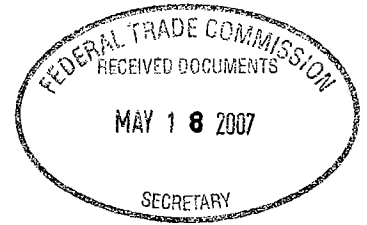


UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

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., ) Docket No. 9322  
)  
CONSOLIDATED NATURAL GAS COMPANY, ) PUBLIC  
)  
and )  
)  
THE PEOPLES NATURAL GAS COMPANY, )  
)  
Respondents. )  
\_\_\_\_\_)

**COMPLAINT COUNSEL'S OBJECTION TO RESPONDENTS' MOTION  
TO REMOVE MATTER FROM ADJUDICATION**

Complaint Counsel objects to Respondents' motion to remove this matter from adjudication under Rule 3.26(c) of the FTC Rules of Practice. Respondents have not met the conditions required for removal because Complaint Counsel has filed a notice of appeal from the district court's ruling. Respondents' motion is therefore premature and should be denied.

On April 13, 2007, Complaint Counsel filed a complaint in federal district court under Section 13(b) of the Federal Trade Commission Act, 15 U.S.C. § 53(b), seeking to enjoin Equitable Resources, Inc. from acquiring The Peoples Natural Gas Company from Dominion Resources, Inc. and Consolidated Natural Gas Company, pending the outcome of this administrative litigation. On May 14, 2007, the district court dismissed the complaint on state

action grounds. On May 16, 2007, Complaint Counsel filed notice of appeal of the district court's ruling, which preserves the Commission's ultimate ability to prevail in its request for a preliminary injunction. Complaint Counsel also filed a motion for an injunction pending appeal, to prevent interim harm to consumers and competition and to preserve the *status quo* during the pendency of the appeal.

By its own terms, Rule 3.26 does not contemplate granting Respondents' motion prior to final resolution of the denial of preliminary injunctive relief. Instead, Rule 3.26(b) permits Respondents to move for withdrawal of a matter *after* (1) "all opportunity has passed" for the Commission to appeal an adverse ruling by a district court *and* "the Commission has neither sought reconsideration of the denial nor appealed it," *or* (2) a court of appeals has denied preliminary injunctive relief. As a result of Complaint Counsel's pending appeal, Respondents cannot satisfy the Rule 3.26(b) standard. Respondents incorrectly contend in their motion that the district court ruling is binding on the Commission even before an appellate court has had an opportunity to rule on the very same issues that were before the district court.<sup>1</sup> Withdrawal of the administrative proceeding at this stage would be premature, as there is no finality in the preliminary injunction proceedings until appellate review is complete.

Denial of the motion does not preclude Respondents from engaging the Commission or even Complaint Counsel for purposes of determining whether the public interest is furthered by ending the litigation. Respondents are free to meet with the Commissioners on their claimed efficiencies, provided they do not do so on an *ex parte* basis. The adjudicative process itself also

---

<sup>1</sup> The Supreme Court's decision in *Federated Dept. Stores, Inc. v. Moitie*, 452 U.S. 394, 398-99 (1981) addressed the *res judicata* effects of an unappealed final judgment and does not support Respondents' position here.

provides a vehicle for Respondents to engage Complaint Counsel on the merits of their efficiencies claims, through discovery in the administrative litigation. However, Respondents' mere promises of cognizable efficiencies do not justify a withdrawal at this stage in the proceedings – particularly insofar as Respondents have not produced sufficient evidence on this point during the year-long pre-complaint investigation. Respondents' late efforts to demonstrate benefits of the proposed transaction requires careful consideration of the merits of such claims *before* withdrawal, especially when important legal questions are pending on appeal as is the case here. Moreover, neither the Pennsylvania regulatory process nor the district court proceeding elicited relevant facts that had not already been considered during the investigative review of the transaction.

Accordingly, the Commission should deny Respondents' motion to withdraw this matter from adjudication before appellate review has been completed.

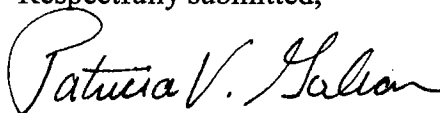
DATED: May 18, 2007

Jeffrey Schmidt  
Director  
Bureau of Competition

David P. Wales, Jr.  
Deputy Director

Phillip L. Broyles  
Assistant Director

Respectfully submitted,



Patricia V. Galvan  
Attorney  
Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Washington, D.C. 20580  
COMPLAINT COUNSEL

## CERTIFICATE OF SERVICE

I, Robert E. LaRocca, hereby certify that on **May 18, 2007**:

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

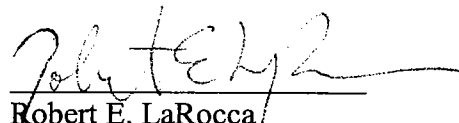
Office of the Secretary  
Federal Trade Commission  
H-135  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

I caused one (1) copy of the **Complaint Counsel's Objection to 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:

William J. Baer, Esq.  
Arnold & Porter LLP  
555 12<sup>th</sup> Street, N.W.  
Washington, D.C. 20004  
[William.baer@aporter.com](mailto:William.baer@aporter.com)

George S. Cary, Esq.  
Cleary Gottlieb Steen and Hamilton LLP  
2000 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006  
[Gcary@cgsh.com](mailto:Gcary@cgsh.com)

Howard Feller, Esq.  
McGuireWoods LLP  
One James Center  
901 East Cary Street  
Richmond, VA 23219-4030  
[Hfeller@mcguirewoods.com](mailto:Hfeller@mcguirewoods.com)

  
Robert E. LaRocca  
Honors Paralegal  
Federal Trade Commission