

IN THE MATTER OF

DOMINION RESOURCES, INC., 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-3901. Complaint, Nov. 4, 1999--Decision, Dec. 9, 1999

This consent order, among other things, requires Dominion Resources, Inc., to divest Consolidated Natural Gas Company's subsidiary, Virginia Natural Gas, Inc., to a Commission-approved acquirer.

Participants

For the Commission: *Michael Moiseyev, Norman Armstrong, Ann Malester, Richard Parker, Jeremy Bulow and Roger Boner.*

For the respondents: *Howard Feller, McGuire, Woods, Battle & Boothe, Richmond, VA. and Stephen Paul Mahinka, Morgan, Lewis & Bockius, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, Dominion Resources, Inc. ("Dominion"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire all the voting stock of respondent, Consolidated Natural Gas Company ("CNG"), a corporation subject to the jurisdiction of the Commission, 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 it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. DEFINITIONS

1. "Generation of electric power" means the process by which electricity is generated through the use of fuel such as natural gas.

2. "Virginia Natural Gas" or "VNG" means Virginia Natural Gas, Inc., the subsidiary of CNG that provides local gas distribution service within the Commonwealth of Virginia.

3. "*Merger Agreement*" means the Agreement and Plan of Merger between Dominion and CNG, dated March 31, 1999, and amended May 11, 1999.

4. "*Respondents*" means Dominion and CNG, individually and collectively.

II. RESPONDENTS

5. Respondent Dominion is a corporation organized, existing and doing business under and by virtue of the laws of Virginia, with its office and principal place of business located at 120 Tredegar Street, Richmond, Virginia. Respondent Dominion, among other things, is engaged in the generation of electric power.

6. Respondent CNG is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business located at 625 Liberty Avenue, CNG Tower, Pittsburgh, Pennsylvania. Respondent CNG, among other things, is engaged in the transportation of natural gas used in the generation of electric power.

7. Pursuant to the Merger Agreement, Dominion will acquire 100 percent of the outstanding voting securities of CNG.

8. Respondents are, and at all times relevant herein have been, engaged in commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and are corporations whose businesses are in or affect commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

III. THE ACQUISITION

9. On March 31, 1999, respondents entered into an Agreement and Plan of Merger which was amended on May 11, 1999, under which Dominion is to acquire 100 percent of the voting securities of CNG valued at approximately \$5.3 billion ("Acquisition").

IV. THE RELEVANT MARKETS

10. For the purposes of this complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are the generation of electric power and the distribution of natural gas.

11. For the purposes of this complaint, the southeastern area of Virginia is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant lines of commerce.

V. THE STRUCTURE OF THE MARKETS

12. The markets for the generation of electrical power and the distribution of natural gas in southeastern Virginia are highly concentrated. Dominion, through its subsidiary, Virginia Power, accounts for more than 70 percent of the electric power generation capacity in the Commonwealth of Virginia. CNG, through its subsidiary, VNG, is the primary distributor of natural gas in southeastern Virginia. Natural gas is one of a limited number of fuels used in the generation of electricity. The proposed acquisition would provide Dominion with control of the available source of firm natural gas transportation capacity in the VNG service territory, thereby enhancing its control over the generation of electrical power in that area.

VI. BARRIERS TO ENTRY

13. The market for the generation of electrical power in the relevant area is characterized by high barriers to entry. Entry into the electrical power generation market in the relevant geographic area by construction of plants that use fuels other than natural gas is unlikely to occur due to environmental restrictions. With the acquisition of CNG by Dominion, entry into the electrical power generation market in the relevant geographic area by construction of plants that use natural gas may be deterred because of Dominion's control over VNG, the primary distributor of natural gas in southeastern Virginia. Dominion's control over VNG would likely deter or disadvantage entry by independent electrical power generation companies because Dominion may be able to raise the costs of entry and/or production to new entrants.

14. Entry into the market for the transportation and distribution of natural gas in the relevant geographic area is unlikely to occur in a timely manner to deter or counteract the adverse competitive effects described in paragraph 15. Construction of natural gas pipelines to serve the southeastern Virginia area would be costly and time consuming, and is not likely to occur due to the existence of substantial excess capacity on the VNG pipeline.

VII. EFFECTS OF THE ACQUISITION

15. The effects of the Acquisition, if consummated, may be substantially to lessen competition and to tend to create a monopoly in the electric power generation market in the relevant area in 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, in the following ways, among others:

- a. By increasing barriers to entry by independent producers; and
- b. By increasing the likelihood that customers will be forced to pay higher prices.

VIII. VIOLATIONS CHARGED

16. The Acquisition agreement described in paragraph 9 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

17. The Acquisition described in paragraph 9, 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.

ORDER TO HOLD SEPARATE

The Federal Trade Commission having initiated an investigation of the proposed acquisition by Respondent Dominion Resources, Inc. ("Dominion"), of 100 percent of the voting securities of Respondent Consolidated Natural Gas Company ("CNG"), and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing 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, or that

the facts as alleged in such Complaint, other than jurisdictional facts, are true, 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 a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Hold Separate:

1. Respondent Dominion is a corporation organized, existing and doing business under and by virtue of the laws of Virginia, with its office and principal place of business located at 120 Tredegar Street, Richmond, Virginia.

