuing refusal to provide information regarding its own pricing and tariff waiver practices while at the same time seeking extensive discovery of Dominion Peoples on the same topic. Specifically, answers to Dominion Peoples Set II, Nos. 16, 17 and 18 and Set III, Nos. 1 and 2 are outstanding.

Competition among local gas distribution companies with overlapping service territories is a fact of life in western Pennsylvania, and, as stated previously, it has been found by the Commission, and affirmed by the Courts, to be in the public's best interest. As Mr. Murry Gerber, Chairman, President and Chief Executive Officer of Equitable acknowledged as recently as August 25, 2003, in a letter to Pittsburgh Mayor Tom Murphy: "We recognize that the delivery of natural gas is competitive in Pittsburgh[.]" For Equitable to now turn around and claim foul before this Commission is inconsistent with Equitable's own practices and that of the natural gas distribution market in western Pennsylvania of which Equitable is a part.

One of Dominion Peoples' primary defenses with regard to agreement to serve PACT is that the gas industry in western Pennsylvania has been highly competitive for many years, and the primary focus of that competition has been on price. Consequently, the gas utilities in western Pennsylvania with overlapping service territories have elected not to charge all items that their tariffs allowed; indeed, the authority to make such an election not to charge certain tariff prices has been expressly stated in tariffs for many years.

Equitable has all the same tools to compete as Dominion Peoples. Equitable, in a settlement of its 2001 §1307(f) proceeding, revised its tariff to allow it to waive retainage both to protect existing load and to obtain new load. "The Joint Petitioners further agree that the Company may discount its fuel retention to no less than the level incurred to serve or retain competitively-situated customers who otherwise would leave the system and for new and incremental load that would not be added if the discount were not extended."<sup>2</sup> In that same case, Equitable's already existing "right

---

<sup>2</sup> *Pennsylvania Public Utility Commission v. Equitable Gas Company*, R-00016132, Recommended Decision dated August 2, 2001 at 10, approved by the full Commission in Opinion And Order adopted September 26, 2001 at 5-6.

to flex the [banking and balancing] to be applied to competitive customers” was affirmed.<sup>3</sup> As is true for all gas distribution companies, Equitable may charge discounted tariff rates.

The current situation involving PACT is just another competition situation between Dominion Peoples and Equitable. Most significantly, this policy of competition among LDCs expressly has been found to be in the public interest.

It is absolutely critical to the presentation of Dominion Peoples’ defense to develop a factual record in this proceeding regarding the marketing and pricing techniques employed by Equitable. While Equitable seeks to focus on Dominion Peoples’ behavior exclusively in a vacuum, Your Honor and the Commission need to understand more broadly the operation of the Western Pennsylvania marketplace. With this information, Peoples can fully develop a record that will enable Your Honor and the Commission to determine if Equitable’s accusations of predatory pricing and unfair competitive practices are accurate or determine that all competing gas utilities in Western Pennsylvania, including Equitable itself, participate in these competitive practices.

Equitable has posed discovery and Dominion Peoples has answered discovery on the topic of tariff waivers and discounts:

EGC-Set II-5:

For each of the last five (5) calendar years, identify by Natural Gas Distribution Company (“NGDC”) competitor (i.e. Columbia Gas, T.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.

EGC Set II-9:

With respect to Peoples’ response to EGC-Set II-4, please:

- a. State the identity of each of Peoples’ customers for which it retains 0% “as gas used in Company operations and unaccounted for gas”.
- b. State the identity of each of Peoples’ customers for which it retains greater than 0% but less than 5.3% “as gas used in Company operations and unaccounted for gas”.

---

<sup>3</sup> *Id.*, Recommended Decision at 8; Opinion and Order at 5.

Discovery directed at Equitable on the very same causes of action claimed by Equitable is a completely relevant scope of discovery. It would be fundamentally unfair were Equitable allowed discovery on Dominion Peoples' tariff practices, but Dominion Peoples denied the same access to Equitable's information.

Equitable has stated in its answer to the second motion to compel that "Clearly, both companies do [discount(?) tariffed rates and charges]."<sup>4</sup> All Dominion Peoples seeks to do is obtain the facts underlying that admission.

This discovery dispute is ripe for decision by Your Honor.

