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	)	Docket No. A-122250F5000
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.	)	

REBUTTAL TESTIMONY OF JAMES L. CRIST

ON BEHALF OF

NATIONAL ENERGY MARKETERS ASSOCIATION,

HESS CORPORATION AND

CONSTELLATION NEW ENERGY- GAS DIVISION, LLC

Q. Please state your name and affiliation.

A. I am James L. Crist, President of Lumen Group, Inc. a consulting firm focused on regulatory and market issues. I am the same witness that presented direct testimony on behalf of National Energy Marketers Association, Hess Corporation and Constellation New Energy- Gas Division, LLC ("Marketers").

Q: What is the purpose of your rebuttal testimony?

A: Upon reviewing the other parties' direct testimony in this case, I noticed the broad opposition by a diverse group of interveners to the stock acquisition proposed by Equitable Resources and Dominion Peoples ("Joint Applicants"). In fact, no party supported the acquisition as it is currently proposed by the Joint Applicants. Most parties who oppose the stock acquisition cited personal experience with Equitable Resources that causes serious concerns. Accordingly, in this rebuttal testimony I will respond to some points made by other parties in their direct testimony.

Q. What is the overriding theme of your concerns?

A. My testimony mainly addresses Equitable Gas's (Equitable) Agency Program and other issues that impact the development of a competitive retail natural gas market. I hope to show that Equitable Resources has not demonstrated a commitment to creating a fair playing field that is necessary in offering customers true choices and allowing natural gas suppliers a fair opportunity to compete in its service territory. The structure as it exists gives Equitable and its affiliate an advantage over non-affiliated marketers and that should not be tolerated.

Q. Whose direct testimony are you responding to in your rebuttal?

A. I will be specifically responding to two interveners that filed direct testimony. The first is direct testimony submitted by witness Alan Chalfant on behalf of the Peoples/Equitable Merger Intervenors ("PEMI"), which is a group of large commercial and industrial customers in the service territories of the Joint Applicants. The second is the direct testimony of witnesses Behr and Fazio on behalf of the Pittsburgh Allegheny County Thermal, Ltd's ("PACT"). PACT operates a steam plant in downtown Pittsburgh. Those witnesses testified about Equitable's sales practices and transportation programs, and their impact on the level of competition on their system. My rebuttal testimony will provide additional facts and analysis of Equitable's sales practices and programs as they pertain to the Agency Program and the vitality and sustainability of retail competition on its system.

Q. Have you prepared any exhibits to be filed with your testimony?

A. Yes. Attachment JLC-1 contains copies of selected documents that are referenced in my testimony.

Q. In his direct testimony, PEMI witness, Mr. Chalfant, generally discussed the competitive natural gas market and concluded that natural gas competition is beneficial for customers and should be maintained. Do you agree?

A Yes. Furthermore, it is important to recognize that rules and regulations governing the retail marketplace are very important in determining the level of competitiveness of the market. Natural gas suppliers simply cannot exist unless the rules allow for fair competition among gas suppliers on a level playing field. And vibrant competition between suppliers will not exist unless the rules of the road are clear and established in a manner that encourages competition. Rules and regulations encourage competition by not creating, for instance, artificial barriers to entry or providing the incumbent utility or its affiliated marketer an unfair advantage over suppliers. When dealing with regulated utilities it is critical that the rules establish fair, open and transparent competition.

Q. On pages 29-30 of his direct testimony, Mr. Chalfant stated that gas-on-gas distribution competition provides benefits to customers. Do you agree?

A: To the extent gas-on-gas distribution competition has existed due to overlapping service territories, I recognize all classes of customers, including those Mr. Chalfant testifies on behalf of, may have been able to derive benefits. Such benefits are negotiated transportation rates offered by competing utilities or the savings realized from switching from the higher cost utility (Equitable) to the lower cost utility (Dominion Peoples). As discussed in more detail below however, in the long run additional customers will benefit more from an effectively competitive retail market through greater choice and opportunities for savings on gas commodity purchases.

Q. At page 5, lines 14-16, Mr. Chalfant says that reducing the scope of gas-on-gas competition by eliminating the overlapping service territories of the Joint Applicants will degrade customer's bargaining power in the existing overlapping service territories of Equitable and Peoples.