2. Respondent CNG is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 625 Liberty Avenue, CNG Tower, Pittsburgh, Pennsylvania.

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

ORDER

I.

It is ordered, That, as used in this Order to Hold Separate, the following definitions shall apply:

A. "*Dominion*" means Dominion Resources, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Dominion, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "*CNG*" means Consolidated Natural Gas Company its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by CNG, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "*Respondents*" means Dominion and CNG, individually and collectively.

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

E. "*Virginia Natural Gas*" or "*VNG*" means Virginia Natural Gas, Inc., the subsidiary of CNG that provides local gas distribution service within the Commonwealth of Virginia, including, but not limited to, the following assets used in any of VNG's businesses:

1. All assets, properties, business and goodwill, tangible and intangible, including the intrastate pipeline that connects VNG's service facility to the interstate pipeline facilities of CNG;

2. Machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;

3. All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, inventions, trade secrets, intellectual property, patents, technology, know-how, specifications, designs, drawings, processes and quality control data;

4. Inventory and storage capacity;

5. All rights, titles and interests in and to owned or leased real property, together with appurtenances, licenses and permits;

6. All rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

7. All rights under warranties and guarantees, express or implied;

8. All books, records, and files; and

9. All items of prepaid expense.

F. "*Acquisition*" means the proposed acquisition of 100 percent of the voting securities of Consolidated Natural Gas Company by Dominion pursuant to the Agreement and Plan of Merger dated March 31, 1999, as amended May 11, 1999.

G. "*VSCC Stipulation*" means the Stipulation entered into by and between the staff of the State Corporation Commission of the Commonwealth of Virginia, Dominion, and CNG in State Corporation Case No. PUA990020, attached hereto as Appendix I.

H. "*Material Confidential Information*" means competitively sensitive or proprietary information not independently known to an

entity from sources other than the entity to which the information pertains, and includes, but is not limited to, all customer lists, marketing methods, technologies, processes, or other trade secrets.

I. "*Hold Separate Period*" means the time period during which the Order to Hold Separate is in effect.

J. "*Service Company Agreement*" means the agreement pursuant to which CNG provides services to VNG, attached hereto as Appendix II.

II.

It is further ordered, That:

A. Respondents shall hold VNG as a separate and independent business, except to the extent that Respondents must exercise direction and control over VNG to assure compliance with this Order to Hold Separate or with the Consent Agreement, or to assure compliance with the Virginia State Corporation Commission, Securities and Exchange Commission, and/or Federal Energy Regulatory Commission regulations and orders, and except as otherwise provided in this Order to Hold Separate, and shall vest VNG with all powers and authorities necessary to conduct its business. The purpose of this Order is to: (i) preserve VNG as a viable, competitive, and ongoing business, independent of Respondents, until divestiture is achieved; (ii) assure that no Material Confidential Information is exchanged between Respondents and VNG; and (iii) prevent interim harm to competition pending divestiture and other relief.

B. Respondents shall hold VNG separate and independent on the following terms and conditions:

1. The Commission at any time may appoint an Independent Auditor to monitor Respondents' compliance with paragraph II. of this Order to Hold Separate, and Respondents shall give the Independent Auditor, if one is appointed, all powers and authority necessary to effectuate his/her responsibilities pursuant to this Order to Hold Separate.

2. If an Independent Auditor is appointed by the Commission, Respondents shall consent to the following procedures:

a. The Commission shall select the Independent Auditor, subject to the consent of Respondents, which consent shall not be

unreasonably withheld. The Independent Auditor shall be a person with experience necessary to perform his or her duties. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Independent Auditor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Independent Auditor, Respondents shall be deemed to have consented to the selection of the proposed Independent Auditor.

b. Within ten (10) days after appointment of the Independent Auditor, Respondents shall execute an Independent Auditor agreement that, subject to the prior approval of the Commission, transfers to the Independent Auditor all rights and powers necessary to permit the Independent Auditor to perform his/her duties.

c. The Independent Auditor shall have full and complete access to all personnel, books, records, documents and facilities of VNG and Respondents or to any other relevant information, as the Independent Auditor may reasonably request, including but not limited to all documents and records kept in the normal course of business that relate to VNG. Respondents shall develop such financial or other information as the Independent Auditor may request and shall cooperate with the Independent Auditor. Respondents shall take no action to interfere with or impede the Independent Auditor's ability to perform his/her responsibilities consistent with the terms of this Order to Hold Separate or to monitor Respondents' compliance with this Order to Hold Separate and the Consent Agreement.

d. The Independent Auditor shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are necessary to carry out the Independent Auditor's duties and responsibilities.

e. Respondents may require the Independent Auditor to sign a confidentiality agreement prohibiting the disclosure of any material information gained as a result of his or her role as Independent Auditor to anyone other than the Commission.

