

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

11/19/08

1186, PA

Pennsylvania Public Utility Commission	:	
v.	:	R-2008-2029325
Equitable Gas Company	:	
 Independent Oil and Gas Association of Pennsylvania,	:	
Complainant	:	
v.	:	C-20066800
Equitable Gas Company,	:	
Respondent	:	

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DIRECT TESTIMONY OF
JAMES L. CRIST
 ON BEHALF OF
 THE INDEPENDENT OIL AND GAS ASSOCIATION
 AND
 HESS CORPORATION

****PUBLIC VERSION****

October 8, 2008

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1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS, AND TELL**
2 **US ON WHOSE BEHALF YOU ARE TESTIFYING?**

3 A. I am James L. Crist, President of Lumen Group, Inc. a consulting firm focused on
4 regulatory and market issues. My business address is 4226 Yarmouth Drive,
5 Suite 101, Allison Park, Pennsylvania 15101. I am presenting testimony on
6 behalf of the Independent Oil and Gas Association of Pennsylvania (IOGA) and
7 Hess Corporation (“Hess”).

8 **Q. DO YOU HAVE ANY QUALIFICATIONS OR OTHER SPECIALIZED**
9 **KNOWLEDGE THAT WOULD ASSIST THE COMMISSION IN ITS**
10 **DELIBERATIONS IN THIS CASE?**

11 A. Yes.

12 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

13 A. I have a B.S. in Chemical Engineering from Carnegie Mellon University and an
14 MBA from the University of Pittsburgh. Additionally I am a Registered
15 Professional Engineer in the Commonwealth of Pennsylvania.

16 **Q. BRIEFLY DESCRIBE YOUR RELEVANT BUSINESS**
17 **QUALIFICATIONS.**

18 A. I have run a consulting practice for the past 14 years focused on regulated and
19 deregulated energy company strategy, market strategy, and regulatory issues.
20 During 2004 and 2005, I undertook a consulting assignment as the Vice President
21 of Consumer Markets for ACN Energy. At the time ACN was a gas and electric
22 marketer that was active in eight states. Prior to that I worked at three major
23 energy companies for a total of 19 years. Most recently I was Vice President of
24 Marketing for Equitable Resources. In that function I was responsible for the
25 development of the strategy for customer choice programs and oversaw the

1 company's participation in the first residential customer choice program in Rock
2 Valley, Iowa, in 1996.

3 Prior to that I was Vice President of Marketing for Citizens Utilities
4 responsible for gas, electric, water and wastewater marketing activities a several
5 service territories in the United States. Under my direction we initiated
6 commercial and industrial transportation and supply services at our gas operation
7 in Arizona. I directed significant gas supply contracting activities with large
8 industrial and commercial customers in our gas operation in Louisiana.

9 Before that, during 1988 through 1994, I was the Marketing Director at
10 Peoples Gas where I was actively involved in many gas transportation programs
11 as the company relaxed transportation requirements so that residential customers
12 would have supply choices. In summary, I have considerable experience in
13 *several states involving natural gas sales and delivery service to all classes of*
14 *customers.*

15 **Q. WHAT ARE THE ISSUES YOU WILL BE ADDRESSING IN YOUR**
16 **TESTIMONY?**

17 A. The issues I address in this testimony are all related to taking steps to assure that
18 Equitable Gas Co. ("Equitable" or "EGC") is in a position to obtain the least cost
19 natural gas supply and to deliver the lowest cost supply to end-user customers on
20 the Equitable system. Some of the topics I address deal with issues facing natural
21 gas producers that deliver gas into Equitable's natural gas gathering system. The
22 topics that I address have to do with policies that should encourage greater
23 production and use of Pennsylvania produced natural gas and improvements in
24 operational procedures of Equitable that will benefit their customers.

1 Other topics I address deal with marketers that offer competitive gas
2 alternatives to customers on Equitable's system. There I have two areas of
3 concern. The first is the operation of the Equitable Agency program, a program
4 that misuses gas company personnel, confidential customer information, and
5 violates the Commission's Standards of Conduct. My second concern addresses a
6 host of operational policies. To that end, I will provide examples of policies in
7 place at other natural gas distribution companies operating in Western
8 Pennsylvania, primarily Dominion Peoples and make recommendations for
9 improvements.

10 **PRODUCER ISSUES**

11 **Q. HOW HAVE YOU CONSTRUCTED YOUR TESTIMONY ON**
12 **PRODUCER ISSUES?**

13 A. My testimony is broken into five sections. In the first section, I will provide some
14 background on Equitable's proposal for Rate AGS that would seek to recover the
15 entire cost of its gathering system from the producers who inject Pennsylvania
16 produced natural gas into Equitable's pipeline system, as well as other issues
17 regarding access to Equitable's system. Second, I will explain why it is good
18 public policy and consistent with Commission policy to encourage the production
19 of Pennsylvania natural gas. In the next section I explain how local gas is
20 delivered to end users, the supply alternatives available to Equitable and why
21 Equitable's view of a separate gathering "system" is inappropriate. In the
22 following section I explain why Equitable's proposal to recover all of its gathering
23 system investment from producers is not reasonable. I also discuss why
24 Equitable's refusal to allow new local production wells to access its public utility

1 facilities is unjustified and detrimental to producers and customers. And in my
2 last section I lay out how Equitable's actions are designed to create greater
3 revenues and profits for Equitable Resources than they may might otherwise
4 realize from the results of this rate proceeding, if they conducted their operations
5 properly.

6 **Q. PLEASE SUMMARIZE YOUR FINDINGS REGARDING THE**
7 **PRODUCER ISSUES.**

8 A. The Commission's regulations require that the development and use of
9 Pennsylvania produced gas be encouraged because of the benefits provided to
10 Pennsylvania gas utilities and their customers. Simply put, the use of local
11 producer gas makes Equitable's customers' gas costs lower than they would be.
12 Equitable's proposal to require producers and marketers of Pennsylvania gas to
13 bear all the costs of Equitable's gathering system investment primarily through
14 "negotiated" rates with producers that most cases, have no viable economic
15 alternatives, in conjunction with Equitable's refusal without justification to permit
16 IOGA producers to access EGC's pipeline system, will have significant adverse
17 short and long term consequences for non-affiliated producers of Pennsylvania
18 gas on Equitable's system. In the short term, independent producers' gas will be
19 priced out of the market, and in the long term, these producers will no longer drill
20 new wells on Equitable's system and may even focus their new well drilling out
21 of state.

22 Commission approval of Equitable's unprecedented Rate AGS cost
23 recovery proposal in this case, will drive non-affiliated producers and marketers
24 off Equitable's system and render improvements in Equitable's operational rules

1 and practices illusory. The Commission must reject Equitable's Rate AGS
2 proposal and require Equitable to adopt customer rates and implement terms and
3 conditions of producer access to its system that promote more use of Pennsylvania
4 produced gas while not favoring Equitable's affiliates.

5 **Q. WHY SHOULD ISSUES AFFECTING LOCAL GAS PRODUCERS BE OF**
6 **CONCERN TO THE PUC?**

7 A. The majority of a customer's gas bill is composed of the cost of gas, not the
8 distribution or delivery charge. Therefore to benefit customers it is important to
9 have enough gas supply to provide for adequate volumes especially during times
10 of cold weather. It makes good sense then, to promote policies and procedures
11 that are conducive to encouraging the development and production of
12 Pennsylvania-based natural gas resources. I will examine several aspects of
13 Equitable's policies and recommend improvements that would be beneficial for
14 the customers of their service territory.

15 **Q. WHAT IS THE "PIPELINE SYSTEM" OF EQUITABLE?**

16 A. It is the piping, compressor stations, metering and other physical plant items that
17 collect, transport and distribute natural gas to end user customers, both sales and
18 transportation.

19 **Q. WHAT IS THE "GATHERING SYSTEM" OF EQUITABLE?**

20 A. It is the portion of the pipeline system that connects to gas wells and it is used to
21 move gas from production wells located in Pennsylvania to the end user
22 customers through the distribution system. There are also 3,620 customers
23 receiving service directly from these gathering facilities

1 **Q. DO PRODUCERS HAVE MULTIPLE OPTIONS AS TO WHICH**
2 **GATHERING FACILITIES THEY WILL CONNECT THEIR WELLS?**

3 A. Yes, in some cases some producer wells are located near both Equitable's
4 gathering and distribution facilities, Dominion Peoples' facilities or the facilities
5 of interstate pipelines. But in the large majority of instances, producers who are
6 interconnected with Equitable's system have just one economic choice –
7 Equitable.

8 **ENCOURAGEMENT OF PENNSYLVANIA-BASED NATURAL GAS**
9 **PRODUCTION IS GOOD POLICY AND RESULTS IN LOWER OVERALL**
10 **RATES FOR END USERS**

11 **Q. WHY IS PENNSYLVANIA GAS ATTRACTIVE?**

12 A. Delivered Pennsylvania natural gas production is generally lower in cost than
13 natural gas from the Southwest production areas of the Gulf of Mexico, Texas and
14 Louisiana due to the lack of interstate pipeline demand, transportation, storage
15 and/or shrinkage charges.

16 **Q. BECAUSE PENNSYLVANIA PRODUCED NATURAL GAS IS IN THE**
17 **MARKET AREA WHERE IT IS CONSUMED WHAT OTHER BENEFITS**
18 **DOES IT PROVIDE?**

19 A. Pennsylvania's supply also provides reliability benefits to Equitable's pipeline
20 system and other cost benefits to Equitable's customers, as Equitable itself has
21 emphasized in its recent Section 1307(f) cases.

22 **Q. HAS THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**
23 **PROVIDED ANY INSIGHT REGARDING THE DESIRABILITY OF GAS**
24 **PRODUCED IN PENNSYLVANIA?**

25 A. Yes, the Commission's transportation regulations (52 Pa Code § 60.1, et. seq.)
26 expressly state that "The development of Pennsylvania natural gas should be
27 promoted because it will achieve benefits which accrue to gas utilities and their

1 customers." Also in § 60.2 it states, "The tariff may not unreasonably restrict
2 Commonwealth natural gas producer access to gas utility facilities."

3 **Q. IS THE ONLY BENEFIT THE LOWER COST AND GREATER**
4 **RELIABILITY OF THE NATURAL GAS SUPPLY?**

5 A. No. In addition to lower cost and greater reliability delivered, Appalachian supply
6 provides other benefits to Equitable's customers, such as diversity of supply and
7 reducing dependency on interstate pipelines. These benefits result in lower costs
8 by reducing interstate pipeline demand costs, lowering purchased gas cost
9 ("PGC") rates, and reducing unit/operating costs (such as compression).

10 **Q. WHAT ARE THE BENEFITS TO PENNSYLVANIA FROM HAVING A**
11 **HEALTHY GAS PRODUCTION INDUSTRY LOCATED IN THE STATE?**

12 A. Having a healthy Pennsylvania natural gas industry is beneficial to the citizens of
13 Pennsylvania, because it provides job and economic development benefits.

14 **Q. ARE THERE COSTS ASSOCIATED WITH UTILIZING**
15 **PENNSYLVANIA PRODUCED NATURAL GAS?**

16 A. Yes. In particular, to have access to locally produced natural gas, Equitable has
17 acquired, constructed and maintained gathering facilities that permit it to obtain
18 locally produced natural gas as part of its system supply as well as to give
19 transportation customers access to this low cost source of supply.

20 **Q. DOES EQUITABLE VIEW ACCESS TO LOCALLY PRODUCED GAS AS**
21 **A BENEFIT TO THEIR CUSTOMERS?**

22 A. Yes. Mr. Quinn stated this clearly in response to data request IOGA Set I-28,
23 "Equitable views its gathering system as a benefit to its ratepayers. Customers
24 receive natural gas service directly from gathering lines (service from field lines).
25 (Exhibit JLC-1) Absent Equitable's service from field lines, distribution service
26 line extensions, for the most part, would be uneconomic and therefore, many

1 customers would be denied natural gas service. Equitable also believes that a benefit
2 will exist for residential, commercial, and industrial distribution customers of Equitable if
3 Pennsylvania production can be acquired and transported to Equitable's distribution
4 system at prices less than city gate delivered interstate natural gas supply."

