

ORIGINAL

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.,))
))
DOMINION RESOURCES, INC.,))
))
CONSOLIDATED NATURAL GAS COMPANY,))
))
 and))
))
THE PEOPLES NATURAL GAS COMPANY,))
))
 Respondents.))
_____))

Docket No. 9322

PUBLIC

MOTION TO STAY COMPLAINT COUNSEL'S DISCOVERY OBLIGATIONS
PENDING RESOLUTION OF RESPONDENTS' MOTION TO
REMOVE MATTER FROM ADJUDICATION

Complaint Counsel moves to stay its discovery obligations pending resolution of Respondents' Motion to Remove Matter from Adjudication, filed on May 16, 2007. Complaint Counsel makes this motion because, absent a Commission ruling on Respondents' motion, Respondents would gain an unfair advantage if Complaint Counsel unilaterally produces its discoverable materials.

Respondents notified Complaint Counsel on May 22 that they intend to object to their discovery obligations on grounds of *res judicata* and do not intend to produce discoverable

materials on May 24, 2007, as required by the Commission's Scheduling Order.¹ The Commission's Scheduling Order issued on April 23, 2007, however, clearly contemplates the contemporaneous exchange of discovery materials. The pendency of Respondents' motion to withdraw frustrates that intent, given Respondents' position on producing discoverable materials and Complaint Counsel's obligation to produce its materials as scheduled.

Moreover, allowing Respondents to review Complaint Counsel's discoverable materials without producing their own materials provides Respondents with an unfair advantage in the federal court proceeding and the administrative proceeding should Complaint Counsel prevail in its appeal of the federal district court's dismissal of Complaint Counsel's request for preliminary injunctive relief.²

Resolution of Respondents' motion to withdraw will resolve the same issues Respondents intend to raise by their objection to discovery requests. Whether the Commission grants the motion to withdraw, stays the administrative proceeding *sua sponte*, or denies the motion to withdraw, the parties will then have more certainty as to their obligations in this administrative proceeding.

Accordingly, Complaint Counsel respectfully requests that the Commission stay Complaint Counsel's discovery obligations until it rules on Respondents' motion to remove the

¹ Under the Commission's Scheduling Order, both Complaint Counsel and Respondents must respond by May 24, 2007 to any discovery requests made before the Scheduling Order was entered.

² On May 14, 2007, a federal district court dismissed the complaint on state action grounds, and on May 16, 2007, the Commission filed notice of appeal of the district court's ruling. The Third Circuit has captioned the case *FTC v. Equitable Resources, Inc.*, Docket No. 07-2499 (3d Cir., docketed May 18, 2007).

matter from adjudication. In light of the limited time before discovery obligations arise under the Commission's Scheduling Order, Complaint Counsel requests that the Commission promptly grant this motion.

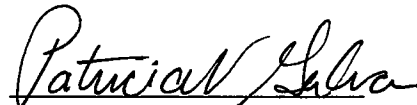
DATED: May 23, 2007

Jeffrey Schmidt
Director
Bureau of Competition

David P. Wales, Jr.
Deputy Director

Phillip L. Broyles
Assistant Director

Respectfully submitted,



Patricia V. Galvan
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Federal Trade Commission
601 New Jersey Avenue, N.W.
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COMPLAINT COUNSEL

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THE PEOPLES NATURAL GAS COMPANY,)	
)	
Respondents.)	

**[PROPOSED] ORDER STAYING COMPLAINT COUNSEL’S DISCOVERY
OBLIGATIONS PENDING RESOLUTION OF RESPONDENTS’ MOTION
TO REMOVE MATTER FROM ADJUDICATION**

This matter comes before the Commission on a Motion to Stay Complaint Counsel’s Discovery Obligations Pending Resolution of Respondents’ Motion to Remove Matter from Adjudication. Having considered the motion, it is hereby

ORDERED, that the Motion to Stay Complaint Counsel’s Discovery Obligations Pending Resolution of Respondents’ Motion to Remove Matter from Adjudication, dated May 23, 2007,

is hereby granted, and Complaint Counsel's discovery obligations are stayed, pending the Commission's resolution of Respondents' Motion to Remove Matter from Adjudication.

By the Commission.

ISSUED: _____

Donald S. Clark
Secretary

CERTIFICATE OF SERVICE

I, Robert E. LaRocca, hereby certify that on **May 23, 2007**:

I caused twelve (12) hard copies of the attached **Motion to Stay Complaint Counsel's Discovery Obligations Pending Resolution of Respondents' Motion to Remove Matter from Adjudication** to be served by hand delivery and one (1) copy by electronic mail upon the following person:

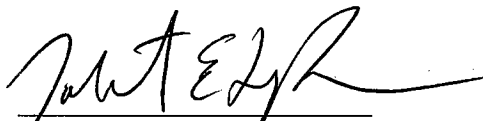
Office of the Secretary
Federal Trade Commission
H-135
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

I caused one (1) copy of the **Motion to Stay Complaint Counsel's Discovery Obligations Pending Resolution of Respondents' Motion to Remove Matter from Adjudication** to be served by electronic mail and followed with one (1) copy by US mail delivery, first class postage prepaid, to the following persons:

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Federal Trade Commission