A. It is true that in that example the likely outcome would be the elimination of transportation discounts and increases in Dominion Peoples lower rates. This is why the elimination of Equitable's Agency Program combined with Equitable's adoption of many of Dominion People's existing operational rules for transportation service is important. Any benefits which have been derived by customers that would be removed by the elimination of gas-on-gas competition between Equitable and Peoples will be mitigated through the development of an effectively competitive retail market. As I recommended in my direct testimony, proactive support for the needs of NGSs and developing retail competition on their system will create a retail market environment in the combined service territories of the Joint Applicants that will potentially attract new NGS entrants and entice existing NGSs to expand their marketing efforts. If the Commission adopts the more favorable rules as I laid out in my direct testimony, this will create more not less choice for the transportation customers in the Joint Applicants' service territories by creating a more level playing field that will attract more entrants and more competitive offerings. Competitive products and pricing will benefit transportation customers by allowing them to shop for the best deal that meets their needs, rather than being limited to the offering of one party – as is largely the case now in Equitable's service territory where the Agency comprises a dominant market share of 3rd party supply service, as described further below.

Q: On pages 31-32 of the direct testimony, Mr. Chalfant favored the continued use of Equitable's Agency Program to provide commercial and industrial customers supply options. Do you agree?

A. Equitable should not be able to cancel or renegotiate all those contracts that are providing benefit to the customers. At the end of the contract term, which for most would be within 12 months, those customers will be able to select between utility sales service or commodity service from a marketer. The Agency Program should be eliminated. I absolutely do not support Equitable's tariff provision 11.7 as it is currently effective. This tariff provision allows the utility to arrange supply options to customers and utilize its position as the regulated utility to create an unfair advantage for its non-regulated, supplier affiliate, Equitable Energy. In other words it appears 11.7 of Equitable's tariff allows the NGS affiliate to market supply service through the utility, placing all other NGSs at a competitive disadvantage in retail natural gas competition. With those disadvantages eliminated then marketers would be only too happy to present PEMI members and other customers competitive gas supply offers.

Q. Who provides supply service to customers receiving supply pursuant to Equitable's Agency Program?

A. Equitable Resources contends that the utility, Equitable Gas, does not sell or resell gas to customers through its Agency Program (See Equitable's Responses to Hess II-19, II-20, and II-24). Rather they contend Equitable Resources' unregulated, supplier affiliate, Equitable Energy, provides supply service to all Agency customers. (See Equitable's Responses to Hess II-2, Hess I-16(b), Hess I-38).

Q: How many commercial and industrial customers are provided supply service through Equitable's Agency Program?

A: Currently, 1600 commercial and industrial customers are provided supply service through the Agency Program. (Equitable's Responses to Hess I-38). However, it is Equitable's supply affiliate, Equitable Energy, which provides supply service to all 1600 of these agency customers. (See Equitable's Responses to Hess II-2, Hess I-16(b), Hess I-38). The 1600 agency customers' supply represents 56% of the total commercial and industrial volume on the Equitable distribution system. (See Equitable's Responses to Hess I-16, Hess I-38, Hess II-2). I note, however, that 56% is of total system supply for commercial and industrial customers. In other words, if you look only at 3rd party supply and leave out what Equitable supplies via tariff, Equitable Energy, by serving agency customers, supplies 68% of all 3rd party gas - 12.4 Bcf v. 5.9 Bcf from other NGSs. (See Equitable's Responses to Hess I-16).

Q: Are marketers just "complaining" because they can't "beat" the supply service provided through Equitable's Agency Program?

A. No. In a world of fair competition, where natural gas suppliers compete on level playing fields, marketers have no room to complain when their competitor snags a customer because it is able to offer a better deal. The very nature of a healthy competitive natural gas market creates competitive pressure between suppliers, which forces suppliers to increase operational efficiencies, improve quality of service, and reduce prices in order to gain a customer's business. It is these very concepts that drive legal and policy makers alike to recognize the advantage of retail competition over monopoly gas supply service.

The real issue then is not whether suppliers can "beat" the supply service provided by Equitable through the Agency Program. The real issue is that Equitable Resources' creates an unfair competitive advantage for its supplier affiliate through Equitable's Agency Program; thus creating an environment that is hostile to marketers other than Equitable's affiliate.

Q. What is indicated by the fact that 56% of the total commercial and industrial customer volume (and 68% of the total commercial and industrial volume provided by 3rd party suppliers) is being served through Agency service?

A. Contrary to Equitable Resources's assertion that the number of customers who have contracted for supply service through the Agency Program provides a strong indication of customer interest in the program (Equitable's Response to Hess II-34), I believe this significant market share indicates that an unfair playing field exists between the utility and Equitable Energy vis-à-vis other NGSs – one that is defined by imperfect information and blurred Code of Conduct lines. Below I set forth an explanation as to how the Agency Program creates this unfair playing field.

Q. Do customers understand they are purchasing gas from an unregulated affiliate, Equitable Energy?

A. No. As Equitable Resources stated in its response to Hess I-44, pursuant to Section 11.7 of the Company's tariff, Equitable will act as an agent in securing a commodity gas supply. Thus, the utility, Equitable, acts on behalf of the customer in securing supply service. This leads customers to believe they are purchasing a regulated, PUC-approved tariff product. That is simply misleading. To further illustrate this point, please see Equitable Resource's response to Hess I-44. Equitable Resources provided the standard delivery agreement which is the primary format used by Equitable to offer bundled supply and delivery (transportation) service pursuant to 11.7 of the tariff. The agreement is made directly between Equitable Gas Company and the customer. In responses to interrogatories Equitable Resources failed to provide any documents which would show how Equitable offers its commercial and industrial customers supply service through agency. More importantly, Equitable does not provide customers any documents indicating who is supplying the gas for the Agency Program. It is not clear to the customer whether the gas supply is from Equitable Gas or Equitable Energy. Nonetheless since the Agency service is an agreement between Equitable Gas and the customer it is only reasonable to assume that the customer believes it is buying its supply service directly from Equitable, the utility.

In reality, however, based on Equitable Resource's interrogatory responses, the customer is buying a non-regulated, commodity gas product from the unregulated, affiliate supplier, Equitable Energy. This is the same commodity product offered by other natural gas suppliers.

Q. How does this create an unfair playing field between the utility's supplier affiliate and other natural gas suppliers?

A When customers purchase supply service that is masked as a utility service, many believe that the product they are purchasing is regulated by the Public Utility Commission. Many customers mistakenly perceive there is a difference in the reliability of the commodity gas offered by the utility versus an NGS. As the Commission is aware, this perception is incorrect because there is no difference in reliability between the natural gas product offered by an NGS and the natural gas product offered by the utility. However, given customers' mistaken perception, supply service offered through the utility's Agency Program may leave many customers with the wrong impression that the commodity gas they receive through the Agency Program is a PUC-regulated product and thus more reliable than the commodity gas supplied by other NGSs . Even PACT's witness, Mr. Behr, stated that "I have been told by customers that they did not understand they were moving from sales service to transportation service under the Agency Program. For the most part they believe they are buying natural gas from the Utility system supply, which they believe to be very reliable." (Behr Direct Testimony, p. 13)

In reality, however, Equitable Resources asserts customers are buying natural gas commodity supply from Equitable Energy, an NGS licensed by the PUC and a marketing and trading arm of Equitable Resources. (See Equitable Resources web site: http://www.eqt.com/Equitable_Energy/ee_home.asp.) However, it is very difficult if not impossible for customers to comprehend that they are not just getting a differently named utility service. This creates an unfair advantage for the affiliate supplier because it essentially allows Equitable Energy to market commodity gas through the guise of Equitable's Agency Program and receive the benefits of the utility brand name. This puts other competitive natural gas suppliers at a clear disadvantage.

Q. Do Equitable's employees work interchangeably with customers on both tariff service and Agency service issues?

A. Yes. According to pages 10-13 of the direct testimony of Mr. Behr, Equitable utilizes and often times switches personnel to work on normal tariff issues and/or their Agency Program. They have two types of utility personnel that deal with commercial and industrial customers on all transportation issues. Their Commercial Representatives normally interface with customers on service hook-up, tariff sales and transportation of third-party (e.g. marketers) gas. They also have Agency Representatives that become involved with supplying Equitable-sourced gas for their Agency Program. From his experiences with Equitable on behalf of marketers and customers, Mr. Behr states these two groups of Equitable representatives do not follow the PUC's Code of Standards.

Q. Does this cause further confusion among customers and thus contribute to the creation of an unfair playing field between the utility's supplier affiliate and other natural gas suppliers?

A. Yes. I see the problem arising when, as indicated by Mr. Behr and by extension his customers, Equitable representatives do not clearly indicate to the customer which service is being offered – tariff sales service or commodity gas supply through the Agency Program. The price for tariff sales is regulated by the PUC, and posted on Equitable's tariff, while commodity gas supply is not regulated and the price for which, according to Mr. Behr's testimony, may not always be clear to the prospective Agency Program customer.

Q. PACT witness Behr (PACT Statement No. 2) cited many examples of Equitable's Agency Program and how it is used to keep a healthy competitive gas supply market from developing and how customers are disadvantaged by the program. Do you agree with his assertions?

A. Yes I do. The many examples offered by Mr. Behr and the lengthy period of time over which they occurred cause serious doubts about Equitable's desire to host a competitive gas market. He cites many examples where the Agency Program was used as a tool to prevent other marketers from being competitive in the markets.

Q. What does confusion mean for the natural gas marketplace?

A. Confusion means that customers are receiving imperfect information. One of the most important factors to the development of any market is the availability of timely and accurate information. When information is distorted it creates a barrier to effective participation in the marketplace by customers and suppliers alike. When customers are denied access to accurate information they are prevented from making rational choices that further their best-interest. They can even be discouraged from making future choices. Also, suppliers are affected because their costs to participate in the market increase as they try to understand and overcome the inaccurate information through research and marketing. It can even hurt their ability to develop relationships with consumers.

Q. Besides causing confusion, how else could the Agency Program create an advantage for the affiliate?

A. When one considers the fact that such a large percentage (56%) of the total commercial and industrial volume are Agency customers provided supply by Equitable's NGS affiliate combined with the blurred lines between the activities of Equitable's sales representatives, one cannot help but wonder whether the line between Equitable and Equitable Energy, as required by the Code of Standards, is similarly blurred. It raises the following issues: Do Equitable Energy representatives receive prospective commercial and industrial leads from Equitable? Are employees of Equitable and Equitable Energy distinct and physically separated? We do not know these answers, however, because how exactly the Agency Program functions is somewhat of a "black box." Moreover what is overwhelmingly clear from the testimony of several parties in the proceeding is that this "black box" program run by the regulated utility has had a deleterious impact on retail natural gas competition.

Q. Did you review PACT Statement No. 3 where Witness Fazio testifies how Equitable was arranging an offer to supply gas service to their subsidiary to serve the Convention Center?

A. Yes, Witness Fazio testified that Equitable was arranging a deal through the Equitrans and delivered by Equitable Gas that would provide gas "below cost".

Q. Why does that concern you?

A. Even the threat of "below cost" pricing is an anti-competitive action and inappropriate behavior that is inconsistent with the regulated nature of a utility. The second aspect that concerns me is that the Equitable employees mentioned, Messers. Crawford, Delana, and Lucas apparently have responsibilities not just for the regulated distribution utility, but also for some aspects of Equitrans and Equitable Energy, their non-regulated gas marketer. (See Behr Direct Testimony) Such sharing of employees and sensitive customer information across the regulated and non-regulated operations of a company is a violation of the Code of Standards. Third, if even one customer, particularly a large customer is receiving "below cost" pricing, then that reduction in cost recovery must be subsidized elsewhere.

Q: Does the unfair playing field created by Equitable's Agency Program ultimately harm the development of natural gas supply competition?

A: Absolutely. If the Commission were to approve this acquisition without eliminating the Agency Program, it will be extremely difficult for NGSs to continue, much less expand, their marketing efforts in southwestern Pennsylvania. Marketers cannot compete effectively when the local utility and its affiliate supplier have such a distinct unfair advantage. Marketers will instead focus their efforts on those markets where the regulatory climate encourages competition.

Q. Has the Commission recognized these issues before?

A. Yes. In the Commission's report to the General Assembly on its "Investigation into the Natural Gas Supply Market," the Commission recognized that its task, as delegated by the Pennsylvania General Assembly, was to define "effective competition." (Report to the General Assembly on Competition in Pennsylvania's Retail Natural Gas Supply Market ("Investigation Report"), Docket No. I-00040103, p. 16) Accordingly, the Commission considered fundamental principles of traditional economics as well as law from other jurisdictions to formulate a workable definition of "effective competition" for the report. (Id.) Among the several factors adopted by the Commission as indicia of "effective competition," the following were included – (1) the lack of substantial barriers to supplier entry and participation in the market and (2) the lack of substantial barriers that may discourage customer participation in the market. (Investigative Report, p;. 25)

The Commission acknowledged that *only* the Energy Association of Pennsylvania and the NGDCs indicated that "effective competition" as envisioned in Chapter 22 existed in the retail natural gas market, and that no changes needed to be made to the legislation. (Investigative Report, p. 39) Further, the Commission stated that "Because a competitive market needs to attract and retain competitors, it is necessary to consider carefully the suppliers' concerns about the operation of the current market, including the existence and magnitude of barriers that the suppliers have identified that may have led them to make business decisions to forego participation in the market." (Investigative Report, P. 27)

Accordingly, I believe the Commission should give weight to the concerns that the Agency Program results in customers receiving imperfect information, which creates a substantial barrier to effective participation in the marketplace by customers and suppliers alike. As I stated, one of the most important factors to the development of any market is the availability of timely and accurate information. Suppliers are justifiably concerned about the impact this market barrier will have on their ability to continue, much less expand, their efforts in southwestern Pennsylvania

Q. What is your recommendation to the Commission in terms of Equitable's Agency Service?

A. Equitable should be ordered to eliminate the Agency Program.

Q. What about the customers currently served by Equitable's Agency Program?

A. At the conclusion of their contract those customers will be able to select between utility sales service or transportation service from a marketer?

Q. Would Equitable Energy be one possible marketer?

A. It could be if it adheres to the Code of Standards.

Q. Is it possible that Equitable Energy and Equitable are co-mingling supply to derive an agency rate?

A. It is hard to tell without more information from Equitable. What we do know is if Equitable Energy desires to submit a lower than market gas price to a customer it would be easy to select such gas from a commingled portfolio that is primarily used for system supply and simply replace that gas with a new purchase. Equitable Resources has offered no evidence to indicate that such activity is not occurring.

Q. Would such a practice comply with the Code of Standards?

A. Absolutely not. That would be using the utility assets to subsidize the gas costs of the affiliate.

Q. Would a practice like that be apparent during the 1307(f) annual gas cost recovery review?

A. It's doubtful. The gas that was removed from the system portfolio would be replaced by gas purchased that day at current market prices. The system supply costs would appear in line with market prices. Of course had the less expensive gas remained in the portfolio then the system gas costs would have been cheaper. In essence, the system-supply customers would be subsidizing the Equitable Energy customers and it would be virtually impossible for the Commission to detect.

Q. Witness Chalfant argued that the utility's incentive to retain the Agency Program will be reduced once the companies merge, possibly writing the Agency Program out of their tariff. Would you agree?

A. I have a different view on what they would actually do. I do agree with Witness Chalfant that Equitable will take steps to increase their revenues from the existing group of competitive customers including those who are on the Agency Program. I do not believe Equitable would discontinue the Agency Program for supply service, however, because there are many customers on Agency that are providing substantial revenue to Equitable and Equitable Energy. PACT witness Behr describes this in his testimony, PACT Statement No. 2.

Q. Given that supply and distribution services are unbundled, how does Equitable justify that acting as an agent on behalf of customers for supply service protects Equitable from having customers leave the distribution system?

A. In its response to Hess II-27, Equitable Resources asserts that NGSs do not have a vested interest to maximize throughput on Equitable's distribution system and hence may attempt to induce customers who have distribution service options to move their distribution service to a competing NGDC in order to maximize their commodity revenues. NGSs do have a vested interest in maximizing throughput on utility systems as that expands sales opportunities to customers who may not have previously met their energy needs through natural gas, however it simply does not matter which system on which that maximization occurs.

Q. How would you respond to Equitable Resource's justification for maintaining the Agency Program if the merger is approved?

A. I do not agree with their maintaining the Agency Program post merger. First, if the Joint Application is approved, most of the significant competition faced by Equitable will be eliminated. Second, any remaining distribution competition with Columbia has been nearly non-existent for 4 years. (See Response to Hess II-10). Since distribution competition will being severely eliminated and/or severely isolated to the portion of Equitable's territory overlapping with Columbia's, any minimal incentive, if it existed, for an NGS's to entice a customer away from the distribution system will be removed.

Furthermore, I would like to reiterate that by creating an effectively competitive retail market – one where there is a level playing field between all affiliated and nonaffiliated suppliers – **more not less** choice for customers will result. The effect will be more NGSs entrants and more competitive product and service offerings from NGSs.

Q. Witness Chalfant stated that at least one PEMI member benefited from the Agency Program and had a 15-year contract with Equitable. He feels that many Agency customers may be at risk in the likely event that Equitable would declare all those contracts to be "in dispute". How should existing Agency agreements be handled?

A. The customers should be protected from Equitable terminating their contracts. At the end of the normal term, which in most agreements would be within 12 months, then customers could consider transportation service with competing gas supply offers from marketers. Equitable Energy would also be free to participate in that type of competition as long as their gas supply is not commingled with the utility system supply, it does not gain access to customers using the existing relationships of utility employees, and it clearly communicates and achieves understanding from the customers that it is an unregulated marketer and not the same as the utility.

Q. Did you review Fazio Exhibit 6, the presentation that Murray Gerber of Equitable Resources presented at the Lehman Brothers conference on September 6, 2006?

A. Yes I did. What is most disturbing are the references on pages 12 and 24 to the integration of Peoples storage and gathering assets with Equitable Resource's midstream operations. In my direct testimony I discussed the reasons that this should not be permitted. What is troubling about this is that even though I anticipated that Equitable Resources would desire to remove Dominion Peoples' storage assets from the distribution utility when they filed their direct testimony they did not mention this was a key part of their strategy, most likely because they knew it would disadvantage all existing customers of Dominion Peoples. As they have demonstrated a pattern for not presenting their entire plans it leaves me wondering what additional ideas Equitable Resources has not disclosed in their filed materials.

Q. Based on your review of the testimony of Witnesses Chalfant, Behr, and Fazio, and several of the interrogatory responses and exhibits what do you conclude?

A. There are several important conclusions:

- Equitable's Agency Program is completely inconsistent with well functioning competitive markets. Its mere presence reduces fair competition between marketers and should not be allowed.
- If the Agency Program is allowed to continue following the acquisition of Peoples by Equitable Resources, the competitive market will be so dysfunctional that marketers will likely find it very difficult to operate and may be forced to move their efforts to service territories with more favorable regulatory climates.
- Third, some customers may not understand the difference between Agency service as compared to utility supply.

- Fourth, great potential exists for Equitable to be in violation of the Code of Standards by commingling gas supplies of Equitable Energy and the utility, and sharing of employees with sensitive information.
- Fifth, Equitable is unlikely to discontinue its Agency Program following the acquisition, although they most likely will increase pricing to customers and increase their revenues.

Q. What would your recommendation be?

A. In order to create a more effectively competitive market Equitable must discontinue use of their Agency Program to capture additional customer business, and existing Agency contracts should not be renewed upon expiration.

Q. Is your analysis complete?

A. No. At this writing, I have been informed by counsel for Hess and Constellation that Equitable still has not provided answers to the many of the interrogatories that had been propounded by Hess and Constellation in this proceeding and for which answers were due on or before 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 NEMA, Hess and Constellation, I am reserving the right to submit this 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.