3. Respondents shall appoint, subject to the approval of the Independent Auditor, if one is appointed, three (3) individuals from among the current employees of VNG or Respondents involved in the management, sales, marketing, or financial operations of VNG to manage and maintain VNG ("The Management Team"). The

Management Team, in its capacity as such, shall report directly and exclusively to the Independent Auditor, and shall manage VNG independently of the management of Respondents. The Management Team shall not be involved in any way in the operations of the businesses of Respondent, other than the VNG business, during the Hold Separate Period.

4. Respondents shall not change the composition of the management of VNG, except that the Management Team shall be permitted to remove management employees for cause subject to approval of the Independent Auditor. The Independent Auditor, if one is appointed, shall have the power to remove members of the Management Team for cause and to require Respondents to appoint replacement members to the Management Team in the same manner as provided in subparagraph II.B.3. of this Order to Hold Separate.

5. The Independent Auditor, if one is appointed, shall have responsibility, through the Management Team, for managing VNG consistent with the terms of this Order to Hold Separate; for maintaining the independence of VNG consistent with the terms of this Order to Hold Separate and the Consent Agreement; and for assuring Respondents' compliance with their obligations pursuant to this Order to Hold Separate.

6. VNG shall be staffed with sufficient employees to maintain the viability and competitiveness of VNG. The VNG employees shall include: (i) all personnel employed by VNG as of the date the Commission accepts the Consent Agreement for public comment; and (ii) those persons hired from other sources. The Management Team, with the approval of the Independent Auditor, if one is appointed, shall have the authority to replace employees who have otherwise left their positions with VNG since January 1, 1999. To the extent that VNG employees leave VNG prior to the divestiture of VNG, the Management Team, with the approval of the Independent Auditor, may replace the departing VNG employees with persons who have similar experience and expertise.

7. Respondents shall cause the Independent Auditor, each member of the Management Team, and each VNG employee involved in the management, sales, marketing, gas supply acquisition, and financial operations, to submit to the Commission a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Order to Hold Separate. These individuals must retain and maintain all Material Confidential Information relating to

the held separate business on a confidential basis and, except as is permitted by this Order to Hold Separate, including services provided pursuant to the Service Company Agreement, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such Material Confidential Information to or with any other person whose employment involves any of Respondents' businesses other than the VNG business. These persons shall not be involved in any way in the management, sales, marketing, and financial operations of the competing products of Respondents.

8. Respondents shall establish written procedures to be approved by the Independent Auditor, if one is appointed, covering the management, maintenance, and independence of VNG consistent with the provisions of this Order to Hold Separate.

9. Respondents shall circulate to VNG employees and to Respondents' employees who are responsible for the operation or marketing of the VNG business, a notice of this Order to Hold Separate and Consent Agreement, in the form attached as Attachment A.

10. The Independent Auditor, if one is appointed, and the Management Team shall serve, without bond or other security, at the cost and expense of Respondents, on reasonable and customary terms commensurate with each person's experience and responsibilities. Respondents shall indemnify the Independent Auditor and the Management Team, and hold the Independent Auditor and the Management Team harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Independent Auditor's or the Management Team'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 Independent Auditor or the Management Team.

11. Respondents shall provide VNG with sufficient working capital to operate VNG at least at current rates of operation, to meet all capital calls in respect of VNG, and to carry on, at least at their scheduled pace, all capital projects for VNG that are ongoing, planned, or approved as of January 1, 1999, plus any additional expenditures authorized since that date. During the period this Order to Hold Separate is effective, Respondents shall make available for

use by VNG funds sufficient to perform all necessary routine maintenance to, and replacements of, VNG's assets. Respondents shall provide VNG with such funds as are necessary to maintain the viability, competitiveness, and marketability of VNG until the date the divestiture is completed.

12. Respondents shall continue to provide the same support services to VNG as are being provided to VNG by Respondents pursuant to the Service Company Agreement, attached hereto as Appendix II. Respondents may charge VNG the same fees, if any, charged by Respondents for such support services under the Service Company Agreement. Respondents shall assure that personnel providing support services retain and maintain all Material Confidential Information of VNG on a confidential basis, and, except as is permitted by this Order to Hold Separate, shall prohibit such persons from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of Respondents' businesses other than VNG. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of VNG.

13. Except as provided in this Order to Hold Separate, Respondents shall not employ or make offers of employment to VNG employees during the Hold Separate Period. The acquirer of VNG shall have the option of offering employment to the VNG employees. After the Hold Separate Period, Respondents may offer employment to VNG employees who have not accepted employment with or whose employment has been terminated by the acquirer of VNG. Respondents shall not interfere with the employment of VNG employees by the acquirer of VNG; shall not offer any incentive to VNG employees to decline employment with the acquirer of VNG or accept other employment with the Respondents; shall remove any impediments that may deter VNG employees from accepting employment with the acquirer of VNG, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with VNG or Respondents that would affect the ability of VNG employees to be employed by the acquirer of VNG; and shall continue the payment of all accrued bonuses, pensions and other accrued benefits to which VNG employees would otherwise have been entitled had they remained in the employment of the Respondents.