5 **EQUITABLE'S SYSTEM INCLUDES DISTRIBUTION FACILITIES THAT**
6 **OBTAIN NATURAL GAS SUPPLY**
7

8 **Q. DESCRIBE THE INTEGRATED PIPELINE SYSTEM OF EQUITABLE.**

9 A. The Equitable pipeline system is a piping network in Western Pennsylvania that
10 *obtains natural gas supply and in turn delivers such supply to end-user customers.*
11 The system is an integrated network of pipes, meters and compressor stations,
12 whose purpose is to ensure reliable natural gas service to customers.

13 **Q. WHERE IS NATURAL GAS PRODUCED THAT FLOWS TO THE END**
14 **USERS ON EQUITABLE'S SYSTEM?**

15 A. Natural gas supply can be broken into two categories. The first category is
16 Pennsylvania-based supply. Such supply is the natural gas obtained from wells
17 located within Pennsylvania. The other category is interstate supply. Such
18 natural gas flows into Pennsylvania, through interstate pipelines and comes from
19 other producing states in the Appalachian region or other more distant production
20 areas such as the Gulf Coast region. This gas may be sold to EGC from non-
21 affiliated producers such as IOGA members, or from affiliated gas supply
22 companies such as Equitable Energy (Equitable Production Company; Equitable
23 Gathering Inc; Equitable Gathering LLC are some other affiliates listed in EGC's
24 base rate filing). The Equitable-affiliated gas supply companies obtain gas from
25 both the Gulf Coast region as well as from the Appalachian region.

1 **Q. HOW DOES THE PENNSYLVANIA BASED SUPPLY ENTER THE**
2 **EQUITABLE PIPELINE SYSTEM?**

3 A. Equitable connects to local gas wells using their gathering system piping or
4 producers deliver gas using piping that they have constructed and own either to
5 the gathering facilities or to facilities Equitable characterizes as distribution
6 facilities.

7 **Q. HOW DOES THE INTERSTATE GAS REACH EQUITABLE?**

8 A. The interstate supply that flows into the Equitable distribution system flows
9 through their affiliate pipeline, Equitrans, and is delivered to Equitable's city gate.
10 This produces a source of revenue for Equitable Resources and as an interstate
11 pipeline, Equitrans is not under the jurisdiction and oversight of the Pennsylvania
12 PUC.

13 **Q. DOES GAS THAT FLOWS THROUGH EQUITRANS CREATE MORE**
14 **REVENUE FOR THE PARENT COMPANY, EQUITABLE RESOURCES?**

15 A. Yes. Any gas consumption need of a customer that is not satisfied with
16 Pennsylvania produced gas must be satisfied with gas flowing through the
17 affiliate pipeline. This scenario creates a natural economic incentive for Equitable
18 Resources to desire to increase natural gas supply that flows through their
19 pipeline, Equitrans to the disadvantage of local natural gas production.

20 **Q. DOES GAS PURCHASED FROM AN EQUITABLE-AFFILIATED GAS**
21 **SUPPLIER PRODUCE MORE REVENUES AND PROFIT FOR**
22 **EQUITABLE?**

23 A. Yes, for the holding company that owns the NGDC – Equitable Resources, Inc.
24 Unlike the utility, which makes no profit on the natural gas it sells to distribution
25 customers, its affiliated gas suppliers can profit from gas sales; these profits
26 ultimately benefit the shareholders of Equitable Resources.

1 **Q. IS THERE A CLEAR DISTINCTION OF EQUITABLE'S GATHERING**
2 **FACILITIES AND THEIR DISTRIBUTION SYSTEM?**

3 A. No. In some instances, classification of piping as either gathering or distribution
4 can be a gray area but from an accounting standpoint the distinction must be
5 made. The facilities that Equitable terms "gathering facilities" are simply pipes
6 that are proximate to Pennsylvania natural gas producer wells that serve the
7 purpose of moving that gas produced by those wells closer, and eventually to the
8 customers that consume the gas. The functionalization of a pipeline as
9 "gathering" or "distribution" is often a difficult task, when the line performs both
10 functions which is the case on some of EGC's gathering lines. The customers who
11 receive locally produced natural gas could be either system sales customers or gas
12 transportation customers. In both cases, they are the beneficiaries of the system
13 that delivers local locally produced natural gas to them.

14 **Q. HOW DOES A PRODUCER MAKE A DECISION REGARDING**
15 **DRILLING A NEW WELL?**

16 A. When a producer evaluates the feasibility of drilling a new gas well in
17 Pennsylvania part of that evaluation entails determining how the gas will be
18 delivered from the well to the customer. If a producer determines that a certain
19 location is an attractive location for drilling because it would result in a gas well
20 with reliable natural gas production, and that the well is near a natural gas
21 pipeline so that the gas can be transported from the well to the customers, than the
22 producer proceeds with the drilling of the well. Once the well is drilled and gas is
23 being produced and flowing into a pipeline the producer generally has no
24 capability to choose what could be done with that gas that flows into a specific
25 pipeline. The producer normally sells gas to that utility for their use in their

1 system supply needs or sells to a marketer pool that supplies end users via the
2 utility's delivery service.

3 **Q. ONCE THE WELL IS DRILLED WHAT CAPABILITY DOES THE**
4 **PRODUCER HAVE TO DELIVER THEIR GAS THROUGH A**
5 **DIFFERENT PIPING SYSTEM?**

6 A. The producer does not have strong short term economic power. The producer
7 cannot pick up its gas well and move it to a different state. In the short term, the
8 gas producer is at the mercy of Equitable. The producer lacks any real power in a
9 negotiation with the Company and must acquiesce to terms and conditions
10 dictated by the Company.

11 **Q. IS THE LONG TERM SITUATION THE SAME?**

12 A. In the long term such behavior by the Company toward producers can have a
13 significant negative effect. Producers recognize that the drilling of a well is a
14 significant long-term investment and will attempt to minimize risk. They will
15 seek to invest their capital and drill their wells in areas that pose less of a risk in
16 terms of treatment they receive from the gas company whose pipe is located
17 proximate to their well that are responsible for moving that gas from the well to
18 the customer. Accordingly companies with the resources may explore other
19 delivery options such as incurring the cost to construct pipelines to access other
20 distribution companies or interstate pipeline companies.

21 **Q. WHAT EFFECT WILL WE SEE FROM EQUITABLE'S ACTIONS OF**
22 **INCREASING FEES CHARGED TO PRODUCERS?**

23 A. The actions of Equitable carry the likely long-term implication that it will drive
24 natural gas production activity out of Pennsylvania which is exactly the opposite
25 of what would be desirable for customers in Pennsylvania. We want to encourage

1 development of local production wells, whose gas would be consumed by the
2 customers in Pennsylvania. Equitable's own actions will cause gas to flow
3 elsewhere. In some cases, producers will seek to drill their wells so that the gas
4 will be delivered onto the system of other utilities, where possible. This hurts
5 customers on Equitable's distribution system and does not result in the most
6 economically efficient well placement.

7 **EQUITABLE'S PROPOSALS AND ACTIONS AFFECTING LOCAL PRODUCERS**

8 **Q. PLEASE EXPLAIN YOUR UNDERSTANDING OF EQUITABLE'S**
9 **PROPOSALS AND POLICIES AFFECTING LOCAL PRODUCTION.**

10 A. Equitable has apparently undertaken a two-part strategy with respect to local
11 producers. In this case it has proposed to assign as the "cost of service" 100% of
12 the direct investment and related expenses of its gathering facilities to its Rate
13 AGS, which is solely charged to producers and marketers who need to use the
14 gathering facilities to deliver gas to Equitable to use as part of Equitable's system
15 supply or to end user transportation customers who buy Pennsylvania gas and
16 have it delivered to their meter using Equitable's delivery service. Equitable seeks
17 total annual revenues from Rate AGS of \$12.8 million but with no change to the
18 existing "negotiated rate" provisions of Rate AGS. Equitable's filing shows \$5.3
19 million as the Rate AGS annual revenues produced at present rates, and allocates
20 over \$7.5 million of the requested \$52 million rate increase to Rate AGS
21 producers and 3rd party marketers. The gathering facilities rate base (\$38.2
22 million) is about 6.5% of Equitable's total claimed rate base of \$583.2 million (the
23 remaining transmission and distribution rate base is \$545 million).

1 At the same time, Equitable for some time has refused to allow certain
2 local producers to obtain access to its distribution and gathering facilities unless
3 the producer agrees to pay an enormously high fee (plus a very high "shrinkage"
4 allowance) to do so. Since late last year, Equitable has also refused to allow
5 access because it claims new production will exacerbate its high levels of lost and
6 unaccounted for gas ("LUG") on its gathering facilities. Just recently, Equitable
7 has refused to set meter taps for new wells at all, claiming that there isn't any
8 capacity on its system to accept any new Pennsylvania production.

9 **Q. TAKING THESE ISSUES SEQUENTIALLY, PLEASE PROVIDE YOUR**
10 **CONCLUSION REGARDING EQUITABLE'S CLAIM THAT**
11 **PRODUCERS SHOULD BE CHARGED RATES TO USE THE**
12 **GATHERING FACILITIES THAT RECOVER THE ENTIRE COST OF**
13 **ITS INVESTMENT**

14 A. As Mrs. Burgraff concluded the costs of the gathering facility investment should
15 properly be included in base rates and borne by the end use customers of
16 Equitable, not the gas producers or marketers.

17 **Q. WHY SHOULD NOT THE GAS PRODUCERS OR MARKETERS BEAR**
18 **THE COST OF THE GATHERING FACILITY INVESTMENT?**

19 A. It is well established that the prudent and reasonable costs incurred by a natural
20 gas distribution utility to meet its obligations to provide reliable natural gas
21 service to its end user customers on a least cost basis should be borne by those
22 customers. Equitable has acquired, constructed and maintained gathering
23 facilities to help it meet these obligations, and the small incremental cost that
24 customers must absorb as a result is well justified by the lower cost and greater
25 reliability that such Pennsylvania production provides. Charging producers for
26 these facilities that provide such clear benefits to end users is completely at odds

1 with established public utility regulatory policy, as I understand it, and threatens
2 to rob Equitable customers of the benefits of Pennsylvania production.

3 Moreover, the gas producers are suppliers to the customers of Equitable,
4 either by providing gas for system supply or by providing gas to transportation
5 customers. Charging a vendor such as the producers for a portion of the utility
6 rate base makes no sense. Next, Equitable may propose charging pipeline
7 contractors for the opportunity to perform maintenance work on the system.

8 **Q. WHAT ARE THE LIKELY CONSEQUENCES IF EQUITABLE'S**
9 **PROPOSAL TO CHARGE THE ENTIRE DIRECT COST OF THE**
10 **GATHERING SYSTEM TO LOCAL PRODUCERS?**

11 A. When Equitable imposes additional costs on producers to extent it is permitted by
12 contract those costs could end up increasing the cost of gas that producers must
13 charge for their gas. Since gas producers are not regulated they have no other
14 mechanism to recover such cost increases but to attempt to pass them along to
15 consumers. This results in a higher cost to produce gas.

16 Producers are essentially restrained by the market price of natural gas, so
17 unlike Equitable, independent producers have no assurance that they can pass on
18 these additional costs to marketers or their own customers if it would make the
19 cost higher than the prevailing market price of interstate gas on if contract
20 provisions do not allow for such an increase. In such instances, the producer may
21 be forced to simply not open new wells or even shut in existing ones.

22 Gas producers do not have a magical independent source of income to
23 support payment of Equitable's requested revenue requirement. To the extent a
24 producer cannot include such cost in their cost of gas then the increase will have
25 an affect of driving the producer's long-term behavior to select drilling sites and

1 opportunities that are not on Equitable's system. This has a negative effect for the
2 customers of Equitable because Pennsylvania-produced natural gas is a lower cost
3 and reliable source of natural gas.

4 **Q. HOW ELSE MIGHT GAS PRODUCERS RESPOND TO THESE HIGH**
5 **CHARGES TO USE EQUITABLE'S GATHERING SYSTEM?**

6 A. Some gas producers have the ability to sell gas into both the Equitable and
7 Dominion Peoples systems. The policies of Dominion Peoples in areas that
8 affect producers and the marketers that might purchase gas from local producers
9 are fairer and more reasonable. This will result in Equitable customers being
10 denied the benefits of lower cost Pennsylvania produced natural gas.

