



McNees Wallace & Nurick LLC
attorneys at law

VASILIKI KARANDRIKAS
DIRECT DIAL: (717) 237-5274
E-MAIL ADDRESS: VKARANDRIKAS@MWN.COM

December 15, 2006

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
The Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA HAND DELIVERY

Re: 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


Dear Secretary McNulty:

Enclosed please find the original and nine (9) copies of Peoples/Equitable Merger Intervenor's ("PEMI") Main Brief concerning the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to the proceeding are being served with a copy of this filing. Please date stamp the extra copy of this transmittal letter and kindly return it to our messenger for our filing purposes. Thank you.

Very truly yours,

MCNEES WALLACE & NURICK LLC

By 
Pamela C. Polacek
Charis Mincavage
Vasiliki Karandrikas

Counsel to Peoples/Equitable Merger Intervenor's

Enclosures
VK/cll

c: Administrative Law Judge John H. Corbett, Jr. (via E-mail and Federal Express w/
diskette)
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant):

VIA E-MAIL AND HAND DELIVERY

Shaun Sparks, Esq.
Darryl Lawrence, Esq.
Office of Consumer Advocate
555 Walnut Street
5th Floor Forum Place
Harrisburg, PA 17101-1923
Email: ssparks@paoca.org
dlawrence@paoca.org

Sharon E. Webb, Esq.
Office of Small Business Advocate
Commerce Building – Suite 1102
300 North 2nd Street
Harrisburg, PA 17101
Email: swebb@state.pa.us

Johnnie E. Simms, Esq.
Allison A. Curtin, Esq.
Office of Trial Staff
Commonwealth Keystone Building
400 North Street, 2 West
Harrisburg, PA 17105-3265
Email: jsimms@state.pa.us
acurtin@state.pa.us

Kevin J. Moody, Esq.
Daniel Clearfield, Esq.
Wolf, Block, Schorr & Solis-Cohen, LLP
213 Market Street, 9th Floor
P.O. Box 865
Harrisburg, PA 17108-0865
Email: kmoody@wolfblock.com

Charles E. Thomas, Jr., Esq.
Thomas T. Niesen, Esq.
Thomas, Thomas, Armstrong & Niesen
212 Locust Street
P.O. Box 9500
Harrisburg, PA 17108-9500
Email: cthomasjr@ttanlaw.com
tniesen@ttanlaw.com

William T. Hawke, Esq.
Amy A. Whitney, Esq.
Hawke, McKeon, Sniscak & Kennard, LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105
Email: wthawke@hmsk-law.com
aawhitney@hmsk-law.com

Michael W. Hassell, Esq.
Post & Schell, P.C.
17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
Email: mhassell@postschell.com

Renardo L. Hicks, Esquire
Stevens & Lee
17 North Second Street, 16th floor
Harrisburg, PA 17101
Email: RLH@Stevenslee.com

VIA E-MAIL AND FEDERAL EXPRESS

Craig A. Doll, Esq.
25 West Second Street
P.O. Box 403
Hummelstown, PA 17036-0403
Email: Cdoll76342@aol.com

Scott J. Rubin, Esq.
3 Lost Creek Drive
Selinsgrove, PA 17870
Email: scott@publicutilityhome.com

Mark R. Kempic, Esq.
Stanley J. Sagun, Esq.
NiSource Corporate Services Company
Southpointe Industrial Park
501 Technology Drive
Canonsburg, PA 15317
Email: mkempic@nisource.com

Glen R. Thomas, Esq.
Christopher A. Lewis, Esq.
Blank Rome LLP
One Logan Square
Philadelphia, PA 19103
Email: thomas@blankrome.com
lewis@blankrome.com

Frank H. Markle, Esq.
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406
Email: marklef@ugicorp.com

Stephen H. Watts, II, Esq.
McGuire Woods LLP
901 East Cary Street
One James Center
Richmond, VA 23219
Email: swatts@mcguirewoods.com

Kevin Quisenberry, Esq.
Community Justice Project
429 Forbes Ave., Ste. 1705
Pittsburgh, PA 15219
Email: kquisenberry@earthlink.net


Vasiliki Karandrikas

Dated this 15th day of December, 2006, at Harrisburg, Pennsylvania.

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. :

MAIN BRIEF OF PEOPLES/EQUITABLE MERGER INTERVENORS

Albemarle Corporation	Precoat Metals
Allegheny Ludlum Corporation	PPG Industries, Inc.
BNZ Materials, Inc.	Union Electric Steel Corporation
Kopp Glass, Inc.	University of Pittsburgh Medical Center

Pamela C. Polacek
Charis Mincavage
Vasiliki Karandrikas
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
717.232.8000 (p)
717.237.5300 (f)

Counsel to Peoples/Equitable Merger Intervenors

Dated: December 15, 2006

TABLE OF CONTENTS

	<u>Page</u>
I. STATEMENT OF THE CASE.....	1
A. Burden of Proof.....	3
B. Sections 1102 and 1103 of the Public Utility Code.....	3
C. Standards Under the Competition Act	4
D. Nature of the Transaction: Stock Purchase or Merger.....	4
E. Settlement Standard	5
II. SUMMARY OF THE ARGUMENT	6
III. ARGUMENT.....	7
A. The Companies Have Failed To Demonstrate that the Proposed Transaction Will Result In Affirmative Public Benefits.....	7
i. <i>Synergy Savings are Speculative</i>	8
ii. <i>Potential PGC Blending May Harm Customers Through Higher Balancing Rates and Reduced Access to DP's On-System Storage</i>	9
iii. <i>The Claimed Job Creation is Unsubstantiated</i>	11
iv. <i>The Transaction Unequivocally Will Not Result in Lower Transportation Rates for Customers</i>	12
v. <i>Socializing Equitable's Universal Service Costs Is Not a Benefit to DP Customers</i>	12
vi. <i>The Companies' Allegations That Natural Gas Marketing Will Be Enhanced Through the Elimination of Gas-on-Gas Competition for Supply and Transportation Services is Conjectural.</i>	13
vii. <i>The Purported Savings from Elimination of Redundant Pipes Is Unproven and Must Be Weighed Against Customer Harm</i>	14

viii.	<i>The Companies Have Failed To Meet Their Burden of Proof, and the Application Must Be Denied</i>	15
B.	The Proposed Transaction Will Likely Have an Adverse Impact on the Public Interest	15
i.	<i>The Evidence Shows That Elimination of Gas-on-Gas Competition Will Result in a Loss of Customer Bargaining Power and Movement to Maximum Rates</i>	18
ii.	<i>The Commission Should Reject Proposals To Eliminate Equitable's Agency program</i>	20
C.	The Proposed Transaction, Even as Modified by the Non-Unanimous Petition for Settlement, Fails to Meet the Requirements for Approval under the Public Utility Code	21
i.	<i>The Petition Merely Reflects the Individual Concerns of Certain Types and Portions of the Parties in this Proceeding But <u>Not</u> the Public Interest Generally</i>	21
ii.	<i>The Petition's Purported Benefits Merely Maintain the Status Quo</i>	24
iii.	<i>Several Provisions in the Petition Could Significantly Harm Large Commercial and Industrial Customers</i>	27
IV.	CONCLUSION	30