14. Notwithstanding subparagraph II.B.13., Respondents may offer a bonus or severance to those VNG employees that continue their employment with VNG until the date that VNG is divested.

15. Respondents shall not exercise direction or control over, or influence directly or indirectly, VNG, the Independent Auditor, the Management Team, or any of their operations; provided, however, that Respondents may exercise only such direction and control over VNG as is necessary to assure compliance with this Order to Hold Separate or the Consent Agreement, or with all applicable laws, rules or regulations.

16. Except for the Management Team and except to the extent provided in subparagraphs II.B.12 and II.B.15., Respondents shall not permit any non-VNG employees, officers, or directors to be involved in the operations of VNG.

17. Respondents shall maintain the viability, competitiveness, and marketability of VNG; shall not sell, transfer, or encumber VNG's assets (other than in the normal course of business); and shall not cause or permit the destruction, removal, wasting, or deterioration, or otherwise impair the viability, competitiveness, or marketability of VNG.

18. If the Independent Auditor ceases to act or fails to act diligently and consistent with the purposes of this Order to Hold Separate, the Commission may appoint a substitute Independent Auditor in the same manner as provided in paragraph II.B.1. of this Order to Hold Separate.

19. Until the divestiture of VNG is accomplished, Respondents shall ensure that VNG employees continue to be paid their salaries, all accrued bonuses, pensions and other accrued benefits to which the VNG employees would otherwise have been entitled had they remained in the employment of Respondents during the Hold Separate Period.

20. Except as required by law, and except to the extent that necessary information is exchanged in the course of consummating the Acquisition, defending investigations, defending or prosecuting litigation, obtaining legal advice, negotiating agreements to divest assets pursuant to the Consent Agreement, or complying with this Order to Hold Separate or the Consent Agreement, Respondents shall not receive or have access to, or use or continue to use, any Material Confidential Information, not in the public domain, about VNG.

Respondents may receive, on a regular basis, aggregate financial information relating to VNG necessary to allow Respondents to prepare United States consolidated financial reports and tax returns. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

21. Within thirty (30) days after the date Respondents sign the Consent Agreement and every thirty (30) days thereafter until the Order to Hold Separate terminates, the Independent Auditor or the Management Team shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Order to Hold Separate. Included within that report shall be the Independent Auditor's or the Management Team's assessment of the extent to which VNG is meeting (or exceeding) its projected goals as are reflected in operating plans, budgets, projections or any other regularly prepared financial statements.

III.

It is further ordered, That Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate 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 in the corporations that may affect compliance obligations arising out of this Order to Hold Separate.

IV.

It is further ordered, That for the purposes of determining or securing compliance with this Order to Hold Separate, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their principal office, Respondents shall permit any duly authorized representatives of the Commission:

A. Access, during office hours of Respondents and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of the Respondents relating to compliance with this Order to Hold Separate; and

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B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

V.

It is further ordered, That this Order to Hold Separate shall terminate on the earlier of:

A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 CFR 2.34; or

B. The day after the divestiture of VNG, as required by the Decision & Order contained in the Consent Agreement, is completed.

ATTACHMENT A

**NOTICE OF DIVESTITURE AND REQUIREMENT
FOR CONFIDENTIALITY**

Dominion Resources, Inc. ("Dominion") and Consolidated Natural Gas Company ("CNG") have entered into an Agreement Containing Consent Orders ("Consent Agreement") with the Federal Trade Commission relating to the divestiture of certain assets.

As used herein, the term "VNG" means CNG's subsidiary that provides local gas distribution service within the Commonwealth of Virginia, as defined in Paragraph I.E. of the Decision & Order. Under the terms of the Consent Agreement, Dominion must divest VNG within the time period set forth in Paragraphs 1 and 3 of the VSCC Stipulation, as defined in Paragraph I.G. of the Decision & Order.

The term "Acquisition" means the acquisition of CNG by Dominion.

VNG must be managed and maintained as a separate, ongoing business, independent of all other Dominion and CNG businesses, until it is divested. All competitive information relating to VNG must be retained and maintained by the persons involved in the operation of VNG on a confidential basis, and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other Dominion or CNG business. Similarly, persons involved in similar activities in Dominion or CNG shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any similar information to or with any other person whose employment involves VNG. The obligations and prohibitions of this paragraph are subject to and modified by the provisions of the Order to Hold Separate, and do not affect VNG's ability to provide information to CNG to the extent necessary to obtain services under the Service Company Agreement, attached as Appendix II of the Order to Hold Separate.