11 **ACCESS TO DISTRIBUTION AND GATHERING PIPELINES**

12 **Q. YOU INDICATED THAT EQUITABLE HAS REFUSED TO HOOK UP**
13 **NEW GAS WELLS TO INCREASE THE AMOUNT OF PENNSYLVANIA**
14 **PRODUCED GAS INTO ITS SYSTEM. THEY HAVE CLAIMED THAT**
15 **THE SYSTEM LACKS CAPACITY AND CONTAINS A LARGE**
16 **AMOUNT OF LEAKS. HAVE YOU BEEN ABLE TO COME TO A**
17 **CONCLUSION REGARDING EQUITABLE'S CLAIMS OF LACK OF**
18 **CAPACITY?**

19 A. Based upon the investigation that IOGA has been able to conduct since Equitable
20 first made this assertion, it does not appear justified. Although Equitable has not
21 yet identified the portions of its system it claims are operating at full capacity as
22 IOGA requested in discovery, it has admitted that six (6) of the new meter tap
23 locations requested by IOGA producers are **not** on portions of its system it claims
24 are operating at full capacity. Indeed, the testimony of one IOGA producer shows
25 that all of its new meter tap requests are for hook-up to Equitable's distribution
26 facilities ("Old Equitable" pipe).

1 I am particularly skeptical in light of the history of Equitable's responses
2 to new meter tap requests. Since November last year, Equitable has been denying
3 local producers' requests to set meters and taps for new wells unless the producer
4 would agree to a contract agreeing to pay an exorbitant rate under rate AGS. I
5 understand that IOGA confronted Equitable about these refusals, pointing out that
6 as the gathering system was a regulated public utility service, Equitable did not
7 have a right to simply refuse to provide access to it and that any disputes about the
8 reasonableness of the rates should be adjudicated by the PUC after access was
9 provided. After Equitable submitted this base rate case, which included its
10 gathering facility plant investment in its rate base claim, making clear that it
11 agreed that its gathering facilities were part of its regulated public utility system,
12 it now claims that it can't make any new hook-ups because it does not have
13 sufficient capacity or LUFG is too high.

14 **Q. IN AN ANSWER TO A DATA RESPONSE, EQUITABLE PROVIDED**
15 **DATA ON LEAK REPAIR THAT ILLUSTRATED THEY HAVE**
16 **INCREASED THEIR MAINTENANCE ACTIVITIES, CORRECT?**

17 A. Equitable's lost and unaccounted for gas (LUFG) is higher than desirable. Upon
18 investigation, it appears that the increase of maintenance activities focused on
19 improving this have only begun recently in 2008.

20 **Q. WHAT IS THE GENERAL QUALITY OF EQUITABLE'S GATHERING**
21 **SYSTEM PIPING?**

22 A. In the response to data requests submitted by IOGA, Equitable has acknowledged
23 that their lost and unaccounted for gas (LUFG) is higher on the piping system
24 connected to the gas producers' wells than on their downstream distribution
25 system. (See, IOGA-I-21, C-20066800) (Exhibit JLC-2) They have also provided

1 data showing that their leak repair activity on the gathering facilities acquired
2 from their affiliates in 1999 and 2003 only recently increased. It is not acceptable
3 for Equitable to use the excuse of having a leaky pipeline system as a rationale for
4 wishing to impose such unreasonable costs on gas producers – or to deny access
5 to the gathering facilities outright.

6 **Q. WHAT IS THE LOST AND UNACCOUNTED GAS ("LUG") DATA FOR**
7 **THE APOLLO SYSTEM?**

8 A. As shown by Equitable's discovery response summary, on its gathering facilities
9 LUG is exceeding 30% in some months in 2008 and exceeding 20% on an
10 average basis so far in 2008 is not the fault of ratepayers or producers. (*See,*
11 *IOGA-I-21, C-20066800*) (Exhibit JLC-2)

12 **Q. WHAT PARTY SHOULD BEAR THE COST OF SUCH EXCESSIVE**
13 **LUG?**

14 A. The cost of LUG above a reasonable amount recovered from ratepayers should
15 be born solely by Equitable's shareholders and not either ratepayers or producers,
16 because Equitable has a duty to operate and maintain its system to minimize
17 LUG yet has failed to do so.

18 **Q. DOES THE LUG LEVEL ON EQUITABLE'S SYSTEM JUSTIFY**
19 **REFUSING TO PERMIT NEW WELL HOOKUPS?**

20 A. No. LUG is a system issue, not one isolated in Equitable's gathering facilities.
21 If Equitable is concerned about its overall level of LUG, then it must formulate a
22 plan to improve its performance in this area; but certainly refusing to permit new
23 load on its system cannot be the answer. I would note that, insofar as I am aware,
24 Equitable has not attempted to impose a similar "moratorium" on pipeline
25 transportation deliveries, or new end user customers, both of which would

1 increase throughput and, in turn, increase Equitable's total amount of LUFG. I
2 support Mrs. Burgraff's conclusion that a reasonable level of LUFG gas is
3 properly charged to end user customers and that the Commission should order that
4 any level in excess of such a reasonable level should be borne by Equitable's
5 shareholders.

6 **Q. CAN EQUITABLE ARBITRARILY DENY ACCESS TO THEIR PIPING**
7 **SYSTEM TO PENNSYLVANIA GAS PRODUCERS?**

8 A. I have been advised by counsel, that Equitable has a duty under the Public Utility
9 Code to permit access to their piping system by Pennsylvania gas producers under
10 *reasonable terms and conditions.*

11 **Q. SO IS EQUITABLE'S DENIAL OF ACCESS TO PIPING FACILITIES**
12 **ARBITRARY?**

13 A. Apparently not. Producers are told that they cannot hook up to a leaky system
14 that lacks capacity. In the next breath Equitable offers a contract containing a
15 \$0.50 per Dth fee that will make the operational restrictions not matter any more.
16 There is nothing arbitrary about their behavior. It appears to be calculated to
17 increase their revenues.

18 **EQUITABLE'S USE OF RATE AGS IS AN ATTEMPT TO CREATE REVENUE**
19 **OPPORTUNITIES THAT BENEFIT EQUITABLE RESOURCES**

20
21 **Q. WHAT IS EQUITABLE'S PATTERN OF BEHAVIOR CONCERNING**
22 **ASSESSING FEES TO PRODUCERS?**

23 A. Equitable has attempted to force additional fees from producers. They have
24 created arbitrary reasons for shutting in producers' gas or not adding new meter
25 taps for producers. They then offer to reverse their position and ignore such
26 claimed system capacity constraints and concerns about system leaks subject to
27 *the producer being willing to enter into an expensive gathering fee agreement.*

1 **Q. HOW DOES THIS ACTION BENEFIT EQUITABLE'S PRODUCTION**
2 **AFFILIATE?**

3 A. Equitable has a gas production affiliate that is a large producer in Appalachia, not
4 just Pennsylvania. If Equitable's actions discourage independent producers from
5 increasing local gas production then Equitable will obtain its customers needs
6 from other gas producers, such as their affiliate. As I pointed out, Equitable's
7 parent can make a profit on gas sales by its supplier subsidiaries. It makes
8 nothing on gas sales by independent local producers.

9 **Q. HOW DOES THIS ACTION BENEFIT EQUITABLE'S TRANSMISSION**
10 **AFFILIATE?**

11 A. If there is a deficiency of Pennsylvania produced gas to meet the overall needs of
12 the customers then additional gas must flow into the system from the intrastate
13 pipeline serving Equitable.

14 **Q. WHAT IS THE INTERSTATE PIPELINE THAT SERVES EQUITABLE?**

15 A. Equitrans, an affiliate of Equitable.

16 **Q. DOES EQUITRANS REVENUE INCREASE IF THERE IS INCREASED**
17 **GAS THROUGHPUT TO EQUITABLE THROUGH EQUITRANS?**

18 A. Yes. In other words, what Equitable has done in this situation is simply act in the
19 overall corporate financial self-interest. By discouraging local independent
20 production they stand to increase corporate revenues.

21 **Q. HOW DOES RATE AGS BENEFIT THE OTHER AFFILIATES OF**
22 **EQUITABLE WHOSE REVENUES ARE NOT REGULATED BY THE**
23 **COMMISSION?**

24 A. Gas provided through Equitable's pipeline affiliate Equitrans results in higher
25 costs to the customers along with increased revenues for Equitable's parent
26 company Equitable Resources.

1 **Q. HOW DOES RATE AGS CREATE ADDITIONAL POTENTIAL**
2 **WINDFALL REVENUE OPPORTUNITIES FOR EQUITABLE ?**

3 A. Their design of rate AGS which allows Equitable to set any price it wishes for a
4 producer creates an opportunity to exceed the revenue requirement contained in
5 this rate case. Equitable simply would need to go to gas producers currently
6 hooked into their system and force increased rates on those producers. Producers
7 that have already made investments in wells would face the unpleasant choice of
8 paying Equitable's higher rates or not receiving any well revenue because
9 Equitable could decide to gas shut in their gas.

10 **Q. WHAT ARE YOUR RECOMMENDATIONS?**

11 A. My recommendations are that rate AGS should be discontinued. Equitable should
12 be directed to enter into a collaborative discussion with IOGA, as described in
13 Ms. Burgraff's Direct Testimony. In addition, the Commission should order
14 Equitable to submit in its compliance filing proposed tariff provisions that govern
15 the ability to access the gathering system. As I noted, in the short term, a
16 producer usually has no choice but to interconnect into Equitable's system, once it
17 has drilled its well in proximity to Equitable's gathering facilities. Equitable
18 should not be able to arbitrarily deny access to such "essential" public utility
19 facilities. Equitable should be directed to prepare a proposed tariff rule that is fair
20 to both Equitable and local producers, and which will advance the ultimate goal of
21 assuring the full use of this low cost valuable resource for the benefit of
22 Equitable's customers. The tariff provision must make clear that Equitable is
23 obligated to set new meter taps within a reasonable timeframe unless there is a

1 verified lack of capacity. As I have noted, the rule would require the facility or
2 make the enhancement Mrs. Burgraff sets out such a plan in her testimony.

3 **THE RETAIL NATURAL GAS MARKET IN EQUITABLE'S**
4 **TERRITORY COULD BE WORKABLY COMPETITIVE.**

5 **Q. WHAT IS THE STATE OF COMPETITION ON EQUITABLE'S**
6 **SYSTEM?**

7
8 A. Natural gas competition dates back to 1986 (the Red Bull Inn case), when the
9 *Commission recognized and established a customer's right to choose its*
10 *distribution supplier. This competition between Local Distribution Companies*
11 *("LDCs"), which I refer to as "LDC Competition," has been beneficial to many*
12 *customers. When effective competition exists, each LDC has an additional*
13 *incentive to operate its system efficiently, so that its distribution costs are as low*
14 *as possible.*

15 Competition in the retail gas supply market has also been a positive
16 development in the Commonwealth. Competition to supply gas commodity
17 involves marketplace participants such as natural gas producers and energy
18 marketers. Customers both large and small now have the ability to choose their
19 supplier of natural gas and this access to competitive supply options has become
20 very valuable to customers. Gas commodity costs typically comprise 60-70% of a
21 customer's annual bill. This percentage increases as energy prices rise, which
22 makes competition, and the energy savings it can bring, even more valuable.
23 Recognizing this benefit, the Commission recently issued an order in the
24 SEARCH proceeding designed to ensure that all utility systems are workably
25 competitive and do not erect barriers to entry by third party suppliers. Equitable,
26 however, maintains operational rules and other policies that inhibit a third party

1 supplier's ability to serve customers in its service territory. This restricts the
2 choices available to Equitable's customers, and thus impedes the development of
3 competition generally, contrary to the Commission's stated policy.

4 **Q. DOES EQUITABLE HAVE AN AFFILIATE THAT OFFERS GAS**
5 **COMMODITY TO CUSTOMERS?**

6
7 A. Yes, its affiliate is Equitable Energy.

