

IN THE MATTER OF

SHELL OIL COMPANY, 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-3843. Complaint, Dec. 21, 1998--Decision, Dec. 21, 1998

This consent order requires, among other things, the Texas-based corporation and its subsidiary to divest portions of the ANR pipeline system to an acquirer that receives the prior approval of the Commission. The consent order also requires the respondents to maintain the viability and marketability of the assets, pending the divestiture of the assets.

Participants

For the Commission: *John Hoagland, Kristen Malmberg, W. David Griggs, Thomas Carter, Morris Morkre, and Jonathan Baker.*

For the respondents: *Richard Brooks, Baker & Botts, Houston, TX. and Dan Wellington, Fulbright & Jaworski, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission") having reason to believe that respondents Shell Oil Company ("Shell") and its subsidiary, Tejas Energy, LLC ("Tejas"), through Tejas' subsidiary Transok, LLC ("Transok"), are subject to the jurisdiction of the Commission and that Tejas' acquisition of certain gas-gathering assets of ANR Field Services Company ("ANRFS") and certain gas processing and other facilities of ANR Production Company ("ANRP"), subsidiaries of The Coastal Corporation ("Coastal"), is 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 ("FTC Act"), as amended, 15 U.S.C. 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 11 of the Clayton Act, as amended, 15 U.S.C. 21, and Section 5(b) of the FTC Act, as amended, 15 U.S.C. 45(b), stating its charges as follows:

I. RESPONDENTS

1. Shell 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 One Shell Plaza, Houston, Texas.

2. Respondent Shell is, and at all times relevant herein has been, 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.

3. Tejas is a limited liability company 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 1301 McKinney, Houston, Texas. Tejas is a wholly-owned subsidiary of Shell.

4. Respondent Tejas is, and at all times relevant herein has been, 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.

II. THE PROPOSED ACQUISITION

5. Respondents, pursuant to a Letter of Intent dated January 20, 1998, among Transok, ANRFS and ANRP, entered into an agreement to acquire certain ANRFS assets consisting of natural gas pipelines, compressors and related appurtenances, and certain ANRP assets, consisting of a natural gas processing plant and other facilities.

III. THE RELEVANT MARKETS

6. The relevant line of commerce in which to analyze the effects of the acquisition is natural gas gathering services, *i.e.*, the transportation, for oneself or for other persons, of natural gas from the wellhead or producing area to a natural gas transmission pipeline or a natural gas processing plant.

7. The relevant sections of the country in which to analyze the effects of the acquisition are in the areas in and around the following

townships in Oklahoma (delineated as Township and Range) and Railroad Blocks in Texas:

- a. 13N/26W and 12N/26W in Roger Mills County, Oklahoma; 11N/26W in Roger Mills and Beckham Counties, Oklahoma; and Roberts and Eddleman Block RE, Brooks and Burleson Blocks 1 and 2, and Commissioner of the Land Office State of Oklahoma Block in Wheeler County, Texas;
- b. 12N/22W and 12N/21W in Beckham and Roger Mills Counties, Oklahoma; and 11N/22W in Beckham County, Oklahoma;
- c. 12N/19W in Custer County, Oklahoma; and 11N/19W and 10N/19W in Washita County, Oklahoma;
- d. 11N/15W and 11N/14W in Washita County, Oklahoma;
- e. 10N/13W, 10N/12W, 9N/12W, 8N/12W and 8N/11W in Caddo County, Oklahoma; and
- f. 6N/8W in Grady County, Oklahoma; and 6N/9W and 5N/9W in Caddo County, Oklahoma.

8. The relevant line of commerce is highly concentrated in the relevant geographic markets. The acquisition will significantly increase concentration in the relevant geographic markets set forth in paragraph seven.

9. Respondent Tejas is an actual and potential competitor of Coastal in the relevant line of commerce in the relevant geographic markets.

10. Effective entry in the relevant line of commerce in the relevant geographic markets is unlikely.

IV. EFFECTS OF THE ACQUISITION

11. The effect of the proposed acquisition, if consummated, may be substantially to lessen competition or tend to create a monopoly in the relevant markets in the following ways, among others:

- a. Actual and potential competition between Tejas and Coastal to provide natural gas gathering services to existing gas wells will be eliminated;
- b. Actual and potential competition between Tejas and Coastal to provide natural gas gathering services for new natural gas wells will be eliminated;

c. The likelihood of collusion or coordinated interaction will be increased or facilitated;

d. Tejas is likely to exact anticompetitive price increases from producers in the relevant geographic market for performance of natural gas gathering services in the relevant geographic markets; and

e. Producers may be less likely to do exploratory and developmental drilling for new natural gas in the relevant geographic markets than prior to the merger.

