

IN THE MATTER OF

OCCIDENTAL PETROLEUM CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 7 OF
THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3191. Complaint, June 25, 1986—Decision, June 25, 1986¹

This consent order, among other things, allows Occidental Petroleum Corp. to proceed with its tender offer for MidCon Corp. and their subsequent merger. Respondent is required to divest MidCon's subsidiary, Mississippi River Transmission Corp. (MRT), within one year after the order becomes final. Additionally, respondent and its subsidiary, Cities Service Oil and Gas Corp., is prohibited from entering into any new agreements to sell natural gas to MRT until the divestiture is completed.

Appearances

For the Commission: *Marc G. Schildkraut.*

For the respondents: *Gerald M. Stein, Occidental Petroleum Corp.,*
Los Angeles, CA. and Paul E. Goldstein, MidCon Corp., Lombard, IL.

COMPLAINT

The Federal Trade Commission having reason to believe that respondent Occidental Petroleum Corporation, a corporation subject to the jurisdiction of the Federal Trade Commission, intends to acquire, or has acquired the stock or assets of respondent MidCon Corp., in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), stating its charges as follows:

I. DEFINITIONS

1. For purposes of this complaint, the following definitions shall apply:

a. "*Occidental*" means Occidental Petroleum Corporation, its subsidiaries, divisions, groups, affiliate entities, and each of their directors, officers, employees, agents and representatives; and each

¹ This matter was inadvertently omitted from the Federal Trade Commission Decisions-Volume 107.

partnership, joint venture, joint stock company or concession in which Occidental is a participant.

b. "*MidCon*" means MidCon Corp., its subsidiaries, divisions, groups, affiliate entities, and each of their directors, officers, employees, agents and representatives; and each partnership, joint venture, joint stock company or concession in which MidCon is a participant.

c. "*The acquisition*" means the transaction described, in whole or in part, in paragraph 10 of this complaint.

d. "*Transportation*" means transportation for one's own account as well as for others.

II. RESPONDENTS

A. Occidental

2. Respondent Occidental is a corporation organized and doing business under the laws of the state of California with its principal place of business located at 10889 Wilshire Boulevard, Los Angeles, California.

3. Respondent Occidental is the parent of a group of companies engaged primarily in the production and marketing of oil, gas and coal and in the manufacture and sale of chemicals and agricultural products.

4. In 1984, respondent Occidental had net sales of \$15.6 billion. Occidental is a major producer of natural gas in the United States. In 1984, Occidental produced approximately 248 billion cubic feet of natural gas.

5. At all times relevant herein, respondent Occidental has been and is now engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

B. MidCon

6. Respondent MidCon is a corporation organized and doing business under the laws of the state of Delaware with its executive offices at 701 East 22nd Street, Lombard, Illinois.

7. Respondent MidCon owns businesses that operate at several levels in the natural gas transportation industry. MidCon had sales of \$4.1 billion in the fiscal year ending September 30, 1985. As of September 30, 1985, MidCon owned and operated natural gas pipeline systems in the United States consisting of over 29,000 miles of pipe-

line. MidCon also owned and operated various other natural gas gathering and transmission facilities.

8. Among the pipeline companies owned by respondent MidCon is Mississippi River Transmission Corporation ("MRT"). MRT is an interstate pipeline that runs from Texas and Louisiana to the St. Louis, Missouri area. Approximately 93 percent of MRT's gas sales were made in the St. Louis area in 1984.

9. At all times relevant herein, respondent MidCon has been and is now engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

III. THE ACQUISITION

10. On December 31, 1985 respondent Occidental and respondent MidCon entered into a merger agreement whereby Occidental agreed to initiate a cash tender offer of \$75 per share for up to 21,000,000 shares, approximately 54 percent of MidCon's stock. The agreement further provides that, subsequent to the successful completion of the tender offer, Occidental will consummate the merger by exchanging either \$75 or 2.2472 shares of Occidental stock for each of the remaining MidCon shares. The total value of the transaction is approximately \$3 billion.

IV. RELEVANT MARKETS

11. One relevant line of commerce in which to evaluate the effects of the acquisition is the transportation by pipeline of natural gas into consuming areas.

12. Another relevant line of commerce in which to evaluate the effects of the acquisition is the sale of natural gas into consuming areas.

13. One relevant section of the country is the St. Louis area, consisting of that part of Missouri containing St. Louis city and Franklin, Jefferson, St. Charles and St. Louis counties and the part of Illinois containing Clinton, Jersey, Madison, Monroe and St. Clair counties.

V. EFFECTS

14. Respondent MidCon, through its MRT and Natural Gas Pipeline Company of America (NGPL) subsidiaries, is the sole supplier of natural gas to the St. Louis area. In 1985, MidCon supplied 100 percent of

the natural gas consumed in the St. Louis area. In 1985, MRT supplied 100 percent of the natural gas purchased by LaCledde Gas Company, the local distribution company for and sole supplier of gas to the city of St. Louis, Missouri.

