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October 14, 2008

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
400 North Street - 2nd Floor
Commonwealth Keystone Building
Harrisburg, Pennsylvania 17120

Re: Pennsylvania Public Utility Commission v.
Equitable Gas Company, Docket No. R-2008-2029325

RECEIVED
2008 OCT 24 PM 1:44
PA PUC
SECRETARY'S BUREAU

Dear Secretary McNulty:

Enclosed are an original and three (3) copies of Hess Corporation's Petition for Interim Emergency Order in the above-captioned proceeding. Copies of this document have been served in accordance with the attached Certificate of Service.

Very truly yours,



Matthew A. Totino

Enclosures
MAT:ck

- c. Certificate of Service
The Honorable John H. Corbett, Jr.

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2008 OCT 14 PM 3:35
PA PUC
SECRETARY'S BUREAU



R-2008-2029325
Hgg FK 10/22/08

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RECEIVED
2008 OCT 14 PM 3:35
PA PUC
SECRETARY'S BUREAU

Pennsylvania Public Utility Commission, et al. :

v. :

R-2008-2029325, et al. :

Equitable Gas Company :

**PETITION OF HESS CORPORATION
FOR INTERIM EMERGENCY ORDER**

To The Honorable John H. Corbett, Jr.:

Hess Corporation ("Hess") files this Petition seeking emergency relief, pursuant to Section 3.6 of the Pennsylvania Public Utility Commission's ("Commission") regulations, 52 Pa. Code § 3.6. Emergency relief is warranted because Equitable Gas Company ("Equitable") has failed to provide adequate assurances that, as it prepares to wind down its Agency Program, it will not assign Agency contracts or transfer expired Agency contracts/customers to its marketing affiliate during the pendency of this proceeding. Thus, emergency relief is necessary and appropriate to ensure that Equitable does not provide any preference to its affiliate, does not transfer or facilitate the transfer of customers to its affiliate, and does not wind up its tariff-based Agency Program in a way that provides any unlawful or unreasonable benefit to its affiliate.

Hess requests that the Presiding Officer grant this Petition and order the following:

- (1) Preclude Equitable, during the pendency of this case, from automatically assigning Agency contracts to its marketing affiliate;

(2) Preclude Equitable, during the pendency of this case, from facilitating the transfer of expired Agency contracts/customers to its marketing affiliate;

(3) Prohibit Equitable Energy, LLC, Equitable's marketing affiliate, from contacting any Agency customers unless and until Equitable has developed a termination process that ensures that all marketers have a fair opportunity to compete for those customers; and

(4) For any customers whose Agency contracts expire during the pendency of this case, require Equitable to send a letter, the text of which is jointly agreed to by Hess and Equitable, at least 60 days before the end of the contract advising the customer of its option to become an Equitable sales customer or obtain service from a list of identified Natural Gas Suppliers, but explaining that no benefit related to distribution service will accrue from choosing Equitable Energy as the customer's gas supplier.

In support of this Petition, Hess states as follows:

I. STATEMENT OF FACTS

1. On June 30, 2008, Equitable filed a general base rate case requesting an increase of \$51.9 million in annual revenues. The filing was made pursuant to Section 1308 of the Code, 66 Pa. C.S. § 1308 (Voluntary changes in rates).

2. On or about August 1, 2008, Hess filed a Petition to Intervene in this matter. In its intervention, Hess stated a direct interest in investigating Equitable's Agency Program, which is a tariff-based program (Section 11.7 of Equitable's tariff)¹ that permits Equitable to act as an agent for customers to secure gas supply, storage services, and transportation capacity to transport the customer's gas to Equitable's city gate. Essentially, Equitable serves as agent for the customer and obtains gas supply from its affiliate and then delivers that supply using rate GDS, General Delivery Service. Currently, Equitable has approximately 1,400 customers in its Agency Program.²

¹ A copy of Tariff Rule 11.7 is attached as Attachment A to this Petition.

² IOGA Hess Joint Statement No. 1, pp. 23, 28.

3. Through its participation in the case, Hess expressed its intent to examine, *inter alia*, whether the Agency Program is anti-competitive and is otherwise unreasonable, in light of the Commission's efforts to ensure the competitiveness of Pennsylvania's gas markets.

4. Hess' Petition to Intervene was subsequently granted by Order of the Presiding Officer.

5. At the Commission's Public Meeting of August 21, 2008, Equitable's rate increase request was suspended, and the case was assigned to the Office of Administrative Law Judge ("OALJ") for prompt scheduling of hearings and the issuance of a Recommended Decision. The Commission's Order suspending the requested increase made clear that the scope of this proceeding includes the reasonableness of Equitable's existing rates, rules and regulations, which includes the reasonableness of the company's Agency Program.

6. On August 19, 2008, Hess propounded Interrogatories and Requests for Production of Documents, Set I ("Set I Discovery Requests") on Equitable. Specifically, Hess sought data and information relating to, among other things, Equitable's Agency Program.³

7. On August 29, 2008, Equitable filed written objections to the Set I Discovery Requests Nos. 1, 3, 6, 7, 11, and 16. In its objections to requests Nos. 1 and 16, Equitable argued that the information sought in these requests regarding the Agency

³ Because the Set I Discovery Requests were propounded prior to any prehearing order establishing an expedited discovery schedule, the discovery was issued pursuant to the Commission's discovery regulations, which provide a 10-day objection period and a 15-day answer period. See 52 Pa. Code § 5.342.

Program was irrelevant because Equitable was intending to exit the Agency Program "by the end of the year."⁴

8. Of note, Equitable in its general rate increase request filing did not indicate its intent to terminate the Agency Program. Thus, the possibility of termination was raised for the first time in this proceeding in Equitable's objections to Hess' Set I Discovery Requests.

9. On September 15, 2008, Hess propounded Interrogatories and Requests for Production of Documents, Set II ("Set II Discovery Requests") on Equitable. Specifically, Hess sought data and information regarding Equitable's proposed termination of its Agency Program, including the process by which Equitable will terminate its Agency program.

10. Specifically, Hess inquired about whether, as part of the termination, Equitable will automatically assign Agency contracts to its marketing affiliate. Hess also inquired about Equitable's intentions with respect to expiring Agency contracts and what those and other Agency customers will be told regarding their options upon the termination of the Agency program. Hess also inquired as to when Equitable will make a tariff filing to reflect the termination of the program.

11. Equitable subsequently submitted its answers to Hess' Set II Discovery Requests. In its response to Hess-II-2(a), Equitable indicated that it has not made a decision relative to the assignment of contracts, but will administer them consistent with their terms.⁵ Equitable further indicated in its answer to Hess-II-3(b) that it has not communicated with its customers about the intended termination of the program and that

⁴ A copy of the objections is Attachment B to this Petition.

⁵ IOGA Hess Joint Statement No. 1, p. 27.

the timing of such communications "is being discussed."⁶ In its answer to Hess II-3(a), Equitable specified that it has no current plans to make a tariff filing to remove Section 11.7 from its tariff.⁷

12. On September 29, 2008, Hess contacted counsel for Equitable via email to relay its concerns regarding the lack of any discernable exit strategy for the Agency Program. In its email, Hess confirmed a disagreement with Equitable as to whether the Commission must approve the termination process. Hess also indicated ambiguity over what role Equitable's supplier affiliate will play as the program winds down.

13. In the email, Hess also raised the issue of timing. Hess noted that based on the procedural schedule, this case will not conclude until the first quarter of 2009, and Hess voiced a concern about what happens to Agency Program customers in the meantime.

14. To address its concerns, Hess proposed the following interim actions, pending a resolution of this case:

- Equitable will not renew expiring Agency Program contracts for more than 12 months;
- Equitable will advise customers who renew their contracts between now and when the Commission acts on these issues that the Agency Program is terminating;
- A letter, the text of which is jointly agreed to by Hess and Equitable, should be sent to Agency Program customers at least 60 days before the end of their contracts that advises them that they can become Equitable sales customers or obtain service from a list of identified NGSSs (including Equitable Energy, LLC), but that no benefit related to distribution service will accrue if the customer chooses Equitable Energy as its gas supplier.

⁶ IOGA Hess Joint Statement No. 1, p. 27.

⁷ IOGA Hess Joint Statement No. 1, p. 26.

15. On October 1, 2008, counsel for Equitable contacted counsel for Hess via telephone and informed that Equitable was not interested in discussing any resolution of these issues during the pendency of this proceeding.

16. On October 3, 2008, counsel for Hess followed up with counsel for Equitable to inquire as to whether Equitable would at least be willing to commit that during the course of this proceeding, it will not automatically assign current Agency contracts to its affiliate supplier and will not automatically refer expired Agency contracts or customers to its affiliate. To date, Hess has yet to receive a response to this latest inquiry.