V. VIOLATIONS CHARGED

12. The acquisition agreement described in paragraph five constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

13. The acquisition described in paragraph five, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition of certain assets of ANR Field Services Company and ANR Production Company (collectively referred to as "ANR"), subsidiaries of The Coastal Corporation ("Coastal"), by Shell Oil Company ("Shell") and its subsidiary, Tejas Energy, LLC ("Tejas"), and it now appearing that Shell and Tejas, hereinafter sometimes referred to as "respondents," having been furnished with a copy of a draft complaint that the Bureau of Competition proposed to present to the Commission for its consideration, and which, if issued by the Commission, would charge respondents with violations of the Clayton Act and Federal Trade Commission Act; and

Respondents, their attorney, 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 respondents have violated the said Acts, and that the 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, 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. Shell 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 One Shell Plaza, Houston, Texas.

2. Tejas Energy, LLC, is a limited liability company 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 1301 McKinney, Houston, Texas.

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

ORDER

I.

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

A. "*Shell*" means Shell Oil Company, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Shell, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "*Tejas*" means Tejas Energy, LLC, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Shell, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Tejas is a wholly-owned subsidiary of Shell.

C. "*Respondents*" means Shell and Tejas, jointly and severally.

D. "*Coastal*" means The Coastal Corporation, 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 Nine Greenway Plaza, Houston, Texas.

E. "*Commission*" means the Federal Trade Commission.

F. "*Acquisition*" means the proposed acquisition by respondents of certain assets of ANR Field Services Company ("ANRFS") and ANR Production Company ("ANRP") (sometimes collectively referred to as "ANR"), subsidiaries of Coastal, pursuant to the Letter of Intent dated January 20, 1998, executed by ANRFS, ANRP, and Transok, LLC, a subsidiary of Tejas.

G. "*Gas Gathering*" means pipeline transportation, for oneself or other persons, of natural gas over any part or all of the distance between a well and a gas transmission pipeline or gas processing plant.

H. "*Person*" means any natural person, partnership, corporation, company, association, trust, joint venture or other business or legal entity, including any governmental agency.

I. "*Related Person*" means a person controlled by, controlling, or under the common control of, another person.

J. "*Relevant Geographic Area*" means all portions of Wheeler County, Texas, within 22 miles of the Hemphill County, Texas, border; all portions of Roger Mills County, Oklahoma, within 25 miles of the Beckham County, Oklahoma, border; all portions of Beckham County, Oklahoma, within 15 miles of the Roger Mills County, Oklahoma, border; all portions of Washita County, Oklahoma, within 18 miles of the Custer County, Oklahoma, border; Custer and Caddo Counties, Oklahoma; and all Townships in Grady County, Oklahoma, within and including the boundaries 4-6N and 5-8W.

K. "*Schedule A assets*" means all of the assets listed in Schedule A of this order.

L. "*Processing*" means the separation of natural gas liquids, including propane, ethane, butanes, and pentanes-plus, from methane.

II.

It is further ordered, That:

A. Following completion of the Acquisition:

1. Prior to the divestiture of the assets listed in Schedule A, respondents shall build an eight (8) inch diameter pipeline to Tejas'

usual specifications connecting pipeline listed in Schedule A as ANR pipeline number 489-0802 and ANR pipeline number 489-0617 in Roger Mills County, Oklahoma, Township 12N 26W, Sections 20, 29, and 30. Respondents shall divest this pipeline with Area 1 assets listed in Schedule A; and

2. Respondents shall divest the Schedule A assets, absolutely and in good faith, at no minimum price, consistent with the provisions of this order, by the later of January 5, 1999, or thirty days after respondents consummate the Acquisition.

B. The divestiture shall be made only to an acquirer(s) that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

C. Pending divestiture of the Schedule A assets, respondents shall take such actions as are necessary to maintain the viability, competitiveness and marketability of the Schedule A assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Schedule A assets, except for ordinary wear and tear.

D. To ensure the marketability of the assets to be divested, respondents shall offer the purchaser of any of the assets listed in Schedule A the opportunity to enter into an agreement with reasonable terms to process the natural gas gathered in the relevant geographic area in Tejas processing facilities for a term of up to two (2) years, cancelable at the asset purchaser's option with ninety (90) days notice.

E. 1. From the time that respondents acquire the Schedule A assets that are currently owned by ANR until their divestiture has been completed in pertinent part, respondents shall offer to purchase, gather and process gas on those Schedule A assets on the same terms and conditions offered by ANR on the date of their transfer.

2. If a producer, operator, or shipper executes a waiver of its rights under paragraph II.E.1, respondents may contract on such other terms and conditions as they may deem appropriate.

F. The purpose of the divestiture is to ensure the continued use of the Schedule A assets in the same type of business in which the Schedule A assets are used at the time of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

III.

It is further ordered, That:

A. If respondents have not divested the Schedule A assets in accordance with the requirements of paragraph II of this order, the Commission may appoint a trustee to divest the Schedule A assets. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(1) of the Federal Trade Commission Act, Section 15 U.S.C. 45(1), or any other statute enforced by the Commission, respondents shall consent to the appointment of a trustee to divest the Schedule A assets in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under paragraph III shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(1) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by respondents to comply with this order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A, respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures of gas gathering assets. If respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondents of the identity of any proposed trustee, respondents shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Schedule A assets. The trustee may, in his or her discretion, or at the direction of the Commission, effect such arrangements and divest (a) any additional gas gathering assets (including, but not limited to, gas gathering lines, compressors, surface equipment, and gas purchase and gathering contracts) of the respondents located in the Relevant Geographic Area and (b) any additional assets necessary to connect

the divested assets to the buyer's existing systems or to a third-party transmission line. The trustee may select such assets pursuant to clauses (a) and (b) of this paragraph to assure the marketability, viability, and competitiveness of the Schedule A assets so as to accomplish expeditiously the remedial purposes of this order.

