

Order

IN THE MATTER OF
EQUITABLE RESOURCES, INC. ET AL.

Docket No. 9322 – Order, May 24, 2007

ORDER STAYING DISCOVERY

Respondents filed a “Motion to Remove Matter from Adjudication” with the Commission on May 16, 2007. Yesterday, Complaint Counsel filed a “Motion to Stay Complaint Counsel’s Discovery Obligations Pending Resolution of Respondents’ Motion to Remove Matter From Adjudication.” Absent an order staying discovery, both parties are obligated under the Commission’s April 24, 2007, Scheduling Order to respond today to any discovery requests made before the Scheduling Order was entered.

According to Complaint Counsel’s Motion to Stay, Respondents have stated that they intend to object to Complaint Counsel’s discovery requests on the basis of *res judicata*, and that they do not intend to produce responsive materials at this time. Complaint Counsel’s motion also expresses concern about unfair advantage if they unilaterally produce discoverable materials, and they argue that the Commission’s resolution of Respondents’ Motion to Remove may resolve many of the same issues likely to be raised by Respondents’ forthcoming objections.

Accordingly,

IT IS HEREBY ORDERED that all discovery in this case be stayed pending the Commission’s resolution of Respondents’ Motion to Remove Matter from Adjudication.

By the Commission.

Interlocutory Orders, etc.

IN THE MATTER OF
EQUITABLE RESOURCES, INC. ET AL.

Docket No. 9322 – Order, May 30, 2007

**ORDER DENYING WITHOUT PREJUDICE RESPONDENTS’ MOTION
TO REMOVE MATTER FROM ADJUDICATION**

On May 16, 2007, respondents Equitable Resources, Inc., Dominion Resources, Inc., Consolidated Natural Gas Company, and The Peoples Natural Gas Company (“Respondents”) moved, pursuant to Rule 3.26(c) of the FTC’s Rules of Practice, 16 C.F.R. § 3.26(c), to remove this matter from adjudication in order to afford the Commission the opportunity to decide whether or not the public interest would be served by continuing this administrative litigation. Complaint Counsel filed a timely objection to the motion on May 18, 2007, and Respondents filed a reply on May 21, 2007.

We note that Respondents have not sought, and Rule 3.26(c) does not contemplate, an immediate determination of whether the Commission would continue its merger challenge in administrative litigation following a conclusive loss of its action for preliminary injunction in federal court. Accordingly, the Commission focuses here on whether removal from adjudication — with the primary purposes of enabling *ex parte* discussions with the parties about the merits of the case and avoiding duplication of litigation resources while the appeal is pending — is desirable and appropriate.

Having considered the parties’ arguments, in light of the Commission’s policy underlying Rule 3.26(c) and the current posture of the federal court litigation, the Commission hereby denies Respondents’ motion without prejudice.

1. Background. On March 1, 2006, Equitable Resources, Inc. executed an agreement to acquire the capital stock of The