BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Application of Equitable Resources, Inc. and the Peoples Natural Gas d/b/a Dominion Peoples, for approval of the transfer of all stock and rights of the Peoples Natural Gas Company to Equitable Resources, Inc., and for the approval of the transfer of all stock of Hope Gas, Inc. d/b/a Dominion Hope, to Equitable Resources, Inc.	**:**	**A-122250, F. 5000**

REPLY BRIEF IN OPPOSITION TO SETTLEMENTS
OF THE
NATIONAL ENERGY MARKETERS ASSOCIATION

Pursuant to the Eighteenth Interim Order of November 17, 2006, issued in the above-referenced proceeding, the National Energy Marketer's Association ("NEM"), hereby submits this Reply Brief in Opposition to Settlements. NEM will not repeat arguments raised within its Main Brief and submits this Reply Brief to respond to three issues presented by the Initial Briefs of the other filing parties. First, NEM continues to question whether the separate term sheets executed by certain parties constitute a "Settlement" and believes that statements within the Initial Briefs cast further doubt as to whether the parties indeed had a meeting of the minds. Second, despite Equitable's erroneous assertions to the contrary, the "Settlement" documents executed by certain stakeholders in this case do not satisfy NEM's significant concerns that the Settlements are not ultimately in the public interest and will not support the development of a properly functioning and effective competitive retail gas market in the combined utility service territories that would be formed as a result of the transaction. Relatedly, PEMI's

recommendation to retain the agency program as a "competitive option" should be rejected. Accordingly, NEM continues to recommend that the combined Settlements and the acquisition be denied or only approved subject to the recommended modifications set forth in NEM's Initial Brief in Opposition.

I. THE SEPARATE TERM SHEETS LACK OVERALL AGREEMENT OF THE SIGNATORY PARTIES AND MAY NOT CONSTITUTE A MUTUALLY AGREED MEETING OF THE MINDS NECESSARY TO CONSTITUTE A VALID SETTLEMENT

As an initial matter, and as discussed in our Initial Brief, NEM questions whether the three separate term sheets executed by certain stakeholders can even properly be considered a "Settlement." NEM noted in its Initial Brief the unusual circumstance present here that the signatories limited their support of the three term sheets such that, "Unless expressly stated herein, however, no individual Intervening/Protesting Party supports settlement terms other than those presented in its individually executed settlement term sheet." (Joint Petition, para. 12, page 5). By separately negotiating terms with the stakeholders without achieving an overall agreement amongst them, it is questionable whether the balancing of competing interests that typifies settlement agreements has been achieved.

Inconsistencies in the Initial Briefs submitted by the other parties have heightened NEM's concern that these term sheets fall far short of a mutually agreed meeting of the minds necessary to constitute a valid settlement. Specifically, NEM is concerned that inconsistencies in the Initial Briefs of Equitable and Hess/Constellation reveal that even amongst signatory parties, considerable confusion exists as to what has actually been agreed to by Equitable, and therefore, whether any meeting of minds occurred is

questionable. In its explanation of the "Settlement" provisions of the Equitable term sheet with Hess/Constellation pertaining to the agency program, Equitable maintains that it will, "begin the process of exiting the Agency Service program as it presently exists and will limit its provision of Agency Service going forward." (Eq. Initial Brief at 22). Equitable further characterizes it as an, "agreement to exit Agency Service in its present form and limit its provision going forward." (Equitable Initial Brief at 40). In contrast, Hess/Constellation maintain that the "Settlement" will be "bringing an end to," affecting a "discontinuation" of, and "eliminating" agency service. (Hess/Constellation Initial Brief at 6 and 8). NEM points this out not simply to parse the words. NEM is genuinely concerned that Equitable's intention vis-à-vis continuation of its agency program, albeit in a modified format, is not consistent with Hess/Constellation understanding, and certainly is not appropriate as explained in the testimony of NEM Witness Crist. This basic misconception coupled with Equitable's strong financial incentive to continue the agency program and its actions to continue to assign all of the agency accounts to its unregulated affiliate is unfair to all marketers (except their affiliate) and to the customers who are deprived of competitive choices. It certainly does not bode well for the competitive supplier community. Moreover, without a genuine, mutually agreed meeting of the minds, NEM questions whether the signatories have even achieved a "Settlement" ripe for Commission review.

II. AS AMPLY DEMONSTRATED BY NEM'S INITIAL BRIEF, THE JOINT PETITION DOES NOT SATISFY NEM'S SIGNIFICANT CONCERNS ABOUT COMPETITIVE MARKET DEVELOPMENT IN THE COMBINED UTILITY SERVICE TERRITORY

Equitable asserts in its Initial Brief that, "With the filing of the Joint Petition it is not clear what, if any, of Mr. Crist's recommendations survive." (Equitable Initial Brief at 40). They urge that NEM Witness Crist's recommendations "be considered satisfied." (Id.). Given NEM's detailed argument in its Initial Brief in opposition to the "Settlements," it is quite apparent that is not true. In its Initial Brief, Equitable summarizes what it believes to be NEM's five concerns. (Id.) NEM's testimony and Initial Brief included far more than those five points of contention. However, without unnecessarily belaboring the process and in the interest of brevity, NEM will respond only to the five issues deemed "satisfied" by Equitable.

Equitable suggests that its agreement to convene a marketer collaborative adequately addresses NEM's concern about competitive retail market development. (Id.). NEM explained in its Initial Brief that while this sounds appealing on its face, without any details as to timetables and actual implementation of suggested changes that it was nothing more than a hollow promise. Equitable for years has chosen not to adopt more progressive, marketer-friendly rules and without firm direction there is no reason to believe they will now. Simply stated, in order to satisfy NEM's concerns, Equitable should be required to adopt Dominion's choice program rules for the combined utility service territory unless and until Equitable demonstrates that such rules will not work in the combined service territory.

Equitable also argues that NEM Witness Crist's recommendation to eliminate the agency program, "should be considered satisfied by Equitable's agreement to exit

Agency Service in its present form and limit its provision going forward." (Equitable Initial Brief at 40). NEM explained in its Initial Brief that notwithstanding the proposed modifications to Equitable's agency program that a substantial threat to competitive marketers would continue to exist. Equitable retains its ability to offer agency service to "a customer attempting to bypass or otherwise leave the Equitable distribution system." (Equitable/Hess/Constellation Settlement, para. 1). And, Equitable's proposal to transfer grandfathered customers to its affiliate would appear to be a violation of the standards of conduct. Additionally, there does not appear to be any restriction upon Equitable's ability to export its Agency Service in any form to the Dominion service territory where some level of competition already exists. Total elimination of any form of agency service is necessary as a condition of the Commission's approval of this stock transfer.

Equitable maintains that NEM Witness Crist's recommendation that Equitable be directed not to move Dominion's storage upstream is addressed because it is not proposing to take such action in this case. (Equitable Initial Brief at 40-41). NEM explained in its Initial Brief that the availability of on-system storage on the Dominion system is preferable to Equitable's practice of obtaining storage from Equitrans and other pipeline suppliers. As a result, should Equitable transfer Dominion's storage assets to Equitrans after completion of the transaction, this would eliminate a significant cost benefit currently realized by marketers operating on Dominion's system. To thoroughly address NEM's concerns, storage and utilization rights should be assigned to individual customers as they leave Equitable system supply for a competitive supplier on the same terms and conditions extended to sales customers. Additionally, Equitable should be required to notify competitive suppliers of their intention to transfer Dominion's storage

assets and that it be done subject to Commission approval. The Settlement does not offer a resolution of this issue, merely a deferral.

Inasmuch as Equitable has agreed not to seek a change in Dominion's LIFO storage accounting method "in this proceeding," Equitable suggests it has addressed NEM's concerns about an accounting methodology change. (Equitable Initial Brief at 40-41). This is not the case. Notwithstanding its agreement not to seek an accounting methodology change in the instant case, NEM is concerned Equitable will seek such a change and likely will do so in a 1307(f) proceeding for which competitive marketers have historically not been permitted standing to intervene. NEM recommends that any savings resulting from an accounting change be implemented in a competitively neutral manner to ensure that all customers, full service, choice and transportation, are able to share in the benefits with respect to an asset they all had a hand in contributing to, cheaper gas in storage. Once more, the issue has not been resolved, only deferred, in this instance, to a proceeding in which NEM likely will not be able to participate.

Finally, Equitable argues that NEM Witness Crist's recommendation to lower Equitable's distribution rates to be equivalent to Dominion's distribution rates is not appropriate for consideration in an application proceeding. (Equitable Initial Brief at 41). As noted by NEM Witness Crist, Equitable's distribution rates are notably higher than Dominion's. (NEM Stmt. 1, page 11, lines 9-17, NEM Stmt. 1-SR, page 18, lines 8-12). It would be patently unfair to require the captive customers in the combined utility service territory to be required to pay the higher distribution rates without Equitable providing record justification for the difference. Relatedly, to the extent these distribution rates have not been unbundled on an embedded cost basis to prevent the

cross-subsidization of artificially low commodity rates, consumers will be prevented from receiving accurate price signals which are a prerequisite to a properly functioning competitive retail market. As such, Equitable should not be permitted to impose distribution rates that are not supported by a fully allocated embedded cost based rate study that unbundles rates based on a proper allocation of competitive commodity-related costs. Once more, resolution of an issue is deferred.

Significantly, of the five issues purportedly "satisfied" by the document presented here, four are deferred and one proposes a partial resolution to the issue raised. Rather than promote a competitive market in the combined service territory, the Joint Petition merely defers any possibility that competition can exist within the Equitable service territory and will serve to reverse any current competition in the Dominion service territory.

III. PEMI's Recommendation that Equitable's Agency Program Be Continued as a "Competitive Option" Should Be Rejected

PEMI maintains that Equitable's agency program is a, "beneficial and viable competitive option to access gas supplies at competitive prices," (PEMI Initial Brief at 20) and the agency program should be continued, "because it provides retail customers with an additional means of bringing competitive market forces to bear on supply prices." (PEMI Initial Brief at 21). NEM fundamentally disagrees. As a general matter, NEM submits that utility commodity supply service should be plain vanilla service. To the extent that customers desire different commodity-related products and services, the competitive market should be relied upon to provide those services. However, so long as the utility (the dominant market player) is permitted to unfairly compete in its service

territory without adherence to the standards of conduct in the provision of commodity-related products and services, competitive suppliers will be reluctant to enter the utility service territory and likely will be unable to offer a competitive product. In point of fact, the existence of the agency program, rather than "bringing competitive market forces to bear," actually deters such competitive market forces from developing. This is evidenced by the lack of competitive supply offers in the Equitable service territory as compared to the Dominion territory (Equitable Statement 2, page 4, lines 9-10), and the related fact that Dominion does not offer an agency program in its service territory. (NEM Statement 1-SR, page 16, line 22 through page 17, line 4). One must not lose sight of the original purpose of the agency programs. Distribution utilities were faced with the departure of customers through bypass as a result of the opening and equal access provisions of interstate pipelines and large customers seeking to lower their natural gas costs. When initially implemented, agency was designed not to promote competition among suppliers or distribution companies, but to thwart competition from other entities. Despite claims to the contrary, agency programs continue to hinder the development of a truly competitive market.

PEMI's apprehension about elimination of the agency program stems from its observation that under the Joint Petition, "Equitable is under no commitment to modify its tariff to provide for more competitively friendly provisions that will ensure an increase of NGSs in the Equitable service territory." (PEMI Initial Brief at 29). As a result, PEMI fears that the Joint Petition will be, "removing a viable competitive option (and in the instance of Equitable – the only competitive option) that is currently available to ratepayers in these service areas without providing any guarantee of replacement."

(PEMI Initial Brief at 29). PEMI's concern as to whether Equitable will actually implement competition friendly tariffs is well-placed. NEM agrees that reform of Equitable's choice tariff should be a part of the comprehensive resolution of this proceeding. However, even if the Commission decides that Equitable's stakeholder collaborative is a sufficient measure at this time, it should not forestall the elimination of the agency program. Agency is a significant barrier to competitive entry and marketer participation. The elimination of this program in the Equitable service territory has the potential to advance the development of the competitive retail market. Likewise, ensuring that an agency program is not instituted in the Dominion service territory will protect the advances achieved in market development in that service territory to date.

NEM has proffered in its testimony and in its Initial Brief a solution that addresses PEMI's concerns. First, the Equitable agency program should be eliminated. Second, in furtherance of the economic development goals that provide the rationale for the agency program, Equitable should offer such customers a delivery rate discount. Finally, the customers should be encouraged to seek competitive offers for commodity supply. This would provide an optimal solution to permit consumers to optimize savings, while simultaneously promoting competitive market development. As such, the interests of PEMI's members would be well served.

IV. CONCLUSION

For the foregoing reasons, NEM reiterates it recommendation that the combined "Settlements" and the acquisition be denied or only approved subject to the recommended modifications set forth in NEM's Initial Brief in Opposition. The unusual

nature of the "Settlement," lacking overall support from the signatories, and perhaps failing to achieve an actual meeting of the minds, certainly calls into question whether it can be denominated as a "Settlement" at all. Despite Equitable's attempt to demonstrate that NEM's concerns have been satisfied, it is abundantly clear that the "Settlement" falls short of serving the public interest or facilitating the development of the competitive retail market. And, the bases underlying PEMI's request to retain the agency program do not justify retaining a program that has done injury to competitive market development, particularly when the option of Equitable-provided delivery rate discounts coupled with competitive commodity supply is considered.

Respectfully submitted,

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