

Complaint

IN THE MATTER OF

EL PASO ENERGY CORPORATION, ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT*Docket C-3997; File No. 0010121**Complaint, January 30, 2001--Decision, January 30, 2001*

This consent order addresses the acquisition by Respondent El Paso Energy Corporation -- a firm engaged in the transportation, gathering, processing, and storage of natural gas; the marketing of natural gas, power, and other energy-related commodities; power generation; the development and operation of energy infrastructure facilities worldwide; and the domestic exploration and production of natural gas and oil -- of PG&E Gas Transmission Teco, Inc., and PG&E Gas Transmission Texas Corporation from Respondent PG&E Corporation, a California holding company that provides energy services throughout North America. The order, among other things, requires the respondents to divest all of El Paso's interest in the Oasis Pipe Line Company to Aquila Gas Pipeline Corporation, Dow Hydrocarbons and Resources, Inc., and the Oasis Pipe Line Company, and all of PG&E's pipeline assets in Matagorda to Panther Pipeline. The order also requires the respondents to divest (1) a fifty percent interest in the Trans Texas pipeline segment from Waha to New Braunfels, Texas; (2) all of PG&E's interest in the Trans Texas pipeline segment running from New Braunfels to Dewville, Texas; and (3) all of PG&E's interest in the Trans Texas pipeline segment running from Dewville to Katy, Texas, to acquirers approved by the Commission. In addition, the order, for ten years, prohibits Respondent El Paso from acquiring, directly or indirectly, any of the assets to be divested, or altering the governance provisions of the Teco pipeline, without obtaining prior Commission approval.

Participants

For the Commission: *Nathan J. Muyskens, W. Stephen Sockwell, Jr., Patricia V. Galvan, Alison M. Chin, Kenton A. James, Evelyn J. Boynton, William R. Vigdor, Phillip L. Broyles, Joseph Eckhaus, Daniel P. Ducore, John D. Simpson, Jeffrey H. Fischer and Daniel P. O'Brien.*

For the Respondent: *Bernard Nigro, Eric Queen and James Rhilinger, Fried, Frank, Shriver and Jacobson, and Michael Fremuth and Kenneth Minesinger, Andrews and Kurth.*

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COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("FTC" or "Commission"), having reason to believe that Respondent El Paso Energy Corporation ("El Paso"), a corporation, and PG&E Corporation ("PG&E"), a corporation, have entered into a stock purchase agreement whereby El Paso proposes to acquire all voting securities of PG&E Gas Transmission Teco, Inc. and PG&E Gas Transmission Texas Corp., that such agreement violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and that such agreement, 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, 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. RESPONDENTS

El Paso

1. Respondent El Paso 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 at 1001 Louisiana Street, El Paso Energy Building, Houston, Texas 77002.
2. Respondent El Paso is, and at all times relevant herein has been, engaged in, among other things, the exploration, production, transportation and sales of natural gas in the State of Texas and elsewhere.
3. Respondent El Paso had total revenues of \$10.6 billion in 1999.

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PG&E

4. Respondent PG&E is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its office and principal place of business at One Market Square, Spear Tower, Suite 2400, San Francisco, California 94105.
5. Respondent PG&E is, and at all times relevant herein has been, engaged in, among other things, the exploration, production, transportation and sales of natural gas in the State of Texas and elsewhere.
6. Respondent PG&E had total revenues of \$20.8 billion in 1999.
7. Respondents El Paso and PG&E 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 business is in or affects commerce, as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

II. THE ACQUISITION

8. Respondent El Paso entered into a stock purchase agreement whereby El Paso proposes to acquire all the voting securities of PG&E Gas Transmission Teco, Inc., and PG&E Gas Transmission Texas Corp., dated January 27, 2000, for \$840 million, including the assumption of \$561 million of debt (the "Acquisition").

III. TRADE AND COMMERCE

9. A relevant line of commerce in which to analyze the effects of the Acquisition is the pipeline transportation of natural gas. The only way to economically ship natural gas over significant distances is through large diameter high pressure pipelines. Buyers of natural gas must use these pipelines to transport gas

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from producing to consuming areas. No other economic way exists to transport commercial quantities of natural gas.

Permian Basin

10. A section of the country in which to analyze the effects of the Acquisition is the prolific natural gas production area located in southwestern Texas and southeastern New Mexico known as the Permian Basin.

11. Consumption of natural gas in the Permian Basin is well below natural gas production levels. Most production is transported to consuming areas in eastern Texas and California on natural gas pipelines.

12. Permian Basin natural gas producers either contract directly with natural gas consumers or sell the gas to marketers who resell the natural gas. Neither the producers nor marketers of Permian Basin gas have an economic alternative to using the natural gas pipelines located in the Permian Basin to deliver gas to users. The producing area of the Permian Basin is therefore a relevant section of the country.

13. El Paso, through its subsidiaries, owns two pipeline systems that transport natural gas out of the Permian Basin. One pipeline transports natural gas to California and other western states. The other, the Oasis pipeline, is a pipeline transporting natural gas from the Permian Basin through the central part of Texas to the Houston area. El Paso controls significant aspects of the Oasis pipeline business.

14. PG&E, through its subsidiaries, owns an interest in two pipeline systems that transport natural gas from the Permian Basin. One pipeline system transports natural gas across Texas to the Dallas area. Another pipeline system transports gas to the Houston area.

