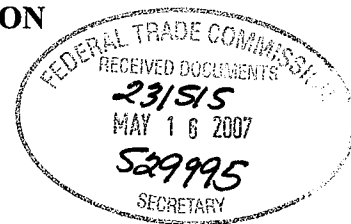


ORIGINAL

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**



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
PUBLIC**

**RESPONDENTS' MOTION TO THE COMMISSION
TO REMOVE MATTER FROM ADJUDICATION**

Respondents Equitable Resources, Inc. ("Equitable"), Dominion Resources, Inc., Consolidated Natural Gas Company, and The Peoples Natural Gas Company ("Peoples") (collectively, "Respondents") move under Rule 3.26(c) of the FTC's Rules of Practice, 16 C.F.R. § 3.26(c), to remove this matter from adjudication. Respondents respectfully submit that the Commission should remove the matter from litigation to consider whether or not the public interest warrants further litigation in light of the dismissal on state action immunity grounds of the FTC's claims against the transaction by the United States District Court for the Western District of Pennsylvania (the "District Court") and the compelling benefits that the transaction would bring to the citizens and economy of western Pennsylvania.

BACKGROUND

On March 14, 2007, Complaint Counsel filed its administrative complaint. Respondents answered the complaint on April 9, asserting a number of defenses, including the state action immunity doctrine. On April 11, Complaint Counsel moved to strike Respondents' state action immunity defense.

On April 13, Complaint Counsel, proceeding under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), filed a complaint against the proposed transaction in the District Court. Complaint Counsel asserted the identical claims that it asserts in these administrative proceedings. The Court ordered expedited briefing of the Respondents' motion to dismiss on state action immunity grounds. In light of the proceedings before the District Court, on April 16, the Commission stayed all briefing on Complaint Counsel's motion to strike, "until further notice," "pending the proceedings in the federal district court." That stay remains in effect.

On May 14, 2007, the District Court granted Respondents' motion to dismiss, holding that the state action immunity doctrine barred the FTC's claims against the proposed transaction. *FTC v. Equitable Resources*, No. 07cv0490 (Mem. Op.) (May 14, 2007) (attached as Exhibit A). Noting that the parties agreed on the legal standard, the District Court concluded that "the application of the legal standard [was] rather straightforward." Mem. Op. at 11-12. The Court held that each of the two prongs of the test for state action immunity – that there be a "clear articulation" of state policy to displace competition with regulation and that the state "actively supervise" that policy, *see California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 105 (1980) – were readily met. *See* Mem. Op. at 13 ("Quite frankly, it is hard to imagine a more thorough 'articulation' of a state policy of regulation meant to take the place of free market competition than the overall comprehensive and pervasive governmental