3. Within ten (10) days after appointment of the trustee, respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in paragraph III.B.3 to accomplish the divestiture(s), which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve 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, in the case of a court-appointed trustee, by the court; provided, however, that the Commission may extend this period only two (2) times.

5. Respondents shall provide the trustee full and complete access to the personnel, books, records and facilities related to the Schedule A assets, or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by respondents shall extend the time for divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall make reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondents' absolute and unconditional obligation to divest at no minimum price. The divestiture(s) shall be made to an acquirer(s) that receives the prior approval of the Commission, provided, however, that if the trustee receives bona fide offers for any of the assets to be divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest such assets to

the acquiring entity or entities selected by respondents from among those approved by the Commission.

7. The trustee shall serve at the cost and expense of respondents, without bond or other security unless paid for by respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondents, such consultants, accountants, attorneys, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Schedule A assets.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph III.A of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation to operate or maintain the Schedule A assets.

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

IV.

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, respondents shall not, without prior notification to the Commission, directly or indirectly:

A. Acquire the Schedule A assets after their divestiture, or any assets the trustee may divest pursuant to paragraph III.B.2 of this order;

B. Acquire any stock, share capital, equity, or other interest in any person engaged in gas gathering within the Relevant Geographic Area at any time within the two years preceding such acquisition; or

C. Enter into any agreements or other arrangements with any person or with two or more related persons to obtain, within any 18 month period, direct or indirect ownership, management, or control of more than five (5) miles of pipeline previously used for gas gathering and suitable for use for gas gathering within the Relevant Geographic Area.

V.

It is further ordered, That the prior notifications required by paragraph IV of this order shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of Part 803, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of respondents. In lieu of furnishing (1) documents filed with the Securities and Exchange Commission, (2) annual reports, (3) annual audit reports, (4) regularly prepared balance sheets, or (5) Standard Industrial Code (SIC) information in response to certain items in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, respondents shall provide a map showing the location of the pipeline whose acquisition is proposed and other pipelines used for gas gathering in the Relevant Geographic Area and a statement showing, for the most recent 12 month period for which volume information is available, the quantity of gas that flowed through pipeline whose acquisition is proposed. Respondents shall

provide the Notification to the Commission at least thirty days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information (within the meaning of 16 CFR 803.20), respondents shall not consummate the transaction until twenty days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. Provided, however, that prior notification shall not be required by paragraph IV of this order for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

VI.

It is further ordered, That:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until respondents have fully complied with the provisions of paragraphs II or III of this order, respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with paragraphs II and III of this order. Respondents shall include in such compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraphs II and III of the order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order is entered, and at such other times as the Commission may require, respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with this order.

VII.

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

VIII.

It is further ordered, That, for the purpose of determining or securing compliance with this order, upon written request, respondents shall permit any duly authorized representative of the Commission:

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

B. Upon five (5) days' notice to respondents and without restraint or interference from them, to interview officers, directors, employees, agents or independent contractors of respondents, who may have counsel present, relating to any matters contained in this order.

IX.

It is further ordered, That this order shall terminate on December 21, 2008.

IN THE MATTER OF
GATEWAY 2000, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF THE
MAGNUSON-MOSS WARRANTY ACT AND SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-3844. Complaint, Dec. 22, 1998--Decision, Dec. 22, 1998

This consent order prohibits, among other things, the South Dakota-based distributor and advertiser, of personal computers and software, from failing to make the text of any written warranty on a consumer product readily available for examination by prospective buyers prior to sale; from failing to provide a full refund of the purchase price of a product, including any shipping costs, insurance, handling or any other fees due to the consumer pursuant to any money-back guarantee offer made by the respondent; and requires the respondent to pay approximately \$290,000 to the U.S. Treasury.

Participants

For the Commission: *Michael Rose, Brenda Doubrava, John Mendenhall, and Margaret Patterson.*

For the respondent: *Michael Sibarium, Winston & Strawn, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Magnuson-Moss Warranty Act ("the Warranty Act"), 15 U.S.C. 2301 *et seq.*, and Rules 701 and 702, 16 CFR Parts 701 ("the Disclosure Rule") and 702 ("the Pre-Sale Availability Rule"), promulgated thereunder, and the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Gateway 2000, Inc., a corporation, hereinafter sometimes referred to as respondent, has violated the provisions of said Acts and Rules, and it appearing to the Commission that a proceeding by it would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The definitions of terms contained in Section 101 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, and in Rules 701 and 702, 16 CFR 701.1 and 702, promulgated thereunder shall apply to the terms used in this complaint.