8 **Q. ARE MARKETERS ABLE TO COMPETE EFFECTIVELY AGAINST**
9 **EQUITABLE?**

10
11 A. No. There are several reasons why the playing field in Equitable is not level and,
12 indeed, is tilted heavily in favor of the utility itself and its affiliate. First, a utility
13 selling gas supply enjoys an automatic advantage by virtue of the fact that it does
14 not have to abide by the same operational rules and procedures (e.g., balancing) as
15 marketers do. Thus, the utility's cost of being in the supply business, and thus the
16 cost it passes on to its gas supply customers, is automatically lower. I will discuss
17 later in my testimony Equitable's operational rules and procedures, which impose
18 significant costs on third party suppliers. In addition, Equitable has two tariff
19 provisions that provide the utility with an even greater advantage in the gas
20 supply market: Contract Service Rates and the Agency Program. Although
21 Equitable has proposed to terminate Contract Service Rates and the Agency
22 Program, it is important to understand why these programs are not appropriate
23 and to ensure that the process by which the Agency Program is wound down is
24 fair and not anti-competitive.

1 **Q. PLEASE DESCRIBE CONTRACT SERVICE RATES.**

2 A. Under Contract Service, Equitable obtains gas supply for a customer and charges
3 the customer a price as low as the commodity cost of gas plus a capacity credit of
4 as low as 1 cent/mcf. Equitable Witness Quinn has proposed discontinuing this
5 program. In the proceeding regarding Equitable's failed purchase of Dominion
6 Peoples Natural Gas ("Equitable/Peoples Merger"), I had advocated for the
7 termination of Contract Service. Thus, I agree with Witness Quinn's proposal.

8 **Q. PLEASE DESCRIBE EQUITABLE'S AGENCY PROGRAM.**

9 A. Equitable's Agency program essentially provides the LDC with a vehicle by
10 which it directly competes with marketers for gas supply customers because it
11 provides services traditionally offered by marketers. Pursuant to Section 11.7 of
12 its tariff, Equitable may serve as agent for any class of customer in making
13 upstream transportation arrangements and in securing gas supply and then deliver
14 that supply to the customers. Technically, Section 11.7 permits Equitable to act
15 as agent solely for purposes of making upstream transportation arrangements.
16 However, in the Equitable/Peoples Merger proceeding, Equitable stated that its
17 affiliate, Equitable Energy, is the gas supplier for all of its Agency customers.
18 [Rebuttal Testimony of James Crist at docket A-122250F5000, page 6, lines 3-5,
19 11-12]. In its response to Hess I-16, Equitable confirmed that this is still the case.
20 In addition, the tariff permits Equitable to negotiate the rates for this service with
21 the customer. Equitable currently has 1,377 Agency customers that consume, in
22 the aggregate, 5,623,184 Mcf. (See Response to Hess II-1 Supplemental).
23 Although this is a significant market, it actually reflects a steady decline over the

1 last few years: in 2005, there were 2,298 customers and 7,428,714 Mcf; in 2006,
2 there were 2,065 customers and 6,405,356 Mcf and in 2007, there were 1,940
3 customers and 6,353,182 Mcf. (See Response to Hess I-16).

4 **Q. HOW DOES EQUITABLE'S AGENCY PROGRAM PREVENT**
5 **COMPETITION BY OTHER MARKETERS?**

6
7 A. Because Equitable can negotiate with its customers the rate for the Agency
8 service, Equitable can provide service to the customer at a lower bundled rate for
9 upstream transportation and local delivery. In situations where LDC competition
10 exists, it would be in Equitable's interest to offer steep discounts for Agency
11 service in order to retain that customer's business for its distribution service,
12 rather than have the customer select distribution service from another proximate
13 LDC. Thus, the Agency Program provides Equitable with a cost advantage over
14 marketers. Because Equitable also can use its distribution customer contact
15 information and distribution company personnel to market its Agency Program to
16 its existing distribution customers, Equitable also enjoys a marketing advantage.

17 Moreover, the fact that Equitable Energy is the only gas supplier serving
18 Agency customers makes it nearly impossible to compete with Agency service.
19 In addition to lowering the bundled rate for upstream transportation and delivery
20 service, the Agency service allows Equitable to lower the gas commodity portion
21 of the bundled offering as well. The size of the program demonstrates the
22 significance of the advantage Equitable realizes.

1 **Q. ARE YOU CONCERNED THAT EQUITABLE IS SHARING CUSTOMER**
2 **INFORMATION WITH ITS MARKETING AFFILIATE?**
3

4 A. Yes. The fact that Equitable Energy is the only gas supplier serving Agency
5 customers creates a distinct possibility that customer information is being shared
6 to facilitate the provision of Agency Service.

7 **Q. SHOULD EQUITABLE BE SHARING SUCH SENSITIVE CUSTOMER**
8 **INFORMATION AND ALLOWING DISTRIBUTION COMPANY**
9 **EMPLOYEES TO CREATE GAS SALES OPPORTUNITIES FOR THEIR**
10 **AFFILIATE MARKETER, EQUITABLE ENERGY?**
11

12 A. No. By virtue of the Commission's Standards of Conduct, Equitable is prohibited
13 from sharing this information with its affiliate. And because customer
14 information is confidential, other marketers must find customers through other
15 means.

16 **Q. COULD EQUITABLE USE GAS SUPPLY OBTAINED FROM NON-**
17 **AFFILIATE MARKETERS TO SATISFY AGENCY CUSTOMERS'**
18 **NEEDS?**
19

20 A. Yes. There are at least thirty-six suppliers (other than Equitable or Equitable
21 Energy) listed on the Commission's website licensed to supply gas in Equitable's
22 service territory. Consequently, the Agency Program effectively freezes out other
23 suppliers and provides Equitable and its marketing affiliate with a stranglehold on
24 competition.

25 **Q. ARE THERE ANY OTHER ILL EFFECTS FROM THE AGENCY**
26 **PROGRAM?**
27

28 A. Yes. The Program could also increase costs to non-Agency Equitable customers.
29 Section 1307(f) allows Equitable to recover its gas costs through its purchased gas
30 adjustment. As I discussed above, in order to attract customers to the Agency
31 Program or retain its distribution customers, Equitable's bundled Agency service

1 may offer a lower overall price. This can be achieved by Equitable lowering
2 either the gas commodity portion and/or the distribution portion of the bundled
3 offer. Because the same personnel are responsible for system gas procurement
4 and Agency gas procurement and it is unclear whether or how Agency supplies
5 are segregated from system supplies, there is potential that system supply gas
6 customers may subsidize Agency gas customers.

7 **Q. DOES THE NEED FOR SUCH A PROGRAM CONTINUE TO EXIST?**

8 A. No. The Agency Program was started several years ago in response to
9 competition between local distribution companies in Western Pennsylvania.
10 There are now other methods, primarily by discounting transportation service and
11 using alternative gas suppliers, to compete against another LDC. Equitable
12 clearly agrees, because it has proposed to eliminate the Program. Equitable stated
13 in its August 29, 2008 "Objections of Equitable Gas Company to Hess
14 Corporation's Set I Interrogatories and Requests for Production of Documents,
15 Nos. 1, 3, 6, 7, 11 and 16" at page 2: "it is Equitable's intention to exit the
16 [Agency] Program by the end of the year."

17 **Q. HAS EQUITABLE PROVIDED ANY DETAIL REGARDING ITS PLAN**
18 **TO EXIT THE AGENCY PROGRAM?**

19
20 A. No. In response to data request Hess II-3(a), Equitable states that it "has no
21 current plans to make a tariff filing to remove Section 11.7 from its tariff."

1 **Q. HAS EQUITABLE COMMUNICATED ITS PLAN TO TERMINATE THE**
2 **AGENCY PROGRAM TO ITS CUSTOMERS?**

3
4 A. No. Again, quoting from the same data response (Hess II-3(b)), Equitable states
5 that it “has not communicated with its agency program customers about the future
6 of the program.”

7 **Q. DOES EQUITABLE INDEED HAVE A PLAN FOR HOW TO**
8 **TRANSITION CUSTOMERS OFF OF THE AGENCY PROGRAM?**

9
10 A. It does not appear so. Equitable states that its “current plan is to cease entering
11 into new or extending existing agency agreements after December 31, 2008. Our
12 *present thinking is that those contracts existing on that date would expire*
13 *consistent with the contract language related to the term of each individual*
14 *agreement. This plan could change, and, if so, Equitable will supplement this*
15 *response.” (Response to Hess II-3(c)). Moreover, Equitable indicated that it has*
16 *not made a decision relative to the assignment of current Agency contracts that*
17 *will not expire by the end of this year (Response to Hess-II-2(a)).*

18 Hess has attempted to seek clarification of these responses and perhaps
19 flesh out Equitable’s plans, but the Company has been dismissive and non-
20 responsive to these inquiries. For example, Equitable has failed to provide
21 adequate assurance that it will not automatically assign current Agency contracts
22 to its marketing affiliate or that it will not automatically transfer Agency
23 customers to the affiliate upon the expiration of the Agency contracts. Thus, if
24 Equitable has thought through all of the consequences of its intention to terminate
25 the Agency Program, or determined how to go about doing so, it is keeping its
26 plans to itself.

1 **Q. SHOULD THIS CAUSE CONCERN FOR THE COMMISSION?**

2 A. Absolutely. There are immediate concerns, as well as long term concerns. Great
3 attention must be paid to the method by which the program is discontinued. The
4 Agency Program currently has 1,377 customers that consume 5,623,184 mcf in
5 the aggregate. (See response to Hess II-1 Supplemental). How these customers
6 are transitioned from Agency service should be determined as soon as possible to
7 avoid the possibility of Equitable Energy enjoying any competitive advantage in
8 acquiring these customers.

9 **Q. WHAT IS YOUR IMMEDIATE CONCERN WITH THE METHOD BY**
10 **WHICH EQUITABLE MIGHT DISCONTINUE ITS AGENCY**
11 **PROGRAM?**

12
13 A. I am concerned that without Commission directive Equitable will either assign or
14 facilitate the transfer of some or all of those Agency customers to its marketing
15 affiliate, Equitable Energy. Most alarming is that Equitable has already begun
16 “transitioning services provided pursuant to Tariff Rule 11.7 to Equitable
17 Energy.” (Response to Hess I-9). Moreover, in response to Hess II-1
18 Supplemental , Equitable has calculated the margin it realizes from operation of
19 the Agency program as \$9,146,179. This is a significant value that Equitable has
20 every incentive to keep within its corporate family. Hess has sought assurances
21 from Equitable that it would not simply assign or transfer its Agency customer to
22 its Affiliate, or in any way facilitate Equitable Energy’s acquisition of these
23 customers. However, Equitable has been unwilling to make any such
24 commitment.

1 **Q. WHY SHOULD THE COMMISSION BE CONCERNED?**

2 A. There are two reasons why the Commission should be concerned that Equitable
3 does not have a transition plan in place. First, there is a competitive concern that
4 Hess (and all other marketers on Equitable's system) will suffer irreparable harm
5 if Equitable assigns or transfers its Agency customer to its Affiliate. Once
6 Agency customers become Equitable Energy customers – and, in particular, under
7 long-term contracts (one year or more) – Hess will be deprived of any meaningful
8 opportunity to compete for those customers. Once these customers have been
9 switched to the Affiliate, the Commission cannot unring the bell.

10 In addition, the Commission should be concerned over potential, and
11 possibly already occurring, violations of the Standards of Conduct for LDCs.
12 First, a LDC may not provide its affiliated marketer with a preference. (Standards
13 of Conduct § 62.142(11)). Facilitating the transfer of nearly 1,400 customers to
14 Equitable Energy certainly would be a preference. Second, a LDC may not
15 disclose customer information to its affiliated marketer without a customer's
16 consent. If such disclosure is made, the LDC must seek customer consent and
17 then provide the customer's information to all suppliers on its system. (Standards
18 of Conduct, § 62.142 (8)). In order to facilitate the transfer of the Agency
19 customers to Equitable Energy, Equitable would necessarily need to share
20 customer information with its affiliate. Moreover, because Equitable Energy is
21 the supplier of gas to the Agency program it is likely that such information has
22 already been shared. Finally, Section 62.142(17) of the Standards of Conduct
23 prohibits the joint marketing or packaging of LDC service with the services

1 provided by an affiliated marketer. Without Commission oversight over the
2 termination of the Agency Program, Equitable has every incentive to work with
3 its affiliated marketer to assure that all Agency customers, and the over \$9 million
4 in margin that they bring the company, become Equitable Energy customers. In
5 short, the Commission should act to ensure that Equitable does not provide any
6 preference to its affiliate, does not transfer or facilitate the transfer of customers to
7 its affiliate and does not wind up the Agency Program in a way that provides any
8 benefit to its affiliate. In addition, to the extent that the Commission has any
9 concerns over compliance with the Standards of Conduct, it should investigate the
10 matter in Equitable's next management audit.