TABLE OF AUTHORITIES

Cases

<u>ARIPPA v. Pa. P.U.C.</u> , 792 A.2d 636 (Pa. Commw. Ct. 2002)	3
<u>City of York v. Pa. P.U.C.</u> , 295 A.2d 825 (Pa. 1972).....	3, 4, 5, 6
<u>Middletown Township v. Pa. P.U.C.</u> , 482 A.2d 674 (Pa. Commw. Ct. 1984)	4, 5, 6, 14, 21
<u>Pa. P.U.C. et al. v. The Peoples Natural Gas Co.</u> ; Docket No. R-00050267	13
<u>Pa. P.U.C. v. Duquesne Light Co.</u> ; Docket No. R-00061346, Statement of Chairman Wendell F. Holland (Nov. 30, 2006)	5
<u>Samuel J. Lansberry, Inc. v. Pa. P.U.C.</u> , 578 A.2d 600 (Pa. Commw. Ct. 1990).....	3
<u>Se-Lin Hosiery, Inc. v. Margulies</u> , 70 A.2d 854 (Pa. 1950)	3

Statutes and Regulations

52 Pa. Code § 60.2	17
66 Pa. C.S. § 332(a)	2, 5
66 Pa. C.S. § 1102(a)(3).....	3, 4
66 Pa. C.S. § 1103(a)	3, 5
66 Pa. C.S. § 2203(14)	15, 18
66 Pa. C.S. § 2210(a)	4

Other Authorities

<u>Sixth Interim Order Granting In Part The Motion To Compel of Hess Corporation and Constellation New Energy-Gas Division, LLC</u> ; Docket No. A-122250F5000 (Aug. 9, 2006).....	5
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I. STATEMENT OF THE CASE

On March 31, 2006, Equitable Resources, Inc. ("Equitable Resources"), the parent corporation of Equitable Gas Company ("Equitable"), and The Peoples Natural Gas Company, d/b/a Dominion Peoples ("Dominion Peoples" or "DP") (collectively, "Companies" or "Joint Applicants"), filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") a Joint Application ("Application") seeking approval of the sale of all of the common stock of Dominion Peoples and Hope Gas, Inc., d/b/a Dominion Hope, by their parent company, Consolidated Natural Gas Company – a wholly owned subsidiary of Dominion Resources, Inc. – to Equitable. The consideration for the proposed transaction is approximately \$970 million in cash.

DP and Equitable are each certified to provide natural gas supply and distribution service in certain parts of western Pennsylvania, including significant portions of Pittsburgh. Direct Testimony of Alan Chalfant, PEMI Statement No. 1, p. 4 (hereinafter, "PEMI St. 1"). Overlapping service areas have created strong incentives for the Companies to compete for retail gas customers regarding price and service quality for supply and transportation service. *Id.* at 5. Upon consummation of the proposed transaction, DP and Dominion Hope will become directly, wholly-owned subsidiaries of Equitable Resources. Although DP will remain a PUC-jurisdictional utility, its integration into the Equitable corporate umbrella will eliminate a competitive alternative that has benefited retail natural gas customers, including large commercial and industrial ("C&I") customers, in western Pennsylvania for decades.

On May 1, 2006, Peoples/Equitable Merger Intervenors ("PEMI") filed a Petition to Intervene and Protest. PEMI is an ad hoc group of large C&I customers receiving service from DP or Equitable. The members of PEMI are listed on the cover of this brief. PEMI members

use substantial volumes of natural gas in their manufacturing and operational processes. Various additional entities also filed Protests and Interventions.¹

A prehearing conference was held on May 25, 2006, before Administrative Law Judge John H. Corbett, Jr. PEMI's Petition to Intervene was unopposed and was granted by Order issued June 2, 2006. On June 15, 2006, the Companies filed Direct Testimony in support of their Application. Pursuant to the procedural schedule, PEMI submitted Direct Testimony on September 1, 2006. PEMI received Direct Testimony from the following parties: OTS; OCA; OSBA; IOGA; NEMA/Constellation/Hess; Representative Wheatley; Mon Valley; and PACT. On September 29, 2006, PEMI submitted Rebuttal Testimony and received Rebuttal Testimony from the following parties: the Companies; OTS; OSBA; and NEMA/Constellation/Hess. On October 23, 2006, PEMI submitted written Surrebuttal Testimony and received Surrebuttal Testimony from Equitable; OTS; OCA; OSBA; IOGA; NEMA/Constellation/Hess; Representative Wheatley; Mon Valley; and PACT. Evidentiary hearings were held in Pittsburgh, Pennsylvania on November 13-17, 2006. Pursuant to the procedural schedule, and according to the requirements of 52 Pa. Code § 5.501 and § 5.502, PEMI submits this Main Brief.

¹ Office of Trial Staff ("OTS"); Office of Consumer Advocate ("OCA"); Office of Small Business Advocate ("OSBA"); Amerada Hess Corporation ("Hess"); Constellation New Energy-Gas Division, LLC ("Constellation"); and the National Energy Marketers Association ("NEMA"); State Representative Jake Wheatley, Jr. ("Representative Wheatley"); Northway Group, L.P.; Columbia Gas of Pennsylvania, Inc.; Amore Management Company; McKinney Properties, Inc.; Crossgates Management, Inc.; Independent Oil and Gas Association of Pennsylvania ("IOGA"); Elmhurst Company L.P.; Energy Savers, Inc.; International Brotherhood of Electrical Workers Local 1956 ("IBEW"); Utility Workers Union of America Local 69 Division 1 ("UWUA"); NRG Energy Center Pittsburgh, LLC ("NRG"); Pittsburgh Allegheny County Thermal, Ltd. ("PACT"); United Cerebral Palsy Association; Agway Energy Services, LLC; Mozart Management; Benedictine Sisters of Pittsburgh; NDC Real Estate Management, Inc.; Allegheny Cemetery; UGI Energy Services, Inc.; and Mon Valley Unemployed Committee ("Mon Valley").

A. Burden of Proof

The proponent of a rule or order has the burden of proof. See 66 Pa. C.S. § 332(a). As proponents of the proposed transaction, the Companies bear the burden of proof. To satisfy this burden, the Companies must demonstrate by a preponderance of the evidence that the proposed merger comports with Pennsylvania law. See Samuel J. Lansberry, Inc. v. Pa. P.U.C., 578 A.2d 600, 602 (Pa. Commw. Ct. 1990). Under the preponderance of the evidence standard, a party must present evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party. See Se-Lin Hosiery, Inc. v. Margulies, 70 A.2d 854, 856 (Pa. 1950). Thus, the Application must be rejected, unless the Companies have presented sufficient evidence to persuade the Commission that the proposed transaction meets the applicable legal standards. In the instant proceeding, the Companies have failed to meet their burden of proof.

B. Sections 1102 and 1103 of the Public Utility Code

A public utility must secure a certificate of public convenience before such utility may merge with or acquire the assets of another public utility. 66 Pa. C.S. § 1102(a)(3). The Commission shall grant a certificate of public convenience "only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public." 66 Pa. C.S. § 1103(a). In making its determination, the Commission must find that "those seeking approval of a utility merger demonstrate more than the mere absence of any adverse effect upon the public. Section [1103] requires that the proponents of a merger demonstrate that the merger will affirmatively promote 'service, accommodation, convenience, or safety of the public' in some substantial way." See City of York v. Pa. P.U.C., 295 A.2d 825, 828 (Pa. 1972); see also ARIPPA v. Pa. P.U.C., 792 A.2d 636 (Pa. Commw. Ct. 2002). When the public interest is considered, "it is contemplated

that the benefits and detriments of the acquisition be measured as they impact on *all affected parties*, and not merely on one particular group or geographic subdivision as might have occurred in this case." Middletown Township v. Pa. P.U.C., 482 A.2d 674, 682 (Pa. Commw. Ct. 1984) (emphasis in original) (denying a proposed acquisition that would benefit some customers, but adversely impact others). Thus, the Commission must not grant a merger proposal absent evidence that affirmative public benefits will result therefrom.