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15. Together Respondents own or control a significant share of all the pipeline capacity from the Permian Basin. Respondents own or control most of the pipeline capacity to the areas in and around San Antonio and Austin, Texas.

16. El Paso and PG&E are actual and direct competitors in the Permian Basin. Competition between the El Paso and PG&E pipeline systems has resulted in significant competition in the transportation of natural gas from the Permian Basin area.

17. There are substantial barriers to entering this market. Building additional pipelines out of the Permian Basin would be expensive, would take more than two years, and would not prevent Respondents from being able to maintain a price increase over pre-Acquisition levels.

Central Texas

18. A section of the country in which to analyze the effects of the Acquisition is the natural gas consuming area in or around the metropolitan areas of San Antonio and Austin, Texas ("Central Texas").

19. The major buyers of natural gas in Central Texas include local gas and electric public utilities and merchant power producers. These entities consume large quantities of natural gas to resell or use as fuel to generate electricity.

20. Natural gas consumption in Central Texas is well above natural gas production levels. Almost all natural gas consumed in Central Texas must be delivered by natural gas pipelines.

21. Natural gas consumers can only receive natural gas from those pipelines that travel through Central Texas. Natural gas buyers in Central Texas have no effective alternative to natural gas pipeline transportation within that area. A relevant line of commerce in which to analyze the effects of the Acquisition is

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therefore the pipeline transportation of natural gas into Central Texas.

22. El Paso's Oasis pipeline transports natural gas into Central Texas. The Oasis Pipeline is one of the major suppliers of natural gas to Central Texas.

23. PG&E owns a pipeline system that transports natural gas into Central Texas. PG&E's system is also a major supplier of natural gas to Central Texas.

24. Together Respondents own or control a significant share of all the pipeline capacity into Central Texas. For some natural gas buyers, Respondent's pipeline systems are the only two alternatives.

25. El Paso and PG&E are actual and direct competitors in Central Texas. Competition between the El Paso and PG&E pipeline systems has resulted in significant competition to transport natural gas to Central Texas.

26. There are substantial barriers to entering this market. Building additional pipelines to natural gas production areas or pipelines outside the geographic market would be expensive, would take more than two years, and would not prevent Respondents from being able to maintain a price increase over pre-Acquisition levels.

Matagorda Offshore Production Area

27. A section of the country in which to analyze the effects of the Acquisition is the natural gas production area located in Texas waters in the Gulf of Mexico known as Matagorda Offshore Production Area ("Matagorda"). This section includes, but is not limited to, Blocks 487, 518, and 519 as designated by the United States Mineral Management Service.

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28. Consumption of natural gas in Matagorda is well below natural gas production levels. Most production is transported to consuming areas on shore.
29. Matagorda natural gas producers either contract directly with natural gas consumers or sell the natural gas to marketers who resell it. Neither producers nor marketers of Matagorda gas have an economic alternative to using natural gas pipelines located in Matagorda to deliver gas to users. The producing area of Matagorda is therefore a relevant section of the country.
30. Respondents own the only two pipelines transporting natural gas from Matagorda.
31. El Paso and PG&E are actual and direct competitors in Matagorda. Competition between the El Paso and PG&E pipeline systems has resulted in significant competition to transport natural gas from Matagorda.
32. There are substantial barriers to entering this market. Building additional pipelines out of Matagorda would be cost prohibitive, and would not prevent Respondents from being able to maintain a price increase over pre-Acquisition levels.

COUNT I:**LOSS OF COMPETITION IN THE PERMIAN BASIN**

33. Paragraphs 1 - 32 are incorporated by reference as if fully set forth herein.
34. The relevant product market in which it is appropriate to assess the effect of the Acquisition is natural gas transportation.
35. The relevant geographic market in which it is appropriate to assess the effect of the Acquisition is the Permian Basin.

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36. The relevant market is highly concentrated and the Acquisition, if consummated, will substantially increase that concentration.

37. Entry into the relevant market would not be timely, likely, or sufficient to prevent anticompetitive effects.

38. The Acquisition will eliminate actual and direct competition between Respondents, with the likely results of raising rates and reducing output of transportation in the relevant market, and diminishing production of natural gas the Permian Basin.

**COUNT II:
LOSS OF COMPETITION IN CENTRAL TEXAS**

39. Paragraphs 1 - 32 are incorporated by reference as if fully set forth herein.

40. The relevant product market in which it is appropriate to assess the effect of the Acquisition is natural gas transportation.

41. The relevant geographic market in which it is appropriate to assess the effect of the Acquisition is Central Texas.

42. The relevant market is highly concentrated and the Acquisition, if consummated, will substantially increase that concentration.

43. Entry into the relevant market would not be timely, likely, or sufficient to prevent anticompetitive effects.

44. The Acquisition will eliminate actual and direct competition between Respondents, with the likely results of raising rates and reducing output of natural gas transportation, and thereby increasing the cost of electricity.

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**COUNT III:
LOSS OF COMPETITION IN MATAGORDA**

45. Paragraphs 1 - 32 are incorporated by reference as if fully set forth herein.
46. The relevant product market in which it is appropriate to assess the effect of the Acquisition is natural gas transportation.
47. The relevant geographic market in which it is appropriate to assess the effect of the Acquisition is Matagorda.
48. The relevant market is highly concentrated and the Acquisition, if consummated, will substantially increase that concentration.
49. Entry into the relevant market would not be timely, likely, or sufficient to prevent anticompetitive effects.
50. The Acquisition will eliminate actual and direct competition between Respondents with the likely results of raising rates and reducing output of transportation in the relevant market, and diminishing production of natural gas in Matagorda.