II. EMERGENCY RELIEF IS NECESSARY AND APPROPRIATE UNDER THE COMMISSION'S TEST FOR SUCH RELIEF.

17. Under Chapter 3 of the Commission's regulations, a party may petition for emergency relief during the course of a proceeding. To the extent practicable, any such petition must be supported by a verified statement of facts establishing the need for interim emergency relief. 52 Pa. Code § 3.6.

18. Under the Commission's regulations, a Presiding Officer is authorized to issue an interim emergency order upon finding that: (1) the Petitioner's right to relief is clear; (2) the need for relief is immediate; (3) the injury would be irreparable if relief is not granted; and (4) the relief requested is not injurious to the public. 52 Pa. Code § 3.7. As demonstrated by the verified facts in this Petition and Hess' testimony filed on October 8th (IOGA Hess Joint Statement No. 1), emergency relief is necessary and appropriate under this 4-part test.

19. Hess has a clear right to relief. Assigning Agency contracts to a marketing affiliate or facilitating the transfer of Agency customers to the affiliate upon the expiration of an Agency contract, which Equitable has failed to assure will not happen during the pendency of this proceeding, would violate the Commission prohibition against preferential treatment towards a marketing affiliate. Moreover, Hess' concern about the improper assignment or transfer of customers cannot be addressed adequately through the Commission's normal adjudicatory process in this rate case and will cause Hess to suffer irreparable harm. Assignments or transfers that occur during this proceeding will deprive Hess (and all other non-affiliated marketers) of a meaningful opportunity to compete for these customers, and once any switch to the marketing affiliate occurs, the competitive damage will be complete already and cannot easily be undone. Finally, the emergency relief requested by Hess is in the public interest because it helps promote competition with respect to natural gas supply products and pricing options for retail customers via Equitable facilities.

A. Hess's right to relief is clear.

20. As a third party supplier serving customers in Equitable's territory that competes with the Agency Program and with Equitable's marketing affiliate for customers, Hess has a clear right to relief on the merits. The assignment of Agency contracts to the affiliate or the automatic transfer of Agency customers to the affiliate upon the expiration of an Agency contract, which Equitable has failed to assure will not happen, would violate the Commission's regulations⁸ and policy.

⁸ See IOGA Hess Joint Statement No. 1, pp. 23-33. A verification of the facts in this Petition is attached. In addition, Mr. Crist, whose filed testimony on this issue is cross-referenced in this pleading, is available for any hearing scheduled by the ALJ at which time IOGA Hess Joint Statement No. 1 can be authenticated and verified.

21. The Commission has announced a "strong policy against direct or indirect discrimination by LDCs in favor of their marketing affiliates or marketing divisions and against independent gas marketers." This is because "[t]he discrimination impermissibly hinders the unbundling of services and the entry of new competitors in the marketplace."⁹ This strong policy against preferential treatment of marketing affiliates is further codified in the Standards of Conduct in the Commission's regulations at 52 Pa. Code § 62.142(11), which prohibits a Local Gas Distribution Company ("LDC") from providing its affiliated marketer with a preference.

22. In short, facilitating the transfer of nearly 1,400 customers to Equitable Energy would certainly be a preference. The requested emergency relief is necessary and proper to ensure that Equitable does not provide any preference to its affiliate by transferring or facilitating the transfer of customers to its affiliate and/or winding up the Agency Program in a way that provides any benefit to its affiliate.

23. In addition, Equitable has failed to provide adequate notice of the termination of the Program. The Agency Program is a tariff-based program that essentially provides Equitable with a vehicle by which it directly competes with marketers for gas supply customers.¹⁰ As a tariff-based program that was approved by the Commission, the Agency Program has the full force and effect of law, and is binding on the utility.¹¹ Under the Commission's regulations, Equitable must provide 60 days' public notice for any modification to its tariff, which includes the modifications necessary to end the Program.¹² Equitable has provided no such notice.

⁹ 52 Pa. Code § 69.191(a).

¹⁰ IOGA Hess Joint Statement No. 1, p. 23.

¹¹ *PPL Elec. Util. Corp. v. Pa. Pub. Util. Comm'n*, 912 A.2d 386 (Pa. Cmwlth. 2006).

¹² 52 Pa. Code § 53.31.

24. Equitable did not formally announce its intent to exit the Program as part of its general rate increase request made in this case. Rather, Equitable announced its intent in objections to Hess' Set I Discovery Requests. And, Equitable has made clear that it does not intend to provide public notice in the form of a tariff filing prior to terminating the program. This is evident from Equitable's answer to Hess' Set II Discovery Requests (Hess II-3(a)), which specifies that Equitable has no current plans to make a tariff filing to remove Section 11.7 from its tariff. Of note, as indicated in its answer to Hess' Set II Discovery Requests (Hess-II-3(b)), Equitable has yet to even communicate with its customers about the intended termination of the program.

25. Equitable should not be permitted to end the Agency Program under the cover of darkness without providing interested parties with notice of such a change. Rather, in accordance with the relief requested in this Petition and with IOGA/Hess St. JLC-1, Equitable should be required to provide customers with adequate notice of the termination and to inform them of their supply options once the Program is terminated.

26. Consequently, Hess has met the first part of the test needed for emergency relief. That is, Hess has a clear right to be protected against the competitive harm that would result from Equitable terminating the Agency Program in a manner that results in preference to Equitable's marketing affiliate and insufficient notice being provided to customers whose Agency contracts end during this proceeding.

B. Hess' need for relief is immediate because Hess will suffer irreparable harm if relief is not granted.

27. The need for the requested relief also is immediate, as the delay associated with the Commission's normal adjudicatory process in this rate case would permit Equitable to provide a preference to its affiliate – a result which, once completed, would be difficult to unravel.

28. As previously discussed, Equitable has expressed its intent to end its Agency Program "by the end of the year." According to Equitable, its plan is to cease entering into new or extending existing Agency agreements as of December 31, 2008.¹³ However, Equitable has failed to provide the necessary details regarding exactly how it will end its Agency Program. As its discovery responses show, Equitable has yet even to *communicate with its customers about the intended termination of the program and states only that the timing of such communications "is being discussed."*¹⁴ Equitable also has specified that it has no current plans to make a tariff filing to remove Section 11.7 from its tariff.¹⁵ Thus, Equitable appears unwilling to provide adequate notice of the ending of its Agency Program, which raises the level of urgency for Program termination issues to be addressed.

29. Moreover, Equitable has failed to provide adequate assurance that, during the pendency of this proceeding, while the process to end the Agency Program is being evaluated, it will not automatically assign Agency contracts to its marketing affiliate or will not facilitate the transfer of Agency customers to the affiliate upon the expiration of Agency contracts. As previously discussed, any such automatic assignment or transfer

¹³ Equitable Response to Hess II-1(d), which is Attachment C to this Petition.

¹⁴ IOGA Hess Joint Statement No. 1, p. 27.

¹⁵ IOGA Hess Joint Statement No. 1, p. 26.

violates the prohibition in the Standards of Conduct against providing preferential treatment towards a marketing affiliate. It is Equitable's failure to provide adequate assurance in these regards, despite the repeated attempts of Hess to obtain such assurance, that gives rise to the immediate need for Hess' requested relief.

30. Hess has made repeated attempts to obtain adequate assurance regarding the status of existing Agency contracts and Agency contracts that expire during the course of this proceeding. Hess' first attempt for clarity on Agency termination issues occurred via discovery. As previously discussed, Hess inquired about whether, as part of the termination, Equitable will automatically assign Agency contracts to its marketing affiliate. Hess also inquired about Equitable's intentions with respect to expiring Agency contracts and what those and other Agency customers will be told regarding their options upon the termination of the Agency program. In its responses, Equitable failed to make any commitment regarding its handling of expired and expiring Agency contracts vis-à-vis its affiliate.

31. Hess made two additional attempts to obtain adequate assurance, which were equally fruitless. On September 29, 2008, Hess contacted counsel for Equitable via email to, *inter alia*, inquire about the role that Equitable's supplier affiliate will play as the Program winds down. On October 1, 2008, counsel responded that Equitable was not interested in discussing any resolution of these issues during the pendency of this proceeding. On October 3, 2008, counsel for Hess followed up with counsel for Equitable to inquire as to whether Equitable would at least be willing to commit that during the course of this proceeding, it will not automatically assign current Agency contracts to its affiliate supplier and will not automatically refer expired Agency contracts

or customers to its affiliate. To date, Hess has yet to receive a response to this latest inquiry.