15. MRT is the only company that owns a pipeline for the transmission of natural gas into the city of St. Louis, Missouri.

16. It is difficult to enter into the business of transporting by pipeline and selling natural gas in the St. Louis area.

17. For the reasons set forth in paragraphs 11 through 16, respondent MidCon has market power in the transportation by pipeline of natural gas and the sale of natural gas into the St. Louis area.

18. Interstate natural gas pipelines are subject to regulation by the Federal Energy Regulatory Commission (FERC) under the authority of the Natural Gas Act, 15 U.S.C. 717w, and Natural Gas Policy Act, 15 U.S.C. 3301-3432. MRT is among the pipelines regulated by the FERC. The FERC regulates the rates charged by interstate pipelines, including MRT, for the transportation of natural gas and the sale of natural gas for resale (sales to local distribution companies). The FERC's review and regulation of these rates is based upon a pipeline's cost of service. To a degree, this regulation constrains the prices and profits of MRT.

19. Some natural gas production and sale at the wellhead is regulated pursuant to the Natural Gas Act and the Natural Gas Policy Act. By operation of the Natural Gas Policy Act, many categories of natural gas production were deregulated on January 1, 1985. 15 U.S.C. 3331(a). At the present time, most natural gas production is deregulated. Pipelines purchase deregulated natural gas at prices negotiated with producers. The portion of natural gas production that is deregulated will increase over time as production from regulated wells declines.

20. The FERC regulates an interstate pipeline's rates based upon the pipeline's costs. If FERC does not disallow an increase in these costs, it would allow the pipeline to charge higher rates. When a pipeline with market power over transportation of natural gas or the sale of natural gas into consuming areas purchases natural gas from an unregulated producing affiliate, there is an incentive to pay higher prices for natural gas. Such transactions between regulated and unregulated affiliate companies present a recognized means of seeking to circumvent rate-of-return regulation covering the regulated affiliate.

21. By combining a major natural gas producer (respondent Occidental) with an interstate gas transmission pipeline with market power in the transportation of natural gas or the sale of natural gas into consuming areas (MRT) the acquisition substantially increases

the potential for MRT to purchase its gas supplies from affiliated producing companies. The acquisition thereby is likely to increase the ability and the incentive of MRT to purchase its supplies of deregulated natural gas in the field from affiliated companies at higher prices than it would have been willing to pay absent the acquisition of respondent MidCon by respondent Occidental. Because some such increase in costs is likely to be permitted, MRT would likely be able to charge higher rates than it would have absent the purchases of natural gas at higher prices from Occidental's affiliated gas producing entities. Prices to customers of MRT would be likely to rise.

22. By increasing the amount of gas MRT purchases from producing affiliates, the acquisition is likely to increase the incentive and ability of MRT to pay high prices to producing affiliates.

23. Under FERC regulations, MidCon is under no obligation to transport gas for others, and as a result can bar access by third parties wishing to sell gas into the St. Louis area.

24. The effect of the acquisition may be substantially to lessen competition or tend to create a monopoly in the transportation by pipeline of natural gas and the sale of natural gas into the St. Louis area in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways, among others:

a. the acquisition will create the incentive and ability for respondent MidCon to raise the price and reduce the sales of natural gas in the St. Louis area; and

b. the acquisition will create an additional incentive for respondent MidCon to refuse to transport lower priced natural gas for others into the St. Louis area.

VI. VIOLATION CHARGED

25. The proposed acquisition of the stock and assets of MidCon by Occidental, as set forth in paragraph 10 herein, violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, as amended, and the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of Occidental Petroleum Corporation's ("Occidental") acquisition of shares of Common Stock of MidCon Corp. ("MidCon") and the subse-

quent merger of MidCon into an affiliate of Occidental pursuant to an Agreement and Plan of Reorganization, and Occidental and MidCon, having been furnished with a copy of a draft complaint that the Bureau of Competition has presented to the Commission for its consideration, and which, if issued by the Commission would charge Occidental and MidCon with violations of the Clayton Act and Federal Trade Commission Act; and

Respondents Occidental and MidCon, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents 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 thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested parties pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Occidental is a corporation organized under the laws of California with its executive office at 10889 Wilshire Boulevard, Los Angeles, California.

2. MidCon is a corporation organized under the laws of Delaware with its executive office at 701 East 22nd Street, Lombard, Illinois.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Occidental and MidCon, and the proceeding is in the public interest.

ORDER

I.

It is hereby ordered, That as used in this order the following definitions shall apply:

1. "Acquisition" means Occidental's acquisition of shares of the Common Stock of MidCon and the subsequent merger of MidCon into Occidental.

an affiliate of Occidental pursuant to an Agreement and Plan of Reorganization.

2. "*MRT*" means Mississippi River Transmission Corporation, an indirect, wholly-owned subsidiary of MidCon.

3. "*Occidental*" means Occidental Petroleum Corporation, its subsidiaries, divisions, groups and affiliates controlled by Occidental and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

4. "*MidCon*" means MidCon Corp. as it was constituted prior to the acquisition, including its parents, subsidiaries, divisions, groups and affiliates controlled by MidCon, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

II.

It is further ordered, That:

(A) Within 12 months of the date this order becomes final, Occidental shall divest, absolutely and in good faith, MRT.

B. Divestiture of MRT shall be made only to an acquirer or acquirers and only in a manner that receives the prior approval of the Federal Trade Commission. The purpose of the divestiture of the MRT is to ensure the continuation of MRT as an ongoing, viable enterprise engaged in the same business in which it is presently engaged and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

C. So long as Occidental shall own MRT, Occidental and its subsidiary, Cities Service Oil and Gas Corporation, shall not enter into any new agreement(s) for sale of natural gas to MRT.

III.

It is further ordered, That:

A. If Occidental has not divested the MRT within the 12-month period, Occidental shall consent to the appointment of a trustee in any action that the Federal Trade Commission may bring pursuant to section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45 (1), or any other statute enforced by the Commission. In the event the court declines to appoint a trustee, Occidental shall consent to the appointment of a trustee by the Commission pursuant to this order.

B. If a trustee is appointed by a court or the Commission pursuant to paragraph III(A) of the order, Occidental shall consent to the fol-

lowing terms and conditions regarding the trustee's duties and responsibilities:

1. The Commission shall select the trustee, subject to Occidental's consent, which shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The trustee shall have 18 months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission, and if the trustee was appointed by the court, subject also to the prior approval of the court. If, however, at the end of the 18-month period the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission or by the court, if the trustee was appointed by a court.

3. The trustee shall have full and complete access to the personnel, books, records, and facilities of MRT and Occidental shall develop such financial or other information relevant to the assets to be divested as such trustee may reasonably request. Occidental shall cooperate with the trustee and shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

4. The power and authority of the trustee to divest shall be at the most favorable price and terms available consistent with the order's absolute and unconditional obligation to divest and the purposes of the divestiture as stated in paragraph II(B). If bona fide offers are received by the trustee from more than one prospective purchaser, the Commission shall determine whether to approve each such purchaser, and the trustee shall divest to the purchaser elected by Occidental from among the purchasers approved by the Commission.

5. The trustee shall serve at the cost and expense of Occidental on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the court or the Commission of the account of the trustee, including fees for his or her services, all remaining monies shall be paid to Occidental and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on commission arrangement contingent on the trustee divesting MRT.

6. Promptly upon appointment of the trustee and subject to the approval of the Commission, Occidental shall, subject to the Commission's prior approval and consistent with provisions of this order, execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to cause divestiture.

7. If the trustee ceases to act or fails to act diligently, a substitute

trustee shall be appointed for the balance of the 18-month period specified in paragraph III(B) (2) or any extension thereof.

8. The trustee shall report in writing to Occidental and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

C. Occidental shall maintain the viability and marketability of MRT and shall not cause or permit the destruction, removal or impairment of any assets of MRT except in the ordinary course of business and except for ordinary wear and tear. Occidental shall use its best efforts to ensure that MRT continues to be an ongoing, viable enterprise engaged in the same business in which it is presently engaged.

IV.

It is further ordered, That, within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Occidental has fully complied with the provisions of paragraphs II and III of this order, Occidental shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with those provisions. Occidental shall include in compliance reports, among other things that are required from time to time, a full description of contacts or negotiations for the divestiture of MRT, including the identity of all parties contacted. Occidental also shall include in its compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports and recommendations concerning divestiture.

V.

It is further ordered, That for a period commencing on the date this order becomes final and continuing for ten (10) years from and after the date this order becomes final, Occidental shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries or otherwise, assets used or previously used by (and still suitable for use by), any interest in or the whole or any substantial part of the stock or share capital of any natural gas transmission line located in whole or part in the St. Louis MSA; these prohibitions shall not relate to participation in any joint venture in which Occidental or MidCon is a participant on the date of service of this order or to the construction of new facilities.

VI.

It is further ordered, That for the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Occidental and MidCon made to its principal office, Occidental and MidCon shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Occidental and MidCon relating to any matters contained in this order; and

B. Upon five days notice to Occidental and MidCon and without restraint or interference from them, to interview officers or employees of Occidental and MidCon who may have counsel present, regarding such matters.

VII.

It is further ordered, That Occidental shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of the order.