IV. VIOLATIONS CHARGED

51. The stock purchase agreement entered into by Respondents El Paso and PG&E constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.
52. The Acquisition, if consummated, would violate 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 WITNESS WHEREOF, the Federal Trade Commission,
having caused this Complaint to be signed by the Secretary and its

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official seal affixed, at Washington, D.C., this thirtieth day of January, 2001, issues its Complaint against Respondents.

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DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent El Paso Energy Corporation (“El Paso”) of all of the outstanding voting shares of PG&E Gas Transmission Teco, Inc., and PG&E Gas Transmission Texas Corp., owned by Respondent PG&E Corporation (“PG&E”), and Respondents having been furnished thereafter with a copy of a draft of 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 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 Order (“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 such Acts, and that a Complaint should issue stating its charges in that respect, 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 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues the following Order:

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1. Respondent El Paso 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 1001 Louisiana Street, El Paso Energy Building, Houston, Texas 77002.
2. Respondent PG&E is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business at One Market Square, Spear Tower, Suite 2400, San Francisco, California 94105.
3. The 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. "El Paso" means El Paso Energy Corporation, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, business units, groups and affiliates controlled by El Paso, including PG&E Gas Transmission Teco, Inc., and PG&E Gas Transmission Texas Corp. after the Acquisition, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.
- B. "PG&E" means PG&E Corporation, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, business units, groups and affiliates controlled by PG&E, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.
- C. "Commission" means the Federal Trade Commission.

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- D. “Aquila” means Aquila Gas Pipeline Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at Loop 410, Suite 1000, San Antonio, Texas 78216.
- E. “Acquirer” or “Acquirers” means the El Paso Oasis Buyer, the PG&E Teco Buyer, or the PG&E Matagorda Buyer or any other entity or entities that are approved by the Commission to acquire the Assets To Be Divested pursuant to Paragraphs II.B, II.D., and II.F. of this Order.
- F. “Acquisition” means the transaction described in the Stock Purchase Agreement between El Paso and PG&E, dated January 27, 2000, pursuant to which Respondent El Paso agreed to acquire all of the outstanding voting shares of PG&E Gas Transmission Teco, Inc., and PG&E Gas Transmission Texas Corp., owned by Respondent PG&E.
- G. “Assets To Be Divested” means El Paso Oasis, PG&E Teco, and PG&E Matagorda.
- H. “Divestiture Agreements” means each and all of the following:
 - 1. PG&E Teco Stock Purchase Agreement between El Paso and Duke, dated October 24, 2000, including, but not limited to, all the schedules, exhibits, and attachments to that agreement and the New Operating Agreement attached as Exhibit A thereto;
 - 2. PG&E Matagorda Pipeline System Asset Purchase Agreement between El Paso and Panther Pipeline, dated October 24, 2000, including, but not limited to, all the schedules, exhibits, and attachments to that agreement.
 - 3. El Paso Oasis Purchase Agreement between and among El Paso and Oasis Pipe Line Company, Aquila and Dow dated October 3, 2000, as amended by the First Amendment to Oasis Purchase Agreement, dated October

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23, 2000, including, but not limited to, all the schedules, exhibits, and attachments to that agreement.

- I. “Dow” means Dow Hydrocarbons and Resources, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at P.O. Box 3387, Houston, Texas 77253-3387.
- J. “Duke” means Duke Energy Field Services, LLC, a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 370 17th Street, Suite 900, Denver, Colorado 80202.
- K. “El Paso Oasis” means all of El Paso’s direct or indirect interest in the Oasis Pipe Line Company.
- L. “El Paso Oasis Buyer” means an entity or entities proposing to acquire El Paso Oasis that receive(s) the prior approval of the Commission to acquire El Paso Oasis.
- M. “Firm Transportation” means the provision of natural gas pipeline transportation that is not subject to a prior claim by another pipeline customer or another class of transportation service and cannot be interrupted except in a situation of force majeure.
- N. “New Divestiture Agreements” means any agreement for the sale of any Assets To Be Divested, other than the Divestiture Agreements, and includes, but is not limited to any divestiture agreement between El Paso and PG&E Teco Buyer, El Paso and PG&E Matagorda Buyer, and El Paso and El Paso Oasis Buyer, which has received the prior approval of the Commission, and any agreement entered into by a trustee pursuant to Paragraph IV. of this Order.
- O. “Oasis Pipe Line Company” means Oasis Pipe Line Company a corporation organized and doing business under and by virtue of the laws of the State of Delaware,

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with its principal place of business located at 12012 Wickchester Lane, Suite 540, Houston, Texas 77079 and its joint ventures, subsidiaries, divisions, business units, groups and affiliates, successors and assigns, including, but not limited, to Oasis Pipe Line Company Texas L.P., Oasis Pipe Line Management Company, and Oasis pipeline (the thirty-six (36) inch pipeline that transports natural gas from Waha, Texas, to Katy, Texas). Oasis Pipe Line Company is currently co-owned by Dow, Aquila and El Paso Field Services Company (formerly known as Channel Gas Marketing Company).