11 **Q. IF IT IS NOT APPROPRIATE FOR EQUITABLE TO MIGRATE THOSE**
12 **CUSTOMERS TO EQUITABLE ENERGY, THEN WHAT DO YOU**
13 **PROPOSE?**

14
15 A. There are at least two options for handling termination of the Agency Program.
16 Equitable could either develop a transition plan for communicating its plans for
17 termination of the Agency Program with its customers and for handling the
18 possibility of employees transferring from the Agency Program to Equitable
19 Energy or it could auction off its Agency customer book to the highest bidder.

20 **Q. PLEASE DESCRIBE YOUR PROPOSED CUSTOMER**
21 **COMMUNICATION PLAN.**

22
23 A. Equitable must communicate the program termination to its customers, with
24 participation of all interested third party suppliers in the drafting and timing of the
25 communications. Equitable should: (1) inform customers that the Agency
26 Program is terminating and after December 31, 2008, Equitable will no longer
27 consider requests for Agency service; (2) explain that upon expiration of their

1 current contracts, customers have the option of purchasing their gas supply from
2 any third party marketer licensed to do business in Pennsylvania and provide a list
3 of all registered marketers (including Equitable Energy); and (3) assure customers
4 that no advantage will accrue through purchase of gas supply through Equitable
5 Energy. This message should be communicated to all Agency customers now, so
6 they are aware of what is to come. The message also should be reiterated at least
7 sixty days prior to Agency contract expiration so that the customers have
8 sufficient time to make alternative gas supply arrangements. Equitable should be
9 required to draft these customer communications and file them with the
10 Commission for comment by interested parties and approval by the Commission.
11 Finally, Equitable should delete Section 11.7 from its tariff.

12 **Q. SHOULD EQUITABLE BE PERMITTED TO CONTINUE RENEWING**
13 **AGENCY CONTRACTS THROUGH THE END OF THE YEAR?**

14
15 **A.** No. It is important to note that termination of the Agency Program will not leave
16 customers without gas supply. There are many options for procurement of gas
17 supply, including using Equitable itself or contracting with a licensed marketer.
18 Moreover, it would provide for a smoother transition if Equitable were to cease
19 renewing Agency Contracts that expire prior to the end of the year. If the
20 Commission does not wish to restrict Equitable in this manner, it should impose a
21 limit on the term of renewed Agency contracts. I propose that any renewed
22 contracts be restricted to a month-by-month renewal, but in no case exceed a
23 maximum term of one year. In this way, the Commission and all marketers can
24 be assured that the Agency Program will be terminated in its entirety by the end
25 of 2009.

1 **Q. WHAT IS YOUR CONCERN WITH RESPECT TO EMPLOYEE**
2 **TRANSFERS?**

3
4 A. In response to Hess I-9, Equitable stated that it “is transitioning services provided
5 pursuant to Tariff Rule 11.7 to Equitable Energy. The transition will be
6 completed by November 1, 2008. During this period, an Equitable employee has
7 assisted in the transition process.” In addition, in its response to discovery request
8 Hess II-6(a), Equitable acknowledges the possibility that employees of Equitable,
9 including employees performing Agency responsibilities, could be employed by
10 Equitable Energy in the future. Indeed, there are at least eight employees of
11 Equitable Energy LLC who were employed by Equitable – six of whom have
12 transferred within the last year or so and one of which is performing the exact
13 same job function (large volume accounts manager). (See Response to Hess I-
14 18). Employees of Equitable with responsibility for administration of the Agency
15 Program necessarily have customer information that cannot and should not be
16 shared with Equitable Energy. To avoid the potential for these employees to be
17 able to use this information in a new position with Equitable Energy, I propose
18 that any employee with responsibilities for administration of the Agency Program
19 be restricted from transferring to Equitable Energy for a minimum of one year
20 following expiration of all Agency contracts. This will allow the proprietary
21 information to become stale and thus lose its value to the affiliate.

22 **Q. WHAT IS YOUR SECOND PROPOSAL FOR TRANSITIONING**
23 **CUSTOMERS OFF OF THE AGENCY PROGRAM?**

24
25 A. Equitable could auction the entire Agency book of business for sale to the
26 marketer with the highest bid (or could divide the book into smaller portions if

1 that will attract more willing buyers). The winning marketer(s) would assume
2 responsibility for securing gas supply for the customers immediately following
3 the sale. This would allow the market to value the book and would maximize the
4 value realized for Equitable's ratepayers. Proceeds from the sale should be
5 credited back to Equitable's ratepayers as the entire Agency program was created
6 and has been operated using regulated assets and employees of the regulated
7 utility. Any Agency Customer whose contract expires prior to the sale should be
8 dealt with as detailed above. In the alternative, Equitable's revenue requirement
9 simply could be reduced by the valuation of the Agency book, which Equitable
10 has stated is \$9,146,179. (See Response to Hess II-1 Supplemental).

11 **EQUITABLE'S OPERATIONAL RULES SHOULD BE REVISED SO**
12 **THAT THEY NO LONGER OPERATE AS BARRIERS TO ENTRY.**

13 **Q. WHAT IS YOUR CONCERN ABOUT EQUITABLE'S OPERATIONAL**
14 **RULES AND PROCEDURES?**

15
16 **A.** Equitable currently maintains rules regarding the operations of marketers on their
17 system that are costly and needlessly burdensome and thus operate as barriers to
18 entry. To stay in business, a marketer must pass on its costs to its customers.
19 Thus, if the costs of doing business behind Equitable are too high, marketers will
20 not be able to attract business. This creates an additional benefit for Equitable's
21 marketing affiliate – by making the operational rules unnecessarily burdensome
22 and costly, Equitable keeps other marketers off its system and increases its
23 affiliate's market share. Below, I identify many areas of improvement in
24 operational rules that would benefit marketers, and thus their customers. I also
25 make recommendations for each issue. In some cases, those recommendations
26 were based on existing practices of Dominion Peoples.

1 **Q. WHY DID YOU SELECT DOMINION PEOPLES?**

2 A. Like Equitable, Dominion Peoples operates in Western Pennsylvania and is
3 subject to many of the same operational characteristics. Its policies, procedures
4 and rules are more reasonable and less costly and thus, are more conducive to
5 competition.

6 **Q. WHAT DO YOU MEAN WHEN YOU SAY OPERATIONAL RULES ARE**
7 **CONDUCTIVE TO COMPETITION? HOW DO OPERATIONAL RULES**
8 **AFFECT MARKETERS AND COMPETITION?**
9

10 A. If these rules are overly punitive and restrictive, it limits the efficiency and value
11 *the marketers may pass along to their customers. Marketers primarily compete on*
12 *and derive their profit from the gas commodity, the price of which is largely*
13 *dictated by market conditions. In order for marketers to compete successfully and*
14 *provide value to their customers, they must minimize their operational costs while*
15 *maintaining quality service to the customers. Unduly burdensome, onerous and*
16 *punitive operational rules can thwart this objective by causing increased costs,*
17 *delays and inefficiencies. Marketers recognize that utilities need tools in their*
18 *transportation programs that ensure system reliability and integrity. But the tools*
19 *in Equitable's transportation program go too far and demand behavior and*
20 *standards higher than the utility itself could follow. In this manner, Equitable is*
21 *able to minimize competition.*

22 **Q. PLEASE LIST THE AREAS OF IMPROVEMENT, DESCRIBE THE**
23 **ISSUE AND MAKE YOUR RECOMMENDATION.**
24

25 A. **1. Consumption data.** In order for a marketer to manage its customer's needs
26 during a month, it is imperative that the marketer receive timely and accurate
27 consumption data from the utility. Equitable, however, does not make usage

1 information available at any time during the month. Thus, there is no opportunity
2 for marketers to balance their positions during the month. Dominion Peoples
3 provides data as meters are read throughout the month. This allows marketers to
4 estimate pool consumption more accurately and thus, to better manage pool
5 imbalances. I recommend that a similar system be implemented by Equitable. To
6 be clear, all I am suggesting is that Equitable make available to marketers
7 information it already has. This will result in no additional costs to Equitable, but
8 could have a dramatic impact on marketers' ability to manage and balance their
9 loads and thus the ultimate costs marketers incur and pass on to their customers.

10
11 **2. Tolerance Level.** A tolerance is the amount by which a marketer can over
12 deliver or under deliver gas into Equitable's system without penalty. There are
13 many factors beyond a marketer's control that can result in a failure to match
14 deliveries to usage. Such factors include unpredicted weather changes, as well as
15 unexpected changes to production schedules. Indeed, in the last two years, Hess
16 has exceeded Equitable's tolerance threshold in 20 of the 24 months, for a total
17 cost to Hess of [REDACTED]. In order to influence marketer behavior, a
18 tolerance should be set at a reasonably achievable level. Equitable's monthly
19 tolerance level of 3.5% is far too low – the factors beyond a marketer's control
20 described above are generally enough to cause a marketer to exceed this level. To
21 make matters worse, Equitable provides no banking options beyond the 3.5%
22 tolerance. Thus, marketers are highly likely to experience imbalances beyond the
23 tolerance through no fault of their own. Although Dominion Peoples also has a

1 3.5% tolerance band, it provides a banking option. This enables a marketer to
2 “save” a previous month’s imbalance in its bank and use that amount to offset any
3 imbalance in a successive month. I propose that Equitable permit marketers to
4 bank their imbalances. Equitable has on-system storage, thus this should be a
5 workable solution. If there is an operational reason why Equitable cannot do this
6 on its system, however, then Equitable should increase its tolerance to a more
7 reasonable, and achievable, 10%. At this percentage, for the last two years, Hess
8 would have only exceeded the tolerance threshold in 13 of the 24 months, for a
9 total cost to Hess of ██████████ – a reduction of ██████████. Attached to my
10 testimony as Exhibit JLC-3- CONFIDENTIAL is a spreadsheet that analyzes
11 Hess’ imbalance tolerance position and costs for the last 2 years at a threshold of
12 3.5%, 8.0% and 10%. This analysis shows that it is not until the tolerance
13 threshold is raised to 10% that Hess would realize a dramatic decrease in its costs.
14 Sales customers are fully protected under an expanded tolerance level by the cash
15 in/cash out rates explained below, which provide Equitable with above market
16 prices for under deliveries, and below market prices for over deliveries.

17
18 **3. Imbalance Trading.** *One tool for managing imbalances is imbalance trading,*
19 *which enables marketers with offsetting imbalances at the end of a month to trade*
20 *those imbalances and eliminate or minimize their cash out/in exposure.*

21 Imbalance trading means that if there is one NGS that has under-delivered and
22 another NGS on the system has over-delivered, the two NGSs could trade gas
23 among themselves to bring their pools into balance and avoid cash out charges.

1 For example, under Equitable's 3.5% tolerance, assume that one NGS is long
2 10% and the other is short 10%. The system as a whole is in perfect balance;
3 however, both NGSs would incur penalties on 6.5% of their deliveries. Trading
4 the imbalance would allow both NGSs to avoid penalties. This is appropriate
5 because the LDC system is not harmed and the utility did not incur any penalties.
6 Furthermore, trading the imbalances can reduce costs that must be passed on to
7 customers.

8 It is important to understand that imbalance trading is simply a re-allocation of
9 gas that occurs after deliveries have been made for the month and after the gas has
10 been consumed by the customers. There is no physical transfer of gas – it is
11 simply a paper transaction involving the redistribution of excess gas supply from
12 one NGS' "account" to another NGS whose "account" is short (or vice versa).
13 Consequently, there is no impact on the utility. Indeed, the utility's only
14 involvement in the transaction is to adjust the volumes in its records (and some
15 LDCs permit the trades via their electronic bulletin boards, thus automating the
16 volume adjustment). Consequently, not only is imbalance trading reasonable
17 from a system perspective, it also makes economic sense. Thus, LDCs should not
18 restrict the opportunity to trade imbalances.