32. The requested emergency relief is necessary and appropriate to avoid the irreparable harm that would occur from Equitable automatically switching Agency customers to its marketing affiliate during the pendency of this proceeding while a full and fair evaluation of the process to terminate the Agency Program is being evaluated. Indeed, Hess' concern in this regard is heightened by the fact that Equitable is already "transitioning services provided pursuant to Tariff Rule 11.7 to Equitable Energy."¹⁶

33. The Commission has held that economic loss can constitute irreparable harm.¹⁷ Irreparable harm may also be established by demonstrating the serious threat of harm to a competing provider's business.¹⁸ Here, there is a serious threat of harm to Hess (and other, non-affiliated marketers) if Equitable, during the course of this proceeding, automatically assigns a current Agency customer to its marketing affiliate or facilitates the transfer of Agency customers to its marketing affiliate upon the expiration of Agency contracts. Once Agency customers become Equitable Energy customers – and, in particular, under long-term contracts (one year or more) – Hess will be deprived of any meaningful opportunity to compete for those customers. Once these customers have been switched to the Affiliate, the Commission cannot unring the bell.¹⁹

¹⁶ IOGA Hess Joint Statement No. 1, p. 28.

¹⁷ *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 615 A.2d 951 (1992).

¹⁸ *Petition of Pennsylvania Carriers' Coalition for Emergency Order Mandating a Standstill of Ordering and Provisioning Arrangements*, Docket No. P-00052158 (Order entered April 7, 2008).

¹⁹ IOGA Hess Joint Statement No. 1, pp. 28-30.

34. In response to a discovery request, Equitable has calculated the margin it realizes from operation of the Agency program as \$9,146,179.²⁰ This is a significant value that Equitable has every incentive to keep within its corporate family. Moreover, were Equitable to provide a preference to its affiliate as described herein, the competitive marketplace would be deprived of the opportunity to compete for that value. Thus, the Commission should take immediate action to assure that the transition of Agency customers occurs in an open and competitive manner.

C. The relief requested is not injurious to the public.

35. The emergency relief requested by Hess will not harm the public. Rather, the requested relief actually is in the public interest because it will help promote competition with respect to natural gas supply products and pricing options for retail customers via Equitable facilities, in furtherance of the Gas Competition Act, 66 Pa. C.S.

§§ 2201 *et seq.* As specified by the General Assembly:

Consistent with section 2204 (relating to implementation), the commission shall allow retail gas customers to choose among natural gas suppliers and natural gas distribution companies to the extent that they offer such natural gas supply services. Retail gas customers shall be able to choose from these suppliers a variety of products, including, but not limited to, different supply and pricing options, and services that evolve as the competitive marketplace matures. (emphasis added).²¹

36. Of note, the Commission recently re-affirmed the Commonwealth's commitment to natural gas supply competition with its Final Order and Action Plan issued in the proceeding, *Investigation into the Natural Gas Supply Market: Report on Stakeholders' Working Group (SEARCH); Action Plan for Increasing Effective*

²⁰ IOGA Hess Joint Statement No. 1, p. 33.

²¹ 66 Pa. C.S. § 2203(2).

Competition in Pennsylvania's Retail Natural Gas Supply Services Market, Docket No. I-00040103F0002 (Final Order entered and Action Plan entered September 11, 2008). In the Order, the Commission noted the following with respect to the status of gas supply competition:

We have reviewed the *SEARCH Report* and have determined that consistent with the pro-competition legislative policy embodied in the Act and the information contained in the *SEARCH Report*, our efforts to increase effective competition in the retail natural gas market should begin now and, furthermore, should be concentrated on changing the market structure and its operation to reduce or eliminate barriers to supplier entry and participation. In our judgment, increasing the number of suppliers and, in time, the variety of service offerings available in the marketplace would be expected to attract customers to the market.²²

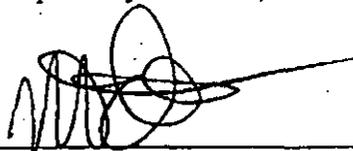
37. Through the *SEARCH* action plan, the Commission confirmed the commitment to increase and sustain natural gas supply competition in Pennsylvania. Granting Hess' requested emergency relief furthers this goal by preventing Equitable from, during the pendency of this proceeding, engaging in preferential treatment towards its marketing affiliate by assigning Agency contracts and referring expired Agency contracts and customers to its marketing affiliate. Without the requested emergency relief, Equitable will have unfettered discretion to end its Agency Program, which would likely lead to preferential treatment towards its affiliate at the expense and irreparable harm of competitive suppliers like Hess and ultimately, their customers.

²² *SEARCH Order*, pp. 5-6.

III. PRAYER FOR RELIEF

WHEREFORE, Hess Corporation respectfully requests that the Presiding Officer grant this Petition for an Emergency Interim Order and (1) preclude Equitable, during the pendency of this case, from automatically assigning Agency contracts to its marketing affiliate; (2) preclude Equitable, during the pendency of this case, from facilitating the transfer of expired or expiring Agency contracts/customers to its marketing affiliate; (3) prohibit Equitable Energy, LLC, Equitable's marketing affiliate, from contacting any Agency customers unless and until Equitable has developed a termination process that ensures that all marketers have a fair opportunity to compete for those customers; and (4) for any customer whose Agency contract expires during the pendency of this case, require Equitable to send a letter, the text of which is jointly agreed to by Hess and Equitable, at least 60 days before the end of the contract advising the customer of its option to become an Equitable sales customer or obtain service from a list of identified Natural Gas Suppliers, but explaining that no benefit regarding distribution service will accrue from purchasing gas supply from Equitable's marketing affiliate.

Respectfully submitted,



John F. Povilaitis
Matthew A. Totino
RYAN, RUSSELL, OGDEN & SELTZER P.C.
800 North Third Street, Suite 101
Harrisburg, Pennsylvania 17102-2025
(717) 236-7714
(717) 236-7816 (fax)

Date: October 14, 2008

Counsel for Hess Corporation

ATTACHMENT A

SUPPLEMENT NO. 63

TO

GAS - PA. P.U.C. NO. 22

EQUITABLE GAS COMPANY

A DIVISION OF EQUITABLE RESOURCES, INC.

SCHEDULE OF RATES, RULES AND REGULATIONS

FOR

GAS SERVICE IN

CITY OF PITTSBURGH

AND TERRITORY ADJACENT THERETO

(For Lists of Communities Served, see Page No. 4)

ISSUED: September 30, 2008

EFFECTIVE: October 1, 2008

Tariff Supplement Filed in Compliance
with the Public Meeting Held on August 21, 2008 in the
Section 1307(f) Proceeding at Docket No. R-2008-2021160

Issued

By

M. ELISE HYLAND

PRESIDENT

EQUITABLE GAS COMPANY
225 NORTH SHORE DRIVE
PITTSBURGH, PA 15212-5861

RULES AND REGULATIONS - (Continued)

11.4 Shrinkage

The Company's retention allowance for delivery service shrinkage is 6.0 percent of the total volume delivered into its system on behalf of commercial and industrial customers and 8.0 percent of the total volume delivered into its system on behalf of all other customers. The Company reserves the right to discount shrinkage at the Company's discretion. (C)

In addition to the shrinkage rate listed above the Company reserves the right to retain a portion of all Apollo District transportation volumes as compressor fuel. The portion will be established in each customer contract based upon the character of the actual service to be provided by the Company, but will not be greater than 3.0%

11.5 Quality of Gas

Gas of suitable quality must be provided by the customer at receipt point(s) designated in the Service Agreement.

11.6 Obligation To Serve

Delivery service customers who hold assigned capacity pursuant to Rate FPS sufficient to meet their firm requirements may return to sales service and the Company will accept back the underlying capacity. The Company shall treat delivery service customers who do not hold assigned capacity sufficient to meet their firm requirements and who wish to return to retail service in the same manner in which it would treat similarly situated customers who apply for retail service for the first time, except that, if the customers are permitted to return to firm service, then the Company shall accept back any capacity previously assigned to the customers. Failure of a customer to pay a Pool Administrator's bill is not a basis for termination of a customer by the Company or for denying the customer's return to retail sales service. Where the Company provides a consolidated bill, partial payment will be credited first to the Company's portion of the bill because the Company retains the obligation to serve.

11.7 Company Agency

If requested by the customer, and agreed to by the Company, the Company will act as agent for the customer in securing storage services and transportation capacity on transmission pipelines to transport customer's gas to the pipeline delivery points on the Company's system. This service shall be administered by the Company subject to the same terms, conditions and rates placed upon other pool operators operating under Equitable's tariff. The Company shall not be responsible for storage and transportation charges incurred on behalf of the customer, nor for the performance, non-performance or continued availability of any pipeline transportation service. The charges for this service shall be determined by negotiation between the Company and the customer.

(C) Indicates Change.

ISSUED: September 28, 2007

EFFECTIVE: October 1, 2007

D. L. FRUTCHEY
CHIEF REGULATORY OFFICER, EQUITABLE UTILITIES

ATTACHMENT B



**THOMAS, LONG,
NIESEN & KENNARD**

Attorneys and Counsellors at Law

THOMAS T. NIESEN
Direct Dial: 717.255.7641
tniesen@thomaslonglaw.com

August 29, 2008

John F. Povilaitis, Esquire
Ryan, Russell, Ogden & Seltzer
Suite 101
800 North Third Street
Harrisburg, PA 17102-2025

Re: Docket No. R-2008-2029325
Pa. P.U.C. v. Equitable Gas Company

Dear Mr. Povilaitis:

Enclosed are the 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, in the above matter. Please call us at your convenience if you wish to discuss the matter.