- P. “Ownership Interest” means the interest of either El Paso, Duke or PG&E Teco Buyer as defined in New Operating Agreement.
- Q. “Panther Pipeline” means Panther Pipeline, Ltd., a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its principal place of business located at 100 Glenborough Drive, Suite 960, Houston, Texas 77067.
- R. “PG&E Matagorda” means the assets listed on the schedules to the PG&E Matagorda Pipeline System Asset Purchase Agreement between El Paso and Panther Pipeline, dated October 24, 2000.
- S. “PG&E Matagorda Buyer” means an entity or entities proposing to acquire PG&E Matagorda that receive(s) the prior approval of the Commission to acquire PG&E Matagorda.
- T. “PG&E Teco” means the assets listed on the schedules to the PG&E Teco Stock Purchase Agreement between El Paso and Duke, dated October 24, 2000.
- U. “PG&E Teco Buyer” means an entity or entities proposing to acquire PG&E Teco that receive(s) the prior approval of the Commission to acquire PG&E Teco.

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- V. “Public Record Date” means the date that the Commission places the Consent Agreement on the public record pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34
- W. “New Operating Agreement” means any agreement between El Paso and Duke or the PG&E Teco Buyer that determines the governance, operation, and expansion of and the receipt, delivery and transport of natural gas on the pipeline segment of PG&E Teco running from Waha to New Braunfels.

II.

IT IS FURTHER ORDERED that:

- A. Not later than ten (10) days after the Public Record Date or the closing of the Acquisition, whichever is later, Respondents shall divest to Duke absolutely and in good faith, PG&E Teco pursuant to and in accordance with PG&E Teco Stock Purchase Agreement between El Paso and Duke, dated October 24, 2000, which Agreement shall not be read to vary or contradict the terms of this Order, and which Agreement is incorporated by reference into this Order and made a part hereof as non-public Appendix 1.
- B. If Respondents have divested PG&E Teco to Duke and have entered into the New Operating Agreement prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Duke is not an acceptable purchaser of PG&E Teco, that the manner in which the divestiture was accomplished is not acceptable, or that the New Operating Agreement is not acceptable, then Respondents shall immediately rescind the PG&E Teco Stock Purchase Agreement between El Paso and Duke, dated October 24, 2000, and shall divest to PG&E Teco Buyer absolutely and in good faith, at no minimum price, PG&E Teco in a manner that receives prior approval of the Commission within one hundred twenty (120) days of the

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date that the Order becomes final. Provided, however, that Respondents shall not be required to divest any fixture, equipment, natural gas inventory, or any asset that PG&E Teco Buyer does not want to acquire, if the Commission approves the manner of the divestiture without those assets.

- C. Not later than ten (10) days after the Public Record Date or the closing of the Acquisition, whichever is later, Respondents shall divest to Oasis Pipe Line Company, Aquila and Dow absolutely and in good faith, El Paso Oasis pursuant to and in accordance with the El Paso Oasis Purchase Agreement between and among El Paso and Oasis Pipe Line Company, Aquila and Dow dated October 3, 2000, as amended by First Amendment to Oasis Purchase Agreement dated October 23, 2000, which Agreement shall not be read to vary or contradict the terms of this Order, and which Agreement is incorporated by reference into this Order and made a part hereof as non-public Appendix 2.
- D. If Respondents have divested El Paso Oasis to Oasis Pipe Line Company, Aquila and Dow prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that any of Oasis Pipe Line Company, Aquila or Dow is not an acceptable purchaser of El Paso Oasis or that the manner in which the divestiture was accomplished is not acceptable then Respondents shall immediately rescind the El Paso Oasis Purchase Agreement between and among El Paso and Oasis Pipe Line Company, Aquila and Dow dated October 3, 2000, as amended by First Amendment to Oasis Purchase Agreement dated October 23, 2000, and shall divest to El Paso Oasis Buyer absolutely and in good faith, at no minimum price, El Paso Oasis in a manner that receives prior approval of the Commission within one hundred fifty (150) days of the date that the Order becomes final. Provided, however, that Respondents shall not be required to divest any fixture, equipment, natural gas inventory, or any asset that El Paso Oasis Buyer

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does not want to acquire, if the Commission approves the manner of the divestiture without those assets.

- E. Not later than ten (10) days after the Public Record Date or the closing of the Acquisition, whichever is later, Respondents shall divest to Panther Pipeline absolutely and in good faith, PG&E Matagorda pursuant to and in accordance with the PG&E Matagorda Pipeline System Asset Purchase Agreement between El Paso and Panther Pipeline, dated October 24, 2000, which Agreement shall not be read to vary or contradict the terms of this Order, and which Agreement is incorporated by reference into this Order and made a part hereof as non-public Appendix 3.
- F. If Respondents have divested PG&E Matagorda to Panther Pipeline prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Panther Pipeline is not an acceptable purchaser of PG&E Matagorda or that the manner in which the divestiture was accomplished is not acceptable then Respondents shall immediately rescind the PG&E Matagorda Pipeline System Asset Purchase Agreement between and among El Paso and Panther Pipeline dated October 24, 2000, and shall divest to PG&E Matagorda Buyer absolutely and in good faith, at no minimum price, PG&E Matagorda in a manner that receives prior approval of the Commission within one hundred twenty (120) days of the date that the Order becomes final. Provided, however, that Respondents shall not be required to divest any fixture, equipment, natural gas inventory, or any asset that PG&E Matagorda Buyer does not want to acquire, if the Commission approves the manner of the divestiture without those assets.
- G. Respondents shall comply with the terms of the Divestiture Agreements and the New Operating Agreement, which terms are incorporated by reference into this Order, and made a part hereof. Any failure by Respondents to