C. Standards Under the Competition Act

The Commission's evaluation of a proposed merger must also consider: (1) whether the proposed transaction is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail gas customers from obtaining the benefits of a properly functioning and effectively competitive retail natural gas market; and (2) the impact on the natural gas distribution company employees and any authorized collective bargaining agent representing those employees. See 66 Pa. C.S. § 2210(a).

D. Nature of the Transaction: Stock Purchase or Merger

Mergers and acquisitions are subject to the same legal standards. A certificate of public convenience is a prerequisite "to acquire from, or to transfer to, any person or corporation...by any method or device whatsoever, including the sale or transfer of stock and ...merger...the title to, or the possession or use of, any...property used or useful in the public service." 66 Pa. C.S. § 1102(a)(3). In the context of stock transfers and mergers, a certificate of public convenience will issue only if there is a finding of affirmative, substantial public benefits. City of York, 295 A.2d at 828. In evaluating "mergers...involving natural gas distribution companies...or the acquisition or disposition of assets or securities of natural gas distribution companies," the Commission must assess whether the proposed transaction is likely to result in anticompetitive or

discriminatory conduct and the proposed transaction's impact on natural gas distribution company employees. 66 Pa. C.S. § 2210(a). Thus, the same legal standards, including the public interest standard, are equally applicable to mergers and acquisitions. See also Sixth Interim Order Granting In Part The Motion To Compel of Hess Corporation and Constellation New Energy-Gas Division, LLC; Docket No. A-122250F5000, p. 6 (Aug. 9, 2006).

E. Settlement Standard

On December 1, 2006, the Joint Applicants submitted to the Commission a pleading styled as "Joint Petition for Settlement," which includes partial settlements that the Joint Applicants negotiated with some parties on a limited subset of the issues raised in this case (hereinafter "Petition"). None of the aforementioned legal obligations are modified as a result of the non-unanimous Petition for settlement entered into by a portion of the parties to this proceeding. Rather, the Commission must determine whether the Companies' Application, as modified by the Petition, is necessary or proper for the service, accommodation, convenience or safety of the public. See 66 Pa. C.S. §1103(a).

Similarly, the Commission must consider whether the modified transaction provides affirmative public benefits, and whether the Application, as modified by the Petition, would be in the public interest, or conversely, would focus solely on benefits that may result for one particular group. See City of York, 295 A.2d at 828; see also Middletown Township, 482 A.2d at 682. The term sheet with the "consumer parties" (i.e., OCA, OTS, Representative Wheatley, and Mon Valley) includes no support from businesses (because both OSBA and PEMI oppose the transaction) and resolves, if anything, only the concerns regarding universal service programs, residential service quality, workplace diversity concerns raised by Representative Wheatley, and a limited number of gas safety issues. These parties represent primarily

residential ratepayer interests and primarily bundled service (i.e., Purchased Gas Cost ("PGC") customer interests). As demonstrated by the ongoing active opposition of PEMI and OSBA, the issues of importance to those parties are not the same as business and transportation ratepayer concerns. In addition, the term sheet with some of the marketers actually includes the discontinuation of services that the PEMI members believe DP and Equitable should continue to provide. As recently indicated by Chairman Holland, a settlement should represent good public policy rather than merely indicate an attempt by parties to avoid litigation and potential rejection of favored positions. See Pa. P.U.C. v. Duquesne Light Co.; Docket No. R-00061346, Statement of Chairman Wendell F. Holland (Nov. 30, 2006) (hereinafter, "Duquesne Statement"). The Commission must review the proposed settlement in light of the "public" interest and not the interest of a limited segment of the "public" (i.e., residential, bundled service customers).

Most importantly, the Companies continue to retain the burden of proof in this proceeding. As the proponents of an order seeking approval of the proposed transaction, the Companies' burden does not shift. 66 Pa. C.S. § 332(a). Rather, the Companies must now demonstrate by a preponderance of the evidence that the Application, as modified by the Petition, comports with the aforementioned Pennsylvania requirements. As discussed more fully herein, the Companies have failed to make the requisite demonstration in satisfaction of the preponderance of the evidence standard.

II. SUMMARY OF THE ARGUMENT

The Commission cannot approve the proposed transaction because it will result in documented harm to customers that is not offset by any showing of substantial affirmative public benefits, as required by the City of York standard. The benefits alleged by the Companies are either conjectural and speculative, or premised on actions that will harm customers. The

agreements reached by the Companies with a limited number of parties do not address the fundamental reasons why this transaction is contrary to the public interest. To withstand judicial scrutiny, the Commission's determination must be based on substantial record evidence. See Middletown Township, 482 A.2d at 682. As demonstrated below, the Companies have failed to carry their evidentiary burden and, therefore, there is no reasonable basis to conclude that the proposed transaction satisfies the applicable legal standards.

III. ARGUMENT

A. The Companies Have Failed To Demonstrate That the Proposed Transaction Will Result in Affirmative Public Benefits.

The Companies assert that the merger will yield various unsubstantiated and/or one-sided "public" benefits, including: (1) an unidentified level of cost savings resulting from synergies; (2) blended PGC rates through use of DP's on-system storage; (3) displacement of interstate pipeline capacity with local production; (4) job creation; (5) elimination of Last-In, First-Out ("LIFO") accounting;² (6) lower distribution rates; (7) socialization of Equitable's high universal service costs; (8) enhanced natural gas supply marketing; and (9) cost savings from redundant pipe elimination. See generally Application, pp. 8-12. The Companies, however, have failed to provide "substantial and legally credible evidence" to support these allegations. See Lansberry, 578 A.2d at 602. Even assuming the alleged benefits would materialize, there is no basis to conclude that these benefits would outweigh the associated costs of the proposed transaction and,

² The partial settlement with OCA, et al. appears to eliminate this proposed benefit from consideration. See Petition, Appendix A, p. 2. The proposed move away from LIFO accounting would not be a benefit resulting from the merger, as DP could implement such a change independent of the merger. PEMI St. 1, p. 20; see also id. at Exh. AC-1, p. 55. Moreover, the proposed accounting change involves a number of negative consequences, including rate base, interest expense, and tax effects, that undermine any purported benefits. PEMI St. 1, Exh. AC-1, pp. 55-57. Even if this accounting change produced a net benefit, most of it would flow to PGC customers, not transportation customers. PEMI St. No. 1, p. 21. Any benefit accruing to transportation customers would be small in comparison to the adverse impacts on such customers resulting from the proposed transaction. Id. Thus, the change in DP's inventory accounting method would not be a legitimate benefit of the proposed merger.

thus, inure to the benefit of ratepayers. Thus, the Companies have not satisfied the applicable legal standards, and the Application must be rejected.

i. Synergy Savings Are Speculative.

