

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

REVISED JOINT CASE MANAGEMENT STATEMENT

Pursuant to the Order Setting Scheduling Conference dated April 13, 2007, Complaint Counsel and Respondents Equitable Resources, Inc., Dominion Resources, Inc., Consolidated Natural Gas Company, and The Peoples Natural Gas Company, file the following Revised Joint Case Management Statement.

1. Statement of Facts. On March 1, 2006, Equitable Resources, Inc. executed an agreement to acquire the capital stock of The Peoples Natural Gas Company from the Consolidated Natural Gas Company, a subsidiary of Dominion Resources, Inc. Equitable and Peoples are, *inter alia*, local distribution companies that distribute natural gas to residential and

nonresidential end users within their service territories. Equitable and Peoples both provide local distribution services to end users in western Pennsylvania.

The Commission issued an administrative complaint on March 14, 2007, alleging that the acquisition of Peoples by Equitable violates the antitrust laws. The complaint alleges that a relevant product market is the local distribution of natural gas to individual nonresidential end users, and that the relevant geographic market 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.

In their answers dated April 9, 2007, Respondents deny certain allegations regarding the nature of their operations. Respondents also deny the allegations setting forth the relevant markets in which the competitive effects of the merger should be evaluated; the allegations that market entry would be difficult; and the allegations that the acquisition would have anticompetitive effects. Respondents also set forth certain affirmative defenses, including, *inter alia*, that, by virtue of the approval of the transaction by the Pennsylvania Public Utility Commission, the complaint is barred by the state action doctrine; that the merger is in the public interest; and that the proposed acquisition will result in substantial merger-specific efficiencies that will benefit consumers.

2. Legal Issues. The principal legal issues in this case are as follows:
 - a. Complaint Counsel alleges that the acquisition of Peoples by Equitable may substantially lessen competition or tend to create a monopoly, in violation of section 7 of the Clayton Act, 15 U.S.C. § 18, and that the agreement pursuant to which the acquisition will occur is an unfair method

of competition, in violation of section 5 of the FTC Act, 15 U.S.C. § 45.

Respondents contend that the transaction is lawful and cite in that regard the merger specific efficiencies that would result from this transaction, which they contend would far outweigh the costs of any alleged loss of competition.

- b. Respondents contend that the FTC's claims are barred by the state action immunity doctrine, enunciated by the United States Supreme Court in *Parker v. Brown*, 317 U.S. 341 (1943), and *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.* 445 U.S. 97 (1980). In that regard, Respondents cite the April 13, 2007, decision of the Pennsylvania Public Utility Commission approving the acquisition of Peoples by Equitable, the clear articulation of the Commonwealth's policy to displace competition at issue and the Commonwealth's active supervision of the conduct at issue. Complaint Counsel contends that the Commonwealth of Pennsylvania has not "clearly articulated and affirmatively expressed" a state policy to displace competition, nor is the anticompetitive conduct of Equitable "actively supervised by the state itself."
- c. Respondents also contend that the complaint fails as a matter of law to state a claim upon which relief can be granted and that the alleged market definitions are not legally cognizable.

3. Motions. On April 11, 2007, Complaint Counsel filed a motion to strike the first affirmative defense of each of the Respondents asserting the state action defense. On April 16,