19 Although Equitable permits imbalance trading, its timing renders the
20 program ineffective as an imbalance management tool and thus increases
21 marketers' cash out/in costs. Equitable permits imbalance trading for one day on
22 Day 5 following month's end. Although Equitable is supposed to provide usage
23 information for the month by Day 5 of the following month, in Hess' experience,

1 usage data generally is not up-to-date or complete by this time so early in the
2 month. Consequently, marketers are forced to trade on inaccurate or estimated
3 usage information, and can result in trades that may not have been necessary.
4 Moreover, a one-day trading window is simply insufficient to allow for evaluation
5 and correction, if necessary, of usage data. Dominion Peoples has a 3 day trading
6 period, which commences on day 15 of the following month. Because the trading
7 period occurs later in the following month, information is more accurate.
8 Moreover, having 3 days to trade allows more time for corrections and gives the
9 marketer more time to find a counter party. I recommend that a similar system be
10 implemented on Equitable.

11
12 **4. Cash in / out rate.** If after trading a marketer still has an imbalance, the
13 marketer will pay the cash out or cash in price applicable to the imbalance level.
14 In order to manage its imbalances and minimize its costs, it is important that a
15 marketer know the cash out/cash in price to which it will be subject. Equitable,
16 however, no longer publishes daily market prices, only the monthly high/low
17 price and the final cash out/ cash in price. Without daily market price
18 information, there is no way for a marketer to confirm that the price imposed is
19 accurate. Moreover, the marketer will only know the price at the end of the
20 month, at a time when the information may have little or no practical value for a
21 marketer's imbalance management decisions. Consequently, I recommend that
22 Equitable publish on its website the daily pricing data.

23

1 **5. Report information.** Equitable communicates usage information via e-mail,
2 sometimes with an associated spreadsheet that is manually created and has
3 potential for error. As noted above, this information is not communicated until
4 after month's end. Moreover, it must be checked for accuracy before marketers
5 can finalize their trades. Because the trading window is only one day, the ability
6 to check the usage information and finalize trades is severely limited. Dominion
7 Peoples provides reports that are automatically generated by its system, which
8 pulls from the scheduling database and incorporates consumption information.
9 Imbalance positions are clearly identifiable and more accurate. Moreover,
10 marketers may access reports anytime. If Equitable changes the timing of the
11 trading period as discussed above, that will mitigate my concern somewhat.
12 However, the issue of inaccurate usage information could be addressed if
13 Equitable improved its NOMS system and automated its reporting function.
14 Although this could result in some costs to Equitable, those costs could be offset
15 by the efficiencies created by avoiding the need for employees to create, populate
16 and transmit the spreadsheets currently employed.

17
18 **6. Enrollment/drops.** Like my concern with Equitable's reporting function,
19 Equitable's method for reporting enrollments and drops is also manual. This
20 creates a lag between an enrollment or drop and Hess' receipt of notification of
21 the activity. The only way to confirm customer status is through e-mail
22 verification. At Dominion Peoples this process is automated. Equitable should
23 also automate its communication of enrollments and drops.

1 **7. Contact Person.** Equitable has only a single marketer contact person
2 available to answer questions. If that contact is out of the office, there is no one
3 available for marketers to contact to verify consumption data, correct report
4 information or confirm enrollments or drops. Dominion Peoples has multiple
5 trained personnel able to address issues and there is no reason why Equitable
6 could not train at least one back-up employee.

7
8 **RECOMMENDATION**

9 **Q. PLEASE SUMMARIZE YOUR RECOMMENDATIONS.**

10 1) Rate AGS should be discontinued. Equitable should be directed to have
11 collaborative discussions with IOGA to develop an agreement that will allow
12 producers to contribute to specific gathering system projects.

13 2) Equitable should be instructed to eliminate the Agency program by a plan that I
14 have laid out that provides all marketers with a fair and equal opportunity to
15 present competitive offers to customers.

16 3) Equitable should improve the operating policies and procedures detailed
17 herein.

18 **Q. IS YOUR ANALYSIS COMPLETE?**

19 **A.** No. At this writing, I have been informed by counsel for both IOGA and Hess that
20 Equitable has not provided responsive or timely answers to certain interrogatories
21 that Judge Corbett ordered Equitable to answer, nor has Equitable responded to
22 interrogatories propounded by IOGA and Hess for which answers are
23 overdue. The responses to this discovery may have a direct bearing on the

1 testimony I have provided. On behalf of IOGA and Hess, I am reserving the right
2 to submit supplemental direct testimony when my analysis is complete.

3 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

4 A. Yes, however I reserve the right to modify this testimony as addition requested
5 data becomes available.

Exhibit JLC-1

Docket No. R-2008-2029325
Item: IOGA-I-28
Respondent: John M. Quinn
Position: Vice President, LDC Rates and Gas Supply

EQUITABLE GAS COMPANY
Response to Interrogatories of the
Independent Oil and Gas Association of Pennsylvania

Item: IOGA-I-28

Does Equitable view its gathering system as a benefit to its ratepayers? Please explain.

Response:

Equitable views its gathering system as a benefit to its ratepayers. Customers receive natural gas service directly from gathering lines (service from field lines). Absent Equitable's service from field lines, distribution service line extensions, for the most part, would be uneconomic and therefore, many customers would be denied natural gas service.

Equitable also believes that a benefit will exist for residential, commercial, and industrial distribution customers of Equitable if PA production can be acquired and transported to Equitable's distribution system at prices less than city gate delivered interstate natural gas supply. Producers who use the gathering system to bring their gas to market also benefit from the gathering system.

Exhibit JLC-2

EQUITABLE GAS COMPANY
Response to IOGA's
Interrogatories, Set I

Item: IOGA-I-21

Reference Equitable's Answer to Amended Complaint, ¶s 38 and 81.

- (a) When did Equitable complete the LUFG study?
- (b) Is the moratorium still in effect? If not, when was it lifted?
- (c) Please explain why the moratorium was imposed to perform the LUFG study.
- (d) Please provide a copy of the LUFG study.

Response:

- a) A LUFG study for Equitable's overall system was included in Equitable's 2008 1307(f) filing at Docket No. R-2008-2021160 which was filed April 1, 2008. A LUFG study of Equitable's gathering system was completed in the third quarter of 2008.
- b) Yes.
- c) Equitable imposed a moratorium on new taps because the Company believed, inter alia, that the gathering system was experiencing elevated levels of unaccounted for gas. Adding incremental gas to this system would exacerbate this issue and ultimately result in higher LUFG volumes.
- d) The LUFG study for the overall system was included in the testimony of Thomas P. Wiggers, identified as Equitable Statement No. 3 in Equitable's 2008 1307(f) filing at Docket No. R-2008-2021160. Please see the attached summary of the LUFG study for the gathering system.

EQUITABLE GAS COMPANY
 Response to Interrogatories of IOGA

Docket No. C-20066800
 Item: IOGA-I-21

	2007	2007	2007	2007	2007	2007	2007	2007	2007	2007	2007	2007	2008	2008	2008	2008	2008	2008
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Receipts	1,014,695	836,412	971,042	1,036,952	1,072,622	1,068,127	940,077	1,082,456	1,049,863	1,095,490	1,077,923	1,086,065	1,086,371	865,876	1,119,811	926,524	771,485	680,427
Deliveries	852,041	734,176	705,445	655,910	738,149	650,808	688,758	786,372	807,121	811,510	896,229	893,665	983,782	758,241	1,000,709	748,432	517,757	453,958
LUPG	162,654	102,236	285,597	381,042	334,473	217,321	251,319	296,084	242,742	283,980	181,694	192,400	102,589	207,735	119,102	178,082	253,728	228,471
LUPG - %	16.03%	12.22%	27.35%	36.75%	31.18%	20.35%	26.73%	27.35%	23.12%	25.92%	16.86%	17.72%	9.44%	21.51%	10.64%	19.22%	32.89%	33.28%
Rolling %												23.61%	22.99%	23.59%	22.18%	20.74%	20.59%	21.34%

EQUITABLE 2 YEAR TOLERANCE ANALYSIS

Exhibit JLC-3 (Public)

8.5% Tolerance

Months within Tolerance	4
Months outside Toler	20

8.0% Tolerance

Months within Tolerance	7
Months outside Toler	17

10% Tolerance

Months within Tolerance	11
Months outside Toler	13

Approx. financial impact over 24 months (does not include any gas trades that may have taken place):

8.5% Tolerance	
----------------	--

8.0% Tolerance	
----------------	--

10% Tolerance	
---------------	--

****PUBLIC****

EXHIBIT JLC - 4 -
REFERENCED EQUITABLE DISCOVERY RESPONSES TO HESS
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

EQUITABLE GAS COMPANY.
Response to Set 1 Interrogatories of the
Hess Corporation, dated August 19, 2008

Item: HESS-I-9

Does Equitable Gas share or jointly use personnel between regulated distribution functions and any commercial/industrial and Choice sales or marketing efforts or gas supply and procurement functions?

Response:

Equitable's regulated distribution function has a commercial/industrial sales group responsible for negotiating delivery service agreements and a marketing group responsible for working with customers, developers, and contractors with new distribution business opportunities. Neither of these groups is involved with unregulated Choice sales, gas supply or gas procurement functions.

Presently, Equitable is transitioning services provided pursuant to Tariff Rule 11.7 to Equitable Energy. The transition will be completed by November 1, 2008. During this period an Equitable employee has assisted in the transition process.

EQUITABLE GAS COMPANY
Response to Set I Interrogatories of the
Hess Corporation

Item: HESS-I-16

List the number of customers served under the Equitable Gas Agency program for each year for the past three years. Provide customer volumes, identify the source of gas supply, and identify by month all pool imbalances and how these costs were reconciled.

Response:

	<u>2005</u>	<u>2006</u>	<u>2007</u>
Customers	2,298	2,065	1,940
Volume	7,428,714	6,405,356	6,353,182

Equitable Energy, LLC was the source of gas for the last three years.

A pool is considered to have an imbalance if it exceeds the tolerance levels identified in the Company's balancing provisions. Each pool has the ability to perform pool to pool transfers consistent with the Company's transfer policy. The agency program pool was cashed in for 37,897 dth in July 2007.

EQUITABLE GAS COMPANY
Response to Set 1 Interrogatories of the
Hess Corporation, dated August 19, 2008

Item: HESS-I-18

Provide a list of all former employees of Equitable Gas that became employees of Equitable Energy LLC, as of the date of these Discover Requests. Provide the job titles and job responsibilities/duties/functions of these employees when they were employed by Equitable Gas.

Response:

Eight current Equitable Energy LLC employees were at one time employed by Equitable Gas Company, LLC. The responsibilities, duties, and functions are self evident by the individual job titles.

Current EE Title	Transfer Date EGC Title
Mgr Eq Residential Franchise	4/8/1996 Customer Service Rep
Sr Gas Controller	9/12/2005 Utility Clerk
Dir Retail Marketing	7/16/2007 Dir Strategic & Reg Analysis
Mgr Scheduling & Trans Billing	9/10/2007 Mgr Scheduling & Trans Billing
Gas Controller I	11/19/2007 Dispatcher A
Mgr Billing/Collect/Cust Svc	12/17/2007 Mgr Customer Process Mgmt
Large Volume Accounts Manager	12/17/2007 Large Volume Accounts Manager
SVP Equity Sales & Gathering	3/10/2008 VP Utility Asset Management

EQUITABLE GAS COMPANY
Response to Set 2 Interrogatories of the
Hess Corporation

Item: HESS-II-1

Reference the August 29, 2008 "Objections of Equitable Gas Company to Hess Corporation's Set I Interrogatories and Requests for Production of Documents, Nos. 1, 3, 6, 7, 11 and 16" at page 2: "it is Equitable's intention to exit the [Agency] Program by the end of the year."