Neither Company has performed any detailed studies or analyses to substantiate the alleged cost savings resulting from purported synergies or economies of scale, nor have the Companies provided any detailed quantification of the other purported benefits. See PEMI St. 1, p. 10. When asked to quantify the purported gas cost savings, Equitable responded: "I can not give you an exact number at this time." Direct Testimony of Randall L. Crawford, Equitable Statement No. 1, p.17 (hereinafter, "Equitable St. 1"). When asked to provide all documents and studies supporting the benefits asserted in the Application, Equitable stated: "the requested analysis is not yet completed." See PEMI St. 1, Exh. AC-1, p. 4. Moreover, Equitable could not provide the number of months that would be required to realize the benefits alleged in the Application. Id. at 10. Similarly, Equitable stated that it "has conducted no definitive quantification of the savings expected as a result of economies of scale or related synergies." Id. at Exh. AC-1, p. 36. Equitable confirmed at the hearing that it still had no definitive evidence to provide to the Commission in support of this claimed benefit. Transcript (hereinafter, "Tr.") at 363-365 (Evidentiary Hearings, Nov. 15, 2006). Thus, the Companies' alleged cost savings are speculative, not proven, and do not constitute legally credible evidence.³

In fact, evidence indicates that the Application would impose substantial costs on ratepayers. As set forth in more detail below, customers will face higher transportation rates,

³ The term sheet between Equitable, OCA, OTS, Representative Wheatley, and Mon Valley alleges that a rate case stay out through January 1, 2009 will resolve "all cost of service issues, including purported synergy savings, related to this proceeding," among those specified parties. See Petition, Appendix A, p. 1. PEMI disagrees with this assertion and will discuss later in this brief how this aspect of the partial agreement actually exacerbates the potential harm to transportation customers. See Section III. C.iii, infra.

higher balancing charges, and potentially higher natural gas supply costs on the DP system through reduced access to on-system storage for local gas supplies. Equitable's own documents demonstrate that it intends to take most transportation customers to maximum rates upon expiration of existing contracts. PEMI St. 1, p.13. When assessing the costs and benefits, the PUC must assume that Equitable will exercise this reserved right. *Id.* at 12-13. Clearly, the speculative cost savings calculated by the Joint Applicants do not outweigh these costs.

ii. Potential PGC Blending May Harm Customers Through Higher Balancing Rates and Reduced Access to DP's On-System Storage.

Any benefits resulting from blending the PGC rates (and the use of DP's on-system storage, as set forth in the Application) would materialize at the expense of other customers and competitive marketers on the DP system. First, permitting Equitable to rely on DP's on-system storage diminishes access by transportation customers and their suppliers to these assets for local gas storage. *See* PEMI St. 1, p. 15. As a result, these users may be forced to rely on additional interstate gas transportation for gas supplies, which may place upward pressure on their total operating costs. *Id.* The record indicates that DP's on-system storage is at full capacity. *Id.* at 15-16. If the assets are already fully utilized, Equitable's intention post-closing to rely on the storage assets for its PGC customers will logically mean that some current on-system storage users will be displaced. If implemented, the Companies' proposal would restrict other current users of this capacity. *Id.* at 15. Thus, allowing Equitable to rely on DP's on-system storage arrangements may not produce benefits for the Companies' customers. To the contrary, the proposed change may harm transportation customers on the DP system through reduced access to on-system storage. *Id.* at 16. Because those customers will be required to rely more on supplies transported through interstate pipelines, the natural gas supply costs for the current

entities using DP's on-system storage assets, including many large C&I transportation customers, may increase.

Although the Companies emphasize the benefits of replacing interstate pipeline capacity with local production, they give very little consideration to the associated reliability ramifications of this proposal. Constraints exist on the peak day deliverability of local supplies. See PEMI St. 1, Exh. AC-1, p. 52. In light of these constraints, Equitable "would expect that the majority of the incremental...local production is deliverable." Id. at Exh. AC-1, p. 7. Given the reliability implications of this proposal, the choice between interstate supplies and local production should not be based on a mere "expectation." Id. at 17. Moreover, any value associated with this proposal cannot be deemed a merger benefit, as its realization does not depend on approval of the Application. Id. at 19-20. For these reasons, the record does not support a finding that this proposal constitutes a public benefit.

Finally, any blending of the PGC activities and rates would also include blending of the balancing rates for transportation customers. Currently, there are significant differences in the Companies' rates. See id. at Exh. AC-3. The differences exist because DP and Equitable use different methodologies to compute balancing and standby charges. See id. at Exh. AC-1, p. 8. Notably, Equitable imposes a 25¢ per Mcf daily imbalance charge on all daily imbalances in excess of 3.5% even though its basic rate already includes a "balancing charge" of 18¢ per Mcf applied to all throughputs. See PEMI St. 1, p. 14. DP has no daily imbalance charge. Id. Because balancing charges are adjusted in the annual 1307(f) proceedings, if PGC rates are blended, transportation customers could experience an almost immediate rate hike due to the proposed transaction. Id. In addition, much of the PGC "savings" that will accrue by blending will occur at the expense of the customers on the DP system, which is one of the reasons that

OSBA opposes the transaction. See Direct Testimony of Brian Kalcic, OSBA Statement No. 1, pp. 6-7 (hereinafter, "OSBA St. 1"). Thus, the evidence in this proceeding indicates that any merger "savings" stemming from the Application will be offset by significant increases in PGC maximum tariff rates and balancing charges for customers on the DP system, as well as increases in transportation rates for customers on both systems. See PEMI St. 1, p. 14; see also OSBA St. 1, pp. 6-7.

iii. The Claimed Job Creation Is Unsubstantiated.

Although the Companies claim that the Application will create approximately 190 jobs, these jobs will not solely benefit Pennsylvania. See Rebuttal Testimony of Randall L. Crawford, Equitable Statement No. 1-R, pp. 12-14 (hereinafter, "Equitable St. 1-R"); see also PEMI St. 1, p. 18; Surrebuttal Testimony of Alan Chalfant, PEMI Statement No. 1-S, p. 7 (hereinafter, "PEMI St. 1-S"). In the Dominion Hope proceeding, Equitable indicated that some of these jobs could be located in West Virginia and that the total number of jobs created could be less than 200. PEMI St. 1, p. 18. In the instant proceeding, Mr. Crawford conceded that only 176 positions would be created in Pennsylvania. See Equitable St. 1-R, pp. 12-14. Equitable further conceded that these jobs are not a merger benefit, but rather a transfer of jobs "necessary to replace part of Dominion Peoples support operations in Ohio and West Virginia." Equitable St. 1, p. 9. Even the Companies' partial settlement with OCA, et al., which the Petition claims is in the public interest because it will result in 200 new jobs in the region, contains no enforceable commitment by Equitable. See Petition, p. 6. Furthermore, the Companies have not quantified the cost impact of these jobs vis-à-vis their cost to serve. PEMI St. 1, p. 18. It remains possible that this transfer of positions could increase ratepayer costs. PEMI St. 1-S, p. 8. Thus, no

evidence indicates that the purported job transfer would result in net cost savings for ratepayers and, thus yield a benefit.

iv. The Transaction Unequivocally Will Not Result in Lower Transportation Rates for Customers.

Equitable asserts that the merger creates the "potential" for lower gas rates than would otherwise occur if the Companies continued to operate independently. See Equitable St. 1, p. 9. This assertion is totally unsupported by any formal, quantitative analysis. See PEMI St. 1, p. 23. Vague, unsubstantiated assertions on "potential" rate reductions provide no evidentiary basis to conclude the proposed transaction would result in lower natural gas rates. Id. In fact, as discussed in more detail below, the proposed transaction will substantially increase transportation rates, particularly for C&I customers that will be assessed maximum rates once their contracts expire. Thus, claims of potential rate reductions as merger-related benefits must be dismissed.

v. Socializing Equitable's Universal Service Costs Is Not a Benefit to DP Customers.