Very truly yours,

THOMAS, LONG, NIESEN & KENNARD

By

Thomas T. Niesen

Encl.

cc: Certificate of Service (w/enclosure)
James J. McNulty, Secretary
(Certificate of Service Only)

080829-Povilaitis (Objection).wpd

**Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Administrative Law Judge
John H. Corbett, Jr., Presiding**

Pennsylvania Public Utility Commission, et al.	:	
	:	
	:	
Independent Oil and Gas Association	:	Docket Nos. R-2008-2029325, et al.
	:	C-20066800
v.	:	
	:	
Equitable Gas Company	:	

**OBJECTIONS OF EQUITABLE GAS COMPANY
TO THE INTERROGATORIES AND REQUESTS FOR PRODUCTION OF
DOCUMENTS OF HESS CORPORATION SET I
NOS. 1, 3, 6, 7, 11 AND 16**

AND NOW, comes Equitable Gas Company ("Equitable" or "Company"), by its attorneys, and, pursuant to 52 Pa. Code § 5.342, objects to the Interrogatories and Requests for Production of Documents, Set I, Nos. 1, 3, 6, 7, 11 and 16, propounded by Hess Corporation ("Hess") in the above matter:

1. On June 30, 2008, Equitable filed Supplement No. 60 to Tariff Gas - Pa. P.U.C. No. 22 with the Pennsylvania Public Utility Commission ("Commission"). Supplement No. 60 contains rates designed to increase annual revenues by approximately \$51 million.

2. On August 19, 2008, Hess served its Set I Interrogatories and Requests for Production of Documents on counsel for Equitable.

3. Equitable objects to Hess Set I Interrogatories Nos. 1, 3, 6, 7, 11 and 16. These Interrogatories seek specific information about certain Equitable customers

which, if made available to Hess and other marketers, could be used by them for their own competitive advantage to the detriment of Equitable, the customers in question and Equitable's other customers. Equitable faces gas-on-gas competition from other local distribution companies with which it shares overlapping service territories. The margin received from negotiated rate customers that Equitable serves in these overlapping service territories benefits Equitable's sales and other customers.

4. It is Equitable's observation that marketers such as Hess attempt to identify customers in overlapping service territories and facilitate the movement of customers off the Equitable system to the systems of other local distribution companies which also enables Hess to charge more for its gas supply. The disclosure of individual, customer-specific information to Hess and other marketers would facilitate these efforts, again, with the loss of margin detrimental to Equitable and its other customers.

5. It is no resolution for marketers to claim that Equitable's concerns about disclosure of customer specific information and resulting loss of revenue are unwarranted or that they, the marketers, would protect customer specific information either voluntarily or pursuant to protective order. Their promises are not enforceable in any meaningful way and the protections afforded by a protective order are not foolproof.

6. Equitable is willing to provide marketers with information in the aggregate provided that no customer specific information is included. Equitable notes further that to the extent that Hess's Interrogatories seeking information about the Agency Program are the result of opposition to the Program, it is Equitable's intention to exit the Program by the end of the year.

Interrogatory No. 1

7. Hess Set I Interrogatory No. 1 provides:

Provide data on customer participation, by year for the past five years, in all Equitable Gas transportation programs, including the Equitable Gas agency program. Provide the following data, in excel format, without limitation:

- a. The migration rate of customers switching to and from the Equitable Gas transportation programs, including the agency program, the number of licensed suppliers, the Pool Operators, and the number of active suppliers doing business on the Equitable Gas System.
- b. List customers identified by a unique, anonymous customer identifier and provide the customer's annual volumes, transportation margin, standby rate, and supplier.

8. The information requested, if provided, would cause unreasonable annoyance, oppression, burden and expense to Equitable and be harmful to Equitable's other customers. See 52 Pa. Code § 5.361(2) and Paragraph 3 through 6 *supra*. The information requested is confidential, highly sensitive, commercial information which should not be disclosed to Hess under any circumstances. The potential for misuse of the information is too great. Hess's willingness to accept information provided by "a unique, anonymous customer identifier" should fool no one. Hess's familiarity with the Equitable system and its customers will easily allow it to identify "anonymous" customers by using the information provided, particularly the customer's annual volumes. In effect, Hess is asking for all the details of each customer in Equitable's transportation program. The information could also put the customer at a disadvantage if it were to negotiate with Hess for gas supply. There is nothing about a general rate filing that opens the door for Hess to obtain this information from Equitable's files. Equitable further objects to providing information for the past five years as unreasonable and burdensome and not likely to lead to relevant evidence. It is, moreover, Equitable's intention to exit the Agency Program by the end of the year.

Interrogatory No. 3

9. Hess Set I Interrogatory No. 3 provides:

List existing commercial and industrial customers that are currently on Equitable Gas distribution system, and provide the following information, without limitation:

- a. To the extent that Equitable Gas has such knowledge, list the number of existing commercial and industrial customers that are currently on the Equitable Gas distribution system that have had discussions with other distribution utilities regarding obtaining distribution service.
- b. With respect to the customers referenced in (a), identify customers using a unique, anonymous identifier and provide each customer's annual load, transportation rate, and standby rate.

10. Interrogatory No. 3 is a clear and obvious attempt to discover highly confidential, competitively sensitive information about specific Equitable customers. Providing the information would cause unreasonable annoyance, oppression, burden and expense to Equitable and be harmful to Equitable's other customers. See 52 Pa. Code § 5.361(2) and Paragraph 3 through 6 *supra*. This confidential, highly sensitive, commercial information should not be disclosed to Hess under any circumstances. Hess is asking Equitable to identify customers that have discussed exiting the Equitable system and then provide rate specific information for each customer. With this information, Hess would then help the customer leave the Equitable system. Providing this information to Hess would be harmful to the public interest. Hess's willingness to accept information provided by "a unique, anonymous customer identifier" should fool no one. Hess's familiarity with the Equitable system and its customers will easily allow it to identify "anonymous" customers by using the information provided, particularly the customer's annual volumes. The information could also put the customer at a disadvantage if it were to negotiate with Hess for gas supply. There is nothing about a general rate filing that opens the door for Hess to obtain this information from Equitable's files.

Interrogatory No. 6

11. Hess Set I Interrogatory No. 6 provides:

Quantify the total discount in the aggregate provided to customers involved in "gas on gas" competition, which is when an end-user is located in the overlapping service territories of two or more natural gas distribution companies. Provide the total discount in the aggregate annually from 2002 to present, and provide a break down of the total discount amount provided to customers per each competing distribution utility or interstate pipeline bypass.

12. Equitable objects to Interrogatory No. 6 to the extent it asks for customer specific information about "gas on gas" competition. Providing such information would cause unreasonable annoyance, oppression, burden and expense to Equitable. See 52 Pa. Code § 5.361(2) and Paragraph 3 through 6, *supra*. Equitable further objects to the request for information back to 2002 as unreasonable and burdensome and not relevant or material to a 2008 general rate filing. Equitable can provide limited, aggregated information in response to this interrogatory for the historic and future test years.

Interrogatory No. 7

13. Hess Set I Interrogatory No. 7 provides:

Provide an itemization of discounts involved in "gas on gas" competition, identifying specific customers and discount amounts annually from 2002 to present. Itemize the discounts by transportation rate, standby rate, shrinkage charge, balancing charge, and migration charge.

14. The information requested, if provided, would cause unreasonable annoyance, oppression, burden and expense to Equitable and be harmful to Equitable's other customers. See 52 Pa. Code § 5.361(2) and Paragraph 3 through 6 *supra*. The information requested is confidential, highly sensitive, customer specific, commercial information which should not be disclosed to Hess under any circumstances. Equitable faces "gas on gas" competition from other LDCs for customers in overlapping service territories. The rate components of these customers are confidential, highly sensitive, customer specific, commercial information. With this information, Hess could approach these customers and facilitate their movement from Equitable's system to the systems of other LDCs. The information could also put the customer at a disadvantage if it were to negotiate with Hess for gas supply. The attempt to acquire this information is far outside the legitimate effort of a marketer attempting to provide a competitive natural gas supply service. Equitable further objects to the request for information back to 2002 as unreasonable and burdensome and not relevant or material to a 2008 general rate filing.

Interrogatory No. 11

15. Hess Set I Interrogatory No. 11 provides:

Provide a list of customers that currently are not served under a migration Transportation tariff that are not paying the current maximum transportation rate, standby rate, migration rate, etc.