- a. Provide data on Agency Program participation by rate schedule in aggregate by month. Specify number of accounts, total volumes, total margin revenue.
- b. For each account that has left the Agency Program indicate if they are now served by system supply as a sales customer, served by Equitable Energy LLC, or served by a non-affiliated marketer.
- c. Is Equitable currently renewing Agency contracts or executing new Agency contracts?
- d. If the answer to c. is "yes," at what point prior to the termination of the Agency Program will Equitable cease renewing existing or executing new Agency contracts?

Response:

- a. Number of customers: 1,377
Volume: 5,623,184 Mcf
Margin: \$9,146,179.
- b. 87 Served by non-affiliate marketer,
12 currently on Equitable Gas tariff service
10 Served by Equitable Energy.
- c.
- d.

EQUITABLE GAS COMPANY
Response to Set 2 Interrogatories of the
Hess Corporation

Item: HESS-II-2

Reference the August 29, 2008 "Objections of Equitable Gas Company to Hess Corporation's Set I Interrogatories and Requests for Production of Documents, Nos. 1, 3, 6, 7, 11 and 16" at page 2: "it is Equitable's intention to exit the [Agency] Program by the end of the year."

- a. How does Equitable plan to administer contracts whose terms extend beyond the end of the year? Will these contracts be assigned to Equitable's marketing affiliate? If the answer is "no," please describe any plans Equitable has developed for administration of these contracts. Provide any documentation that supports your answer.
- b. How does Equitable plan to administer contracts whose terms expire between now and the end of the year? Will the customers with such contracts automatically be referred to Equitable's marketing affiliate? If not, identify the entity(ies) to which these customers will be referred, including whether these customers will be informed of their choices to obtain gas supply and/or will be directed to marketers not affiliated with Equitable. Provide any documentation that supports your answer.
- c. Provide a copy of a typical Agency Program contract.

Response:

- a. Equitable will administer its contracts consistent with the terms contained therein until they expire. Equitable has not made a decision related to the assignment of contracts nor does the Company believe any changes need to occur related to the administration of the contracts.
- b. See Equitable's response to Hess-II-1c.
- c. A Highly Confidential, typical Agency Program contract in blank form is available for inspection in accordance with the terms of the Protective Order dated September 11, 2008.

EQUITABLE GAS COMPANY
Response to Set 2 Interrogatories of the
Hess Corporation

Item: HESS-II-3

Reference the August 29, 2008 "Objections of Equitable Gas Company to Hess Corporation's Set I Interrogatories and Requests for Production of Documents, Nos. 1, 3, 6, 7, 11 and 16" at page 2: "it is Equitable's intention to exit the [Agency] Program by the end of the year."

- a. When does Equitable plan to make a tariff filing to remove Section 11.7 from its tariff to effectuate termination of the Agency Program?
- b. Has Equitable communicated its plans to terminate the Agency Program to its customers? If not, does it plan to do so? If so, when? Provide any plans or other documentation referencing customer communication efforts with respect to termination of the Agency Program.
- c. Please describe any other plans or details regarding termination of the Agency Program. Provide any documentation supporting your answer.

Response:

- a. Equitable has no current plans to make a tariff filing to remove Section 11.7 from its tariff. Please refer to Equitable's response to Dominion-I-11.
- b. Equitable has not communicated with its agency program customers about the future of the program. At this time, the timing of such a communication is being discussed.
- c. Equitable's current plan is to cease entering into new or extending existing agency agreements after December 31, 2008. Our present thinking is that those contracts existing on that date would expire consistent with the contract language related to the term of each individual agreement. This plan could change, and, if so, Equitable will supplement this response.

EQUITABLE GAS COMPANY
Response to Set 2 Interrogatories of the
Hess Corporation

Item: HESS-II-6

For any employees currently performing responsibilities for administration of the Agency Program:

- a. How will Equitable determine what their responsibilities should be after the Agency Program has been terminated? Will such employees be reassigned to Equitable Energy, LLC?
- b. If so, what procedures will Equitable implement to ensure that employees with Agency Program responsibilities do not use customer information to confer an advantage upon Equitable Energy, LLC?
- c. Provide any documentation that supports your answers.

Response:

- a. Administration of Equitable's agency program is one of several responsibilities certain employees perform for Equitable. Equitable forecasts no FTE reductions resulting from changes in the administration of the agency program. It is possible that current Equitable employees may in the future choose to apply for jobs with Equitable Energy if job openings become available.
- b. Equitable will abide by tariff Rule 11.25.
- c. Refer to Equitable's tariff Rule 11.25 available at EQT.com.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
v.	:	R-2008-2029325
Equitable Gas Company	:	
Independent Oil and Gas Association of Pennsylvania,	:	
Complainant	:	
v.	:	C-20066800
Equitable Gas Company,	:	
Respondent	:	

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SURREBUTTAL TESTIMONY OF

JAMES L. CRIST

ON BEHALF OF

HESS CORPORATION

(HESS St. 1-SR)

11/18/08

HBG, PA

RA5

November 14, 2008

1 **Q. Please state your name and business address for the record.**

2 A. I am James L. Crist, President of Lumen Group, Inc. a consulting firm focused on
3 regulatory and market issues. My business address is 4226 Yarmouth Drive,
4 Suite 101, Allison Park, Pennsylvania 15101. I am presenting surrebuttal
5 testimony on behalf of Hess Corporation ("Hess"). I have separately submitted
6 testimony on behalf of the Independent Oil and Gas Association of Pennsylvania.

7 **Q. Have you previously submitted testimony in this proceeding?**

8 A. Yes. On October 8, 2008, my Direct Testimony was submitted in this case.

9 **Q. What does your surrebuttal testimony on behalf of Hess address?**

10 A. My surrebuttal testimony responds to the rebuttal testimony of Equitable Gas
11 Company ("Equitable Gas" or "Company") witness John M. Quinn on the subject
12 of the Agency Program, Equitable Gas witness Thomas P. Wiggers on the subject
13 of operational issues affecting competitive gas suppliers operating on the
14 Equitable Gas system and The Techs Industries, Inc. witness James S. Anderson
15 on the subject of current Agency Program contracts.

16 **RESPONSE TO EQUITABLE GAS REBUTTAL TESTIMONY REGARDING**

17 **THE AGENCY PROGRAM**

18 **Q. Please summarize the elements of Mr. Quinn's rebuttal testimony you intend**
19 **to address.**

20 A. Mr. Quinn testifies that Equitable Gas intends to modify how it uses its Agency
21 Program. It no longer is interested in remaining as the agent to procure gas
22 supplies for its customers and recommends that it be permitted to renew expiring

1 contracts until the end of January, 2009. For contracts set to expire on and after
2 February 1, 2009, Equitable Gas proposes to notify those customers that the
3 Company has decided not to offer Agency service "except in limited
4 circumstances" and that their current Agency contract will expire at the end of its
5 term. Equitable Gas proposes that it notify Agency service customers whose
6 contracts are expiring come February 1, 2009, that renewals will not be agreed to
7 and advise those customers that they can return to tariff service or contact any of
8 the gas marketers listed on the Company's website. Contrary to prior practice,
9 those customers would not be offered a re-determined rate or a market price for
10 those expiring contracts. A list of active marketers will be provided to Agency
11 service customers and the notice would be prepared with marketer and Bureau of
12 Fixed Utility Service input. The notice would be sent to all Agency service
13 customers by December 1, 2008.

14 As Agency service contracts continue to expire, "similar" letters would be sent to
15 customers and each month a number of Agency service contracts will end. The
16 Company expects that the vast majority of agency customers will be gone from
17 Agency service by the end of 2009 or 2010. A few longer term contracts will be
18 honored by Equitable Gas until they expire.

1 **Q. Is Equitable Gas planning to amend or withdraw its current Agency**
2 **Program tariff Rule 11.7?**

3 A. No. The Company has stated that it plans to continue to utilize the Agency
4 Program "in the limited circumstance of a customer attempting to bypass or
5 otherwise leave the Equitable distribution system." Equitable St. 1-R, p. 54.

6 **Q. Are there any other subjects in Mr. Quinn's rebuttal testimony you will**
7 **address?**

8 A. Yes. He contends that I misunderstand what the non-gas margin represents for
9 customers using the Agency service. That is not the case and I will clarify this
10 issue.

11 **Q. Is Equitable Gas' proposal for the future of the Agency Program acceptable**
12 **in your view?**

13 A. No it is not. The Company's most recent thoughts on the future of this Program
14 reinforce my conclusion that the Agency Program must be ended in its entirety.
15 First, Tariff Rule 11.7 is suspect because it specifically refers to the Company
16 acting as agent for the customer "in securing storage services and transportation
17 capacity on transmission pipelines to transport customer's gas to the pipeline
18 delivery points on the Company's system." In practice however, Agency service
19 consists of Equitable arranging for upstream transportation and capacity, a gas
20 supply for the customer that is combined with a delivery service charge that may
21 be discounted, or not, to deliver the gas from the Equitable Gas city gate to the
22 customer's premises. We have learned that for the last three years, only Equitable

1 Gas' competitive affiliate, Equitable Energy, has been used to arrange for the
2 Agency Program gas supply. According to Equitable's discovery response to
3 HESS-IV-4, the customer has no knowledge that in fact Equitable Energy is their
4 gas supplier, not Equitable Gas, and there is no direct commercial relationship
5 between Equitable Energy and the customer. See Hess Exhibit JLC 1-SR. The
6 Commission and the customers would be aware from reading Rule 11.7 that the
7 rate for the service is "negotiated" and that Agency service must be requested and
8 agreed to by the Company. However, Equitable has abused any latitude it may
9 have under this tariff provision and believes it may decide at its sole discretion
10 that it can terminate the Agency Program or change the criteria under which a
11 customer is eligible for Agency service.

12 In the course of this proceeding, Equitable has indicated the Agency Program will
13 be terminated. It then indicated the Agency Program will be transitioned to
14 Equitable Energy. It then decided to wind down the program, but did not finalize
15 or propose any plan for communicating its intentions to customers. Its most
16 recent thoughts on the future of the program, as reflected in Mr. Quinn's rebuttal
17 testimony, consist of not changing the tariffed description of the program, but
18 deciding it will now be available to only to some subset of previously eligible
19 customers that in Equitable Gas' view are "attempting to bypass or otherwise
20 leave the Equitable distribution system." According to Mr. Quinn, without
21 changing a word of the Agency Program tariff rule, Agency service customers all
22 of whom apparently have a contract renewal option, will be able to exercise or not

1 exercise that renewal option depending on whether their contract expires before or
2 after February 1, 2009.

3 Equitable Gas seems to believe it can make these modifications to Agency
4 Program eligibility and how the Program is applied without reflecting these terms
5 in the tariff or obtaining Commission approval of those terms. If it believed
6 otherwise, it would have made a proposal in this case to modify the Agency
7 Program, obtain Commission approval and file a new tariff as part of its
8 compliance filing. Moreover, to the extent Equitable Gas intends to continue to
9 offer Agency service, it has made no commitments to broaden its sources of gas
10 supply for the service beyond its competitive affiliate, Equitable Energy. This
11 feeding of Agency Program business to its competitive affiliate is an unreasonable
12 preference that should never have been permitted and if the Agency Program
13 continues in some form, such exclusive use of an affiliated supplier in a natural
14 gas distribution company program should be prohibited.

15 Against this backdrop of how the Agency Program has been implemented, the
16 only reasonable course the Commission could chart is to eliminate this Program
17 entirely, subject to a reasonable transition period. Equitable is free to continue to
18 compete with natural gas distribution companies ("NGDC") that represent
19 alternatives to its customers by discounting its delivery service rate or by
20 becoming more efficient so that its tariffed delivery rate is more competitive. It
21 has not made it clear why it needs the Agency program to compete with NGDCs
22 or why the gas supplier in Agency contracts must be its affiliate, Equitable

1 Energy. I have shown that Equitable does not need the Agency program to
2 compete and that competitive gas supplies may be arranged from a host of
3 suppliers, not solely through their affiliate.