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comply with the Divestiture Agreements or the New Operating Agreement shall constitute a failure to comply with this Order. Notwithstanding any paragraph, section, or other provision of the Divestiture Agreements or the New Operating Agreement, any failure to meet any condition precedent to closing (whether waived or not) or any modification of the Divestiture Agreements (excluding the New Operating Agreement, modifications to which shall be restricted only by the prior approval requirements of Paragraph III.A. of the Order) without the prior approval of the Commission, shall constitute a failure to comply with this Order. Provided, however, that no decision by the arbitrator or any arbitration panel under any the Divestiture Agreement or the New Operating Agreement shall constitute an interpretation of or determine the obligations of Respondents under the Order.

- H. The purpose of Paragraphs II. and III. of this Order is to ensure that the Assets To Be Divested continue to be used in the same businesses in which the Assets To Be Divested are 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.

III.

- A. Respondent El Paso shall not, without the prior approval of the Commission, directly or indirectly, make or agree to any modification or amendment of the voting rights as defined in Section 3.2 of New Operating Agreement, or the Ownership Interests as defined in Section 5.1 of New Operating Agreement.
- B. Respondent El Paso shall not, without the prior approval of the Commission, directly or indirectly:
- (1) acquire any stock, share capital, equity, or other interest in the whole or any part of the Oasis Pipe Line Company or Assets To Be Divested; or

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- (2) acquire the whole or any part of the Oasis Pipe Line Company or Assets To Be Divested.

IV.

IT IS FURTHER ORDERED that:

- A. If Respondents fail to complete one or more of the divestitures required by Paragraph II. of this Order within the time periods specified therein, the Commission may appoint one or more Divestiture Trustees to divest those Assets To Be Divested that have not been divested to an Acquirer or Acquirers in a manner acceptable to the Commission. The Divestiture Trustee will have the authority and responsibility to divest the Assets To Be Divested absolutely and in good faith, and with the Commission's prior approval. Neither the decision of the Commission to appoint a Divestiture Trustee, nor the decision of the Commission not to appoint a Divestiture Trustee, to divest any of the assets under this Paragraph IV. 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(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.
- B. If a Divestiture Trustee is appointed by the Commission or a court pursuant to Paragraph IV. of this Order to divest the Assets To Be Divested to an Acquirer or Acquirers, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustees powers, duties, authority, and responsibilities:
 1. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within

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ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

2. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest the Assets To Be Divested to an Acquirer or Acquirers pursuant to the terms of this Order and to enter into a purchase and sale agreement(s) and, as applicable, an operating agreement with the Acquirer or Acquirers pursuant to the terms of this Order, which purchase and sale agreement(s) and, as applicable, operating agreement, shall be subject to the prior approval of the Commission.
3. Within ten (10) days after appointment of the Divestiture 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 Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to divest the Assets To Be Divested to an Acquirer or Acquirers and to enter into a purchase and sale agreement(s) and, as applicable, an operating agreement, with the Acquirer or Acquirers.
4. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph IV.B.3. of this Order to divest the Assets To Be Divested to Acquirer or Acquirers in a manner acceptable to the Commission. If, however, at the end of the applicable twelve-month period, the Divestiture Trustee has submitted to the Commission a plan of divestiture or believes that divestiture can be achieved within a reasonable time, such divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however,

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the Commission may extend such divestiture period only two (2) times.

5. The Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities of Respondents related to the Assets To Be Divested, or to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of his or her responsibilities.
6. The Divestiture Trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, but shall divest expeditiously at no minimum price. The divestitures shall be made only to Acquirer or Acquirers and the divestitures shall be accomplished only in a manner that receives the prior approval of the Commission; provided however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Respondents from among those approved by the Commission; provided further, however, that Respondents shall select such entity within five (5) days of receiving written notification of the Commission's approval.
7. The Divestiture Trustee shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and

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other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture 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. The Divestiture Trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the Divestiture Trustee's locating an Acquirer or Acquirers and assuring compliance with this Order.

8. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture 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 Divestiture Trustee.
9. If the Commission determines that the Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute trustee in the same manner as provided in Paragraph IV. 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 Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to comply with the terms of this Order.

Decision and Order

11. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Assets To Be Divested.
 12. The Divestiture Trustee shall report in writing to the Commission every two (2) months concerning his or her efforts to divest the Assets To Be Divested and Respondents' compliance with the terms of this Order.
- C. Respondents shall maintain the viability, marketability, and competitiveness of the Assets To Be Divested, and shall not cause the wasting or deterioration of the Assets To Be Divested, nor shall they cause the Assets To Be Divested to be operated in a manner inconsistent with applicable laws, nor shall they sell, transfer, encumber or otherwise impair the viability, marketability or competitiveness of the Assets To Be Divested. Respondents shall comply with the terms of this Paragraph until such time as Respondents or the Divestiture Trustee have divested the Assets To Be Divested pursuant to the terms of this Order. Respondents shall conduct the business of the Assets To Be Divested in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance efforts) and shall use their best efforts to preserve the existing relationship with suppliers, customers, employees, and others having business relationships with the Assets To Be Divested in the ordinary course of business and in accordance with past practice. Respondents shall not terminate the operations of any Assets To Be Divested. Respondents shall use their best efforts to keep the organization and properties of each Assets To Be Divested intact, including current business operations, physical facilities and working conditions, and a work force of equivalent size, training, and expertise associated with the Assets To Be Divested.

