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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch

In the Matter of **EQUITABLE RESOURCES, INC.,** **a corporation,** **DOMINION RESOURCES, INC.,** **a corporation,** **CONSOLIDATED NATURAL GAS COMPANY,** **a corporation,** **and** **THE PEOPLES NATURAL GAS COMPANY,** **a corporation.**	**Docket No. 9322**

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Respondent Equitable Resources, Inc. ("Equitable") and Respondent Consolidated Natural Gas Company ("CNG"), a wholly-owned subsidiary of Respondent Dominion Resources, Inc. ("DRI"), have entered into an agreement pursuant to which Equitable would acquire the capital stock of Respondent The Peoples Natural Gas Company ("Peoples") from CNG, that such agreement violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. THE PARTIES AND JURISDICTION

A. Equitable Resources, Inc.

1. Respondent Equitable is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at 225 North Shore Drive, Pittsburgh, Pennsylvania 15212.

2. Equitable is an integrated energy company engaged in the production, gathering, distribution and transmission of natural gas.

3. Through its Equitable Gas Company division, Equitable provides natural gas distribution to residential, commercial, industrial and other customers in northern West Virginia and western Pennsylvania.

4. Equitable is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

B. Dominion Resources, Inc.

5. Respondent DRI is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its office and principal place of business located at 120 Tredegar Street, Richmond, Virginia 23219.

6. DRI is a holding company with subsidiaries and affiliates engaged in the generation, transmission and distribution of electricity; the gathering, transmission, storage and distribution of natural gas; energy marketing; and the exploration and production of crude oil and natural gas.

7. DRI is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

C. Consolidated Natural Gas Company

8. Respondent CNG is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 120 Tredegar Street, Richmond, Virginia 23219. CNG is a wholly-owned subsidiary of DRI.

9. CNG is engaged in the production, transportation, distribution and retail marketing of natural gas, serving customers in Pennsylvania, Virginia, West Virginia, Ohio and other states in the Northeast and Mid-Atlantic regions.

10. CNG is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

D. The Peoples Natural Gas Company

11. Respondent Peoples is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at Dominion Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222. Peoples is a wholly-owned subsidiary of CNG.

12. Peoples is engaged in the distribution of natural gas to residential, commercial, industrial and other customers in southwestern Pennsylvania.

13. Peoples is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

14. DRI, CNG and Peoples hereinafter are collectively referred to as "Dominion."

II. THE ACQUISITION

15. On March 1, 2006, Equitable executed an agreement to acquire the capital stock of Peoples and Hope Gas, Inc. from CNG for approximately $970 million, subject to certain closing and post-closing adjustments.

16. The closing of the transaction is subject to various conditions, including clearance under the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18A, and receipt of approval of the Pennsylvania Public Utility Commission ("PUC") and the West Virginia Public Service Commission.

III. NATURE OF COMPETITION

17. Equitable and Peoples are local distribution companies ("LDCs") that distribute natural gas to residential and nonresidential end users within their service territories.

18. LDCs receive natural gas from interstate transmission pipelines at one or more locations referred to as city gates or from local production. LDCs then distribute the natural gas to end users through underground pipeline systems referred to as gas mains and service lines.

19. In the Commonwealth of Pennsylvania, LDCs are regulated by the PUC under Title 52 of the Pennsylvania Code.

20. The predecessors of Equitable and Dominion were originally incorporated pursuant to the Pennsylvania Natural Gas Companies Act of May 29, 1885 ("1885 Act"), before the creation of the Public Service Commission in 1913, predecessor to the PUC. By virtue of charters or amendments filed pursuant to the 1885 Act, Equitable and Dominion have the right to provide natural gas distribution to overlapping service territories within Allegheny County and adjoining counties, including the City of Pittsburgh. Predecessors of Equitable and Dominion began to provide local distribution in the overlapping areas in the late 1890s or early 1900s. Equitable and Dominion continue to distribute natural gas to end users in overlapping service territories today.

21. In Pennsylvania, the PUC approves the maximum rates, fees and other charges (hereinafter collectively referred to as "rates") that a LDC may charge for natural gas distribution. A LDC retains discretion to negotiate rates to an individual nonresidential end user that are less than the maximum rates established by the PUC.

22. In areas that are serviced by two or more LDCs, nonresidential end users are able to negotiate rates that they will be charged by the LDC for the distribution of natural gas. In such areas, each LDC has the ability and the incentive to compete for the business of the individual nonresidential end users by offering to provide distribution services to the end user at competitive prices that are less than the maximum rates established by the PUC.

23. Equitable and Dominion have competed vigorously for the business of individual nonresidential natural gas distribution customers in their overlapping service territories by offering discounts from the maximum rates, by providing better service and by offering financial and other incentives to builders and developers for the right to distribute natural gas to residential and commercial properties under construction.

24. In some areas where Equitable and Dominion compete, they are the only alternatives for the local distribution of natural gas. In other areas, they may also compete with one or two other LDCs, namely Columbia Gas of Pennsylvania, Inc. and T.W. Phillips Gas and Oil Co.