The Companies allege that socializing their combined universal service costs among their customers is a public benefit. Given that Equitable has the highest concentration of payment-trouble customers in the Commonwealth outside of Philadelphia, the only beneficiaries of this proposal are Equitable customers. See PEMI St. No. 1, p. 22. In short, this proposal would force DP customers to absorb incremental universal service costs for the Equitable service area, resulting in a cost shift and not any cost savings. Id. Equitable has provided no evidence to the contrary. Id. Absent such evidence, the combination of the Companies' universal service programs would not constitute a genuine merger benefit.

vi. *The Companies' Allegations That Natural Gas Marketing Will Be Enhanced Through the Elimination of Gas-on-Gas Competition for Supply and Transportation Services is Pure Conjecture.*

The allegation that the merger may entice additional gas suppliers to enter the Companies' market area by eliminating gas-on-gas competition is pure conjecture. Equitable St. 1, p. 21. This claim is not based on any formal competitive market analysis or any survey of current or potential gas suppliers in western Pennsylvania. PEMI St. 1, p. 25. Even if this speculation proved true, it would not constitute a merger benefit because it would be offset by the adverse competitive impacts associated with the elimination of gas-on-gas competition between the Companies. *Id.* It is fundamentally illogical to believe that the competition for transportation service between Equitable and DP has any impact on marketers' willingness to enter the territories to provide gas supply services. Finally, if the proposed transaction is approved and Equitable's retail market regulations are applied to the DP service area, the level of market participation by alternative suppliers could actually suffer. *Id.* at 40. There are more marketers on the DP system than the Equitable system. *Id.* at 39. In the absence of a formal study, it is no more reasonable to conclude that more marketers will serve on the merged system than it is to conclude the contrary. Further, it may be more reasonable to conclude that marketers will leave the system when the corporate entity with the worse track record (*i.e.*, Equitable) takes over everything. Because both tariffs currently allow gas-on-gas competition for transportation service and supply service, the Commission clearly must question whether the mere existence of this competition inhibits market entry and, by extension, whether its elimination will solve the issues that have led to the disparate levels of marketer entry into the two territories. Speculation regarding enhanced competition does not represent an affirmative, substantial benefit of this merger.

vii. The Purported Savings from Elimination of Redundant Pipes Is Unproven and Must Be Weighed Against Customer Harm.

The Companies initially speculated that the Application could save customers approximately \$200 million in avoided capital spending over the next 20 years.⁴ See Equitable St. 1, p. 15. Subsequently, the Companies produced a study of their overlapping pipeline facilities. See PEMI St. 1-S, p. 10. The study reduced the Companies' purported capital spending benefits from \$200 million to approximately \$140 million, indicating that any alleged capital costs savings may be substantially less than initially contemplated. PEMI St. 1-S, p. 10; see also Equitable St. 1-R, p.18. In addition to the substantial downward adjustment, it is important to note two disclaimers: (1) the study makes no determination of the duration over which these alleged savings would be realized; and (2) the study conditions the realization of these alleged benefits upon a merger of the Companies' systems. PEMI St. 1-S, p. 11. Whereas the Companies originally claimed that these benefits would be realized within 20 years, the study indicates that it may take even longer. See id.

Even if the savings could be realized over 20 years, the annualized capital savings (using the amounts quantified in the report) now amount to only \$7.25 million per year. Id. This figure pales in comparison to the merger costs in excess of \$1 billion. See PEMI St. 1, Exh. AC-2. Any long-term potential savings associated with the gradual elimination of redundant facilities must be weighed against the immediate adverse ratepayer and economic development impacts associated with the elimination of gas-on-gas competition. Id. at 36. Neither the study nor any

⁴ Notably, the Companies' purported savings are based on the notion that gas-on-gas competition results in wasteful duplication of gas distribution facilities. The Commission, however, has acknowledged that "the purpose of gas on gas competition is to encourage improvements and efficiencies in the utilities' operations." See Pa. P.U.C. et al. v. The Peoples Natural Gas Co.; Docket No. R-00050267, Order, p. 33 (Sept. 30, 2005). This remains a valid objective. Moreover, record evidence indicates that the Companies' capital investment attributable to competition for distribution service customers will be offset by additional revenues from these customers within 6 years for Equitable and 2 years for DP. See PEMI St. 1, p. 36; see also id. at Exh. AC-5.

other evidence submitted by the Companies demonstrates that the potential long-term benefits associated with the elimination of redundant pipe would outweigh the short-term and long-term harm produced by the merger on ratepayers and economic growth in western Pennsylvania. Id. Accordingly, the Commission should not rely on promises of cost savings over an unspecified period of time as a basis for approving the merger.

viii. The Companies Have Failed To Meet Their Burden of Proof, and the Application Must Be Denied.

The Companies have failed to demonstrate that the proposed transaction would result in substantial affirmative benefits, as required by Pennsylvania law. The Companies' purported benefits are unsubstantiated and outweighed by the costs associated with the elimination of gas-on-gas competition, including higher transportation rates, higher balancing charges, and potentially higher natural supply costs due to the limited availability of DP's on-system storage assets. It is not enough for the Companies to make high-level assertions of cost savings. Assertions of public benefits, without more, do not establish a sufficient basis for approving the Application. The Companies have failed to meet their burden of proof. Accordingly, the Application must be denied.

B. The Proposed Transaction Will Likely Have an Adverse Impact on the Public Interest.

The proposed transaction would not only fail to yield the substantial affirmative benefits required by Pennsylvania law, but also harm the public interest by creating strong incentives for anticompetitive conduct by the Companies through the elimination of existing gas-on-gas competition in overlapping service territories. See PEMI St. 1, p. 28. When assessing the impact of a proposed transaction on the public interest, "it is contemplated that the benefits and detriments" of the transaction will be measured with respect to "*all affected parties*, and not

merely on one particular group." Middletown Township, 482 A.2d at 682 (emphasis in original). Large C&I customers comprise a significant segment of the public that will be adversely impacted if the proposed transaction is approved through the elimination of gas-on-gas competition and, thus, the: (1) limited ability to bargain for competitive rates; and (2) imposition of maximum rates. These production cost increases will erode intra-company, national, and international competitiveness. Finally, proposals to eliminate Equitable's Agency program coincident with approval of the proposed transaction should be rejected. Elimination of the Agency program would only exacerbate the anticompetitive impact of the proposed transaction.

Gas-on-gas competition between the Companies has existed in western Pennsylvania for many years. See PEMI St. 1, p. 34. The Natural Gas Choice and Competition Act ("Competition Act") did not change historic practices in the Commonwealth's natural gas market and did not in any way hinder the gas-on-gas competition that existed at the time of its passage. Id. In fact, the Competition Act expressly provides that a natural gas distribution company "may continue to provide natural gas service to its customers under all tariff rate schedules and riders incorporated into its tariff, and policies or programs, existing on the effective date of this chapter." 66 Pa. C.S. § 2203(14). Although this type of competition is rather unique in comparison to other areas of the United States, it is a uniqueness that has provided concrete and verifiable benefits to Pennsylvania customers. It is fundamentally illogical to conclude that the removal of an existing competitive option for customers is in the public interest when that option is providing concrete and verifiable benefits. See PEMI St. 1, p. 8. In ruling on this case, the Commission must base its decision on the actual factual circumstances and impacts on the DP and Equitable customers, rather than whether the objection to eliminating gas-on-gas competition would be valid or available if the Companies were located in another state.