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V.

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 corporation, that may affect compliance obligations arising out of this Order.

VI.

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 it, to interview officers, directors, employees, agents or independent contractors of Respondents.

VII.

IT IS FURTHER ORDERED that 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, El Paso shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order. Each report shall describe any agreement whereby Respondents obtain Firm Transportation on any of the Assets to Be Divested.

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VIII.

IT IS FURTHER ORDERED that this Order shall terminate:

- A. With respect to Respondent El Paso, ten (10) years after the date the Order becomes final.
- B. With respect to Respondent PG&E, when the Acquisition has been completed.

By the Commission.

Analysis

Analysis of Proposed Consent Order To Aid Public Comment

Issued when the Commission tentatively approved a proposed consent order on January 29, 2001

I. Introduction

The Federal Trade Commission (“Commission”) has accepted for public comment from the El Paso Energy Corporation (“El Paso”) and PG&E Corporation (“PG&E”) (collectively the “Proposed Respondents”) an Agreement Containing Consent Order (“the Proposed Consent Order”). The Proposed Consent Order remedies the likely anticompetitive effects in the natural gas transportation markets in the Permian Basin production area, the San Antonio – Austin area, and the Matagorda offshore production area. El Paso has also reviewed a proposed draft of complaint (the “Proposed Complaint”) that the Commission contemplates issuing. The Proposed Consent Order is designed to remedy the likely competitive effects arising from the El Paso acquisition of all of the outstanding voting shares of PG&E Gas Transmission Teco, Inc., and PG&E Gas Transmission Texas Corporation, from PG&E (the “Acquisition”).

II. Description of the Parties and the Proposed Acquisition

El Paso Energy Corporation is an integrated energy company producing, transporting, gathering, processing, and treating natural gas. With over \$21 billion in assets, El Paso Energy Corporation is one of the largest integrated natural gas-to-power companies in the world. El Paso Energy not only owns North America's largest natural gas pipeline system, but also has growing operations in merchant energy services, power generation, international project development, gas gathering and processing, and gas and oil production.

El Paso has an interest in five pipeline systems in Texas: the Oasis pipeline, running from west Texas, through the San Antonio and Austin areas, to the Katy natural gas trading area (near Houston, Texas); the Channel Pipeline, extending from south Texas to the Houston Ship Channel; the Shoreline and Tomcat gathering systems, carrying gas from the Texas Gulf Coast to

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other larger transmission pipelines, and the Gulf States Pipeline, which runs from the Texas border to Ruston, Louisiana. In addition, El Paso owns the El Paso Natural Gas Pipeline that carries large volumes of gas from the Permian Basin gas gathering area to New Mexico, Arizona and Southern California.

PG&E is a California holding company that provides energy services throughout North America. During 1999, PG&E's annual revenues were \$20.8 billion. One of PG&E's divisions, PG&E Gas Transmission, provides natural gas transmission and distribution through three subsidiaries. PG&E Gas Transmission operates natural gas transportation in the northwestern United States through its wholly-owned subsidiary PG&E Gas Transmission Northwest and in Texas through two wholly-owned subsidiaries PG&E Gas Transmission Texas Corporation ("PG&E GTT") and PG&E Gas Transmission Teco, Inc. ("PG&E Teco").

Together PG&E GTT and PG&E Teco own 8,000 miles of intrastate pipelines in Texas. PG&E's Texas pipeline capacity is about 3 billion cubic feet of gas per day ("Bcf/d."). One PG&E pipeline system connects a prolific gas supply area of western Texas and southeastern New Mexico (the Permian Basin) to the cities of San Antonio and Austin and a major market trading area near Houston, called Katy. This is the Trans Texas pipeline. The Tufco pipeline, a second PG&E system, jointly owned with TXU Corporation connects the Permian Basin to another trading area near Dallas. A third PG&E system connects producing areas in southern Texas to the trading area of Agua Dulce.

El Paso proposes to acquire all of the outstanding stock of PG&E Teco and PG&E GTT, owned by PG&E, for \$840 million.

III. The Investigation and the Proposed Complaint

The Proposed Complaint alleges that consummation of the Acquisition would violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The Proposed

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Complaint alleges that the Acquisition will lessen competition in each of the following markets: (1) the transportation of natural gas out of the Permian Basin; (2) the transportation of natural gas into the gas consuming area of Central Texas, which includes San Antonio, Austin, and the surrounding metropolitan area; and (3) the transportation of natural gas out of the Matagorda Island Offshore production area (“Matagorda”), located in waters off of the Texas coast near Galveston.

To remedy the alleged anticompetitive effects of the Acquisition, the Proposed Consent Order requires Proposed Respondents to divest: (1) all of El Paso’s share of the Oasis Pipe Line Company; (2) a 50 percent interest in the pipeline segment from Waha to New Braunfels; (3) all of PG&E’s interest in the pipeline segment running from New Braunfels to Dewville, Texas; (4) all of PG&E’s interest in the pipeline segment running from Dewville to Katy; and (5) all of PG&E’s assets in Matagorda.

The Commission accepted for public comment the Agreement Containing Consent Order after an extensive investigation in which the Commission examined competition and the likely effects of the acquisition in the markets alleged in the Proposed Complaint and in several other areas. The Commission conducted the investigation in coordination with the Attorney General of the State of Texas. Proposed Respondents have entered into an agreement with the State of Texas settling charges that the Acquisition would violate state antitrust law.

The analysis applied in each market follows the analysis of the Federal Trade Commission and Department of Justice *Horizontal Merger Guidelines* (1997) (“*Merger Guidelines*”). The Proposed Complaint alleges in three counts that the Acquisition would violate the Federal antitrust laws in natural gas transportation in three separate geographic markets in Texas. The proposed Acquisition, if consummated would result in highly concentrated markets and allow Proposed Respondents to raise prices unilaterally. The Proposed Complaint also alleges that entry into

Analysis

any of the three markets would not be timely, likely, or sufficient to prevent a price increase. The efficiency claims of the Proposed Respondents, to the extent they relate to the markets alleged in the Proposed Complaint, are small compared to the magnitude and likely harm, and would not restore competition lost as a result of the acquisition even if the Proposed Respondents achieved the claimed efficiencies.

A. Count I – Loss of Competition in the Permian Basin

The Permian Basin is a natural gas producing area in western Texas and southeastern New Mexico. As alleged in the Proposed Complaint, producers and marketers of Permian Basin gas have no alternative but to transport their gas to consuming areas on natural gas pipelines located in the Permian Basin. El Paso and PG&E today are two of the largest holders of natural gas pipeline capacity out of the Permian Basin, and El Paso would be the largest holder of capacity in this region if the Acquisition were completed.

As alleged in the Proposed Complaint, the market for natural gas transportation from the Permian Basin would be highly concentrated after the Acquisition. For most times of the year, Permian Basin natural gas producers prefer to sell their gas to the San Antonio and Austin area (“Central Texas”). At other times, California is a desirable destination. The Proposed Complaint alleges that Proposed Respondents own or control most of the capacity from the Permian Basin to Central Texas. Proposed Respondents own almost all the capacity from the Permian Basin to California. The Acquisition is likely to eliminate actual and direct competition in this market between Proposed Respondents with the likely effects of increased rates and reduced output of transportation in the market, and diminished production of natural gas in the Permian Basin.

B. Count II – Loss of Competition in Central Texas

Central Texas, which includes the metropolitan areas of San Antonio and Austin, is an important natural gas consuming area.

Analysis

Buyers of natural gas, gas and electric utilities and merchant power plants, have no alternative to using pipelines located near metropolitan San Antonio and Austin. These Central Texas customers also do not have economic alternatives to using natural gas to fuel all or a significant number of their power plants. El Paso's Oasis pipeline and PG&E's Trans Texas pipeline account for almost all of the natural gas pipeline capacity into Central Texas.

Today, the market is highly concentrated and would become more so if the Acquisition were to occur, absent the proposed divestitures. Certain Central Texas transportation customers must use either Oasis or Trans Texas for all or a significant portion of their transportation needs. Other pipelines in the area have insufficient capabilities to offset the anticompetitive effects of the Acquisition. Absent relief, the Acquisition would enable El Paso unilaterally to raise prices to these customers, which would also raise the price of electricity to Central Texas consumers.

C. Count III – Loss of Competition in Matagorda

El Paso and PG&E own the only two pipeline systems that transport gas from the Matagorda off-shore production areas to on-shore processing facilities. The Proposed Complaint alleges that the Acquisition will eliminate actual and direct competition between Proposed Respondents, with the likely effects of increased rates and reduced output of transportation in the market, and diminished production of natural gas in the Matagorda area.

IV. The Proposed Consent Order

The Commission accepted for public comment an Agreement Containing Consent Order with Proposed Respondents, which would settle allegations contained in the Proposed Complaint. The Agreement Containing Consent Order contemplates that the Commission would issue the Proposed Complaint and enter the Proposed Order.

Analysis

The Proposed Consent Order requires the Proposed Respondents to divest all of El Paso's interest in Oasis Pipe Line Company to Aquila Gas Pipeline Corporation ("Aquila," a subsidiary of Utilicorp United Ltd.), Dow Hydrocarbons and Resources, Inc. ("Dow," a subsidiary of Dow Chemical Company) and the Oasis Pipe Line Company (the corporate owner of the Oasis pipeline). Aquila, Dow and El Paso currently own Oasis Pipe Line Company. The Proposed Consent Order also requires the Proposed Respondents to divest: (1) a 50 percent interest in the Trans Texas pipeline segment from Waha to New Braunfels; (2) all of PG&E's interest in the Trans Texas pipeline segment running from New Braunfels to Dewville, Texas; *and* (3) all of PG&E's interest in the Trans Texas pipeline segment running from Dewville to Katy. Prior to PG&E's Acquisition in 1997, these three pipeline segments were known as the Teco Pipeline. The Proposed Respondents must divest the Teco Pipeline to Duke Energy Field Services, LLC ("Duke," a subsidiary of the Duke Corporation). The Proposed Consent Order also requires Proposed Respondents to divest all of PG&E's pipeline assets in Matagorda to Panther Pipeline. The Proposed Respondents must divest these assets to these approved buyers not later than 10 days after the Commission places the Agreement Containing Consent Order on the public record or the closing of the Acquisition, whichever is later.

Under the terms of the Proposed Consent Order, in the event that El Paso does not divest the assets required to be divested under the terms and time constraints of the Proposed Consent Order, the Commission may appoint a trustee to divest those assets, expeditiously, and at no minimum price.

For a period of ten (10) years from the date the Proposed Consent Order becomes final, the Proposed Consent Order prohibits El Paso from acquiring, directly or indirectly, any of the assets that are to be divested or altering the governance provisions of the Teco pipeline without obtaining the prior approval of the Commission. PG&E's obligations under the Proposed Consent Order terminate after completing the Acquisition.

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The Proposed Consent Order also requires the Proposed Respondents to provide the Commission with a report of compliance with the terms of the Proposed Consent Order within thirty (30) days after the Order becomes final. Proposed Respondents must also file annual compliance reports detailing their compliance with the notice provisions under the Proposed Consent Order.

A. Resolution of the Competitive Concerns

The Proposed Consent Order, if finally issued by the Commission, would settle all of the charges alleged in the Commission's Proposed Complaint.

1. The Proposed Order Resolves Competitive Concerns in the Permian Basin and Central Texas

Under the terms of the Proposed Consent Order, Respondent El Paso will divest all of its interest in the Oasis Pipe Line Company to Aquila, Dow, and the Oasis Pipe Line Company. Proposed Respondents also have agreed to divest to Duke all of the Teco Pipeline.

El Paso will sell its Oasis Pipe Line Company stock to Dow, Aquila and the Oasis Pipe Line Company. Oasis Pipe Line Company will retire its El Paso stock. Oasis currently operates as a single pipeline with three owners, Aquila, Dow and El Paso. After the proposed divestitures are completed, El Paso will no longer have any interest in the Oasis Pipe Line Company, and current owners will continue to own and operate Oasis. The divestiture therefore enables Oasis to compete with El Paso and Duke to serve Permian Basin producers and marketers of natural gas.

The Teco Pipeline is being divested to Duke, a firm that is not presently in the market. Under the Proposed Consent Order, Duke will be able to sell gas on or expand the Teco Pipeline without obtaining the approval of El Paso. These protections will afford

Analysis

Duke the opportunity to compete with El Paso to serve the Permian Basin. In 1999, Duke had annual revenues of \$21.7 billion. Duke currently owns and operates natural gas and other pipelines throughout the United States.

The proposed divestitures resolve competitive concerns in the Permian Basin by giving Permian producers two new options for transportation. The proposed divestitures lower Permian Basin concentration levels below pre-Acquisition concentration levels. The proposed divestitures also give Permian producers new options for shipping natural gas to the most desirable destination. Before the Acquisition, Permian producers had two companies competing to deliver gas to Central Texas, PG&E and Oasis (owned by El Paso). After the divestitures, they will have three alternatives, Duke, Oasis (independent of El Paso) and El Paso.

In Central Texas, the divestiture creates a market less concentrated than before the proposed Acquisition. Presently, firms that need natural gas transportation have two primary options, Oasis and PG&E. After the divestiture these firm will have a third option in Duke.

2. The Proposed Order Resolves Competitive Concerns in the Matagorda Area

Under the terms of the Proposed Consent Order, Proposed Respondents will divest PG&E's Matagorda area pipeline assets to Panther Pipeline Company. Panther has substantial experience operating pipeline and gathering systems. By divesting all of the PG&E assets, Matagorda producers will continue to have two pipelines with which they may contract for natural gas transportation.

B. Opportunity for Public Comment

The Proposed Consent Order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part

Analysis

of the public record. After thirty (30) days, the Commission will again review the Proposed Consent Order and the comments received and will decide whether it should withdraw from the Proposed Consent Order or make it final.

By accepting the Proposed Consent Order subject to final approval, the Commission anticipates that the competitive problems alleged in the Proposed Complaint will be resolved. The purpose of this analysis is to invite public comment on the Proposed Consent Order, including the proposed divestitures, to aid the Commission in its determination of whether it should make final the Proposed Consent Order. This analysis is not intended to constitute an official interpretation of the Proposed Consent Order, nor is it intended to modify the terms of the Proposed Consent Order in any way.

Complaint

IN THE MATTER OF

THE BLACK & DECKER CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-4000; File No. 0023194

Complaint, February 8, 2001--Decision, February 8, 2001

This consent order addresses claims on certain packaging and labeling for lockset products, including locksets, deadbolts, knobs, and handles marketed by Respondent Kwikset Corporation -- a wholly-owned subsidiary of Respondent The Black & Decker Corporation -- that such products are all or virtually all made in the United States. The order, among other things, prohibits the respondents from misrepresenting the extent to which any Kwikset lockset is made in the United States, while permitting the respondents to represent that such products are made in the United States as long as all, or virtually all, of the components of the products are of United States origin, and all, or virtually all, of the labor in manufacturing them is performed in the United States. The order also prohibits the respondents from representing that their products are "All American Made" or "All American Made and Proud of it" or otherwise entirely made in the United States, unless such products are in fact one hundred percent made in the United States.

Participants

For the Commission: *Laura D. Koss, Walter C. Gross, Elaine D. Kolish, and Keith B. Anderson.*

For the Respondents: *Mary L. Azcuenaga and Joan Heim, Heller Ehrman.*

COMPLAINT

The Federal Trade Commission, having reason to believe that The Black & Decker Corporation and Kwikset Corporation ("respondents") have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges: