BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Application of Equitable Resources, Inc. and The Peoples Natural Gas Company, d/b/a Dominion Peoples, for Approval of the Transfer of All Stock and Rights of the Latter to the Former and for the Approval of the Transfer of All Stock of Hope Gas, Inc., d/b/a Dominion Hope, to Equitable Resources, Inc.	)	Docket No. A-122250F5000

DIRECT TESTIMONY OF JAMES L. CRIST

ON BEHALF OF

NATIONAL ENERGY MARKETERS ASSOCIATION,

HESS CORPORATION AND CONSTELLATION NEW ENERGY

Q. Please state your name and business address, and tell us on whose behalf you are testifying?

A. I am James L. Crist, President of Lumen Group, Inc. a consulting firm focused on regulatory and market issues. My business address is 4226 Yarmouth Drive, Suite 101, Allison Park, Pennsylvania 15101. I am presenting testimony on behalf of National Energy Marketers Association, Hess Corporation and Constellation New Energy ("Marketers").

Q: Do you have any qualifications or other specialized knowledge that would assist the Commission in its deliberations in this case?

A: Yes.

Q. What is your educational background?

A. I have a B.S. in Chemical Engineering from Carnegie Mellon University and an MBA from the University of Pittsburgh. Additionally I am a Registered Professional Engineer in the Commonwealth of Pennsylvania.

Q. Briefly describe your relevant business qualifications.

A. I have run a consulting practice for the past ten years focused on regulated and deregulated energy company strategy, market strategy, and regulatory issues. During 2004 to 2005 I undertook a consulting assignment as the Vice President of Consumer Markets for ACN Energy. ACN is a gas and electric marketer that is active in eight states. Prior to that I worked at three major energy companies for a total of 19 years. Most recently I was Vice President of Marketing for Equitable Resources. In that function I was responsible for the development of the strategy for customer choice programs and oversaw the company's participation in the first residential customer choice program in Rock Valley, Iowa, in 1996. Prior to that I was Vice President of Marketing for Citizens Utilities responsible for gas, electric, water and wastewater marketing activities a several service territories within the United States. The gas and electric utility operations were in Vermont, Louisiana, Arizona, Colorado, and Hawaii. Under my direction we initiated commercial and industrial transportation and supply services at our gas operation in Arizona. I directed significant gas supply contracting activities with large industrial and commercial customers in our gas operation in Louisiana. Before that, during 1988 through 1994, I was the Marketing Director at Peoples Gas where I was actively involved in many gas transportation programs as the company relaxed transportation requirements so that customers would have supply choices. In summary, I have considerable experience in several states involving residential, commercial, and industrial customer transportation programs.

Q. Equitable claims that this is just a stock transaction, yet glancing ahead at your testimony it is apparent that you are greatly concerned with operation issues that would result from a merger of the ownership and management of these two utilities. Why be concerned now?

A. While Equitable has not laid out a schedule for merger of the two local distribution utilities they have pushed aggressively for a rapid decision in this case and proposed merger of the gas supply functions prior to this heating season that begins in October and the elimination of avenues by which marketers can move gas to customers.

One would be naïve not to be concerned at this stage, given that Equitable's policies, charges, tariff provisions and actions up until this point separate from the merger have created so much concern for the marketing community. Regardless as to how you characterize the transaction, as a merger or stock transfer, after the transfer is completed as contemplated only Equitable will remain in the service area that currently is comprised of Equitable and Dominion Peoples. In my opinion, the current tariff structure implemented in the Dominion Peoples service territory has fairer asset sharing rules, balancing guidelines and related issues for Choice and transportation customers. It would be in the public interest to ensure that, at a minimum, the current Dominion Peoples programs are maintained and become the new standard for the entire merged service territory as a condition of any combination of market participants of this size and dominance. If the stock transfer is permitted to take place before Equitable is required to address the significant defects in its Choice and Transportation programs, the subsequent acquisition and elimination of Dominion Peoples from the market area in my opinion could result in a reduction of competition and the positive benefits of competition that have been enjoyed by consumers. The proposal currently before the Commission would potentially eliminate the progress made to date on the Dominion Peoples system and prevent growth of effective competition in the expanded, post-transaction Equitable service territory. If this transaction is approved, in my opinion it should be premised on the larger merged service territory implementing the more competition-friendly rules governing Dominion Peoples currently.

Q. Why should the Commission be considering the effects of this acquisition on competition?

A. First, the Commission has a legal obligation to consider whether the proposed merger is likely to result in anticompetitive conduct which will prevent retail gas customers from obtaining the benefits of a properly functioning and effectively competitive retail natural gas market. (66 Pa. C.S.A. § 2210(a)(1) (West 2000)). Because the operational rules and transportation programs on the Dominion Peoples system are more accepting of and favorable to promoting a functional competitive market, anything but adopting those rules for the entirety of the merged system would be a violation of the standard by which the Commission must assess the merger or acquisition.

Second, in its recent Investigation into the Natural Gas Supply Market in Docket I-00040103, the Commission determined there was a lack of effective competition in Pennsylvania's retail natural gas market, and as a result commenced a collaborative stakeholder group to address what measures are necessary to promote and improve the level of competition in the Commonwealth. (Docket I-00040103, Report to the General Assembly on Competition in Pennsylvania's Natural Gas Supply Market, p.67). It would be contrary to this mission undertaken by the Commission to enhance retail competition to not at a minimum have the more competition friendly rules and programs adopted for the merged system.

This is an appropriate proceeding where the Commission can advance its goal of enhancing retail competition as will be discussed in the following recommendations.

BASIC PRINCIPLES OF COMPETITION AND CHOICE

Q. Aren't gas utilities supposed to be monopolies? What's all the fuss about "competition" and "choice?"

A. We've had competition in western Pennsylvania since 1986 (the Red Bull Inn case) when a customer's right to choose their distribution supplier was recognized and established by the Commission. Competition between LDCs (which I refer to as "LDC Competition") has been beneficial to many customers. With effective competition each LDC has an additional incentive to keep its distribution costs in line and cannot utilize its monopoly powers. LDC competition occurs at all levels in the markets, residential, commercial, and industrial.

Competition to supply gas commodity, services and other energy related technologies (which is referred to as "Retail Choice") is a form of market competition which involves new entrants to the marketplace such as energy marketers and related service providers. Beginning with large customers and through gradual relaxation of transportation minimums, smaller customers, including residential customers, have the ability to choose their supplier of natural gas. Under the Choice program this right extends to every residential consumer. The right for a customer to choose equitably is worth preserving and twenty years of competition development should not be allowed to be set back.

The acquisition will eliminate the distribution competition between Dominion Peoples and Equitable which typically comprises 20-30% of a customer's annual bill. However, 60-70% of a typical customers annual bill is represented by the costs associated with the natural gas commodity itself. As energy prices increase, so does this percentage. Also, the higher this percentage, the more valuable price competition is to consumers in this service territory as well as the public interest of the Commonwealth of Pennsylvania. Energy savings represented by price and technology competition in retail choice programs helps not only the local consumers but helps the economy in general.

Q. How would the acquisition reduce customer's choices of distribution suppliers?

A. Equitable has proposed to eliminate duplicative distribution piping and services. Essentially, the concern is that Equitable will impose its more expensive tariff rates and less competitive transportation rules on all customers and require consumers to purchase services through its related entities (whether literally or through overly restrictive transportation rules). This will ultimately cost customers money and the customer will see no benefit from this merger and in fact will be negatively impacted as a result. This would also affect all of the customers that now enjoy LDC competition, gas supply choices and the lower rates charged by Dominion Peoples.

Equitable has made no guarantees to match Dominion Peoples lower rates and accept the more beneficial choice program and transportation rules operated by Dominion Peoples and apply that to all its customers. Although Witness Dalena recognized that "one consistently applied Choice program for a combined pool of

568,000 potential residential choice customers provides an opportunity for NGSs to benefits from economies of scale such as, reduced transactional costs e.g. nominations, accounting, etc. and reductions in the cost to acquire customers" (Dalena page 7, lines 8-12), such benefits will not happen if the current Equitable rules govern the combined program. He states that there are no changes in tariffs or other rates or terms proposed in either Equitable or Dominion's choice programs as part of the instant proceeding. (Dalena page 5, lines 21-22). There is more effective competition on the Dominion Peoples system for commodity supply than on Equitable's system (evidenced, for example, by a higher migration rate) and the Dominion rules that have fostered competition should be implemented on the Equitable system as a condition of the Commission's approval of this transaction.

Q. There are many more customers that are not situated in areas where both Equitable and Dominion Peoples provide distribution services. Would they see a reduction in their ability to choose?

A. Absolutely. Eventually they would see the restrictive policies of Equitable governing their abilities to obtain supplier gas through transportation programs and through Choice programs. On the other hand, if the Dominion Peoples policies are adopted it will have a positive effect on those customers.

Q. Which direction should we be heading?

A. The existing level of choices should be enhanced. At a minimum Equitable should be ordered to adopt Dominion Peoples policies related to gas transportation and gas choice and lower their distribution rates to be more competitive. This acquisition should not reduce choices for customers.

Q. Can you provide examples of the Investigation into the Natural Gas Supply Market in Docket I-00040103 changes you would require Equitable to make?

A. Yes. For example, Dominion Peoples provides customers with on-system storage assets as they migrate, through their marketer while Equitable does not. In Equitable's direct testimony they state that as a result of the acquisition most if not all of the new system would be served from local supply and on-system storage, so there is no reason why Equitable should not provide each customer with its equitable portion of such local supply and storage if they choose to migrate to an alternative supplier. The amount that a consumer is provided through his/her alternative supplier should be equal to the amount that would be available if the consumer remained with the utility for commodity service. Anything less would be unfair.

Also, Equitable should be required to eliminate duplicative costs that are paid for by both customers and marketers and properly account for each item so that a customer that chooses to migrate to an alternative supplier is not required to pay for these costs twice.

Q. What should the Commission do?

A. Equitable's actions both historic and current have been disappointing in this area. Indeed, leading up to their recent filing and even now they could improve their policies but they have chosen not to. Consistent with the Commission's goal of enhancing retail competition, it should condition approval of the stock transaction upon Equitable's implementation of Dominion's transportation rules. Absent the transaction being conditioned upon greater competition and more retail choice, I am not aware of any incentive Equitable would have to promote gas supply competition after this transaction is completed.

COSTS SHOULD NOT INCREASE DUE TO THE MERGER

Q. Is it a requirement of the PUC that this acquisition cause positive benefits?

A. As discussed previously I'm advised by counsel that legislation requires the PUC to insure the effect of any acquisition or merger will not result in anticompetitive conduct. As I understand it, acquisitions must meet the same standard as mergers and they must bestow positive benefits upon the public, not just a portion of the public. The Commission also has an affirmative obligation to insure that public benefits will result from the merger. *City of York vs. Pa. P.U.C.,* 449 Pa. 136, 295 A.2d 825 (1072).

Q. What would make the overall costs increase following this merger?

A. Equitable is paying a premium over book value for Dominion Peoples. Presumably, upon filing their rate case following the stock acquisition Equitable would seek recovery of that amount and intend to earn a return on their total investment. Equitable shareholders should absorb this premium rather than ratepayers.

Equitable has not presented an analysis showing this merger will result in reduced costs for customers, nor have they presented any evidence that they based their purchase price on any financial analysis therefore the purchase premium could only be based on the premise that when they create a monopoly situation where there was one before that the result will be higher revenues. All we have is the testimony of Witness Crawford who merely concludes that there will be a positive benefit but fails to quantify any tangible benefit to customers.

This merger creates two significant questions: Will Equitable reduce its costs and pass on the benefits of the merger to its customers? How will it be known if there was ever a benefit of this merger if Equitable does not provide the customers with lower rates and lower gas cost delivery alternatives up front?

Q. Equitable touted the $50 million in benefits mostly from changing the Dominion Peoples accounting practice regarding storage gas. That sounds like it should reduce costs.

A. I'll address the lack of merit of that idea later, but simply stated Dominion Peoples could make this accounting change without the merger so this is not a merger benefit. The on-going financial impact of replacing the low cost vintage gas in storage with gas at today's relatively high prices will result in an increase in working capital and the associated return on that.

Q. Equitable Witness Rafferty cited significant reductions of pipeline capacity once the two gas supply functions are merged. How will this affect competition and not reduce costs?

A. I examined Equitable's tariff and calculated the capacity charges to get gas to their citygate was $1.71/mcf plus a balancing charge of $0.18/mcf . That compares to Dominion Peoples capacity and balancing charge of $0.66/mcf. This doesn't provide a basis to believe when Equitable is managing the entire gas supply portfolio for both companies that their costs will decrease.

In fact, after the merger there will be the same number of total customers in western Pennsylvania, consuming the same amount of gas with the same usage profile as currently exists, yet Witness Rafferty stated he would plan to reduce the capacity significantly. Such reductions in capacity hardly seem possible and leads one to question the prudency of the current Dominion Peoples and Equitable gas supply and capacity purchasing.

Q. That addresses getting gas to the citygate. What are the differences in the delivery service costs between Equitable and Dominion Peoples?

A. Comparing the Delivery rate for Residential Firm Delivery, Equitable has total charges of $4.94/mcf compared to Dominion Peoples at $3.02/mcf. These same charges in other utilities just across the state line in Ohio are significantly lower, as there the utilities have examined these charges and have realized that a significant amount of what had been recovered in base rates was really attributable to commodity charges and, thus have removed those charges from base rates and properly placed those charges in the commodity costs so that consumer could make more equitable comparisons and not be penalized for choosing a competitive alternative.

Q. Are there other examples that compare the delivery costs?

A. If you look across the board at delivery costs you will find that Equitable's charges are higher than Dominion Peoples' charges for every delivery tariff. Because Equitable is the acquiring company and in absence of direction by the Commission they will have every incentive to eventually impose their policies and procedures with which they are familiar onto the former Dominion Peoples system and 320,000 customers will see their costs rise.

UTILITIES SHOULD NOT COMPETE AGAINST MARKETERS

Q. Should the Commission increase or decrease the customer's ability to obtain gas supply from sources other than the utility?

A. As previously mentioned, it is the Commission policy to increase competition.

Q. How, in your opinion, are distribution utilities to aid in supporting this policy?

A. While distribution utilities are currently permitted to remain in the gas supply business for their sales customers they must offer services to marketers at the same non-discriminatory rates as they would offer such services to their affiliate gas marketers. Those rates must reflect the same costs that the utility incorporates as part of their sales tariff. In other words, if the customer takes gas supply from the utility or from a marketer the costs for delivery of that gas should be identical. Distribution utilities should not set up barriers to marketers who attempt to capture business on their system. Equitable's policies and rates set up such barriers.

Q. Should utilities attempt to capture the gas commodity purchase decisions of customers?

A. No, not at all. The utility, because of who they are will have an advantage over a marketer. They have an existing relationship with the customer and will continue to provide distribution services including billing. Some customers perceive marketers as risky. The utility should encourage price and service competition for customers to explore alternative commodity suppliers and not attempt to retain that business.

Q. Does Equitable have an affiliate that offers gas commodity to customers?

A. Yes they do.

Q. If a marketer offers an Equitable customer a lower gas supply cost than Equitable has in their sales tariff then how does Equitable compete to capture that business?

A. Equitable competes for the commodity business using their Agency program and using their Contract Service rates.

Q. How do the Contract Service rates work?

A. There is both a Firm and Interruptible rate offered under Contract Service. In either case, Equitable obtains gas supply for that customer and charges the customer a price as low as their commodity cost of that gas plus a capacity credit of as low as 1 cent/mcf.

Q. How does Equitable's Agency program work?

A. Equitable serves a agent for the customer and obtains gas supply from their affiliate and then delivers that supply using their rate GDS, General Delivery Service. Equitable uses this program to compete against marketers.

Q. What should Equitable do about their Agency program?

A. The Equitable Agency program should be eliminated so that Equitable would not present themselves as a competitive alternative to the marketers. That is simply not the role of the public utility where development of customer choices is desired. Equitable can voluntarily end their Agency program, and could have taken such action years ago, or even now, but they have not. If such a policy were allowed to spread to the Dominion Peoples system it would have a negative effect on the marketers ability to conduct business.

Q. Why is Equitable's Agency program unfair competition for marketers?

A. Marketers must run their business covering their purchase costs of gas delivered to the citygate, operational costs and profits all from what they are able to obtain in a competitive market from a willing customer. Equitable's Agency program has no such burdens. Their cost of gas does not have to be fully loaded meaning it does not have to cover the fully allocated capacity charges, nor does it include operational charges or profits. In competing against the marketers, Equitable's Agency program has an unfair advantage. In essence, it cross-subsidizes costs and transfers risks that undermine competition by non-utilities that much recover costs and risks within a market-based pricing structure.

Q. Does Equitable's Agency program focus on just one class of customer?

A. No. The Equitable Agency program can apply to residential, commercial, or industrial customers. It also is available to provide both firm and interruptible service.

Q. Does the need for such a program continue to exist?

A. No. It is my understanding that the Agency Program was started several years ago in response to competition between local distribution companies in Western Pennsylvania. There are now other methods, primarily by discounting transportation service and using alternative suppliers, to compete against another LDC. Following the acquisition of the major competitive LDC, Dominion Peoples, will for all practical purposes cease to exist.

Equitable should not be using their Agency program to compete against marketers, which slows or stops the growth of the competitive supplier market.

UTILITIES SHOULD COMPLY WITH THE PUC'S CODE OF STANDARDS

Q. What is the PUC's Affiliate Code of Standards?

A. Chapter 62, Section 141 of the Pennsylvania code explains the Standards of Conduct that utilities and marketers must adhere to in their customer choice activities. More specifically the rules applicable to relations and interactions between an incumbent utility and any unregulated marketing affiliate it may have. The Standards of Conduct are intended to ensure that the incumbent utility's affiliate does not derive an unfair competitive advantage over other natural gas suppliers by virtue of its connection to the incumbent utility.

Q. In your opinion could the Standards of Conduct be utilized to help ensure this merger does not result in anticompetitive conduct?

A. Yes. Proper monitoring and enforcement of the Standards of Conduct between the merged utility and both its unregulated marketing affiliate and arms of the utility offering services which might compete with marketers would help the Commission ensure customers obtain the benefits of a properly functioning and effectively competitive retail natural gas market. This is particularly important given the size and area of the combined utilities.

STORAGE TREATMENT

Q. Equitable has proposed changing the accounting methodology from LIFO to FIFO for the gas in storage on the Dominion Peoples system, claiming it will produce an immediate savings of $50 million. Please comment.

A. Accounting rules merely tell you when to recognize the recovery of costs. They do no reduce those costs. It is an artificial means of showing savings that in total do not change at all.

Q. Please elaborate on the "cheap gas" that is in the storage fields?

A. Gas is cycled in and out of storage fields every year. There's a certain amount of gas called "cushion gas" that remains in the field year after year. To completely drain the storage field of all the gas including the cushion gas would have a negative impact on the storage field. The cushion gas that was injected into the field when it was first developed was priced far less than the current price of natural gas.

Q. Is it just the gas that was injected into the storage field when it was first developed that constitutes "cheap gas"?

A. No. Dominion Peoples prices gas in storage inventory each year by calculating the weighted average price of all gas purchased during the year. This becomes the layer price of gas for a given year. As gas is withdrawn from storage, it is priced according to this annual average, on a LIFO basis. If the current year injections exceed withdrawals, and annual LIFO layer is established. If withdrawals exceed injections, those volumes are priced at the most recently established layer (weighted average annual price of gas) available in inventory. Layers established years ago would have cheaper prices than the current price.

Q. How does an accounting change result in a windfall?

A. Dominion Peoples operates using the Last In, First Out (LIFO) accounting method, meaning that every year when it withdraws gas from storage the gas it is withdrawing is the gas that was last in, or injected into the field during the immediately preceding injection season. So the price of the gas withdrawn is roughly the price of the gas that was injected.

By switching to a First In, First Out (FIFO) accounting method, the gas withdrawn would be the gas that was first in, or injected into the field when the field was first developed. That is a much lower price.

Q. Would there be complications from a change in accounting methods?

A. Certainly. Changing storage inventory methodology has complicated tax, rate base and accounting consequences. For example, Dominion Peoples' rate base includes gas in storage upon which it is entitled to earn a return. If the value of storage gas were increased because of a change in accounting method, the rate base would have to be increased and distribution rates would increase as a result. Likewise, changing inventory pricing methods would create immediate tax consequences as deferred taxes become due. Equitable failed to mention such costs and complexities when they laid out their accounting scheme.

Q. If Dominion Peoples thought it was a good idea to make a change in accounting method couldn't they do it now, without having to go through a merger?

A. If desired, Dominion Peoples could propose such a change along with the resulting impacts. Due to the complexity of such multiple changes it would be likely done in a base rate case. Simply put, Dominion Peoples has not made such an independent proposal on their own.

Q. If such an accounting change were made who should benefit?

A. As the "cheap gas" was injected into storage during previous seasons any windfall from an accounting change should benefit the customers of Dominion Peoples, and not the customers of Equitable.

Q. And if that change was made to benefit the customers of Dominion Peoples should it just benefit the current sales customers?

A. No. The "cheap gas" was injected in previous seasons including seasons when most industrial and commercial customers were still taking sales service from Dominion Peoples. They should also benefit from any windfall.

Q. How should such a benefit be passed onto the customers?

A. It is important that such a benefit be passed to all the Dominion Peoples customers through a credit applied to their distribution charge. Therefore any customers that are currently not taking sales service will still receive the benefit to which they are entitled.

Q. What about the storage fields themselves? Doesn't Dominion Peoples have considerable storage compared to Equitable?

A. Both Dominion Peoples and Equitable have access to storage but there is a big difference in where that storage asset is located. Dominion Peoples obtains storage from pipeline suppliers, most notably Dominion Transmission, and they have their own storage fields on their distribution system. Equitable obtains storage from pipeline suppliers, most notably Equitrans, but has no storage fields on their distribution system.

Q. What's the difference? Storage is storage, isn't it?

A. Actually there's a significant difference in where the storage assets reside. Dominion Peoples having storage on their distribution system is superior to only have access to storage through the interstate pipeline.

Additionally Dominion Peoples allocates their on-system storage to the marketers on a pro-rata basis, meaning that they receive appropriate amounts of storage based on the needs of their customers. On Equitable, since their storage is located on Equitrans, marketers must buy that storage from Equitrans at FERC-approved rates. It costs more to operate as a marketer under the arrangement on the Equitable system and that means that the customers pay more. Equitrans is the benefactor of that arrangement.

Q. Aren't Equitable's storage fields on Equitrans because they are physically located near that pipeline?

A. Not really. It's not like Equitrans is one straight piece of pipe that runs from Kentucky to Pennsylvania with storage fields all along it, and then hooks into the Equitable Gas distribution system. The actual storage fields are located in several locations in Pennsylvania and West Virginia. The reason that Equitable's storage is on Equitrans instead of Equitable Gas is that the capital cost of the storage fields are included in Equitrans' rate base. Dominion Peoples on the other hand chooses to have their storage fields remain part of their distribution system.

Q. If the merger goes forward what could happen to the storage fields that are currently part of the Dominion Peoples system?

A. Equitable could decide to transfer those assets to Equitrans, which would deprive marketers of the benefits of on-system storage. Such a move should not be allowed.

Q. What can be done about it at this point?

A. The Commission should impose conditions of merger, and one of those conditions should be that the currently on-system storage assets of Dominion Peoples remain as part of the distribution utility.

PRODUCER ISSUES

Q. Why are marketers concerned about producer issues?

A. Marketers can only exist in a competitive marketplace if they have access to competitively priced sources of gas. If conditions exist that cause those costs to increase relative to the utilities system gas costs then marketers may cease doing business on that utility distribution system. Customers would lose out as their choices become limited.

Q. There seems to be a pattern where the current policies of Dominion Peoples are preferred over the policies of Equitable. Is that the case with Producer issues?

A. Yes it is. The policies of Dominion Peoples in areas that affect producers and the marketers that might purchase gas from local producers are fairer and more reasonable.

Q. How could this merger affect local (Pennsylvania) producers?

A. More than half of the supply on the Dominion Peoples system is provided by local production. If Equitable imposes their higher gathering rates or restricts the use of on-system storage or imposes additional restrictions through tariff rules this would result in higher costs to the customer.

OPERATIONAL RULES

Q. Are the operational rules of Dominion Peoples also superior to those of Equitable?

A. Yes. As I mentioned earlier in my testimony, the operational rules within which Natural Gas Suppliers (NGSs) must operate on the Dominion Peoples' system are much more conducive to competition.

Q. What do you mean when you say operational rules are conductive to competition? How do operational rules affect marketers and competition?

A. First and foremost it is the structure of operational rules and transportation programs on a utilities system that dictates the services and products NGSs can offer customers. If these rules are overly punitive and restrictive, it limits the efficiency and value the NGSs may pass along to their customers. Marketers compete on and derive their profit from the gas commodity, the price of which is largely dictated by market conditions. In order for marketers to successfully compete and provide value to their customers, they have an economic incentive to minimize their operational costs while maintaining quality service to the customers. Unduly burdensome, onerous and punitive operation rules can thwart this objective by causing increased costs, delays and inefficiencies. Marketers recognize utilities need tools in their transportation programs that allow them to ensure system reliability and integrity, but rules that demand behavior and standards higher than that which they would be able to provide themselves goes beyond what is necessary to monitor behavior and protect system integrity. Rather it can become a tool by which competition can be limited. This happens not just because it limits the products and savings that existing NGSs might be able to offer customers, but also because the more onerous the operational rules are for NGSs, the greater a barrier to entry there exists.

Q. You have mentioned several times that from your perspective the Dominion Peoples' transportation rules and programs are more conducive to competition. Do you have examples of this?

A. Yes. One aspect of the Dominion Peoples' system which is more conducive to supporting competition is their data management and marketer interface capabilities.

Q. Can you compare the data management and marketer interface capabilities of the Dominion Peoples and Equitable?

A. Dominion Peoples provides customer consumption and supply data on a real-time basis. They post data on a website daily. Equitable provides a statement five days following the month-end. It is not only easier to manage and match supply with demand on Dominion Peoples because of the availability of good quality current data, but this has quite a significant economic impact. This is important because that impact is ultimately felt by the consumers.

Q. Are there any other aspects of Dominion People's marketer interface capabilities that have a noted impact competition?

A. Yes, the specific system utilized by Dominion People's for NGSs to nominate and schedule gas for customer, called E-Scripts. This system provides and efficient and reliable means by which NGSs can communicate this data with the utility, and unfortunately Equitable did not purchase E-Scripts as part of this transaction. Lacking E-Scripts or a similar system makes it harder to imagine that Equitable will be able to handle the increased data requirements of Dominion Peoples.

Q. What are some of the actual operational rules you cite that have an impact on the NGSs ability to effectively compete for and efficiently serve customers?

A. These rules include but are not necessarily limited to those governing nominations, balancing, cash outs and penalties. These are the rules which govern the amounts NGSs must nominate and deliver to the utilities system for use by the customer, and what happens when those volumes do not precisely match what was actually used by the customers.

Q. Are there differences between Dominion Peoples and Equitable's rules in this area?

A. Yes, for example imbalance trading is a tool by which NGSs can bring their accounts into balance with no net effect on the systems' overall balance. Equitable allows one day for this while Dominion Peoples allows three days. As this is a tool by which marketers may minimize costs for customers without impacting the utilities position, the longer time within which to perform this is the most conducive to competition.

Q. Are there differences between the combined billing services offered the NGSs by the companies for the residential and small commercial Choice customers each company provides combined billing services and handles billing for the marketers. Are there any cost differences?

A. Yes, more specifically there are cost differences. Dominion Peoples provides billing at no cost so the marketer does not have that expense. Equitable charges $0.30/bill each month and this puts the marketer at a disadvantage when competing against their sales service. It would clearly be contrary to the Commission's objective of ensuring the merger does not deprive customers of the full benefits of a comet should this charge be continued after the merger.

RECOMMENDATION

Q. Should the Commission approve this acquisition?

A. As currently proposed this acquisition does not meet the public benefit standards. Unfortunately there are too many significant issues that span many areas that would affect marketers and customers negatively.

Q. Please summarize your recommendations.

A. Commission approval of this acquisition should be premised upon certain conditions: 1) Equitable should be instructed to lower their rates so they are equivalent to Dominion Peoples; 2) Equitable should adopt Dominion Peoples operating policies and procedures detailed herein; 3) Equitable should be instructed not to move the storage assets of Dominion Peoples upstream; 4) Equitable should be instructed not to change the LIFO storage accounting method; and 5) Equitable should be instructed to eliminate the Agency program .

Q. Is your analysis complete?

A. No. At this writing, I have been informed by counsel for Hess and Constellation that Equitable has not provided answers to the agency program interrogatories that Judge Corbett in his Sixth Interim Order ordered Equitable to answer, nor has

Equitable responded to a second set of interrogatories propounded by Hess and Constellation for which answers were due on August 31, 2006. The responses to this discovery may have a direct bearing on the testimony I have provided and my analysis of the competitive environment for NGSs on the Equitable system. On behalf of NEM, Hess and Constellation, I am reserving the right to submit supplemental direct testimony when my analysis is complete.

Q. Does this conclude your testimony?

A. Yes, however I reserve the right to modify this testimony as addition requested data becomes available.