Any violation of the Consent Agreement may subject Dominion to civil penalties and other relief as provided by law.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition by respondent Dominion Resources, Inc. ("Dominion") of 100 percent of the voting securities of respondent Consolidated Natural Gas Company ("CNG"), and respondents having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said Consent 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, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, 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 a complaint should issue stating its charges in that respect, and having thereupon issued its complaint and an Order to Hold Separate, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 CFR 2.34, the Commission hereby makes the following jurisdictional findings and issues the following order:

1. Respondent Dominion is a corporation organized, existing and doing business under and by virtue of the laws of Virginia, with its office and principal place of business located at 120 Tredegar Street, Richmond, Virginia.

2. Respondent CNG is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its

office and principal place of business located at 625 Liberty Avenue, CNG Tower, Pittsburgh, Pennsylvania.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of 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. "*Dominion*" means Dominion Resources, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Dominion, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "*CNG*" means Consolidated Natural Gas Company its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by CNG, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "*Respondents*" means Dominion and CNG, individually and collectively.

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

E. "*Virginia Natural Gas*" or "*VNG*" means Virginia Natural Gas, Inc., the subsidiary of CNG that provides local gas distribution service within the Commonwealth of Virginia, including, but not limited to, the following assets used in any of VNG's businesses:

1. All assets, properties, business and goodwill, tangible and intangible, including the intrastate pipeline that connects VNG's service facility to the interstate pipeline facility of CNG;

2. Machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;

3. All customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, inventions, trade secrets, intellectual property, patents, technology, know-how, specifications, designs, drawings, processes and quality control data;

4. Inventory and storage capacity;

5. All rights, titles and interests in and to owned or leased real property, together with appurtenances, licenses and permits;

6. All rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;

7. All rights under warranties and guarantees, express or implied;

8. All books, records, and files; and

9. All items of prepaid expense.

F. "*Acquisition*" means the proposed acquisition of 100 percent of the voting securities of Consolidated Natural Gas Company by Dominion pursuant to the Agreement and Plan of Merger dated March 31, 1999, as amended May 11, 1999.

G. "*VSCC Stipulation*" means the Stipulation entered into by and between the staff of the State Corporation Commission of the Commonwealth of Virginia, Dominion, and CNG in State Corporation Case No. PUA990020, attached hereto as Appendix I.

H. "*Material Confidential Information*" means competitively sensitive or proprietary information not independently known to an entity from sources other than the entity to which the information pertains, and includes, but is not limited to, all customer lists, marketing methods, technologies, processes, or other trade secrets.

I. "*Hold Separate Period*" means the time period during which the Order to Hold Separate is in effect.

II.

It is further ordered, That:

A. Respondents shall divest VNG at no minimum price, absolutely and in good faith, within the time period set forth in paragraphs 1 and 3 of the VSCC Stipulation; provided, however, that if respondents divest VNG pursuant to paragraph 3 of the VSCC Stipulation, no holder of Dominion stock shall be permitted to acquire five percent (5%) or more of the voting stock of VNG.

B. If respondents divest VNG pursuant to paragraph 1 of the VSCC Stipulation, respondents shall divest VNG only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of VNG is to ensure the continued use of

VNG in the same business in which VNG is engaged at the time of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

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

D. No later than the time of the execution of a purchase agreement between respondents and a proposed acquirer of VNG, respondents shall provide the proposed acquirer with a complete list of all non-clerical, salaried employees of VNG at any time from January 1, 1999 until the date of the purchase agreement.

E. Respondents shall provide the proposed acquirer with an opportunity to inspect the personnel files and other documentation relating to individuals identified in paragraph II.D. of this order to the extent permissible under applicable laws, at the request of the proposed acquirer any time after the execution of the purchase agreement.

F. Respondents shall provide to all VNG employees during the Hold Separate Period a continuation of all employee benefits currently offered to such employees.

III.

It is further ordered, That within thirty (30) days after the date this order becomes final and every thirty (30) days thereafter until respondents have fully complied with the provisions of paragraph II. 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 paragraph II. of this order and with the Order to Hold Separate. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with paragraph II. 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. The final

compliance report required by this paragraph III. shall include a statement that the divestiture has been accomplished in the manner approved by the Commission and shall include the date the divestiture was accomplished.

IV.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate 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 in the corporations that may affect compliance obligations arising out of this order.

V.

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

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

B. Upon five (5) days' notice to respondents and without restraint or interference from respondent, to interview officers, directors, or employees of respondents, who may have counsel present, regarding such matters.

VI.

It is further ordered, That this order shall terminate after the divestiture required in paragraph II.A. of this order has been accomplished.

Commissioner Leary not participating.

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COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

Joint Petition of

Dominion Resources, Inc.
and
Consolidated Natural Gas Company

CASE NO. PUA990020

For approval of agreement and
plan of merger under Chapter 5
of Title 56 of the Code of VirginiaMOTION FOR CONSIDERATION OR STIPULATION

The Staff of the State Corporation Commission ("Staff"), together with Dominion Resources, Inc., ("DRI") Consolidated Natural Gas Company ("CNG") (collectively, "Petitioners"), Virginia Electric and Power Company ("Virginia Power") and Virginia Natural Gas Company ("VNG") have entered into a Stipulation to resolve the issues pending in this proceeding. The Stipulation is attached hereto as Exhibit A.