4 **Q. What in your view would be the terms of a reasonable transition period prior**
5 **to ending the Agency Program?**

6 A. The Administrative Law Judge ("ALJ") has already partially addressed the issue
7 of a transition period. In the fourteenth interim order, he provided that Agency
8 contracts could automatically renew up to January 1, 2009. However, after that
9 date, my recommendation is that no renewals be permitted. The letter
10 notifications to the customer pursuant to the ALJ's orders, as well as the follow up
11 customer notification recommended by Mr. Quinn closer to the time the Agency
12 contract expires, should make that important fact clear. As far as the content of
13 the notifications are concerned, I agree with Mr. Quinn that the letter should be
14 prepared with marketer and Bureau of Fixed Utility Service input and include the
15 information Mr. Quinn recommends be included. However, the letters should
16 also explain that the selection of a competitive supplier will not affect the delivery
17 service Equitable Gas is required to provide to the customer.

18 **Q. Are there any other requirements that should be part of a wind down of the**
19 **Agency Program?**

20 A. Yes. In view of Mr. Quinn's testimony that it will be several years until current
21 Agency contracts expire, the Commission should require quarterly reports to be
22 filed by Equitable Gas with the Commission, and served on all parties to this case,

1 that track the expiration of Agency contracts by indicating how many have
2 expired in the last quarter and how many are still in effect. This would continue
3 until all Agency contracts had expired. Given Equitable Gas' propensity to
4 unilaterally adjust how the Agency service is conducted, this reporting
5 requirement is a necessity.

6 **Q. Mr. Quinn has recommended that the Commission permit Rule 11.7 to stay**
7 **in effect and be applied by the Company in circumstances where a customer**
8 **is attempting to bypass or otherwise leave the Equitable Gas system. Do you**
9 **agree with this recommendation?**

10 A. No I do not. My recommendation is that the program be terminated because in
11 application it has harmed competition and is not necessary to provide the
12 Company options such as discounting delivery service rates where appropriate to
13 compete with other NGDCs who are seeking customers currently served by
14 Equitable Gas. However, if the Commission determines that the Agency Program
15 should continue, significant changes to the Program, including the tariff's
16 description of the program, need to be made. Under the current program, it is not
17 clear to the customer where their gas supply is coming from, and there is potential
18 for other customers to be subsidizing costs related to the Agency service gas
19 supply. Moreover, the delivery service provided to the Agency customers may or
20 may not be discounted. Taken together, the supply and delivery services provided
21 to Agency customers, as a negotiated rate, can mask exactly what the customer is
22 paying for each component of their service, create the potential for cost shifting,

1 prevent an accurate weighing of competitive options and make regulatory review
2 of the propriety and reasonableness of the program very difficult, if not
3 impossible.

4 **Q. How should the Agency Program be modified?**

5 A. First, the tariff description of the service needs to be amended, which should be
6 accomplished as part of any compliance filing in this case. Literally, a plain
7 reading of Rule 11.7 indicates that Equitable Gas can be selected by the customer
8 to be its agent in obtaining pipeline capacity upstream of the Company's City
9 Gate, to transport "customer's gas" to pipeline delivery points on the distribution
10 system. The reality of how Equitable Gas has deployed the Agency Program over
11 time is that it packaged delivery service, which may or may not be discounted
12 from tariffed General Delivery Service rates, with a price for gas supply provided
13 (unbeknownst to the customer) by its silent, affiliated supplier-partner, Equitable
14 Energy. Tariff Rule 11.7 should be amended to state plainly that the Agency
15 service consists of Equitable Gas acting as an agent for the customer to obtain gas
16 supply through a competitive supplier licensed to operate on the Company's
17 system. The supply will be arranged for the customer through a competitive
18 selection process open to all suppliers.

19 As part of the conditions under which Equitable Gas would be allowed to
20 continue the Agency Program, the Company must eliminate the exclusive nature
21 of the supply arrangements with its marketing affiliate, Equitable Energy, and for
22 renewing or new contracts permit all interested marketers to bid to be the gas

1 supplier, utilizing the upstream pipeline assets provided by the agent, Equitable
2 Gas.

3 The Tariff rule should also indicate that the service is available to customers who
4 can demonstrate that they can bypass the Equitable distribution system by
5 obtaining service from another certificated NGDC. The customer should be
6 required to produce evidence of the bypass potential, which should be retained by
7 the Company so that it could be verified that customers served through the
8 Agency Program had established their eligibility. Finally, it should indicate that
9 the customer may also be eligible for discounted delivery service, which can be
10 requested through other Equitable Gas tariff provisions. Beyond these
11 parameters, the Commission should not permit Agency service to continue.

12 **Q. Would this revised Agency Program have any impact on the notice provided**
13 **to customers whose Agency service contracts are expiring?**

14 A. Yes. If the Commission decides to allow the Agency program to continue,
15 but with the modifications I recommend, then customer notices should be revised
16 to indicate to customers the conditions under which Agency service could
17 continue.

18 **Q. Do you recall Mr. Quinn's rebuttal testimony where he states that you**
19 **misunderstand the \$9,146,179 in revenue associated with the delivery service**
20 **"associated with the Agency program"?**

21 A. Yes, I do.

1 **Q. Having reviewed Mr. Quinn's rebuttal testimony, do you agree you**
2 **misunderstood the nature of this revenue to Equitable Gas?**

3 A. No. In my Direct Testimony, I equated this revenue with profit that benefits
4 Equitable Gas as a consequence of the Agency program and its sole reliance on
5 Equitable Energy as gas supplier for the Agency Program. Mr. Quinn disputes
6 this characterization because he contends Equitable would receive these revenues
7 "regardless of who supplies the gas". However, Equitable Gas has indicated that
8 Agency service customers can have discounted delivery service rates. It has also
9 acknowledged that for the last three years, it has exclusively used Equitable
10 Energy as the gas supplier for Agency service. Because it is self dealing with its
11 affiliate, Equitable Energy, for the supply portion of the Agency service,
12 Equitable Gas has enormous latitude in what it receives for delivery service, and
13 what its affiliate, Equitable Energy, receives for supply service. For example,
14 with the pricing flexibility that use of Equitable Energy as its Agency service
15 "partner" gives it, Equitable Gas can charge more or less for delivery service, and
16 still outcompete other NGDCs or non-affiliated gas suppliers, and thus retain
17 flexibility on how much delivery service revenue it gets to book. A lower price
18 from its gas supply affiliate can allow Equitable Gas to minimize the discounting
19 it does on its delivery service and still retain the customer. When Equitable
20 Energy is the exclusive gas supplier, Equitable Gas' delivery service revenues are
21 not carved in stone and the gas supplier used for Agency service can allow the

1 Company to benefit from larger delivery service revenues. I do not believe that
2 such options should be allowed to continue.

3 **RESPONSE TO THE TECHS INDUSTRIES, INC.**

4 **Q. What is your understanding of the purpose of the rebuttal testimony of Mr.**
5 **Anderson on behalf of the Techs with respect to the Agency Program?**

6 A. Mr. Anderson is clear that the Techs "seek to ensure that its [current] Agency
7 Agreement and the Delivery Service Agreement remain in effect and are honored
8 pursuant to their terms."

9 **Q. Does this objective conflict with any of your recommendations?**

10 A. No it does not. I have not proposed that any current Agency Program Agreements
11 be terminated prior to their stated term. Therefore, I have doubts as to whether
12 this rebuttal testimony is really rebutting any direct testimony in this case.
13 However, I note that Mr. Anderson explains that The Techs have both an Agency
14 Service Agreement and a Delivery Service Agreement with Equitable Gas, and he
15 indicates that if Equitable no longer offers the current Agency Program when the
16 Agency Agreement expires, The Techs "would evaluate whether to take service
17 with Dominion Peoples with respect for those facilities that have this competitive
18 option."

19 **Q. What is the significance of this assertion?**

20 A. First, The Techs are an illustration of how Equitable Gas can still compete by
21 establishing a separate delivery service agreement that combats the cost of

1 delivery service from another NGDC even if the Agency Program is terminated.
2 Moreover, the termination of the Agency Program under the transition
3 recommendations I have made in this case, actually enhance The Techs
4 competitive options. Instead of an Agency Program in which the price offered by
5 Equitable Energy was the only game in town, The Techs could replace their
6 expired Agency Program Agreement with a supply agreement offered by any one
7 of several competitive suppliers, including Equitable Energy. And if the
8 Commission were to allow the Agency Program to continue under the
9 recommendations I have made, provided they met the eligibility requirements of
10 Agency service, The Techs would have the benefit of multiple suppliers
11 competing to be the Equitable Gas Agency Program gas supplier, and still retain
12 the option to explore gas supply offers from other competitive suppliers licensed
13 to operate on the Equitable Gas system outside the Agency Program.

14 **RESPONSE TO EQUITABLE GAS TESTIMONY REGARDING**
15 **OPERATIONAL ISSUES**

16 **Q. Please summarize your comments regarding Mr. Wiggers' rebuttal**
17 **testimony regarding operational issues.**

18 **A.** In my direct testimony, I proposed that Equitable Gas either provide a banking
19 option or increase the imbalance tolerance threshold so that marketers could
20 manage imbalances more easily and cost effectively.

1 **Q. Mr. Wiggers states that banking is not a feasible option because Equitable**
2 **does not have “on-system storage,” is that a fair statement?**

3 A. No. His testimony is misleading. While Equitable Gas does not have storage
4 behind its city gate, its affiliated interstate pipeline, Equitrans LP, does have
5 upstream storage, and Equitrans directly connects into Equitable Gas’ system. If
6 a shipper can deliver gas into Equitrans, that gas can be delivered into the
7 Equitable system. Thus, it is disingenuous to say that “a banking option is not
8 practical” and Equitable should provide the option. Of course, Equitable could
9 charge a reasonable fee for the service to enable it to recover any costs it would
10 incur due to the provision of the service.

11 **Q. Mr. Wiggers also states that Equitable Gas will not consider raising its**
12 **tolerance level because of opposition to a similar proposal in a prior case.**
13 **Please comment.**

14 A. If the Commission is convinced that banking is not feasible, it should require
15 Equitable to increase the imbalance tolerance for the reasons discussed in my
16 direct testimony. Mr. Wiggers stated that in the 2004 1307(f) case the Company
17 proposed an increase which was opposed at that time by other parties. The result
18 of that case was a small increase in the tolerance level but not to the amount
19 desired by the Company. Now Mr. Wiggers seems to imply that Equitable will
20 not consider increasing the tolerance because Staff and the statutory advocates
21 opposed such an increase four years ago. In this proceeding, the OCA and OSBA
22 have not raised a single objection to Hess’ proposals – in fact, they have not

1 commented at all on the issues raised in my initial testimony. Consequently, it is
2 highly inappropriate for Equitable to assume that the same objections at present in
3 the 2004 PGC case are present today in Equitable's current rate case.

4 **Q. Is there any reason for concern with respect to Hess' proposed increase in**
5 **the imbalance tolerance threshold?**

6 A. No. Increasing the tolerance to a reasonable level will simply ensure that
7 marketers are not penalized for circumstances beyond their control that impact
8 their ability to deliver gas into Equitable's system without harming reliability.
9 Moreover, the increased tolerance should decrease costs to customers as
10 marketers must price their services to recover their costs. If they have to assume a
11 particular level of cashout penalties because of an artificially low tolerance, those
12 costs must be passed on to customers. Customers will benefit from lower gas
13 costs as a result of Hess' proposal.

14 **Q. Does this conclude your surrebuttal testimony on behalf of Hess?**

15 A. Yes.

HESS EXHIBIT JLC 1-SR

Docket No. R-2008-2029325
Item: HESS-IV-4
Respondent: John M. Quinn
Position: Vice President, LDC Rates and Gas Supply

EQUITABLE GAS COMPANY
Response to Interrogatories of the
Hess Corporation

Item: HESS-IV-4

At the hearing on Hess' request for an interim emergency order held on October 23, 2008, Hess made an on-the-record data request that Equitable advise whether, under the terms of the Agency contracts, there is a direct commercial relationship between Equitable Energy and the customer. (Tr. 216). Pursuant to the Commission's regulations, Equitable's response is due by November 3, 2008. Provide the response accordingly.

Response:

Under the terms of the Agency contracts, there is no direct commercial relationship between Equitable Energy and the customer in that the contract is between Equitable Gas Company and the agency service customer. Equitable Gas Company agrees to secure natural gas for the customer, but does not take ownership of the gas.