In the Pittsburgh area, there are numerous C&I customers located in the Companies' overlapping service territories.⁵ This situation provides retail gas customers in overlapping service areas, particularly large C&I customers, with significant leverage to negotiate the prices, terms, and conditions for natural gas supply and transportation.⁶ The Commission's natural gas transportation regulations clearly contemplate that this type of negotiation will occur. See 52 Pa. Code § 60.2(1)-(6). Retail transportation customers benefit from negotiated transportation rates set below the tariff maximum levels and closer to, but still greater than, cost-of-service levels, reduced or waived retainage rates, and other special terms and conditions. PEMI St. 1, p. 29. Because both Companies have flexibility under their current tariffs to offer large customers supply service at negotiated rates, C&I customers also benefit from the competition between the Companies with respect to supply service. Id. at 31. These negotiated rates demonstrate that customers in the overlapping areas are deriving concrete benefits from the competition between the Companies. Id. at 29-30. Existing competition creates incentives for Equitable to match or beat DP's service terms and conditions to secure the business of existing and potential gas customers.

Importantly, there is nothing illegitimate about customers exercising their bargaining power to secure rate discounts. PEMI St. 1-S, p. 18. In fact, the Commission set maximum transportation rates in the region above cost-of-service levels with the understanding that customers could use any available competitive leverage to reduce their transportation rates below this ceiling. Id. at 16-18. The Commission made this decision with the full knowledge that

⁵ In the DP territory alone, there are 522 commercial and 29 industrial customers that have the option of taking service from Equitable. See PEMI St. 1, p. 28; id. at Exh. AC-1, p. 35.

⁶ See, e.g., PEMI St. 1, pp. 29-30. On the DP system, 647 commercial and 115 industrial customers currently benefit from negotiated contracts. On the Equitable system, 200 commercial and 38 industrial customers benefit

(cont'd footnote)

overlapping service areas existed in western Pennsylvania and that customers would use gas-on-gas competition to reduce their transportation rates. Id. Furthermore, because maximum transportation rates in the region are set well in excess of cost and were justified based on what the market may bear, discounting does not automatically create an under-recovery of fixed costs that must be absorbed by other customers. Id. at 16. Due to this higher rate ceiling, DP and Equitable can discount transportation charges without creating a cost under-recovery that could potentially be absorbed by other customers. Id. at 17. Thus, transportation rate discounting is a legitimate tool for managing natural gas costs.

i. The Evidence Shows That Elimination of Gas-on-Gas Competition Will Result in a Loss of Customer Bargaining Power and Movement to Maximum Rates.

If the proposed transaction were approved, the Companies' incentive to compete in the overlapping service areas would be eliminated. Rather than competing against each other, the Companies' common objective will be maximizing the profits of their parent company. PEMI St. 1, p. 33. In evaluating a merger, "the probable general effect of the merger upon rates is certainly a relevant criteria of whether the merger will benefit the public." City of York, 295 A.2d at 829. The elimination of gas-on-gas competition, particularly in the Pittsburgh area, would place upward pressure on customer rates in the overlapping service area due to the elimination of customers' current bargaining power. PEMI St. 1, p. 33. Documents made available to the parties confirm that Equitable has analyzed increasing its margins from its current top 25 customers and the date of elimination of discounts provided by DP to current "competitive" customer over the next 15 years, presumably as contracts expire. Id. at 13; see

(continued footnote)

from negotiated contracts. Based on customer counts provided by the Companies, this represents 23% of Equitable's industrial customers and 57.5% of DP's industrial customers. See id. at 30.

also OSBA St. 1, p. 5. Indeed, the Companies will undoubtedly seek to recoup transaction costs through the imposition of maximum rates. The public input testimony confirms that Equitable has declared that competition is over, and it will not negotiate rates with significant businesses such as the Doubletree Hotel in downtown Pittsburgh. See, e.g., Tr. at 14 (Public Input Hearings, July 18, 2006). Thus, without competition to discipline natural gas prices, the Companies will have every incentive to set rates at maximum tariff levels, at the expense of ratepayers.

In addition to the \$970 million acquisition price, associated merger costs include: \$7.1 million in transaction expenses, \$26.9 million in outside services, \$11.6 million for materials and supplies, and over \$17 million in employee costs. See PEMI St. 1, p. 11; see also id. at Exh. AC-2. The acquisition price alone far exceeds the alleged merger savings. Id. at 11. Thus, even if Equitable is permitted to retain any resulting cost savings, the Companies still must expect to increase revenues in order to break even on the investment and must expect to increase revenues even more if the stockholders will be given a return on their investment. Because Equitable has agreed in its partial settlement with OCA, et al. that it will not seek to recover transaction costs in rates, as Mr. Chalfant testified, the Companies will undoubtedly seek to recoup these expenses by increasing transportation customers' rates. The post-transaction opportunity to move all transportation customers to the excessive maximum rates in the tariff and increase balancing and other charges will provide the windfall needed for Equitable Resources to make this transaction profitable at the expense of business and industry in southwestern Pennsylvania. This is highly inappropriate and must be summarily rejected by the PUC.

ii. The Commission Should Reject Proposals To Eliminate Equitable's Agency program.

Mr. Crist claims that the Agency program should be eliminated because it undermines competition. Direct Testimony of James L. Crist, NEMA Statement No. 1, p. 13. As a threshold matter, proposals to modify or eliminate the Agency program are beyond the proper scope of this proceeding. Rebuttal Testimony of Alan Chalfant, PEMI Statement No. 1-R, p. 4 (hereinafter, "PEMI St. No. 1-R"). Such issues are more properly the focus of a general rate case or a complaint proceeding. *Id.* at 4-5. Thus, the Commission should dismiss proposals to modify or eliminate the Agency program as beyond the scope of this proceeding.

The Agency program offers retail customers in the Equitable service area a beneficial and viable competitive option to access gas supplies at competitive prices and, consequently, manage their supply costs. *Id.* at 5. Managing production costs is critical to energy-intensive C&I customers. Elimination of the Agency program would exacerbate the anticompetitive impacts of the proposed transaction by removing a viable competitive option that is currently available to ratepayers in the Equitable service area. *Id.* at 9. The Competition Act clearly states that any rate or program in existence at the time of its adoption can continue. *See* 66 Pa. C.S. § 2203(14).

Moreover, claims that the Agency program provides Equitable with an unfair competitive advantage, because its cost of gas does not have to be "fully loaded" with capacity costs, profits or other charges are misplaced. PEMI St. 1-R, p. 7. In a competitive market, suppliers must price their products in response to market forces. *Id.* As a result, suppliers only recover fixed costs or profits from their customers to the extent that prevailing market forces permit such recovery. *Id.* In other words, in a competitive market, recovery is not guaranteed. This economic principle applies to sales under Equitable's Agency program as well as to retail sales by gas marketers. *Id.* Thus, there is nothing unfair about pricing natural gas supplies under the

Agency program based on the laws of supply and demand. Id. 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. Id. at 9-10.

C. The Proposed Transaction, Even as Modified by the Non-Unanimous Petition for Settlement, Fails to Meet the Requirements for Approval Under the Public Utility Code.

Because the proposed transaction, on its face, fails to meet the requirements for PUC approval, the Companies have attempted to salvage their Application by entering into a non-unanimous Petition for settlement with a portion of the parties to this proceeding. The Companies suggest that this Petition should relieve any concerns the Commission may have with respect to the proposed combination of DP and Equitable. Further review, however, indicates that the Petition fails to provide any tangible benefits to customers and, more importantly, could actually harm certain classes of customers if implemented.