### III. Rescheduling

Originally, hearings were scheduled to be held on May 18-20, 2004. The agreed upon sixty (60) day extension would have the effect demonstrated in the following table:

EVENT	ORIGINAL DUE DATE	60 DAY EXTENSION
Initial Discovery Period Ends	January 30, 2004	March 30, 2004
EQ Prefiled Direct Testimony	February 27, 2004	April 27, 2004
DP Prefiled Direct Testimony	April 16, 2004	June 15, 2004
EQ Prefiled Rebuttal Testimony	May 7, 2004	July 6, 2004
DP Surrebuttal Outline	May 14, 2004	July 13, 2004
Hearings	May 18-20, 2004	July 19-21, 2004

Dominion Peoples proposes to modify the simple sixty (60) day extension of the previously established dates to obtain more time within which to submit direct testimony. It is clear that Equitable intends to present multiple witnesses, including expert witnesses. While Dominion Peoples has sought to obtain information about this testimony in discovery, Equitable has objected to the Interrogatories, seeking to preclude any discovery in its testimony for its due date. Dominion

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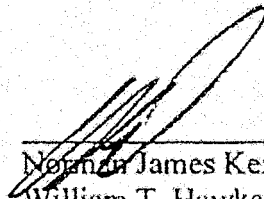
<sup>4</sup> Equitable's Answer To Dominion Peoples Motion To Compel Responses to Interrogatories Set II at 6.

Peoples has not moved to compel responses but rather suggests that a minimum of sixty (60) days be provided before Dominion Peoples' testimony is required. This is reasonable given that Equitable has had eight (8) months between the filing of its Complaint and the submission of testimony and as of this date, Dominion Peoples does not know the nature of Equitable's expert's opinion and, therefore, does not know what, if any, outside expert testimony Dominion Peoples may need.

Therefore, Dominion Peoples proposes that its pre-filed direct testimony be due on July 5, 2004 and hearings be held in the early part of August 2004.

Dominion Peoples contacted Equitable on Wednesday, March 10, 2004 and offered to stipulate a revised schedule with Equitable and continues to be willing to do so.

Respectfully submitted,



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Hawke McKeon Sniscak & Kennard LLP  
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(717) 236-1300

Susan G. George, Esquire  
The Peoples Natural Gas Company  
625 Liberty Avenue  
Pittsburgh, PA 15222

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

DATED: March 12, 2004

RECEIVED  
2004 MAR 12 PM 1:15  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the foregoing The Peoples Natural Gas Company d/b/a Dominion Peoples' Prehearing Conference Memorandum upon the person and in the manner indicated below.

**BY HAND DELIVERY**

Johnnie E. Simms, Senior Prosecutor  
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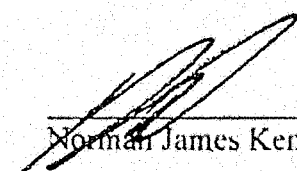
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Daniel L. Frutchey  
Senior Vice President and General Counsel  
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Pittsburgh, PA 15212

  
\_\_\_\_\_  
Norman James Kennard

Dated: March 12, 2004

REC-11730  
2004 MAR 12 PM 4:15  
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March 12, 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

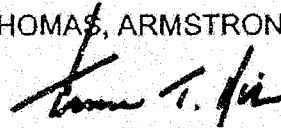
Gentlemen:

Enclosed is Equitable Gas Company's Response to Dominion Peoples' Set II Interrogatory No. 1.  
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



Thomas T. Niesen

Encl.

cc: Susan G. George, Esquire (w/encl.)  
Johnnie E. Simms, Esquire (w/encl.)  
Anthony P. Picadio, Esquire (w/encl.)  
Dennis S. Shilobod, Esquire (w/encl.)  
Kevin J. Moody, Esquire (w/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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March 15, 2004

James J. McNulty, Secretary  
Pennsylvania Public Utility Commission  
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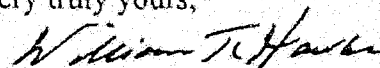
Re: Equitable Gas Company, a Division Of Equitable Resources, Inc., v. The Peoples Natural Gas Company d/b/a Dominion Peoples; Docket No. C-20031128;  
**OBJECTION OF THE PEOPLES NATURAL GAS COMPANY, D/B/A DOMINION PEOPLES TO EQUITABLE GAS COMPANY'S INTERROGATORIES SET V Nos. 2, 4, 8, 11, 24 and Nos. 5-7**

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' Objection to Equitable Gas Company's Interrogatories Set V, Nos. 2, 4, 8, 11, 24 and Nos. 5-7 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,



William T. Hawke  
Counsel for Dominion Peoples

NJK/tap

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MAR 15 PM 4:21  
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MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

101

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

~~DOCKETED~~  
APR 19 2004

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OBJECTIONS OF THE  
PEOPLES NATURAL GAS COMPANY,  
D/B/A DOMINION PEOPLES  
TO EQUITABLE GAS COMPANY'S  
INTERROGATORIES SET V, Nos. 2, 4, 8, 11, 24 and Nos. 5-7

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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 objects to Equitable Gas Company's ("Equitable" or "EGC") Set V. Nos. 2, 4, 8, 11, 24 and Nos. 5-7.

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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. Under cover letter dated March 9, 2004, Equitable served its Fifth Set of Interrogatories on Dominion Peoples.

## II. OBJECTIONS

3. Dominion Peoples objects to Equitable's Set V, Nos. 2, 11 and 24 which are as follows:

2. With respect to Peoples' response to OTS-P-1, provide the most recent class cost of service study, and all supporting documentation, filed before the Pennsylvania Public Utility Commission, regardless of whether the study was used to develop final rates in that case.

11. Provide the following financial information:

- a. the latest Commission-approved capital structure and component costs that form the basis for Dominion Peoples' rates. If the Commission did not approve a capital structure and related cost rates, during the past ten years, please provide the capital structure and cost rates for Peoples' most recent annual report to the Commission.
- b. the total effective tax rate (including any gross receipts taxes and local property and income taxes)
- c. current depreciation rates by FERC account
- d. the Company's assumed inflation rate for financial projections.

24. As a follow-up to Peoples' response to Equitable Set III Interrogatory No. 11, what was the capital structure claimed in Peoples' most recent general rate proceeding? Also, please provide a copy of Peoples' three most recent quarterly reports to the Pennsylvania Public Utility Commission.

4. Dominion Peoples objects on the grounds of relevance. While a class cost of service study is relevant to establishing rates in a base rate case, the current proceeding involves Dominion Peoples service to Pittsburgh Allegheny County Thermal Ltd. and not to a rate class. Under the Commission's transportation regulations, the maximum rate may be flexed downward. As stated by ALJ Holland (now Commissioner Holland) in Dominion Peoples 1990

rate proceeding, "unquestionably, under either ceiling proposed by the parties, there is the flexibility to negotiate down to an individual customer rate as low as one cent per Mcf." *The Pennsylvania Public Utility Commission, et al. v. The Peoples Natural Gas Company*, R-901607 (August 15, 1990, 0. 29-30), (adopted by the Commission September 28, 1990). The same situation exists today where negotiated contracts are not unusual; cost of service studies simply are irrelevant in reviewing transportation rates except in the context of a base rate case.

As was the case with the cost of service study, the financial information requested in Interrogatory No. 11, including the latest Commission-approved capital structure and component costs of Dominion Peoples' rates, is irrelevant.

5. Dominion Peoples objects to Equitable's Set V, No. 4 which is as follows:

4. Provide all support for Dominion Peoples' tariffed BB&A charges of \$0.1384/Mcf and \$0.0320/Mcf (effective January 1, 2004). Such support should include, but not necessarily be limited to, the cost basis upon which such charges are based, the billing determinants assumed in the rate calculation, and any other calculations needed to proceed from per book amounts to the filed tariffs. To the extent that such information appears in the Company's annual 1307(f) filing, provide a citation to the specific portion of the filing that contains the necessary information.

6. Dominion Peoples objects on the grounds of relevance. Dominion Peoples' tariffed banking, balancing and advancing ("BB&A") rates simply are not part of this proceeding. Indeed, unlike Equitable, Dominion Peoples is not permitted under its tariff to waive BB&A charges as Equitable does.

7. Dominion Peoples objects to Equitable's Set V, No. 8 which is as follows:

8. Provide any resource expansion plans for the next 15 years, or for the longest forecast period available.

8. Dominion Peoples objects on the grounds of relevance. With regard to any "resource expansion plan" that Dominion Peoples may have, similarly, as this case involves service to PACT, any such plan is irrelevant to any fact and issue in this case.

9. Dominion Peoples objects to Equitable's Set V, Nos. 5-7 which are as follows:

5. Provide the number of customers by service type (Firm, Interruptible, Transport, etc.) and class (Residential, Commercial, Industrial, etc) on a monthly basis for the most recent five-year period and the 15-year forecast horizon. If a monthly forecast is not available, provide data on an annual basis. If a 15-year forecast is not available, provide data for the longest forecast period available. Please provide this information in electronic format if available.
6. Provide sales information for each of the customer breakdown provided in response to Interrogatory No. 5 on a monthly basis for the most recent five-year period and the 15-year forecast horizon. If a monthly forecast is not available, please provide data on an annual basis. If a 15-year forecast is not available, provide data for the longest forecast period available. Please provide this information in electronic format if available.
7. Provide peak day information for each of the customer breakdowns provided in response to Interrogatory No. 5 for the most recent five-year period and the 15-year forecast horizon. If a 15-year forecast is not available. Please provide this information in electronic format if available.

10. Dominion Peoples objects on grounds of both relevance and unreasonableness.

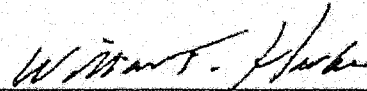
A. Relevance. This proceeding, as noted above, is a complaint brought by Equitable objecting to service provided by Dominion Peoples to a single customer located in Pittsburgh. Equitable's Interrogatory Set V, Nos. 5-7, asks Dominion Peoples to track hundreds of thousands of customers, their volumes and their peak day usage by all service types and customer classes by month for the last five years and prospectively for the next fifteen years. No

reasonable definition of the scope of this proceeding can include such an expansive request for information involving all of Dominion People's service types and customer classes.

B. Unreasonableness. The data compilation required would be extremely large and time consuming to assemble. For the historic period alone, this equates to the calculation of 60 data points for each and every individual service category and customer class for over 350,000 individual customers that Equitable asks Dominion Peoples to identify. The compilation of the information requested by Equitable would require the expenditure of substantial time, effort and expense.

WHEREFORE, The Peoples Natural Gas Company d/b/a Dominion Peoples objects to Equitable Gas Company Interrogatory Set V, Nos. 2, 4, 8, 11, 24 and Nos. 5-7.

Respectfully submitted,



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

Counsel for Dominion Peoples

DATED: March 15, 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(s) and in the manner indicated below

BY HAND DELIVERY

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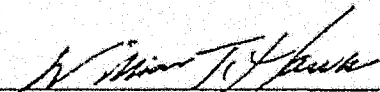
Johnnie E. Simms, Senior Prosecutor  
Office of Trial Staff  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
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Pittsburgh, PA 15212

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Wolf, Block, Schorr & Solis-Cohen LLP  
Locust Court Building, Suite 300  
212 Locust Street  
Harrisburg, PA 17101

  
\_\_\_\_\_  
William T. Hawke

DATED: March 15, 2004

# OALJ Hearing Report

Please check those blocks which apply

Docket No.:	C-20031128		YES	NO
Case Name:	Equitable Gas Company, a division of Equitable Resources, Inc. v. The Peoples Natural Gas Company d/b/a Dominion Peoples	Prehearing Held:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Location:	Pittsburgh	Hearing Held:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Date:	March 15, 2004	Testimony Taken:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ALJ:	Michael A. Nemeo	Transcript Due:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Reporting Firm:	Commonwealth Reporting	Hearing Concluded:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		Further Hearing Needed:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		Estimated Add'l Days:	To be scheduled	
		RECORD CLOSED:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		Briefs to be Filed:	<input type="checkbox"/>	<input type="checkbox"/>
		Bench Decision:	<input type="checkbox"/>	<input type="checkbox"/>
		REMARKS:		

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PITTSBURGH OFFICE

PLEASE PRINT CLEARLY - Incomplete information may result in delay of processing.

Name and Telephone Number	Address	Who are you representing?
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Telephone: 717/236-1300	E-mail Address: njkennard@hmsk-law.com	Fax Number: 717/236-4841
Susan G. George Dominion Resources	625 Liberty Ave  City: Pgh    State: PA    Zip: 15222	Dominion Peoples
Telephone: 412 497 6891	E-mail Address: Susan_George@dom.com	Fax Number: 412-497-6838
Anthony P. Picardis	47th Floor 600 Grant St  City: Pgh    State: PA    Zip: 15219	PACT RJP
Telephone: 412-288-4010	E-mail Address: picardis@psm-n.com	Fax Number: 412-288-2405

Check this box if additional parties or attendees appear on back of form.

Reporter's Signature

Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.

Name and Telephone Number	Address	Who are you representing?
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Telephone: 717-255	E-mail Address:	Fax Number:
Anthony J. Picadio Esq.	4710 US Steel Tower 600 Grant Street <small>City State Zip</small> Pgh PA 15219-2702	PACT
Telephone: 412-288-4010	E-mail Address:	Fax Number:
Kevin J. Moody, Esq.	212 Locust Street Suite 300 <small>City State Zip</small> Harrisburg PA 17101	NRG Energy Center - B4 LLC
Telephone: 717-237-7160	E-mail Address:	Fax Number:
Telephone:	<small>City State Zip</small>	Fax Number:
Telephone:	<small>City State Zip</small>	Fax Number:
Telephone:	<small>City State Zip</small>	Fax Number:
Telephone:	<small>City State Zip</small>	Fax Number:
Telephone:	<small>City State Zip</small>	Fax Number:
Telephone:	<small>City State Zip</small>	Fax Number:
Telephone:	<small>City State Zip</small>	Fax Number:

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CHARLES E. THOMAS  
(1913 - 1998)

March 18, 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

Dear Mr. Kennard:

Enclosed are Equitable Gas Company's responses to the remaining Dominion Peoples' outstanding Set II Interrogatories Nos. 3, 5, 6, 8, 9, 20, 21, 22 and 23. Also enclosed in response to your letter of March 17, 2004 are Equitable's responses to the remaining Dominion Peoples' outstanding Set I Interrogatories Nos. 20 and 31. Please note that Equitable has designated the response to Set I, Interrogatory No. 31 as "highly confidential."

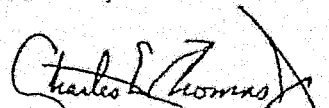
Equitable is not answering Dominion Peoples' Set I Interrogatories Nos. 25, 26 and 33 as you request in your March 17 letter. If you review Equitable's Objections filed December 18, 2003, you will see that Equitable filed objections to Interrogatories Nos. 25, 26 and 33. In addition, we are not certain what you meant in your letter by a supplemental response to Set I Interrogatory No. 30 and are reviewing the original response to Interrogatory No. 30 which was served on January 9, 2004.