IV. RELEVANT MARKETS

25. A relevant product market in which to analyze the effects of the proposed acquisition is the local distribution of natural gas to individual nonresidential end users. A firm that was the only provider of local distribution of natural gas would be able to impose a small but significant and nontransitory increase in price on customers who are not already paying the highest rates permitted by PUC regulation. In addition, individual buyers of local natural gas distribution would not likely switch to other alternatives if the price of natural gas distribution were to increase by a small but significant and nontransitory amount.

26. A relevant geographic market in which to analyze the effects of the proposed acquisition is the individual service location of each nonresidential end user that benefits or could benefit in the future from competition between Equitable and Dominion in western Pennsylvania.

V. ENTRY CONDITIONS

27. Entry into the relevant markets is difficult and would not be likely, timely or sufficient to remedy the anticompetitive effects of the proposed acquisition.

VI. ANTICOMPETITIVE EFFECTS

28. The relevant markets are highly concentrated and would become significantly more concentrated after the proposed acquisition. In some areas, Equitable and Dominion are the only providers of local distribution of natural gas. In such areas, Equitable would have a monopoly after the proposed acquisition. In other areas, there are only one or two other providers of local distribution of natural gas. In such areas, the proposed acquisition would eliminate one of only a few providers of local distribution of natural gas.

29. The proposed acquisition may substantially lessen competition in the following ways, among others:

    a. by eliminating competition between Equitable and Dominion in the local distribution of natural gas in the relevant markets;

    b. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between the combined Equitable and Peoples and other providers of local distribution of natural gas in the relevant markets; and

c. by increasing the likelihood that the combined Equitable and Peoples will unilaterally exercise market power in the local distribution of natural gas in the relevant markets,

each of which increases the likelihood that prices for the local distribution of natural gas would increase above competitive levels, and that competition for the local distribution of natural gas would decrease, in the relevant markets.

VII. VIOLATIONS CHARGED

COUNT I – ILLEGAL ACQUISITION

30. The allegations contained in paragraphs 1-29 are repeated and realleged as though fully set forth here.

31. Equitable's proposed acquisition of Peoples, if consummated, would substantially lessen competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. §18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

COUNT II – ILLEGAL ACQUISITION AGREEMENT

32. The allegations contained in paragraphs 1-29 are repeated and realleged as though fully set forth here.

33. Equitable and Dominion, through the Agreement described in paragraph 15, have engaged in unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

NOTICE

Notice is hereby given to the Respondents that the fourteenth day of June, 2007, at 10:00 a.m., or such later date as determined by the Commission or by an Administrative Law Judge of the Commission, is hereby fixed as the time and Federal Trade Commission offices, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580, as the place when and where a hearing will be had on the charges set forth in this Complaint, at which time and place you will have the right under the FTC Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

Pending further order of the Commission, the Commission will retain adjudicative responsibility for this matter. *See* § 3.42(a) of the Commission's Rules of Practice for Adjudicative Proceedings. The Commission hereby allows you 20 days from the date of service of this Complaint upon you to file either an answer or a dispositive motion. If you file a dispositive motion within that time, your time for filing an answer is extended until 10 days after service of the Commission's order on such motion. If you do not file a dispositive motion within that time, you must file an answer.

An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted.

If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission or the Administrative Law Judge shall file an initial decision containing appropriate findings and conclusions and an appropriate order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under §3.46 of the Commission's Rules of Practice for Adjudicative Proceedings and the right to appeal the initial decision to the Commission under §3.52 of said Rules.

Failure to answer within the time above provided shall be deemed to constitute a waiver of your right to appear and contest the allegations of the complaint and shall authorize the Commission or the Administrative Law Judge, without further notice to you, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions, and order.

An initial prehearing scheduling conference will be scheduled no later than 14 days after the last answer is filed by any party named as a respondent in the complaint. Unless otherwise directed, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Ave., N.W. Room 532, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the prehearing scheduling conference, and Rule 3.31(b) obligates counsel for each party, within 5 days of receiving a respondent's answer, to make certain initial disclosures without awaiting a formal discovery request.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the acquisition of Peoples by Equitable, or any other transaction that combines them, challenged in this proceeding violates Section 7 of the Clayton Act, as amended, the Commission may order such relief against respondents as is supported by the record and is necessary and appropriate, including, but not limited to:

1. An order preventing Equitable from acquiring Peoples, if the acquisition has not occurred at the time of the Commission's decision;

2. The divestiture of Peoples and any other associated or necessary assets in a manner that restores Peoples as a viable, independent competitor in the relevant markets, with the ability to offer such services as Peoples is now offering and planning to offer, if the acquisition has occurred at the time of the Commission's decision;

3. A prohibition against any transaction between Equitable and Dominion that combines their operations in the relevant markets except as may be approved by the Commission;

4. A requirement that, for a period of time, Equitable provide prior notice to the Commission of acquisitions, mergers, consolidations, or any other combinations of its delivery services with any other company providing natural gas delivery services;

5. A requirement for Equitable to file periodic compliance reports with the Commission; and

6. Any other relief appropriate to correct or remedy the anticompetitive effects of the transaction or to restore Peoples as a viable, independent competitor in the relevant market.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by the Secretary and its official seal to be affixed hereto, at Washington, D.C., this fourteenth day of March, 2007.

By the Commission, Commissioner Harbour dissenting.

Donald S. Clark
Secretary