Specifically, the nature of the Petition indicates that it does not promote good public policy, but rather, seeks to ensure that certain parties' preferred positions will be adopted by the PUC. Similarly, the Petition fails to set forth any tangible benefits, instead offering nothing more than "discussions" or "collaboratives," the results of which Equitable will retain full discretion. Most importantly, several provisions, if implemented, would detrimentally harm certain classes of customers. Accordingly, the Companies' Application, as modified by the Petition, is not necessary, proper, or in the public interest and for those reasons must be denied.

- i. The Petition Merely Reflects the Individual Concerns of Certain Types and Portions of the Parties in this Proceeding But Not the Public Interest Generally.*

The non-unanimous Petition fails to address the concerns of all parties in this proceeding and contains terms and conditions that are not fully supported by all of the signatories. Because

of this disjointed formulation, the Petition fails to provide any substantive evidence that the interests of the public have been addressed, much less resolved. Accordingly, the Commission cannot give any weight to this document, as it fails to ensure that the resulting transaction is in the public interest.

Several parties to this proceeding, including PEMI, the OSBA, NEMA, and the UWUA, have not joined onto this Petition. See Petition, p. 1. By failing to present any provisions that would allow PEMI and the OSBA to lend any support, the Companies have effectively ignored the concerns of all of their C&I customers.⁷ See PEMI St. 1, pp. 2-3; see also OSBA St. 1, pp. 1-2. Similarly, while two specific natural gas suppliers ("NGSs"), Constellation and Hess, are signatories to the Petition, NEMA, which is an association of numerous NGSs, has not had its issues appropriately addressed.⁸ See NEMA St. 1, pp. 1-5.

Instead, the Petition concentrates on issues impacting specific customer classes. For example, while the Companies trumpet the fact that the Petition contains terms assuaging OCA and Mon Valley concerns regarding the Companies' Universal Service Programs ("USPs"), the Companies fail to mention that USPs benefit only the residential customer class. See Petition, p. 7. Similarly, while the Companies submit that the Petition will enhance IOGA's production of natural gas, IOGA's term sheet fails to review how the proposed modifications to operational rules and practices will affect customers currently receiving local production, much less whether enhancements to local production will actually occur. Id.; see also id. at Appendix B; see also PEMI St. 1, p. 17. The Petition also fails to address PEMI's concerns regarding access to DP's

⁷ Moreover, PEMI is concerned that several of the provisions in this Petition may actually harm C&I customers. See Section III.C.iii., infra.

⁸ Considering that several of NEMA's members may be providing natural gas supply service to the Companies' C&I customers, the inability of the Companies to address NEMA's concerns compounds PEMI's apprehension regarding the Petition.

on-system storage by transportation customers and their marketers for local gas storage. As a result, the Petition does not even resolve all of the local gas production issues in this proceeding.

Even the signatories to the Petition do not support all of the terms and conditions contained therein. Although the filing is labeled a "joint" Petition, in actuality the document contains nothing more than boilerplate language, with the actual "settlement" provisions contained in three separate appendices. See Petition, Appendices A-C. Moreover, the signatories are only willing to express support for the terms contained in their individually executed term sheets. See id. at 1. To suggest that this Petition is "comprehensive" is a gross overstatement by the Companies.⁹

Both Commonwealth Court and Commission precedent warn against actions that only benefit specific interests without contemplating the effects on other groups. See Middletown Township, 482 A.2d at 682; see also Duquesne Statement, pp. 1-2. Unfortunately, the Companies have chosen not to follow this wisdom, instead offering a document that addresses specific issues raised by individual parties without any concern as to whether the outcome results in good public policy. The Commission must consider the circumstances under which this Petition was conceived, the benefits and detriments that will result, and the underlying motivation of the signatories. Upon such review, the Commission can confirm that the Petition does not resolve the issues in this proceeding nor does it render the proposed transaction in the public interest. For those reasons, the Petition, and the underlying Application, must be rejected.

⁹ The lack of willingness by the parties to support other terms and conditions is evidenced by the timing with which resolution with the various parties was achieved. For example, consensus was reached with PACT prior to the beginning of evidentiary hearings; resolution with IOGA was achieved on November 15; Constellation/Hess attained consensus on November 16; and the remaining parties (OCA, OTS, Mon Valley, and Representative Wheatley) indicated resolution on November 17. See Petition, p. 4. In actuality, the Companies did not achieve a "joint" Petition, but rather, were successful in "picking-off" some of the parties to this proceeding by agreeing to individual terms that the parties were otherwise hesitant to litigate. See Duquesne Statement, pp. 1-2.

ii. *The Petition's Purported "Benefits" Merely Maintain the Status Quo.*

The Companies have failed to provide any evidence supporting their claim that the Application is in the public interest. See Section III.A., supra. As a result, the Companies offer the proposed Petition, claiming the modifications therein render the transaction beneficial to the public. In actuality, because the Petition merely maintains the status quo, rather than providing any affirmative benefits, the proposed Application must be rejected.

The vast majority of the Petition fails to require the Companies to commit to any terms or conditions that would actually benefit customers, instead allowing the Companies to have "discussions" with parties while maintaining discretion with respect to any future actions. See Petition, Appendices A-C. For example, with respect to USPs, the signatories have agreed to form a collaborative "to discuss" these issues, and the Companies "will consider" the collaborative's recommendations before making any filings. Id., Appendix A, pp. 2-3. Thus, while the collaborative can discuss a host of issues related to organizing, funding, and modifying the USPs, the Companies are not beholden to any of these recommendations.¹⁰

Similarly, Equitable has agreed to "maintain contributions to the hardship funds and to the local community at least at the level of direct contribution amounts attributable to" Equitable and DP in 2005. Id. at 3. While the Companies claim that the proposed transaction will provide significant benefits to the local community, Equitable is unwilling to commit to anything more than retaining the status quo with respect to community giving. If the benefits of this merger are

¹⁰To resolve Representative Wheatley's concerns regarding diversity, the Companies are willing to "attempt" to develop a program to increase the hiring of minority or low-income applicants and "work with Representative Wheatley" to increase diversity within Equitable. See Petition, Appendix A, pp. 3-4. If Equitable's diversity issues are as troublesome as suggested by Representative Wheatley, then surely settlement of this issue would require something more concrete than a mere "attempt" to solve these problems. See Direct Testimony of Representative Jake Wheatley, Wheatley Statement No. 1, pp. 6-8.

as remarkable as the Companies claim, then the question arises as to why Equitable refuses to commit to anything that would expand its charitable ventures beyond those currently in place.

In addition, as part of the term sheet with Constellation and Hess, the Companies address the eventual combination of Equitable's and Dominion Peoples' tariffs. Upon this combination, Equitable "commits" to "filing tariff provision that promote the development of the competitive market in the combined service territory." See Petition, Appendix C, pp. 3-4. Throughout this proceeding, however, Equitable has indicated that it believes its current tariff promotes competition and is not lacking in any manner. See, e.g., Equitable St. 1-R, p. 21. Conversely, marketers have argued that the combination of Equitable and DP could be disastrous if Equitable applies its current tariff provisions to DP's system. See NEMA St. 1, p. 3. Thus, the "settlement" merely delays this dispute for another day, which may be why other marketers (i.e., NEMA) did not join the agreement.

While the Petition requires Equitable to form a users group to make recommendations regarding the consolidation of these tariffs, Equitable is not under any requirement to follow these recommendations. Moreover, given that Equitable considers its current tariff to be more than adequate with respect to allowing for competition on its system, the possibility that Equitable will adhere to the users group's recommendations seems unlikely. Because Equitable would retain that discretion even without agreeing to the terms of the Petition, the status quo remains unchanged.