16. Interrogatory No. 11 is a clear and obvious attempt to discover highly confidential, competitively sensitive information about specific Equitable customers. Providing the information would cause unreasonable annoyance, oppression, burden and expense to Equitable and be harmful to other customers. See 52 Pa. Code § 5.361(2) and Paragraph 3 through 6 *supra*. This confidential, highly sensitive, commercial information should not be disclosed to Hess under any circumstances. In effect, Hess is asking Equitable to identify the customers who have a service alternative (including *gas-on-gas* customers) who are able to migrate from the Equitable system because they are not paying a migration rider. With this information, Hess can facilitate efforts to move from the system. The information could also put the customer at a disadvantage if it were to negotiate with Hess for gas supply. There is nothing about a general rate filing that opens the door for Hess to obtain this information from Equitable's files.

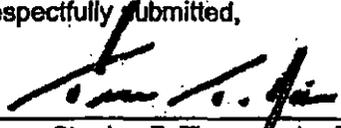
Interrogatory No. 16

17. Hess Set I Interrogatory No. 16 provides:

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.

18. The information requested, if provided, would cause unreasonable annoyance, oppression, burden and expense to Equitable and be harmful to Equitable's other customers. See 52 Pa. Code § 5.361(2) and Paragraph 3 through 6 *supra*. The information requested is confidential, highly sensitive, commercial information and only asked in order to provide Hess with a marketing advantage. It should not be disclosed to Hess under any circumstances. The information could also put the customer at a disadvantage if it were to negotiate with Hess for gas supply. Equitable further objects to providing this information as it is not relevant or material and not likely to lead to relevant evidence. It is Equitable's intention to exit the Agency Program by the end of the year.

Respectfully submitted,

By 

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Attorneys for
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Date: August 29, 2008
EGC Objections to Hess Sale 1.wpd

**Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Pennsylvania Public Utility :
Commission, et al.**

**Independent Oil and Gas : Docket Nos. R-2008-2029325, et al.
Association : C-20066800**

v.

Equitable Gas Company

CERTIFICATE OF SERVICE

I hereby certify that I have this 29th day of August, 2008, served a true and correct copy of the Objections of Equitable Gas Company to Hess Corporation's Set I Interrogatories, Nos. 1, 3, 6, 7, 11 and 16, upon the persons and in the manner set forth below:

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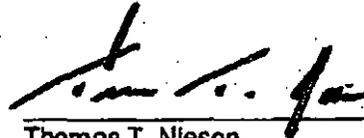
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I further hereby certify that, pursuant to 52 Pa. Code Section 5.342(e)(2), I am
this day filing a copy of this Certificate of Service with the Secretary of the Commission.



Thomas T. Niesen
PA Attorney ID No. 31379

ATTACHMENT C

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."

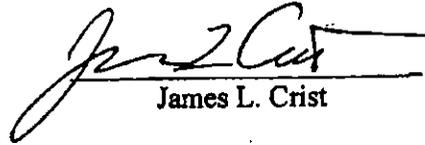
- a. Provide data on Agency Program participation by rate schedule in aggregate by month. Specify number of accounts, total volumes, total margin revenue.
- b. For each account that has left the Agency Program indicate if they are now served by system supply as a sales customer, served by Equitable Energy 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. To be provided by supplemental response.
- b. To be provided by supplemental response.
- c. Equitable is currently offering to renew existing Agency agreements prior to their expiration. Equitable would execute new Agency agreements in order to retain customers on its system.
- d. Equitable's current plan is to cease entering into new or extending existing agency agreements after December 31, 2008. Equitable's present intention would be to retain Agency Program ability for the purpose of retaining customers on its system.

VERIFICATION

I, James L. Crist hereby verify that the statements in the foregoing petition are true and correct to the best of my information, knowledge and belief. I understand that the statements are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to the unsworn falsification to authorities.


James L. Crist

Dated: 8th October , 2008

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :
v. :
Equitable Gas Company : Docket No. R-2008-2029325

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing documents in accordance with the requirements of 52 Pa. Code § 1.54 et seq. (relating to service by a participant).

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ELECTRONIC MAIL**

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**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	:	

RECEIVED
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SECRETARY'S BUREAU

DIRECT TESTIMONY OF

JAMES L. CRIST

ON BEHALF OF

THE INDEPENDENT OIL AND GAS ASSOCIATION

AND

HESS CORPORATION

****PUBLIC VERSION****



R-2008-2029325
Hbg TX 10/23/08

October 8, 2008

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 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 a 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 ("LUGF") DATA FOR**
7 **THE APOLLO SYSTEM?**

8 A. As shown by Equitable's discovery response summary, on its gathering facilities
9 LUGF 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 **LUGF?**

14 A. The cost of LUGF 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 LUGF yet has failed to do so.

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

20 A. No. LUGF is a system issue, not one isolated in Equitable's gathering facilities.
21 If Equitable is concerned about its overall level of LUGF, 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 LUGF. I
2 support Mrs. Burgraff's conclusion that a reasonable level of LUGF 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 A. No. In response to data request Hess II-3(a), Equitable states that it "has no
20 current plans to make a tariff filing to remove Section 11.7 from its tariff."
21

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

Docket No. C-20066800
Item: IOGA-1-21
Respondent: Thomas P. Wiggers
Position: Director, Gas Supply

EQUITABLE GAS COMPANY
Response to IOGA's
Interrogatories, Set 1

Item: IOGA-1-21

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	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	1,014,885	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	965,876	1,119,611	926,524	771,486	660,427	
Deliveries	852,041	734,176	705,445	655,910	738,149	850,806	688,758	788,372	807,121	811,510	886,228	893,665	663,782	758,241	1,000,709	748,432	517,757	453,966	
LUG	162,654	102,236	265,597	381,042	334,473	217,321	251,319	298,084	242,742	283,980	181,694	192,400	102,589	207,735	119,102	178,082	253,728	228,471	
LUG - %	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%	22.16%	20.74%	20.66%	21.34%	

EQUITABLE 2 YEAR TOLERANCE ANALYSIS

Exhibit JLC-3 (Public)

[REDACTED]

Months within Tolerance	4
Months outside Toler	20

[REDACTED]

Months within Tolerance	7
Months outside Toler	17

[REDACTED]

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):

[REDACTED]

[REDACTED]

[REDACTED]

****PUBLIC****

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

Docket No. R-2008-2029325

Item: HESS-I-9

Respondent: John M. Quinn

Position: Vice President, LDC Rates and Gas Supply

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.

Docket No. R-2008-2029325
Item: HESS-I-16
Respondent: Robert M. Narkevic
Position: Manager of Rates

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.

Docket No. R-2008-2029325
Item: HESS-I-18
Respondent: John M. Quinn
Position: Vice President, LDC Rates and Gas Supply

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

Docket No. R-2008-2029325

Item: HESS-II-1

Respondent: John M. Quinn

Position: Vice President, LDC Rates and Gas Supply

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.

Docket No. R-2008-2029325
Item: HESS-II-2
Respondent: John M. Quinn
Position: Vice President, LDC Rates and Gas Supply

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.

Docket No. R-2008-2029325

Item: HESS-II-3

Respondent: John M. Quinn

Position: Vice President, LDC Rates and Gas Supply

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.

Docket No. R-2008-2029325
Item: HESS-II-6
Respondent: John M. Quinn
Position: Vice President, LDC Rates and Gas Supply

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.

Miss Exhibit # 3

Hog LH

R-2008-2029325

10-23-08

DOCUMENT FOLDER

- 1. James L. Crist
- 2. Lumen Group
- 3. IOGA (Independent Oil & Gas Association) Stmt 1, P 1-2 + Hess
- 4. I signed the verified statement
- 5. One-That during the pendency of this case, Equitable be precluded from automatically assigning Agency contracts to its marketing affiliate ~~and from~~
 ~~Two~~ facilitating the transfer of expired Agency contracts/customers to its marketing affiliate;
- ~~Three~~ ~~Two~~- That during the pendency of this case, Equitable's marketing affiliate, be prohibited from contacting any Agency customers unless and until Equitable has developed a termination process that ensures that all marketers have a fair opportunity to compete for those customers; and
- ~~Four~~ ~~Three~~- A mutually agreeable notification process for any customers whose Agency contracts expire during the pendency of this case.
- 6. Ensure Equitable does not provide preference to affiliate, does not wind down Agency to provide any unlawful or unreasonable benefit, does not cause irreparable harm
- 7. Party must show Clear Right to Relief
- 8. Assignment of contracts or automatic transfer or sharing of customer information. Facilitation of 1400 customers / 5.6 BCF
- 9. My direct pp 29-30 and Petition Para 20-22
- 10. Eq intends NO tariff filing which would appear inconsistent with Commission rules requiring 60-day notice for such changes
- 11. Part 2 is Party must show need for relief is immediate and Part 3 is Party would suffer irreparable harm
- 12. Eq has been unwilling to provide adequate notice or assurance that it would not automatically assign, transfer or facilitate 1400 customers/ 5.6 Bcf
- 13. Irreparable harm. Difficult to unwind
- 14. Once Agency is Eq Energy lost business opportunity is irreparable. Cannot unring the bell
- 15. My Direct pp 28-30 and Petition Para 27-34
- 16. Fourth is Relief not cause injury to public
- 17. This is in public interest provides competition in line with the Gas Competition Act
- 18. Petition Para 35-37

SECRETARY'S BUREAU
 2008 OCT 28 PM 1:03
 RECEIVED
 # 2454

John F. Povilaitis

From: John F. Povilaitis
Sent: Monday, September 29, 2008 4:20 PM
To: Thomas T. Niesen (tniesen@thomaslonglaw.com); Charles E. Thomas, Esq. (cthomasjr@thomaslonglaw.com)
Cc: Matthew Totino (mtotino@ryanrussell.com)
Subject: Equitable Agency Program

RECEIVED
2008 OCT 28 PM 1:03
PA PUBLIC
SECRETARY'S BUREAU

**DOCUMENT
FOLDER**

Dear Tom & Tom,

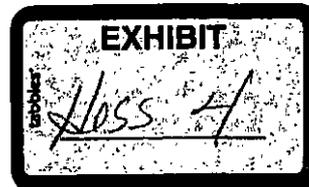
Hess has reviewed the discovery responses we received on Equitable's Agency Program. Although it seems clear Equitable is winding this program down, we have a disagreement as to whether the Commission must approve that process or not. In addition, it is not clear what role Equitable Energy will be playing as the end of the Agency Program is approached. Some aspects of this issue can be dealt with by being addressed in our rate case testimony, but this case will not conclude until the first quarter of 2009, and Hess is concerned about what happens to Agency Program customers in the meantime.

To place these issues on hold pending the end of the case, Hess proposes that it stipulate with Equitable that 1) until this case is concluded, Equitable will not renew expiring Agency Program contracts for more than 12 months, 2) that customers who renew their contracts between now and when the Commission acts on these issues be advised Equitable is planning a termination of the Agency Program and 3) that a letter, the text of which is jointly agreed to by Hess and Equitable, be sent to Agency Program customers at least 60 days before the end of their contracts that advises them of their options to become an Equitable sales customer or obtain service from a list of identified NGSs. Reaching this agreement will provide certainty for all concerned until the Commission can look at the contemplated wind up of the program as a rate case issue. It also eliminates the need for Hess to seek assistance from the ALJ prior to the Commission reviewing this matter.

Since this matter is of urgent concern to Hess, we would like to have a conference call with Equitable representatives tomorrow so we can discuss an agreement as outlined above. Thank you in advance for your assistance on this issue.

John F. Povilaitis, Esq.
Ryan, Russell, Ogden & Seltzer P.C.
800 North Third Street, Suite 101
Harrisburg, PA 17102-2025
PH: 717-236-7714
FAX: 717-236-7816
JPovilaitis@RyanRussell.com
www.RyanRussell.com

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Hbg/JK
R-2008-2029325
10-23-08

Equitable Exhibit 1-1 EOP
DJK-Hog / Corbett
10-23-08

October 20, 2008

RECEIVED
2008 NOV -3 PM 1:52
PA PUC
SECRETARY'S BUREAU

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

In re: Docket Nos. R-2008-2029325, *et al.* and C-20066800
Pa. P.U.C., *et al.* v. Equitable Gas Company

Dear Secretary McNulty:

Enclosed for filing in the above matter are an original and three (3) copies of Equitable Gas Company's Answer to the Petition of Hess Corporation for Interim Emergency Order. Copies of the Company's Answer are being served upon the persons and in the manner set forth on the certificate of service attached to it.

Very truly yours,

THOMAS, LONG, NIESEN & KENNARD

By


Charles E. Thomas, Jr.

Enclosures

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

081020-McNulty (Answer to Petition for Emergency Order).wpd

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Administrative Law Judge
John H. Corbett, Jr., Presiding

Pennsylvania Public Utility Commission, <i>et al.</i>	:	
	:	
	:	
Independent Oil and Gas Association	:	Docket Nos. R-2008-2029325, <i>et al.</i> C-20066800
	:	
v.	:	
	:	
Equitable Gas Company	:	

**ANSWER OF EQUITABLE GAS COMPANY
TO THE PETITION OF HESS CORPORATION
FOR INTERIM EMERGENCY ORDER**

AND NOW, comes Equitable Gas Company ("Equitable"), by its attorneys, and, pursuant to 52 Pa. Code § 3.6(c), answers the Petition of Hess Corporation ("Hess") for Interim Emergency Order in the above-captioned matter. In opposition to Hess' Petition, Equitable submits as follows:

I. BACKGROUND

1. On June 30, 2008, Equitable filed Supplement No. 60 to Tariff Gas - Pa. P.U.C. No. 22 with the Pennsylvania Public Utility Commission ("Commission"). Supplement No. 60 contains rates designed to increase annual revenues by approximately \$51.9 million. On or about August 1, 2008, Hess filed a Petition to Intervene in the matter which was granted by Judge Corbett's Prehearing Order, dated September 5, 2008.

2. On or about October 14, 2008, Hess filed the subject Petition for Interim Emergency Order ("Interim Petition") allegedly "pursuant to Section 3.6 of the [Commission's] regulations, 52 Pa. Code § 3.6."¹ In its Interim Petition, Hess contends that emergency relief is warranted because Equitable allegedly failed to provide adequate assurances to Hess that it would not assign or transfer contracts under its Agency Program to its marketing affiliate during the pendency of this proceeding. Hess further contends that emergency relief is necessary to ensure that Equitable does not provide preferential treatment to its affiliate, including the transfer of customers to such affiliate, or does not wind down the Agency Program in an unlawful or unreasonable manner.

3. Hess requests the following relief:

(1) Preclude Equitable, during the pendency of this case, from automatically assigning Agency contracts to its marketing affiliate;

(2) Preclude Equitable, during the pendency of this case, from facilitating the transfer of expired Agency contracts/customers to its marketing affiliate;

(3) Prohibit Equitable Energy, LLC, Equitable's marketing affiliate, from contacting any Agency customers unless and until Equitable has developed a termination process that ensures that all marketers have a fair opportunity to compete for those customers; and

(4) For any customers whose Agency contracts expire during the pendency of this case, require Equitable to send a letter, the text of which is jointly agreed to by Hess and Equitable, at least 60 days before the end of the contract advising the customer of its option to become an Equitable sales customer or obtain service from a list of identified Natural Gas Suppliers, but explaining that no benefit related to distribution service will accrue from

¹ Hess Interim Petition at 1.

choosing Equitable Energy as the customer's gas supplier.²

II. STANDARDS FOR INTERIM EMERGENCY RELIEF

4. The Commission's has promulgated regulations at 52 Pa. Code §§ 3.1-3.12 governing the standards for emergency relief. Commission regulations define an *emergency* as "[a] situation which presents a clear and present danger to life or property or which is uncontested and requires action prior to the next scheduled public meeting." 52 Pa. Code § 3.1. It is inherent, then, that an emergency, as defined by the Commission's regulations, must exist before any emergency relief, interim or otherwise, may be sought or granted.

5. Section 3.6(a) of the Commission's regulations permits a party to petition the Commission for an interim emergency order during the course of a proceeding. 52 Pa. Code § 3.6(a). The petition must be supported by a verified statement of facts³ which establishes the existence of the need for interim emergency relief, including, but not limited to, facts which demonstrate:

- (1) The petitioner's right to relief is clear.
- (2) The need for relief is immediate.
- (3) The injury would be irreparable if relief is not granted.
- (4) The relief requested is not injurious to the public interest.

52 Pa. Code § 3.6(b). *All* of the foregoing criteria must be met before a presiding officer may issue an order granting the relief sought.

² Hess Interim Petition at 1-2.

³ Significantly, and as addressed in Section III, *infra*, Hess' Interim Petition is not supported by a verified statement of anybody in Hess' employ. The verification attached to the Interim Petition contains no statement of facts establishing the existence of an emergency and was taken by an outside consultant.

6. Allegations set forth in the petition are deemed to have been denied by the opposing parties. 52 Pa. Code § 3.6(c). Although not required, a party may file answer to a petition in accordance with 52 Pa. Code § 5.61. Equitable hereby specifically denies all allegations set forth in Hess' Interim Petition and, as set forth in more detail below, submits that interim emergency relief is unnecessary, inappropriate, and unwarranted under the facts of this case.

III. DISCUSSION

A. There is No Emergency

7. There is no danger to life or property averred in or presented by the Hess Interim Petition as is necessary and required to support emergency relief. In short, *there is no emergency. The matters averred are economic only and are the very same matters raised by Hess witness James L. Crist in his direct testimony served on October 8, 2008.*⁴ A schedule has been established for addressing matters in the rate proceeding including hearings on November 18, 19, 20 and 21. The Hess Interim Petition should be denied as unnecessary. Equitable will address these matters in its rebuttal testimony and the Commission will take testimony at the hearings in November. There is no emergency or any need for the Interim Petition, and Equitable, moreover, should not be required to take time to address such a petition during the rebuttal testimony phase of the litigation schedule.

8. The essential underlying premise for Hess' filing of its Interim Petition - *i.e.*, that Hess may be harmed competitively and economically - fails to constitute a clear and present danger to life or property. In fact, nowhere in its Interim Petition does Hess explain, *factually or legally*, how the status of Equitable's Agency Program creates a situation of clear and present danger to life or property. Simply put, no emergency

⁴ See Direct Testimony of James L. Crist, at 27-30.

exists under the circumstances of the instant proceeding, and, thus, Hess has no basis for requesting relief of any sort. For this reason alone, Hess' Interim Petition should be denied.

B. The Interim Petition Is Not Supported By The Required Verified Statement of Facts

9. As a further threshold matter, Equitable emphasizes that Commission regulations at 52 Pa. Code § 3.6(b) expressly require "a verified statement of facts which establishes the existence of the need for interim emergency relief," including facts supporting the four enumerated matters discussed in Paragraph 5, *supra*, of this Answer. The only verification submitted with the Interim Petition is that of Hess consultant, James L. Crist. Averments of fact, including the important verification of "the existence of the need for interim emergency relief" and "irreparable injury," in support of an interim emergency order require the verification of someone with more knowledge of the Petitioner than an outside consultant.⁵ Additionally, Hess is relying on alleged economic harm exclusively to support its claim of emergency and irreparable injury. Yet, Hess has objected to supplying its SEC filings in discovery which would disclose information related to its financial health.⁶

C. The Four Mandatory Prerequisites for Granting Interim Emergency Relief Have Not Been Met

10. Even if an emergency is deemed to exist, Hess has not satisfied the four mandatory prerequisites for interim emergency relief, all of which must be met before

⁵ Section 1.36 of the Commission's regulations, 52 Pa. Code § 1.36, specifically provides that petitions containing an averment of fact not appearing in the record "must be personally verified by a party thereto or by an authorized officer or other authorized employee of the party if a corporation." (emphasis added).

⁶ See Answer of Hess Corporation to the Motion of Equitable Gas Company to Dismiss Objections and Compel Responses to Its Set I Interrogatories and Requests for Production of Documents to Hess Corporation ("Hess Answer to Equitable Motion to Compel") at 12.

an interim emergency order will be granted. Hess' Interim Petition fails to establish that (1) Hess' right to relief is clear; (2) Hess has an immediate need for relief; (3) Hess' injury would be irreparable if relief is not granted; and (4) the relief requested is not injurious to the public interest. As such, emergency relief is unnecessary, inappropriate, and unwarranted for any reason during the pendency of this proceeding, and Hess' Interim Petition should be denied.

(1) **No Clear Right to Relief Exists**

11. Hess has failed to demonstrate that it has a clear right to relief. First and foremost, a litigation schedule has been established to discuss matters in this rate proceeding, including the scheduling of four days of evidentiary hearings. The issues raised by Hess in its Interim Petition concerning Equitable's Agency Program are matters that Equitable can and will address in its rebuttal testimony and at the hearings in November.

12. Moreover, Equitable's Agency Program is still an effective tariff-based program. While Equitable has expressed a desire to exit the program, no end date has been set at this time and Equitable's response to Hess Set II Interrogatory No. 1 continues to reflect Equitable's position. An incomplete copy of that response was attached to the Interim Petition as Attachment C. The complete response is attached hereto as **Attachment A**. No procedures for exiting the program, including the assignment or transfer of customers and contracts, have been finalized. The program, therefore, continues to be and will remain in effect until otherwise determined. As Hess acknowledges, the Agency Program, as a tariff-based, Commission-approved program, has the full force of effect of law and is binding on Equitable.⁷ Equitable continues to

⁷ Hess Interim Petition at 8 (citing *PPL Elec. Util. Corp. v. Pa. P.U.C.*, 912 A.2d 386 (Pa. Cmwlth. 2006)).

operate the program in a manner consistent with the terms of its tariff and will continue to do so as required by law. Hess' claim that Equitable intends to "end the Agency Program under the cover of darkness without providing interested parties with notice" is simply untrue. Equitable has always maintained, and will not deviate from, its obligations under the law with respect to its Agency Program and the proper procedures for exiting the program *when* the appropriate time arises.

13. Hess' attempt to create a right to relief premised on baseless accusations does not establish a clear right of any sort. Given that the program is still in existence, and that Hess' issues regarding the Agency Program will be thoroughly and adequately addressed in this proceeding, Hess' right to relief is not clear and its requested relief should not be granted.

(2) No Immediate Need for Relief Exists

14. There is no need for immediate relief. As previously discussed, Equitable has not made a specific decision as to *when* and *how* the Agency Program will be discontinued. Hess claims it has not been provided the necessary details regarding discontinuance of the program, but no such details exist at this time. Equitable continues to evaluate its options with respect to its Agency Program. In addition, the purported economic detriment faced by Hess is not immediate since Hess is not presently supplying natural gas to agency program customers. Accordingly, emergency relief is premature and unnecessary at this time.

15. Hess spends a number of paragraphs in its Interim Petition arguing that it made several attempts to obtain and was repeatedly denied adequate assurances regarding the status of existing Agency contracts.⁸ These "fruitless" attempts, Hess contends, demonstrate an immediate need for relief. Nothing could be further from the

⁸ See Hess Interim Petition at 10-11.

truth. As discussed *supra*, Hess seeks such information for economic and competitive reasons only. The matters averred in Hess' Interim Petition will be adequately addressed in due course during this proceeding. Hess' failure to obtain the specific answers it seeks at its liking and on its schedule does not create an immediate need. It likewise does not create an emergency situation that is dangerous to life or property.

16. Hess has failed to meet the second prerequisite for emergency relief. Its Interim Petition must be denied.

(3) No Irreparable Injury Will Be Sustained

17. Hess will not suffer irreparable injury if relief is not granted. Hess justifies its claim for emergency relief entirely on economic grounds, particularly the purported deprivation of its ability to compete for customers.⁹ In support, Hess cites *West Penn Power Co. v. Pa. P.U.C.*, 615 A.2d 951 (1992), for the proposition that economic losses can constitute irreparable harm.¹⁰ Hess further contends that irreparable harm may also be established by demonstrating the serious threat of harm to a competing provider's business.¹¹ However, in this case as discussed, *infra*, there is no harm to Hess since

⁹ Importantly, Hess' position in this regard in its Interim Petition runs contradictory to and is indirectly inconsistent with the statements it made in its Answer to Equitable's Motion to Compel with respect to Equitable's Set I Interrogatories and Requests for Production of Documents. In its Answer, Hess specifically stated that:

[It had never] argued that the proposed rate increase impedes its ability to compete. . . . Any fact regarding the overall financial stability of Hess has no bearing on whether the rate increase is 'detrimental to the ability of Hess to compete, specifically, or to the competitive marketplace in general' or whether Equitable's supplier and other rules are unreasonable or deprive Hess of a meaningful opportunity to compete.

Hess Answer to Equitable Motion to Compel at 12.

¹⁰ Hess Interim Petition at 12.

¹¹ Hess Interim Petition at 12 (citing *Petition of Pennsylvania Carriers' Coalition for Emergency Order Mandating a Standstill of Ordering and Provisioning Arrangements*, Docket No. P-00052158 (Order entered April 7, 2005) ("*Petition of PCC*").

it is not providing natural gas to agency service customers and Hess has provided no evidence regarding a serious threat of harm to its own business. Indeed, Hess has objected to discovery relating to its own financial health.

18. Hess' reliance on the *West Penn Power* case is misplaced, as that case is factually distinguishable from the instant proceeding. In *West Penn Power*, Mon Valley Energy Corporation made a deposit of \$120,000 in connection with the terms of an electric energy purchase agreement. The Commonwealth Court concluded that Mon Valley, without the issuance of an emergency order, stood to lose significant moneys which it had deposited in good faith under the agreement. The Court noted that while monetary losses are generally insufficient to support an emergency order, under the circumstances of that case such losses satisfied the irreparable injury requirement. Here, Hess, unlike Mon Valley, does not have actual monetary losses at stake. Rather, any economic losses Hess may suffer are purely speculative, and there is no guarantee that Hess would succeed in competing for Agency Program customers. Thus, it is impossible for Hess to suffer any monetary losses or an "injury" from failure to compete for business which it did not have in the first place.

19. Hess' reliance on *Petition of PCC* is also inapposite. In that case, Verizon Pennsylvania, Inc. had ceased provisioning new orders for unbundled network elements to existing customers of the Pennsylvania Carriers' Coalition ("PCC"), a coalition of competitive local exchange carriers. As a result, Verizon's action had impeded the ability of competing carriers to adequately serve their embedded base of customers. The Commission, therefore, concluded that the emergency petition was necessary to assure reasonable and adequate telephone service due to the threat of harm to PCC's business (*i.e.*, its existing customer base). **In the instant proceeding, Hess, unlike PCC, does not serve existing Agency customers. Hess' ability to serve its own**

existing customers is neither impeded nor restricted in any way. Simply put, there is no threat to Hess' existing base of customers or its business, and Hess suffers no irreparable injury due to Equitable's Agency Program and Equitable's actions with respect to the operation thereof.

20. As the measure of what is at issue in its discussion of irreparable harm, Hess claims that the margin Equitable realizes from operation of the Agency Program is \$9,146,179, suggesting that Equitable might lose that margin if Hess or another supplier aside from Equitable Energy would provide the gas for the Agency Program.¹² Hess completely misunderstands what this amount represents. Equitable does not provide any gas commodity through its agency service. Equitable Energy, the provider of the gas commodity, may make a profit, but Equitable is not privy to that information. The \$9,146,179 is the revenue received by Equitable for providing the delivery service associated with the Agency Program, which is often referred to as non-gas margin and only a portion of which would represent return for Equitable. **Equitable would continue to receive this delivery service revenue regardless of who supplies the gas — whether the supplier is an Equitable affiliate, Hess or another natural gas supplier.** Equitable would lose this delivery service revenue *if and only if* the customer were to leave the Equitable system for the system of another local distribution company, and Hess has stated and argued vigorously that it has never, does not now, and does not intend to engage in or facilitate *gas on gas* competition. Hess' argument fails to satisfy the irreparable harm criterion.

21. While it is true that Commission has held under very limited circumstances that economic losses can satisfy the rule's irreparable injury prerequisite,

¹² Hess Interim Petition ¶ 34, at 13, citing a data response to Hess-II-1, Supplemental.

economic detriment alone does not constitute the existence of an emergency for purposes of issuing a temporary order.¹³ Hess' alleged adverse economic effects, including an economic threat of the loss of potential competition, are speculative at best.¹⁴ Without additional substantive grounds for relief, Hess' alleged economic hardship is not enough to constitute an irreparable injury and does not warrant the relief requested.

22. Hess has failed to satisfy the third prerequisite for interim emergency relief, and its Interim Petition should be denied.

(4) The Relief Sought Will Be Injurious to the Public Interest

23. The relief requested by Hess would be injurious to the public interest. Equitable's Agency Program is a tariff-based, Commission-approved program. As such, Equitable is obligated to operate the program in a manner that is both consistent with the terms of its tariff and in accordance with the Commission's Rules and Regulations and the Pennsylvania Public Utility Code. By extension, the Agency Program is, therefore, both reasonable and in the public interest. Hess, however, requests relief that, if granted, would disrupt the status quo and attempt to preclude and prohibit Equitable from operating its Agency Program consistent with the terms of its tariff and statutory law. No modifications to Section 11.7 of Equitable's tariff is necessary or warranted. To do so would disturb the status quo and harm the public interest.

24. In arguing that it has met the public interest prerequisite, Hess contends that the requested relief is "actually in the public interest because it will help promote

¹³ *Peoples Natural Gas Co. v. Pa. P.U.C.*, 555 A.2d 288 (Pa. Cmwlth. 1989). See also *Brink's, Inc. v. Pa. P.U.C.*, 464 A.2d 639 (Pa. Cmwlth. 1983) (holding that a finding of economic detriment if a temporary grant of relief were not issued did not amount to an emergency as a matter of law).

¹⁴ See *Peoples Natural Gas Co.*, *supra*.

competition with respect to natural gas supply products and pricing options for retail customers via Equitable facilities."¹⁵ Hess further argues that without emergency relief, "Equitable will have unfettered discretion to end its Agency Program, which would likely lead to preferential treatment towards its affiliate at the expense and irreparable harm of competitive suppliers like Hess and ultimately, their customers."¹⁶ Such statements are groundless, purely speculative, and wholly without merit.

25. Hess' own evidentiary presentation *actually* shows that competition is not suffering in any way under the Agency Program. We quote from pages 23-24 of Hess Statement No. 1 containing the prepared direct testimony of its witness Crist:

Q. PLEASE DESCRIBE EQUITABLE'S AGENCY PROGRAM.

* * *

Equitable currently has 1,377 Agency customers that consume, in the aggregate, 5,623,184 Mcf. (See Response to Hess II-1 Supplemental). Although this is a significant market, it actually reflects a steady decline over the last few years: in 2005, there were 2,298 customers and 7,428,714 Mcf; in 2006, there were 2,065 customers and 6,405,356 Mcf and in 2007, there were 1,940 customers and 6,353,182 Mcf. (See Response to Hess I-16).

In addition, as illustrated by **Attachment A**,¹⁷ of the 109 customer accounts that have left the Agency Program, eighty percent (80%) of them are now served by a non-affiliated marketer. Perhaps more significantly, only nine percent (9%) are served by Equitable's affiliate, Equitable Energy. The remaining eleven percent (11%) returned to tariff service. It is clear that Equitable has engaged in absolutely no preferential treatment towards its marketing affiliate with respect to the assignment of contracts and

¹⁵ Hess Interim Petition at 13.

¹⁶ Hess Interim Petition at 14.

¹⁷ Attachment A hereto is the complete response to Hess-II-1. Attachment C to the Interim Petition contained only a portion of this response to Hess-II-1.

customers. The facts indicate that the Agency Program continues to be reduced and other marketers have been successful in supplying former agency service customers. Hess should stop filing pleadings and devote its time to competing.

26. As previously discussed, Equitable continues to operate its Agency Program in a manner consistent with the terms of its tariff and will continue to do so as required by law. The Agency Program has been part of Equitable's tariff for years. It is *per se* in the public interest, and the relief requested would be injurious to the public interest if granted. Hess' attempt to dictate the terms and conditions as to when and how Equitable's Agency Program will be discontinued, particularly under the guise of competition, is contrary to the facts and the allegations made with respect thereto are inflammatory, baseless, and expressly contradicted by the evidence.

27. The fourth prerequisite concerns the public interest, not Hess' financial interest. The granting of an emergency order must be supported by facts not speculation. Hess' has failed to satisfy the fourth prerequisite for emergency relief. Its Interim Petition must be denied.

IV. A FINAL CONCERN

28. Many of the assertions in Hess' Interim Petition have been made by Hess witness Crist in Hess Statement No. 1. Per the procedural schedule established at the Prehearing Conference, Equitable's rebuttal testimony is not due to be served until October 31, 2008. It is grossly unfair for Hess to be permitted to make the same contentions twice and to force Equitable to have to address those contentions eleven days before its testimony is due. To borrow Hess' own words from its Answer to *Equitable's Motion to Compel*, the Interim Petition is tantamount to harassment since the only reasonable conclusion from its submission at this stage of the proceeding is that its sole purpose is to divert Equitable's attention away from its task at hand —

preparing and filing the Company's rebuttal testimony. Requiring Equitable to participate in a hearing will result in Hess being granted a "preview" of Equitable's rebuttal testimony, which is clearly unfair.

V. CONCLUSION

29. Hess' Interim Petition is devoid of any evidence of an existing emergency which would warrant the grant of an interim emergency order. It is not supported by a verified statement of facts establishing the existence of the need for interim emergency relief and it fails to demonstrate that (1) Hess has a clear right to relief; (2) the need for relief is immediate; (3) the injury would be irreparable if relief is not granted; and (4) the relief requested is not injurious to the public interest. Having failed to establish any, let alone all, of the mandatory prerequisites, Hess' Interim Petition for interim emergency relief must be denied.

WHEREFORE, Equitable Gas Company prays that Administrative Law Judge Corbett deny the Petition of Hess Corporation for Interim Emergency Order for the reasons set forth above.

Respectfully submitted,

By  _____

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Date: October 20, 2008

Answer to Petition for interim Emergency Order (Final).wpd

ATTACHMENT A

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.

Before The
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission, et al.	:	
	:	
	:	
Independent Oil and Gas Association	:	Docket Nos. R-2008-2029325, et al. C-20066800
	:	
v.	:	
	:	
Equitable Gas Company	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this 20th day of September, 2008, served a true and correct copy of the Answer of Equitable Gas Company to Petition for Interim Emergency Order, upon the persons and in the manner set forth below:

BY EMAIL AND FIRST CLASS MAIL

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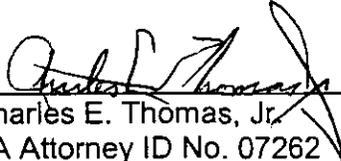
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