

Complaint

86 F.T.C.

IN THE MATTER OF

KERR-McGEE CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT AND SEC. 8 OF THE
CLAYTON ACT*Docket C-2694. Complaint, July 17, 1975—Decision, July 17, 1975*

Consent order requiring an Oklahoma City, Okla., energy company, among other things to cease permitting any individual to serve on its board of directors if such individual is or would be at the same time a director of Oklahoma Natural Gas Company.

Appearances

For the Commission: *William A. Horne.*

For the respondent: *J. Randolph Wilson, Covington & Burling,*
Wash., D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents have violated the provisions of Section 8 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the interest of the public, issues this complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Kerr-McGee Corporation is a corporation organized and existing under and by virtue of the laws of the State of Delaware, maintaining its principal place of business at Kerr-McGee Center, Oklahoma City, Oklahoma. At all times relevant to this complaint, Kerr-McGee Corporation had capital, surplus, and undivided profits aggregating in excess of \$1 million. In 1972, Kerr-McGee Corporation had revenues in excess of \$679 million.

PAR. 2. Respondent Oklahoma Natural Gas Company is a corporation existing under and by virtue of the laws of the State of Delaware, maintaining its principal place of business at 624 S. Boston Ave., Tulsa, Okla. At all times relevant to this complaint, Oklahoma Natural Gas Company had capital, surplus, and undivided profits aggregating in excess of \$1 million. In 1973, it had revenues in excess of \$133 million.

PAR. 3. Until or about July 10, 1974, and for some years previously, Dean A. McGee served simultaneously as a director of Kerr-McGee Corporation and Oklahoma Natural Gas Company. On or about July 10, 1974, Dean A. McGee resigned from the board of directors of Oklahoma

Natural Gas after having been notified of the Commission's intent to issue a complaint in this matter.

PAR. 4. The business of respondents Kerr-McGee Corporation and Oklahoma Natural Gas Company encompasses, but is not limited to, the exploration for and the production and sale of natural gas.

PAR. 5. (a) Kerr-McGee Corporation and Oklahoma Natural Gas Company, by the nature of their business and location of operations, are competitors of each other with respect to the exploration for and the production and sale of natural gas.

(b) The elimination of competition by agreement or otherwise between Kerr-McGee Corporation and Oklahoma Natural Gas Company would hinder, foreclose, and restrain competition, or tend to create a monopoly in the exploration for and production and sale of natural gas.

PAR. 6. (a) The activities referred to in Paragraph Four are performed by corporate respondents in various States of the United States, and products of said respondents are sold and distributed in many other States of the United States.

(b) Kerr-McGee Corporation and Oklahoma Natural Gas Company each engages in commerce as that term is defined in the Clayton Act and the Federal Trade Commission Act.

PAR. 7. The director interlock, as hereinabove alleged, constitutes a violation of Section 8 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereto with violation of the Federal Trade Commission Act, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's rules; and

The Commission having considered the agreement and having provisionally accepted same, and the agreement containing consent order having thereupon been placed on the public record for a period of sixty (60) days, and having duly considered the comment filed

thereafter pursuant to Section 2.34(b) of its rules, now in further conformity with the procedure prescribed in Section 2.34(b) of its rules, the Commission hereby issues its complaint, in the form contemplated by said agreement, makes the following jurisdictional finding, and enters the following order:

1. Respondent, Kerr-McGee Corporation, (Kerr-McGee), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Kerr-McGee Center, Oklahoma City, Okla.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I

It is ordered, That Kerr-McGee Corporation (Kerr-McGee), its successors and assigns, do forthwith cease and desist from permitting any individual to serve on its board of directors if such individual is or would be at the same time a director of Oklahoma Natural Gas Company.

II

It is further ordered, That Kerr-McGee shall, within thirty days after service of this order, and annually for a period ending five (5) years thereafter, request from each member of its board of directors a written statement which discloses the name, business, and location of operations of each other corporation of which such member is also a director, exclusive of any corporation in which Kerr-McGee controls, directly or indirectly through subsidiaries, more than 50 percent of the voting stock; exclusive of any corporation which derives annual gross revenues of less than \$1,000,000 from the exploration, production and sale of natural gas, the purchase and refining of crude oil, and the sale of refined petroleum products; and exclusive of any corporation not engaged in "commerce" as defined in Section 1 of the Clayton Act as amended or Section 4 of the Federal Trade Commission Act.

III

It is further ordered, That for a period ending five (5) years after service of this order, Kerr-McGee shall, at least thirty (30) days prior to any directors' meeting at which one or more directors will be elected or the mailing of proxy statements for any shareholder meeting at which

one or more directors will be elected, request from each person who is being considered as a member of the board of directors, but has not been a member of the board of directors during the previous year, a written statement which discloses the information described in Paragraph II.

IV

It is further ordered, That for a period ending five (5) years after service of this order, Kerr-McGee shall not permit on its board of directors any person who fails to submit a written statement pursuant to Paragraphs II and III or any person who is a director of another corporation named in response to the statements required pursuant to Paragraphs II and III when said statement reveals or when a reasonably diligent investigation would reveal to respondent that such other corporation is a competitor of Kerr-McGee by virtue of its business and location of operation in the exploration for, production or sale of natural gas or in the purchase or refining of crude oil, or in the sale of refined petroleum products. If compliance with Paragraphs I and IV requires any member of Kerr-McGee's board of directors to resign or to be removed from the board of directors of either Kerr-McGee or such other corporation, Kerr-McGee shall be allowed a reasonable period of time within which to take any legal or other steps which are necessary to secure compliance with this order.

V

It is further ordered, That Kerr-McGee notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent which may affect compliance obligations arising out of this order, such changes to include, but not be limited to, dissolution, assignment or sale resulting in the emergence of a successor corporation.

VI

It is further ordered, That respondent Kerr-McGee shall, within thirty (30) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order, and shall within sixty (60) days submit copies of those lists provided by all current directors of Kerr-McGee pursuant to Paragraphs II and III designating all other corporations of which they are directors.

Complaint

86 F.T.C.

IN THE MATTER OF
OKLAHOMA NATURAL GAS COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT AND SEC. 8 OF THE
CLAYTON ACT

Docket C-2695. Complaint, July 17, 1975—Decision, July 17, 1975

Consent order requiring a Tulsa, Okla., energy company, among other things to cease permitting any individual to serve on its board of directors if such individual is or would be at the same time a director of Kerr-McGee Corporation.

Appearances

For the Commission: *William A. Horne.*

For the respondent: *John L. Arrington, Jr., Huffman, Arrington, Scheurich & Kihle, Tulsa, Okla.*

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondents have violated the provisions of Section 8 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, and that a proceeding in respect thereof would be in the interest of the public, issues this complaint, stating its charges as follows:

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