The Staff and the parties to the Stipulation agree that the provisions contained therein, if approved by the Commission, represent an efficient and expeditious resolution of the issues presented by the joint petition, protect the public interest, and comply with the standard established for approval of utility merger petitions, as set forth in § 56-90 of the Code of Virginia.

This joint petition was filed under the provisions of Chapter 5 of Title 56 of the Code of Virginia, and must be acted upon by the Commission, or be deemed approved, on or before

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November 17, 1999. The Staff therefore moves the Commission to establish immediately a period in which to receive comments, or requests for hearing, or both, upon the Stipulation and thereafter to give it immediate consideration to the approval of the Stipulation. In view of the time limitation for consideration of the joint petition, Staff does not request suspension of the existing procedural schedule.

WHEREFORE, the Staff of the State Corporation Commission moves the Commission to provide interested parties the opportunity to comment, or request hearing, or both, upon the attached Stipulation and to give it immediate consideration to approval of the Stipulation.

Respectfully submitted,

The Staff of the
State Corporation CommissionBy: William H. Chambliss
CounselWilliam H. Chambliss
Deputy General CounselMarta B. Curtis
AttorneyC. Meade Browder, Jr.
AttorneyState Corporation Commission
Office of General Counsel
P.O. Box 1197
Richmond, Virginia 23218
(804) 371-9671

August 9, 1999

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing "Motion for Consideration of Stipulation" was mailed first-class mail, postage prepaid, this 9th day of August, 1999, to each of the following: Edward L. Flippen, Esquire, Stephen W. Watts, II, Esquire, and Kedwo Chartey-Tagos, Esquire, McGuire, Woods, Battle & Boothe, L.L.P., 1 James Center, 901 East Cary Street, Richmond, Virginia 23219-4030; William P. Boswell, Esquire, Consolidated Natural Gas Company, 625 Liberty Avenue, Floor 21, Pittsburgh, Pennsylvania 15222-3187; Donald A. Pickenscher, Vice President, General Counsel and Corporate Secretary, Virginia Natural Gas, Inc., 5200 East Virginia Beach Boulevard, Norfolk, Virginia 23502-3488; James F. Stutts, Esquire, Dominion Resources, Inc., P.O. Box 26532, Richmond, Virginia 23261; James C. Roberts, Esquire, Mays & Valentine, P.O. Box 1122, Richmond, Virginia 23218-1122; John F. Dudley, Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; Edward L. Petriol, Esquire, Christian & Barton, 909 East Main Street, Suite 1200, Richmond, Virginia 23219-3095; Edgar M. Roach, Jr., Chief Executive Officer, Virginia Electric and Power Company, P.O. Box 26666, Richmond, Virginia 23261; and Stephen E. Williams, Senior Vice President and General Counsel, Consolidated Natural Gas Company and Virginia Natural Gas

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Company, Inc., 625 Liberty Avenue, Floor 21, Pittsburgh,
Pennsylvania 15222-3197.



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EXHIBIT A
COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

Joint Petition of	)	
Dominion Resources, Inc.	)	CASE NO. PUA990020
and	)	
Consolidated Natural Gas Company	)	
For approval of agreement and plan	)	
of merger under Chapter 5 of Title 56	)	
of the Code of Virginia	)	

STIPULATION

This Stipulation, made and entered into as of the ~~9th~~ day of August, 1999, sets forth an agreement among Dominion Resources, Inc. ("DRI") and Consolidated Natural Gas Company ("CNG") (collectively, the "Petitioners"), Virginia Natural Gas Company ("VNG"),¹ Virginia Electric and Power Company ("Virginia Power")² and the Staff of the State Corporation Commission ("Staff") as to a proposed resolution of the application in the above-captioned case. The application is a joint petition requesting approval under Chapter 5, Title 56, of the Code of Virginia (§ 56-88 et seq.) of a proposed Merger that would result in CNG becoming a wholly owned subsidiary of DRI ("Proposed Merger"). The Staff, VNG, Virginia Power and Petitioners believe that this Stipulation will efficiently and expeditiously resolve the issues raised by the joint petition, will assure that the statutory standard of § 56-90 of the Code of Virginia is met and will otherwise protect the public interest.

The signatories to this Stipulation will, as soon as possible after execution of the Stipulation, file it with the Virginia State Corporation Commission ("Commission"), together with a motion by the Staff requesting that the Commission enter an order prescribing appropriate

¹ VNG is a subsidiary and affiliate of petitioner CNG that provides regulated local gas distribution service within the Commonwealth.

² Virginia Power is a subsidiary and affiliate of petitioner DRI that provides regulated electric utility services within the Commonwealth.

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procedures for other parties to comment upon the issues presented in the Stipulation and, thereafter, for the Commission to enter an order approving the Stipulation and ordering such other actions and imposing such conditions as necessary to conclude this proceeding.

