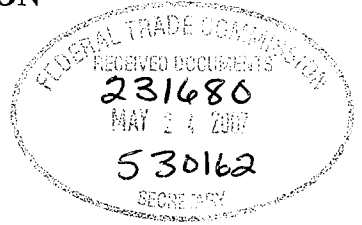


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



)
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' RESPONSE TO COMPLAINT COUNSEL'S MOTION TO STAY
COMPLAINT COUNSEL'S DISCOVERY OBLIGATIONS

Respondents Equitable Resources, Inc. ("Equitable"), Dominion Resources, Inc., Consolidated Natural Gas Company, and The Peoples Natural Gas Company ("Peoples") (collectively, "Respondents") hereby respond to Complaint Counsel's Motion to Stay Complaint Counsel's Discovery Obligations.

Through its motion, Complaint Counsel seeks a *one-sided* stay that would permit Complaint Counsel *not to respond* to the discovery requests that were served on it on April 20, 2007 (to which it did not object when its objections were due on May 4) or otherwise fulfill its discovery obligations, but would *require* Respondents *to respond* to Complaint Counsel's discovery requests and any other discovery requests it promulgates. It seeks such a one-sided stay having just a few days ago objected to Respondents' motion under Rule 3.26 to relieve the

litigation burden on both parties pending the Third Circuit's decision by removing the matter from adjudication with the specious argument that that motion was "premature." In other words, Complaint Counsel wants the litigation burden to continue on Respondents but not on itself while it awaits the Third Circuit's decision on the appeal of the district court's dismissal of the FTC's claims. Fundamental fairness requires that both sides be treated equally and that this matter either be removed from adjudication or stayed in its entirety.

By filing this motion, Complaint Counsel has made clear that which has been obvious since the District Court dismissed the FTC's complaint: the administrative litigation should not proceed while federal court appellate proceedings are ongoing. Indeed, in contrast to what Complaint Counsel is now telling the Commission, Complaint Counsel previously agreed that continued administrative adjudication of this matter pending appeal would be wasteful and burdensome.¹ That is especially true now that the district court has not once but twice held that state action immunity bars the FTC's claims as a matter of law and, in denying the FTC's motion for an injunction pending appeal, held that the FTC had not even demonstrated "a substantial issue on the merits of the state action immunity doctrine." *FTC v. Equitable Resources*, No. 07-cv-0490 (May 17, 2007) (Memorandum Opinion Denying Plaintiff FTC's Motion for an Injunction) at 9 (attached as Exhibit B). As Respondents urged in their motion to remove the matter from adjudication, continuing the administrative litigation in these circumstances would

¹ On May 22, Complaint Counsel contacted Equitable's counsel and, in light of the impending burden on Complaint Counsel of discovery responses due on May 24, suggested that the parties agree to a mutual stay of discovery. Because a discovery stay alone would be unworkable with other critical scheduling dates fast approaching, Complaint Counsel and Respondents instead agreed to file a motion to stay the *entire* adjudicative proceedings pending the resolution of the FTC's Third Circuit appeal. Complaint Counsel prepared a draft joint motion and order to that effect, which Respondents authorized Complaint Counsel to sign on their behalf. (An email chain of this exchange is attached as Exhibit A.) On May 23, however, the Bureau of Competition decided instead to file the present motion for a one-sided stay rather than the mutual stay of the entire adjudication previously agreed.