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.

Norman J. Kennard, Esquire  
March 18, 2004  
Page 2

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)  
Kevin J. Moody, Esquire (w/encl.-non-proprietary only)  
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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CHARLES E. THOMAS  
(1913 - 1998)

March 19, 2004

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

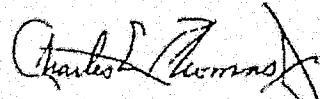
Dear Secretary McNulty:

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 Motion to Bifurcate Count V in the above referenced proceeding. Copies of Equitable's 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.)

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SECRETARIAT, S. JUDGE

88

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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SECRETARY'S OFFICE

**EQUITABLE GAS COMPANY'S  
MOTION TO BIFURCATE COUNT V**

AND NOW, comes Equitable Gas Company, a division of Equitable Resources, Inc., by its attorneys, and, pursuant to 52 Pa. Code §5.103 and Judge Nemeč's directive at the Second Prehearing Conference held March 15, 2004, submits this Motion to Bifurcate Count V in the above captioned proceeding. In support thereof, Equitable submits as follows:

**I. Background and History of Proceeding**

1. This proceeding involves 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's original Complaint, filed with the Public Utility Commission ("Commission") on August 29, 2004, contained four counts: Count I - Duplication of Facilities; Count II - Predatory Pricing; Count III - Unfair Competition; and Count IV - Rate Discrimination. On January 22, 2004, Equitable filed an Amendment to the Complaint setting forth an additional Count V - Lack of Service Authority.

**DOCKETED**  
APR 27 2004

2. A Prehearing Conference was scheduled and held in Pittsburgh on November 20, 2003, with Administrative Law Judge Michael A. Nemeec presiding. Counsel for Equitable, Dominion Peoples, PACT and the Public Utility Commission's Office of Trial Staff ("OTS") appeared and participated in the Prehearing Conference. By Interim Order dated January 21, 2004, NRG Center-Pittsburgh LLC ("NRG") was granted status as an intervenor.

3. A Second Prehearing Conference was held on March 15, 2004, before Judge Nemeec. Counsel for Equitable, Dominion Peoples, PACT, OTS and NRG appeared and participated in the Second Prehearing Conference. In its Second Prehearing Conference Memorandum, Equitable presented alternative schedules, the first of which was based on a suggested bifurcation and threshold litigation of the service authority issues presented in Count V with Counts I through IV being continued generally pending the outcome of the Count V litigation. Judge Nemeec directed Equitable to file a written motion requesting the proposed bifurcation.

## **II. Proposed Bifurcation and Threshold Consideration of Count V**

4. In its Count V Amendment to Complaint, Equitable avers that Dominion Peoples, by 1971, had abandoned service to the Golden Triangle Area of the City of Pittsburgh and had transferred all of its downtown Golden Triangle Area customers to Equitable. On March 5, 2004, Dominion Peoples filed an Answer to Count V in which it admitted that, in 1971, it served as many as sixty (60) accounts in the area of the City of Pittsburgh generally referred to as the "Golden Triangle" and that it transferred customers to Equitable in 1971 in order to avoid having to make capital expenditures needed to maintain service to existing customers but denied abandoning service.

5. Equitable proposes to bifurcate Count V and litigate the service authority issues presented in Count V as threshold issues. Counts I through IV would be continued generally pending the outcome of the Count V litigation. Equitable submits that bifurcation and threshold litigation of Count V is appropriate for the following reasons:

- a. Count V can be ready for trial with little in the way of additional discovery given the allegations in the Amended Complaint and Dominion Peoples responsive Answer. If Count V were bifurcated, Equitable would intend to take the deposition of Ms. Susan George, who signed the affidavit attached to Dominion Peoples' Answer to Count V, for the limited purpose of discovery related to Dominion Peoples' Answer to Count V. Thereafter, and following the exchange of prepared written testimony, Equitable would anticipate the need for one day of hearing concerning the Count V issues. To accommodate the 2004 1307(f) proceedings of both Dominion Peoples and Equitable, Equitable suggests that the hearing on Count V be scheduled for late August following the conclusion of the major work efforts in the 1307(f) proceedings.
- b. In contrast to Count V, Counts I through IV will not be ready for trial prior to the Fall of 2004 given the discovery which is outstanding and the differences of position related thereto. For example:
- (1) As previously discussed, a material issue presented in Counts I through IV is Dominion Peoples' waiver of retainage gas to attract customers generally and PACT specifically.<sup>1</sup> Discovery concerning retainage had been the subject of some dispute during the weeks prior to the Second Prehearing Conference. Equitable's Second Set of Interrogatories to Dominion Peoples, which it served on December 12, 2003, sought information concerning Dominion Peoples' waiver of retainage. Although Dominion Peoples filed no objection to the waiver related Set II Interrogatories, the answer to Interrogatory No. 5 concerning

---

<sup>1</sup> Retainage is sometimes referred to as gas lost and unaccounted for. It is also sometimes referred to as the "fuel" used to deliver gas to an end user. In Counts II and III of its Complaint, Equitable alleges that Dominion Peoples is engaging in predatory pricing and unfair competition by waiving retainage in its entirety for PACT and other customers.

waiver of retainage was not provided until March 11, 2004, three months after the Interrogatory was served and the response that was provided was materially incomplete.<sup>2</sup> Equitable's Interrogatory No. 9, Set III also sought information concerning waiver of retainage.<sup>3</sup> Dominion Peoples initially objected to Set III, Interrogatory No. 9 but, subsequently, agreed to answer the Interrogatory. Dominion Peoples' response to Set III, Interrogatory No. 9 was served on March 11, 2004, along with the response to Set II Interrogatory No. 5, which again was materially incomplete.

- (2) Equitable intends to undertake follow up discovery in regard to the retainage waiver information provided on March 11, 2004. Equitable had postponed the scheduling of depositions until receiving responses to the outstanding discovery, particularly those questions dealing with the waiver of retainage. Equitable had thought that the receipt and review of preliminary information prior to the deposition would result in a more efficient deposition.

---

<sup>2</sup> Dominion Peoples provided its answer to Interrogatory No. 5 of Equitable's Second Set Interrogatories on a highly confidential basis. Equitable agrees that Dominion Peoples' answer to Interrogatory No. 5 should be considered "highly confidential" although no notification of highly confidential information was provided by Dominion Peoples pursuant to the December 4, 2003, Protective Order.

<sup>3</sup> Equitable's Set III Interrogatory No. 9 which was outstanding at the time of the filing of the Motion to Extend Discovery and Litigation Schedule on January 23, 2004 was one of the specific reasons cited by Equitable in support of its Motion. Interrogatory No. 9 asks as follows:

9. With respect to People's response to EGC-Set II-4, please:
  - a. State the identity of each of People's customers for which it retains 0% "as gas used in Company operations and unaccounted for gas".
  - b. State the identity of each of People's customers for which it retains greater than 0% but less than 5.3% "as gas used in Company operations and unaccounted for gas". Identify and provide a full and complete copies of any and all agreements, past or present between PACT and Equitable.

Equitable still does not know, as an example, the identity of the customers for which Dominion Peoples has waived retainage as requested in Set III, Interrogatory No. 9 or the volumes subject to retainage waivers as requested in Set II, Interrogatory No. 5.<sup>4</sup> Nevertheless, rather than seeking a full response through the interrogatory process, Equitable intends, at this point, to depose the Dominion Peoples' marketing and other personnel who have knowledge of the waiver of retainage, the volumes delivered to these customers, the circumstances of waiver identified in the response to Interrogatory No. 9 and Dominion Peoples use of its "financial field model" in its offer to serve PACT.<sup>5</sup> Those individuals are presently thought to be Rodney Holmes, who is identified as the person responsible for the responses to Set II Interrogatory No. 5 and Set III Interrogatory No. 9, and William McKeown. In regard to the waiver of retainage in respect to the PACT/Dominion Peoples Agreement in particular, Equitable also intends to depose William Barry, PACT's consultant in connection with the displacement of Equitable's service to PACT.

---

<sup>4</sup> Equitable, again, would agree that the identity of the Dominion Peoples' customers should be treated as "highly confidential." In its response to Dominion Peoples' Set I, Interrogatory No. 30, Equitable identified on a "highly confidential" basis those instances in which it has agreed to waive retainage going so far as to identify the customers by name. Dominion Peoples should do likewise in response to Equitable's Interrogatories.

<sup>5</sup> In its answer to Equitable's Set II Interrogatory No. 7 Dominion Peoples disclosed that it has a "financial field model for making capital investments for large volume projects" and that the terms of its agreement with PACT were negotiated based on the "financial field model." No further details of the "financial field model" were, however, provided in the answer to Equitable's Set II Interrogatory No. 7. In its follow up Set III Interrogatory No. 10, Equitable asked Dominion Peoples to provide a copy of the "financial field model" and assumptions and work papers used to perform the analysis shown in the answer to Set II Interrogatory No. 7. Dominion Peoples response was to refer to another of its responses and state that there are no workpapers. The financial field model was not provided in the other response. Equitable has included a further follow up interrogatory concerning the financial field model in its Fifth Set of Interrogatories.

- (3) In addition to the foregoing, Dominion Peoples has filed a motion to compel Equitable to respond to its Set II Interrogatories Nos. 16, 17 and 18.<sup>8</sup> Equitable has filed an answer in opposition to the motion arguing that the characterization of Equitable's Complaint presented by Dominion Peoples in support of its motion is inaccurate. Equitable's Complaint alleges a pattern of conduct of charges without economic justification, the result being a below cost, predatory rate, indicative of a pattern of unfair competition. Equitable believes that there was no rational reason for Dominion Peoples to offer such a deep transportation discount or waiver of retainage to PACT. The preparation of testimony with respect to Counts I, II, III and IV must await the completion of discovery

---

<sup>8</sup> Dominion Peoples Set II Interrogatories Nos. 16, 17 and 18 ask as follows:

16. Fully and completely state whether Equitable has ever offered to waive retainage to attract a prospective customer or to retain an exiting customer, even if Equitable was ultimately unsuccessful in obtaining or retaining the customer. 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 offered to be waived; the associated annual volumes; and the reason for offering such waiver. Provide any and all documents related thereto.
17. Provide a full and complete listing of all tariff rates, surcharges or other terms that Equitable is entitled to collect from or apply to a transportation customer or natural gas supplier, but which Equitable has waived, declined or otherwise forgone during the last five (5) calendar years. For each such category of item listed, identify the number of affected customers and suppliers, the associated annual volumes, and the reason for foregoing the item. Provide any and all documents related thereto.
18. Provide a full and complete listing of all tariff rates, surcharges or other terms that Equitable is entitled to collect from or apply to a transportation customer or natural gas supplier, but which Equitable has offered to waive, decline or otherwise forgo during the last five (5) calendar years, to attract a prospective customer or to retain an exiting customer, even if Equitable was ultimately unsuccessful in obtaining or retaining the customer. For each such category of item listed, identify the number of affected customers and suppliers for whom the item was proposed to be waived, declined or forgone, the associated annual volumes that were or would have been associated; and the reason for waiving, declining or foregoing the item. Provide any and all documents related thereto.

which in turn must yield priority to the Section 1307(f) proceedings. As a consequence, Count V should be bifurcated and a procedural schedule established for its resolution in advance of the resolution of Counts I, II, III and IV.

- c. It must also be recognized that a Commission decision that Dominion Peoples has abandoned service to the Golden Triangle Area as alleged in Count V may make the litigation of the remaining issues appropriate for resolution in other proceedings. A number of the matters which are among the bases for Counts I, II, III and IV appear to be the subject of consideration in the Section 1307(f) proceedings of Dominion Peoples and Equitable and other companies. Although Equitable remains confident that it will be able to show that Dominion Peoples' actions with respect to facilities duplication, predatory pricing, unfair competition and rate discrimination are in conflict with the Public Utility Code and the public interest, certain issues related to Counts I, II, III and IV may best be the subject of a generic state wide proceeding on natural gas competition in the post Choice and Competition Act world.
- d. With bifurcation, a Commission decision that Dominion Peoples has abandoned service to the Golden Triangle Area as alleged in Count V would permit the earlier return of PACT to Equitable's service prior to the 2004/2005 heating season and help sustain Equitable during a rate moratorium, presently pending before the Commission, which, if approved as part of a settlement in another matter, will not end until January 1, 2006. Waiting for an order resolving all counts of the Complaint may delay the return of PACT to Equitable's service until well into the next heating season.

Accordingly, Equitable submits that the litigation of Count V should be bifurcated from Counts I through IV for hearing and disposition purposes and a procedural schedule established for its resolution in advance of the resolution of Counts I, II, III and IV.

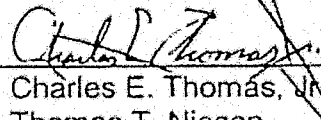
6. Equitable submits that the following schedule would be appropriate for consideration of a bifurcated Count V during the pendency of the respective 1307(f) proceedings of both Dominion Peoples and Equitable:

**Proposed Procedural Schedule for Count V**

Discovery Period on Count V Ends	April 23, 2004
Equitable's Direct Testimony Due	May 21, 2004
Respondent's Testimony and Testimony of Other Parties Due	June 30, 2004
Rebuttal Testimony Due	July 21, 2004
Surrebuttal Testimony Due	August 6, 2004
Hearings	Week of August 23, 2004

Respectfully submitted,

By



Charles E. Thomas, Jr.  
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THOMAS, THOMAS, ARMSTRONG & NIESEN  
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Daniel L. Frutchey  
Senior Vice President and General Counsel  
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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: March 19, 2004

Motion to Bifurcate.wpd

Before the  
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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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	:	
	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 19<sup>th</sup> day of March, 2004, served a true and correct copy of Equitable Gas Company's Motion to Bifurcate Count V, upon the persons and in the manner set forth below:

**BY FAX AND FIRST CLASS MAIL**

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

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

Anthony P. Picadio, Esquire  
Picadio Sneath Miller & Norton, P.C.  
Suite 4710 U.S. Steel Tower  
600 Grant Street  
Pittsburgh, PA 15219

**BY HAND DELIVERY**

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

SECRETARY'S BUREAU

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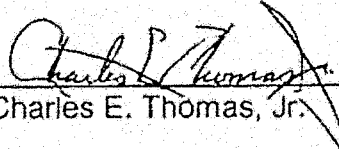
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Johnnie E. Simms, Senior Prosecutor  
Office of Trial Staff  
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**BY FIRST CLASS MAIL**

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806 Law & Finance Building  
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Charles E. Thomas, Jr.

*Thomas, Thomas, Armstrong & Niesen*  
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CHARLES E. THOMAS  
(1913-1998)

March 30, 2004

James J. McNulty  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
P. O. Box 3265  
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

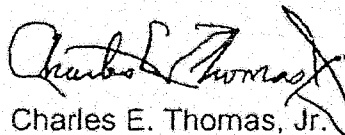
Dear Secretary McNulty:

Enclosed for filing are an original and three (3) copies of the Joint Motion of Equitable Gas Company and The Peoples Natural Gas Company, c/b/a Dominion Peoples for a General Continuance in the above referenced proceeding, including a general stay of all procedural matters. Copies of the Joint 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.)

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Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**DOCKETED**  
MAY 13 2004

SECRETARIAT'S BUREAU

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JOINT MOTION OF EQUITABLE GAS COMPANY  
AND THE PEOPLES NATURAL GAS COMPANY  
FOR GENERAL CONTINUANCE

DOCUMENT  
FOLDER

AND NOW, comes Equitable Gas Company, a division of Equitable Resources, Inc., ("Equitable"), the Complainant in the above matter, and The Peoples Natural Gas Company, d/b/a Dominion Peoples, ("Dominion Peoples"), the Respondent in the above matter, (collectively referred to hereinafter as "Movants") by their attorneys, and, pursuant to 52 Pa. Code §5.103, jointly move for a general continuance of the above captioned matter. In support thereof, Movants submit as follows:

**I. Background and History of Proceeding**

1. This proceeding involves a Complaint filed by Equitable against Dominion Peoples concerning Dominion Peoples' displacement of Equitable's service to Pittsburgh Allegheny County Thermal ("PACT"). Equitable's original Complaint, filed with the Public Utility Commission ("Commission") on August 29, 2004, contained four counts: Count I - Duplication of Facilities; Count II - Predatory Pricing; Count III - Unfair Competition; and Count IV - Rate Discrimination. On January 22, 2004, Equitable filed

an Amendment to the Complaint setting forth an additional Count V - Lack of Service Authority.

2. A Prehearing Conference was scheduled and held in Pittsburgh on November 20, 2003, with Administrative Law Judge Michael A. Nemeec presiding. Counsel for Equitable, Dominion Peoples, PACT and the Commission's Office of Trial Staff ("OTS") appeared and participated in the Prehearing Conference. By Interim Order dated January 21, 2004, NRG Center-Pittsburgh LLC ("NRG") was granted status as an intervenor. A Second Prehearing Conference was held on March 15, 2004, before Judge Nemeec. Counsel for Equitable, Dominion Peoples, PACT, OTS and NRG appeared and participated in the Second Prehearing Conference.


3. By this Joint Motion, Movants respectfully request that the Public Utility Commission continue this proceeding generally and stay all procedural matters, including, without limitation, the propounding and answering of discovery and pleadings related thereto, the answering of any outstanding motions and pleadings and the preparation of testimony. Movants will use the period of the continuance to attempt to reach a mutually acceptable resolution of the matter. During the continuance, Movants will file status reports with Judge Nemeec on the first of each calendar month. Each of the Movants reserves the right to terminate the continuance and request the scheduling of a further prehearing conference for the purpose of reviewing the matter and proposing the establishment of a litigation schedule.

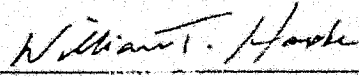
WHEREFORE, Equitable Gas Company, a division of Equitable Resources, Inc., and The Peoples Natural Gas Company, d/b/a Dominion Peoples, pray that the Pennsylvania Public Utility Commission continue this proceeding as set forth above.

Respectfully submitted,

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

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

By   
Charles E. Thomas, Jr., Esquire  
Thomas T. Niesen, Esquire  
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Daniel L. Frutchey  
Senior Vice President/General  
Counsel  
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Susan G. George  
Managing Counsel  
The Peoples Natural Gas Company  
d/b/a Dominion Peoples  
625 Liberty Avenue  
Pittsburgh, PA 15222

DATE: March 30, 2004

Action for General Continuance wpd

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 30<sup>th</sup> day of March, 2004, served a true and correct copy of the foregoing Joint Motion for General Continuance, upon the persons and in the manner set forth below:

BY FAX AND FIRST CLASS MAIL

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

Susan G. George, Esquire  
The Peoples Natural Gas Company  
d/b/a Dominion Peoples  
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Pittsburgh, PA 15219

SECRETARY'S OFFICE

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**BY HAND DELIVERY**

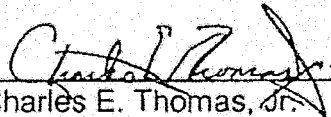
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