The Stipulated agreements are as follows:

1. Within twelve months following completion of the Proposed Merger, DRI, CNG, or both, will sell and dispose of VNG and all of its assets, including the interstate pipeline that connects VNG's service territory to the interstate pipeline facilities of CNG, to a purchaser which is not affiliated with the Petitioners, Virginia Power, or VNG. DRI, CNG, or both may seek a reasonable extension of such time limit from the Commission upon a showing of good cause. The Petitioners, VNG and Virginia Power acknowledge and agree that the approval of the Commission under Chapter 5 of Title 56 of the Code of Virginia is necessary for the sale of VNG contemplated herein, and further acknowledge and agree that the acceptance or approval by the Commission of this Stipulation shall not constitute and grant of approval.
2. The Petitioners, VNG and Virginia Power shall furnish such information to the Staff as Staff deems necessary from time to time to monitor the said parties' compliance with the provisions of this Stipulation. The said parties will promptly advise the Staff should the details of the Proposed Merger change in any material fashion at any time.
3. If DRI, CNG, or both, have not sold VNG within the time period specified in Paragraph No. 1, including any extensions thereof, DRI will, within three months of the expiration of the time period specified in Paragraph No. 1, including any extensions thereof, appoint a Board of Directors for VNG, none of whom shall be

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officers or directors of DRI, CNG, Virginia Power or any of their affiliates, and none of whom shall have substantial business dealings with DRI, CNG, Virginia Power or any of their affiliates and, contemporaneously, will effect a distribution of all shares of VNG common stock by delivering all such shares of VNG common stock to a duly authorized distribution agent, for distribution to the holders of DRI common stock. The distribution will be made on a basis determined by the board of directors of DRI, but no holder of DRI common stock will be required (1) to pay any cash or other consideration for the shares of VNG common stock received in such distribution or (2) to surrender or exchange shares of DRI common stock received in order to receive VNG common stock. DRI shall, to the extent practicable, take such steps as are necessary to ensure that such distribution of VNG common stock will qualify as a tax-free distribution under the Internal Revenue Code. DRI, CNG, or both may seek a reasonable extension of said three month time limit from the Commission upon a showing of good cause.

4. VNG and Virginia Power waive their right to seek recovery of any costs directly or indirectly related to the Proposed Merger, the sale of VNG required in Paragraph No. 1, or the disposition of VNG required in Paragraph No. 3, from their Virginia jurisdictional customers.
5. VNG further acknowledges that approval of this Stipulation neither obligates nor otherwise binds the Commission to allow recovery of an acquisition adjustment in VNG's cost of service. Further, the Petitioners and VNG shall inform any potential purchaser of VNG of the provisions of Paragraph Nos. 4 and 5 of this Stipulation.

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6. Petitioners and VNG agree that, during the period prior to the sale or other disposition of VNG, pursuant to Paragraph Nos. 1 or 3, VNG will not seek an increase in its currently approved base rates, and that VNG's purchased gas adjustment clause shall continue in effect during this period, provided, however, that nothing in this Stipulation is intended to limit the Staff in the performance of its duties and responsibilities or to impair the Commission's ability to exercise its lawful jurisdiction or to carry out its lawful responsibilities with respect to its regulation of VNG.
7. Petitioners, Virginia Power and VNG agree that any changes in existing affiliate agreements, and any proposed affiliate agreements, between and among the Petitioners, VNG and Virginia Power will require Commission approval under Chapter 4, Title 56, of the Code of Virginia (§ 56-76 et seq.) and that nothing contained herein is intended to avoid the need for such approval or to seek such approval in this docket. For a period of twelve months following the sale of VNG required in Paragraph No. 1, or the disposition of VNG required in Paragraph No. 3, DRJ, Virginia Power and CNG shall inform the Staff in writing of any services being provided by any of those companies to VNG, or its successor in interest.
8. The Staff, Petitioners, VNG and Virginia Power acknowledge that, prior to completion of the Proposed Merger, the Petitioners may file one or more applications with the Securities and Exchange Commission ("SEC") under the Public Utility Holding Company Act of 1935 ("1935 Act") to, among other things, register Petitioners, or either of them, as holding companies under the 1935 Act. Copies of all such filings will be provided to the Staff. The Petitioners, VNG and Virginia Power stipulate that the SEC has no jurisdiction

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over the rates and services of VNG and Virginia Power under the 1935 Act, and that VNG and Virginia Power will continue to be subject to the authority of the Commission regarding such rates and services. It is intended that, after the Proposed Merger, the Commission will have the same ratemaking and regulatory authority to regulate the rates and services of VNG and Virginia Power as it did before the Proposed Merger.

