IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

FEDERAL TRADE COMMISSION **600 Pennsylvania Avenue, N.W.** **Washington, D.C. 20580,** **Plaintiff,** **vs.** **EQUITABLE RESOURCES, INC.** **225 North Shore Drive** **Pittsburgh, Pennsylvania 15212,** **DOMINION RESOURCES, INC.** **120 Tredegar Street** **Richmond, Virginia 23219,** **CONSOLIDATED NATURAL GAS COMPANY** **120 Tredegar Street** **Richmond, Virginia 23219, and** **THE PEOPLES NATURAL GAS COMPANY** **Dominion Tower** **625 Liberty Avenue** **Pittsburgh, Pennsylvania 15222,** **Defendants.**	**CIVIL ACTION NO. _______________** **ELECTRONIC FILING**

COMPLAINT FOR RELIEF PURSUANT TO
SECTION 13(b) OF THE FEDERAL TRADE COMMISSION ACT

Plaintiff, the Federal Trade Commission ("Commission"), by its designated attorneys, brings this action for a temporary restraining order and preliminary injunction under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to restrain and enjoin Defendant Equitable Resources, Inc. ("Equitable"), including its domestic and foreign agents, divisions, subsidiaries, affiliates, partnerships, and joint ventures, from acquiring through merger or otherwise, any stock, assets, or other interest, either directly or indirectly, of Defendant The Peoples Natural Gas Company ("Peoples") from Defendants Dominion Resources, Inc. ("DRI") and Consolidated Natural Gas Company ("CNG"). The proposed acquisition of Peoples by Equitable, if allowed to proceed, may substantially lessen competition in the markets for local distribution of natural gas to individual nonresidential customers in metropolitan Pittsburgh and western Pennsylvania. The purpose of this action, pursuant to Section 13(b) of the FTC Act, is to maintain the status quo during the pendency of an administrative proceeding challenging Defendants' proposed transaction, which has been commenced by the Federal Trade Commission pursuant to Section 5 of the FTC Act, 15 U.S.C. § 45, and Sections 7 and 11 of the Clayton Act, 15 U.S.C. §§ 18 and 21.

JURISDICTION

1. Jurisdiction is based upon Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and upon 28 U.S.C. §§ 1337 and 1345. This is a civil action arising under Acts of Congress protecting trade and commerce against restraints and monopolies, and is brought by an agency of the United States authorized by an Act of Congress to bring this action.

2. Equitable, DRI, CNG and Peoples are engaged in commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12. Equitable, DRI, CNG and Peoples are engaged in, among other things, the local distribution of natural gas in metropolitan Pittsburgh and western Pennsylvania.

VENUE

3. Venue is proper under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), under 28 U.S.C. § 1391(b) and (c), and under Section 12 of the Clayton Act, 15 U.S.C. § 22.

Equitable, DRI, CNG, and Peoples transact business and are found within the Western District of Pennsylvania. This action involves, in part, the threatened loss of competition in the local distribution of natural gas to customers located within the Western District of Pennsylvania.

THE PARTIES

4. The Commission is an administrative agency of the United States Government established, organized, and existing pursuant to the FTC Act, 15 U.S.C. § 41 *et seq.*, with its principal offices at 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The Commission is vested with authority for enforcing, *inter alia*, Section 7 of the Clayton Act and Section 5 of the FTC Act.

5. Defendant Equitable is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania. Its offices and principal place of business are located at 225 North Shore Drive, Pittsburgh, Pennsylvania 15212. Equitable is an integrated energy company engaged in the production, gathering, distribution and transmission of natural gas. 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.

6. Defendant DRI is a corporation organized and existing under the laws of the Commonwealth of Virginia. Its offices and principal place of business are located at 120 Tredegar Street, Richmond, Virginia 23219. 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. Defendant CNG is a corporation organized and existing under the laws of the State of Delaware. Its offices and principal place of business are located at 120 Tredegar Street, Richmond, Virginia 23219. CNG is a wholly-owned subsidiary of DRI. 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 of the United States.

8. Defendant Peoples is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania. Its offices and principal place of business are located at Dominion Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222. Peoples is a wholly-owned subsidiary of CNG. Peoples is engaged in the distribution of natural gas to residential, commercial, industrial and other customers in southwestern Pennsylvania. DRI, CNG, and Peoples hereinafter are collectively referred to as "Dominion."

SECTION 13(b) OF THE FTC ACT

9. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), provides in pertinent part:

> Whenever the Commission has reason to believe--
>
> > (1) that any person, partnership, or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and
> >
> > (2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final, would be in the interest of the public--
>
> the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public

> interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond . . . .
>
> 15 U.S.C. § 53(b).

<u>THE PROPOSED ACQUISITION AND THE COMMISSION'S RESPONSE</u>

10. On March 1, 2006, Equitable and CNG executed an agreement for Equitable 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.

11. On March 14, 2007, the Commission issued its administrative complaint challenging the proposed transaction under Section 5 of the FTC Act and Section 7 of the Clayton Act, and authorized the commencement of an action under Section 13(b) of the FTC Act to seek a temporary restraining order and a preliminary injunction barring the proposed transaction during the pendency of the administrative proceeding.

12. Defendant Equitable, in the absence of relief in federal court enjoining the acquisition, is free to consummate the proposed acquisition at any time, following the Pennsylvania Public Utility Commission's ("PUC") approval of the transaction on April 13, 2007. Defendant Equitable refuses to assure the Commission that it will not consummate the proposed acquisition during the pendency of the Commission's administrative proceeding to determine its legality.

13. In authorizing the commencement of this action, the Commission determined that such an injunction is in the public interest and that it has reason to believe that the aforesaid proposed acquisition would violate Section 7 of the Clayton Act and Section 5 of the FTC Act

because the acquisition may substantially lessen competition and/or tend to create a monopoly in the relevant markets alleged below.

TRADE AND COMMERCE

14. Defendants Equitable and Peoples are local distribution companies ("LDCs") that distribute natural gas to residential and nonresidential customers within their service territories.

15. 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 customers through underground pipeline systems referred to as gas mains and service lines.

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

17. 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, the 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 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 customers in overlapping service territories today.

18. In Pennsylvania, the PUC approves the maximum rates, fees and other charges (hereinafter collectively referred to as "rates") that an LDC may charge for natural gas

distribution. An LDC retains discretion to negotiate rates to individual nonresidential customers that are less than the maximum rates established by the PUC.

19. In areas that are serviced by two or more LDCs, nonresidential consumers are able to negotiate rates for natural gas distribution. In such areas, each LDC has the ability and the incentive to compete for the business of individual nonresidential customers by offering to distribute natural gas at prices less than the maximum rates established by the PUC.

20. Equitable and Peoples 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 properties under construction.

21. In some areas where Equitable and Peoples 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.

LIKELIHOOD OF SUCCESS ON THE MERITS

22. In an administrative proceeding to adjudicate the legality of the proposed acquisition, the Commission is likely ultimately to succeed in demonstrating that the proposed acquisition would violate Section 7 of the Clayton Act and Section 5 of the FTC Act as set forth in Paragraphs 23 through 30 *infra*.

LOSS OF COMPETITION IN THE LOCAL DISTRIBUTION OF NATURAL GAS TO NONRESIDENTIAL CUSTOMERS

23. As alleged below, Defendants Equitable and Dominion currently exercise market power in various markets for the local distribution of natural gas to nonresidential customers in metropolitan Pittsburgh and western Pennsylvania. Equitable and Dominion exercise that market power through price discrimination, charging nonresidential customers for whom they do not compete the maximum regulated tariff, while providing discounts for customers for whom they do compete. Equitable and Dominion are the most significant, if not the only, constraints on each other's ability to raise prices.

RELEVANT MARKETS

24. Defendants Equitable and Dominion price discriminate among their nonresidential customers based on each customer's ability to shift from one company to the other or to alternative sources for natural gas delivery or energy. Defendants exercise market power by providing local natural gas distribution to nonresidential customers at different prices according to the ability of the customer to shift to alternatives. Customers with the least ability to switch between Equitable and Dominion or alternative sources are charged the highest prices, while those with more flexibility to switch are charged lower prices. The difference between the prices charged to customers with the least ability to switch and the prices charged to more favored customers is significant. The ability to set local natural gas distribution prices in this manner and price discriminate among customers demonstrates market power–the unilateral ability to raise price profitably.

25. A relevant product market and line of commerce in which to analyze the competitive effects of this acquisition is the local distribution of natural gas to individual nonresidential customers.

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

CONCENTRATION

27. The proposed acquisition would substantially increase market concentration in all the relevant markets.

EFFECTS OF THE PROPOSED ACQUISITION IN THE LOCAL DISTRIBUTION OF NATURAL GAS

28. The proposed acquisition, if consummated, may substantially lessen competition in the following ways, among others: 1) by eliminating competition between Equitable and Dominion in the relevant markets; 2) 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 3) by increasing the likelihood that the combined Equitable and Dominion will unilaterally exercise market power in the relevant markets. Each of these effects 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. In fact, Equitable and

Dominion have already raised prices in anticipation of the consummation of the proposed acquisition.

29. Equitable and Dominion are, have been, and in the future will be, substantial competitors in each of the relevant markets.

30. Substantial, timely, and effective entry into the relevant markets, sufficient to deter or counteract the anticompetitive effects of the proposed acquisition, is unlikely.

NEED FOR RELIEF

31. Equitable's acquisition of Peoples would impede the Commission's ability to obtain full and effective relief under 15 U.S.C. § 53(b).

32. The reestablishment of Peoples as an independent viable competitive entity if it were to be acquired by Equitable would be difficult, and there is a substantial likelihood that it would be difficult or impossible to restore the two companies as they now exist. Furthermore, it would be difficult or impossible for the Commission to devise effective divestiture remedies after an administrative proceeding, if Peoples, or any part of Peoples, were to be acquired by Equitable. Finally, substantial interim harm to competition has already occurred and continues to occur.

33. For the reasons stated above, the granting of the injunctive relief sought is in the public interest.

WHEREFORE, the Commission requests that the Court:

(1) Temporarily restrain Defendant Equitable, and all its affiliates, from taking any further steps to consummate, directly or indirectly, the proposed acquisition of Peoples, or any other acquisition of stock, assets, or other interest, either directly or indirectly, in Peoples;

(2) Preliminarily enjoin Defendant Equitable, and all its affiliates, from taking any further steps to consummate, directly or indirectly, the proposed acquisition of Peoples, or any other acquisition of stock, assets, or other interest, either directly or indirectly, in Peoples;

(3) Order the Defendants to maintain the status quo pending the outcome of an administrative trial by the Commission challenging such acquisition, and until such complaint is dismissed by the Commission or set aside by a court on review, or until the order of the Commission made thereon has become final; and

(4) Award such other and further relief as the Court may determine to be proper and just, including costs.

Dated: April 13, 2007

Respectfully submitted,

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