Finally, because the OCA raised several significant concerns regarding Equitable's quality of service, a large portion of the Petition is dedicated to requiring Equitable to improve its level of customer service to that currently attained by Dominion Peoples. See Petition, Appendix A, pp. 4-5; see also Direct Testimony of Barbara R. Alexander, OCA Statement No. 2,

pp. 3-9 (hereinafter, "OCA St. 2"). Similarly, the OTS raised numerous concerns regarding Equitable's gas safety procedures, and a portion of the Petition is dedicated to requiring Equitable to implement procedures currently used by Dominion Peoples. See Direct Testimony of Ralph Graeser, OTS Statement No. 2, pp. 2-3; see also Petition, Appendix A, p. 6. While improving Equitable's quality of service and safety may be viewed as a benefit beyond the status quo, the underlying problems from which these provisions arose are extremely distressing.

Specifically, the terms of the Petition require Equitable, the acquirer, to raise its levels of service and safety to that of Dominion Peoples. While these provisions may provide limited benefit to Equitable's customers, the long-term possibility of Equitable eventually downgrading DP's quality and safety levels (and possibly other conditions of service) remains a strong possibility. See OCA St. 2, pp. 22-24. While immediate benefits may be reaped through these provisions, the long-term implications of this transaction remain evident.

The Petition fails to provide any quantifiable, much less affirmative, benefits to the public beyond the current status quo. Moreover, those customer classes that may be affected by certain terms and conditions in the Petition are still not assured any substantive benefits, but rather, a mere willingness by the Companies to "listen" to recommendations and "attempt" to resolve problems. Although vague paper promises may be acceptable to other parties, they should not be acceptable to the Commission in reviewing the equally valid objections to the transaction raised by the OSBA, PEMI, NEMA, and the UWUA. Because the Companies will continue to maintain full and complete discretion with respect to future actions, including the overarching levels of quality and safety levels of both Equitable and DP, the Petition fails to offer any modifications that would render the proposed transaction as necessary or proper for the public interest.

iii. Several Provisions in the Petition Could Significantly Harm Large Commercial and Industrial Customers.

Compounding the failure of the Companies to provide any affirmative benefits to customers are certain provisions in the non-unanimous Petition that would actually harm particular classes of customers on both Equitable's and Dominion Peoples' systems. Considering approval for the proposed transaction requires a showing of affirmative benefits, the implementation of an Application, and accompanying Petition, that would detrimentally harm customers requires immediate rejection by the Commission.

Under the terms of the Petition, the Companies will not file for a general base rate increase any earlier than January 1, 2009. See Petition, Appendix A, p. 1. The signatories to this provision (i.e., the OCA, OTS, Mon Valley, and Representative Wheatley) most likely considered that residential customers would benefit from avoiding any rate increases for the next four years. Conversely, for large C&I customers receiving service from the Companies under negotiated contracts, this provision could result in significant and unexpected rate increases during this time. See PEMI St. 1, pp. 12-13.

Because Equitable has failed to explain how it would recoup the \$970 million resulting from the transaction, a logical assumption would have Equitable ultimately turning to ratepayers to recover at least some of these costs. Id. at 12. The agreement by the Companies not to implement a general rate increase for the next four years ensures that Equitable will be unable to recoup any monies from customers on tariffed rates. Instead, Equitable would have to turn to contract customers, who, through the nature of the proposed transaction, would be placed in a precarious position. Id.

Several PEMI members have contracts with DP for distribution service, which expire in 2007. Id. at 39-40. PEMI members with Equitable contracts have expiration dates that range

from 2006 to beyond 2009. Id. Because the proposed transaction will eliminate gas-on-gas competition, many of these customers will no longer have the ability to negotiate competitive contracts. Once the customers' current contracts have expired, Equitable will be in a position to refuse to negotiate further contracts and instead increase these customers' transportation rates to the maximum tariff levels. Id. at 12. Given that Equitable has already analyzed increasing its margins from its current top twenty-five customers, as well as the date of elimination of discounts provided by DP to current "competitive" customers over the next fifteen years, the possibility of Equitable implementing such a plan in order to recoup its transaction costs from these customers is extremely probable. Id. at 13.

Moreover, the Companies' willingness not to file for a rate increase until 2009 ensures that the maximum rates remitted by these customers are above "just and reasonable" levels. PEMI St. 1-S, p. 18. Maximum transportation rates in western Pennsylvania are set at a "value of service" rather than a "cost of service" level to account for customers being able to utilize competitive leverage to reduce transportation prices. Id. In other words, the Commission specifically set Equitable's and Dominion Peoples' transportation rates at higher than cost of service levels under the assumption that these customers would be able to negotiate rates below the ceilings based upon competitive alternatives. Id.

Once the leverage provided by gas-on-gas competitive is eliminated, however, large C&I customers will no longer be able to negotiate transportation rates below the maximum level. As a result, these customers will be forced to take service at the maximum rate, which is significantly above the cost of providing this service and contrary to the Commission's intent when setting these ceilings. Id. The stay out that Equitable gave as a "concession" to OCA is actually a windfall for the Companies, as it enhances their guaranteed revenue stream from

captive transportation customers on both systems, who will be forced to take service at unjust and unreasonable rates. Id.

Compounding this problem is the provision in the Petition that seeks to eliminate Equitable's Agency program and Dominion Peoples' Rate CER. See Petition, Appendix C, pp. 1-2. Throughout this proceeding, Constellation and Hess have sought to eliminate these programs, arguing that Agency constitutes unfair competition for natural gas marketers. NEMA St. 1, pp. 13-16. Constellation and Hess have also argued, however, that Equitable's tariff provisions do not promote competition, thereby keeping NGSs at bay. Id. at 13-14.

Under the Petition, the Agency program will be eliminated, but 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. See Petition, Appendix C, pp. 3-4. NGSs are under no obligation to provide service to customers within the service territories, and neither Hess nor Constellation (nor any other NGS) is willing to commit to serving customers even if the agency programs are removed. Tr. at 489-90 (Evidentiary Hearings, Nov. 16, 2006). Accordingly, this provision only intensifies the proposed transaction's anticompetitive impacts by 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 a replacement. PEMI St. 1-R, p. 2.

The Companies have failed to meet their burden of proving that the proposed transaction would provide any affirmative benefits to customers, much less be in the public interest. The non-unanimous Petition, which purportedly settles a handful of issues involving individual parties to this proceeding, does not modify that finding. Rather, the Petition addresses the particularized concerns of several parties without any consideration of the resulting harm to other


customer classes. Even those provisions that do not detrimentally affect customers fail to provide any benefits beyond the status quo. As such, the Commission must reject the Companies' Application, including the resulting Petition, and deny any acquisition of Peoples by Equitable.

IV. CONCLUSION

WHEREFORE, Peoples/Equitable Merger Intervenors respectfully submit that the Joint Applicants have failed to meet their burden of proof to demonstrate that the proposed transaction will bring substantial, affirmative public benefits to Pennsylvania and, therefore, respectfully request that the Joint Application be denied. Moreover, the Joint Application, even as modified by the non-unanimous Petition for settlement, fails to meet the requirements for approval under the Public Utility Code and, thus, must be rejected.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 
Pamela C. Polacek (I.D. No. 78286)
Charis Mincavage (I.D. No. 82039)
Vasiliki Karandrikas (I.D. No. 89711)
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000
(717) 237-5300 (fax)

Counsel to Peoples/Equitable Merger Intervenors

Dated: December 15, 2006