9. The Petitioners, Virginia Power and VNG and their affiliates shall bear the full risk of any preemptive effects of the 1935 Act. The Petitioners, Virginia Power and VNG and their affiliates shall take all such actions as the Commission finds are necessary and appropriate to hold Virginia ratepayers harmless from rate increases, or foregone opportunities for rate decreases. Such actions may include, but are not limited to, filing with and obtaining approval from the SEC for such commitments as the Commission deems reasonably necessary to prevent such preemptive effects.
10. The Petitioners, VNG, Virginia Power and Staff represent and acknowledge that this Stipulation, if approved by the Commission, would result in full and fair resolution of the issues raised in Case No. PUA990020. This Stipulation reflects a balancing of many important interests put forward in these proceedings by, or affecting, the Petitioners, VNG, Virginia Power and Staff. If the Commission does not intend to approve all aspects of this Stipulation, then the Petitioners, VNG, Virginia Power and Staff respectfully request that the Commission (a) notify them of such intention and the basis thereof and (b) allow them three days to attempt to reach a modified stipulation that addresses the Commission's concerns. If no such time period is permitted by the Commission, or if no such

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modified stipulation is reached within three days, then the Petitioners, VNG, Virginia Power and Staff, or any of them, may withdraw their support of this Stipulation and request to be heard on any issues raised in this proceeding.

11. The Petitioners, VNG and Virginia Power agree that their failure to observe or carry out any of the provisions of this Stipulation shall be deemed a non-compliance with this Stipulation, and each of such parties will promptly notify the Staff should any of them not be in compliance with, or be unable to carry out and observe, any provisions of this Stipulation.
12. After reasonable notice and opportunity to be heard afforded to the party or parties affected, and after such inquiry as it finds appropriate, the Commission may make a determination whether such parties are in compliance with the provisions of this Stipulation or whether such non-compliance is imminent or likely. Pending such determination, the Commission may issue such temporary injunctions or orders as it finds necessary in order to prohibit any entity from taking an action or failing to take an action that would constitute non-compliance with this Stipulation, or in order to preserve the status quo ante pending a final determination. If, after such inquiry, the Commission determines that any such party is not presently in compliance with this Stipulation, or that such non-compliance is imminent or likely, either of which situation is hereafter referred to as a "violation," it may issue orders, including the imposition of injunctive relief, to remedy the violations. The Commission may also impose upon any entity found in violation of any provisions of this Stipulation such fines and other penalties as it may deem proper and as may be authorized under any applicable provision of law. The Commission may also impose fines upon any entity which

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fails or refuses to obey an order or injunction issued by the Commission under this Paragraph, and each day's continuance of such violation shall be deemed a separate offense, to the extent permitted by law. The Petitioners, VNG and Virginia Power agree that the Commission has full authority under the law to take the actions contemplated in this Stipulation, and, in particular, to enforce this Stipulation against them in the manner described herein. The Petitioners, VNG and Virginia Power agree not to challenge or defend against, in any forum, any Commission authority set forth or referred to in this Stipulation. Should any other entity make such challenge or defense, the Petitioners, Virginia Power and VNG will oppose such efforts. The Petitioners, VNG and Virginia Power agree to support affirmatively in all respects the provisions of this Stipulation.

IN WITNESS WHEREOF, the following corporations have caused this Stipulation to be executed, acknowledged and delivered on their behalfs by their respective officers identified below, who have been duly authorized to take such actions in accordance with valid resolutions of their respective boards of directors, which resolutions are in full force and effect:

Dominion Resources, Inc.	Thomas F. Farrell, II
Consolidated Natural Gas Company	Stephen E. Williams
Virginia Electric and Power Company	Edgar M. Roach, Jr.
Virginia Natural Gas Company	Stephen E. Williams

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Respectfully submitted,

STAFF OF THE VIRGINIA
STATE CORPORATION COMMISSIONBy: Thomas E. Smith

DOUGLASS RESOURCES, INC.

By: Thomas Smith

CONSOLIDATED NATURAL GAS COMPANY

By: _____

VIRGINIA NATURAL GAS COMPANY

By: _____

VIRGINIA ELECTRIC AND POWER COMPANY

By: _____

[Appendix II Redacted]
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IN THE MATTER OF

PHYSICIANS FORMULA COSMETICS, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3909. Complaint, Dec. 10, 1999--Decision, Dec. 10, 1999*

This consent order, among other things, prohibits Physicians Formula Cosmetics, Inc., the California-based seller and distributor of cosmetics and skin-care products, from misrepresenting the extent to which any of its products are made in the United States.

Participants

For the Commission: *Kent Howerton, Laura Koss, Elaine Kolish, and Keith Anderson.*

For the respondent: *Tammy Berry, Pierre Fabre, Azusa, CA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Physicians Formula Cosmetics, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Physicians Formula Cosmetics, Inc. is a Delaware corporation with its principal office or place of business at 1055 W. Eighth Street, Azusa, California.

2. Respondent has labeled, offered for sale, sold, and distributed products to the public, including cosmetics, cosmetics brushes, and skin-care products.

3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4. Respondent has disseminated or has caused to be disseminated packaging and labeling for its cosmetics, cosmetics brushes, and skin-care products, including but not necessarily limited to the attached Exhibits A through G. The packaging and labeling contain the following statements: