

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-3996; File No. 0010086
Complaint, January 29, 2001--Decision, March 19, 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 Respondent The Coastal Corporation, a diversified energy and petroleum products company that explores for, produces, gathers, processes, transports, stores, markets and sells natural gas throughout the United States, and is also engaged in refining, marketing, and distributing petroleum products; coal mining; and marketing power. The order, among other things, requires the respondents to divest their interests in (1) the Gulfstream Natural Gas System to Duke Energy and Williams Gas Pipeline; (2) the Empire Pipeline to Westcoast Energy; (3) the Green Canyon and Tarpon Pipelines to Williams Field Services; (4) the Manta Ray, Nautilus, and Nemo Pipelines to Enterprise Products; and (5) the Stingray Pipeline to Shell Gas Transmission and Enterprise Products. The order also requires the respondents to divest their interests in the Midwestern Gas Transmission Pipeline, the UTOS Pipelines, and the Iroquois Pipeline to acquirers approved by the Commission. In addition, the order requires Respondent Dominion Resources -- which already owns sixteen percent of the Iroquois Pipeline -- to provide the Commission with advance notice before increasing its interest in that pipeline.

Participants

For the Commission: *John C. Weber, Art Nolan, Mark Menna, Stephen Y. Wu, Robert E. Friedman, Kenton A. James, Alison M Chin, Evelyn Boynton, William R. Vigdor, Phillip L. Broyles, Daniel P. Ducore, Jeff Dahnke, Geary A. Gessler, Jeffrey H. Fischer and Daniel O'Brien.*

Complaint

For the Respondents: *Linda R. Blumkin, and Eric H. Queen, Fried, Frank, Harris, Shriver & Jacobson, Clifford H. Aronson, John Lyons, and Ian G. John, Skadden, Arps, Slate, Meagher & Flom LLP, and Stephen Paul Mahinka, Morgan, Lewis & Bockius LLP.*

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 (“Commission”), having reason to believe that respondent El Paso Energy Corporation has entered into an agreement to acquire all of the securities of The Coastal Corporation, all subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows.

I. RESPONDENTS

El Paso

1. Respondent El Paso Energy Corporation (“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, gathering, processing, transportation, storage, marketing and sales of natural gas in the United States.

Complaint

3. Respondent El Paso had total revenues of \$10.6 billion in 1999.

Coastal

4. Respondent The Coastal Corporation (“Coastal”) 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 Coastal Tower, Nine Greenway Plaza, Houston, TX 77046.
5. Respondent Coastal is, and at all times relevant herein has been, engaged in, among other things, the exploration, production, gathering, processing, transportation, storage, marketing and sales of natural gas in the United States.
6. Respondent Coastal had total revenues of \$ 8.2 billion in 1999.

II. THE ACQUISITION

7. Respondent El Paso entered into a merger agreement, dated January 17, 2000, in which El Paso would acquire all of the Coastal common stock and the former Coastal shareholders will, as a result, own approximately 53% of El Paso’s voting securities (the “Acquisition”). The total dollar value of the Acquisition, which includes about \$6 billion in debt and preferred securities, is estimated to be \$16 billion.

III. TRADE AND COMMERCE

8. A relevant line of commerce in which to analyze the effects of the Acquisition is transportation of natural gas. The only way economically to transport commercial quantities of natural gas over significant distances is through large diameter, high pressure pipelines.
9. A second relevant line of commerce in which to analyze the effects of the Acquisition is long term firm transportation of

Complaint

natural gas. Long term firm transportation is a natural gas transportation service requiring the pipeline company to guarantee for one year or more that it will transport a specified daily quantity of natural gas from one destination to another, without interruption. Many users of natural gas cannot bear the risk of interruption and must purchase long term firm transportation in areas where pipelines are periodically capacity constrained. For these customers, other pipeline services and periodic resales of transportation by holders of long term transportation rights are not reasonably interchangeable.

10. A third relevant line of commerce in which to analyze the effects of the Acquisition is the provision of tailored services. Tailored services allow users of natural gas, such as local natural gas distribution companies, to balance their changes in natural gas demand with their supply of natural gas and transportation. Tailored services include limited and no notice services and are typically sold in conjunction with natural gas storage services. Users of this service, such as local natural gas distribution companies, face severe variations in their natural gas demand and cannot substitute alternative pipeline services and periodic resales of transportation by long-term transportation holders for tailored services.

Central Florida

11. A section of the country in which to analyze effect of the Acquisition is the natural gas consuming area consisting of the Florida counties of Brevard, Charlotte, Citrus, De Soto, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Manatee, Martin, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Sarasota, Sumter and St. Lucie ("Central Florida").
12. The major buyers of natural gas in Central Florida include local natural gas distribution companies, electric power generating utilities and industrial customers. These entities

Complaint

buy large quantities of natural gas to resell, to use as fuel to generate electricity or for industrial processes.

13. Consumption of natural gas in Central Florida is substantially higher than production, with the result that most natural gas consumed in Central Florida must be transported by natural gas pipelines.
14. Natural gas users in Central Florida can only receive natural gas from those pipelines that travel to Central Florida. Natural gas users in Central Florida have no effective alternative to natural gas pipeline transportation within that area and cannot economically access natural gas pipelines outside of Central Florida.
15. El Paso owns a 50% interest in the Florida Gas Transmission ("FGT") pipeline which transports natural gas to Central Florida. FGT is the only interstate natural gas pipeline currently transporting natural gas to Central Florida.
16. Coastal has proposed building the Gulfstream Natural Gas System ("Gulfstream") to transport natural gas into Central Florida. Gulfstream has precedent agreements with ten Florida utilities and power-generation facilities representing long-term commitments for the majority of its 1.1 billion cubic feet of natural gas per day capacity. Coastal plans to have Gulfstream begin service in June of 2002.
17. Together Respondents will own or control all the pipeline capacity into Central Florida. For natural gas buyers in Central Florida, Respondents' pipeline systems are or will be the only two alternatives.
18. El Paso and Coastal are ongoing competitors, actual potential competitors, and perceived potential competitors in Central Florida.

Complaint

19. There are substantial barriers to entering Central Florida. Building additional pipelines to natural gas production areas or pipelines out of Central Florida would be unlikely, take over two years, and not prevent Respondents from maintaining prices at pre-Acquisition levels.

Buffalo-Niagara Falls, Rochester, Syracuse,
and Albany-Schenectady-Troy MSAs

20. Sections of the country in which to analyze effect of the Acquisition are the natural gas consuming areas in or around the Buffalo-Niagara Falls, Rochester, Syracuse, and Albany-Schenectady-Troy, New York, Metropolitan Statistical Areas (“MSAs”).
21. The major buyers of natural gas in each of the Buffalo-Niagara Falls, Rochester, Syracuse, and Albany-Schenectady-Troy MSAs include local natural gas distribution companies, electric power generating utilities, and industrial customers. These entities buy large quantities of natural gas to resell, to use as fuel to generate electricity or for industrial processes.
22. Consumption of natural gas in each of the New York State MSAs is substantially higher than production, with the result that most natural gas consumed in each of the MSAs must be transported by natural gas pipelines.
23. Natural gas users in each of the Buffalo-Niagara Falls, Rochester, Syracuse, and Albany-Schenectady-Troy MSAs can only receive natural gas from those pipelines that travel through that MSA. Natural gas users in each MSA have no effective alternative to natural gas pipeline transportation within that MSA and cannot economically access natural gas pipelines outside of that MSA.
24. El Paso’s Tennessee Gas Pipeline is one of the major suppliers of natural gas transportation into each of the

Complaint

Buffalo-Niagara Falls, Rochester, Syracuse, and Albany-Schenectady-Troy MSAs.

25. Coastal operates and owns a 50% interest in the Empire State Pipeline. The Empire State Pipeline is a major supplier of natural gas to each of the Buffalo-Niagara Falls, Rochester, and Syracuse MSAs.
26. Coastal also owns a 16% interest in the Iroquois Gas Transmission Company, which owns the Iroquois Pipeline ("Iroquois"). Iroquois is a major supplier of natural gas to the Albany-Schenectady-Troy MSA.
27. Together Respondents own or control a significant share of all pipeline capacity into the Buffalo-Niagara Falls, Rochester, Syracuse and Albany-Schenectady-Troy MSAs. For some natural gas buyers, Respondents' pipelines are two of the only three transportation options. For some natural gas buyers, Respondents' pipelines are the only two transportation options for transporting low cost Canadian natural gas into these areas.
28. El Paso and Coastal are ongoing competitors in the Buffalo-Niagara Falls, Rochester, Syracuse and Albany-Schenectady-Troy MSAs. Competition between the El Paso and Coastal pipeline systems has resulted in significant competition to transport natural gas to the Buffalo-Niagara Falls, Rochester, Syracuse and Albany-Schenectady-Troy MSAs.
29. There are substantial barriers to entering any Buffalo-Niagara Falls, Rochester, Syracuse and Albany-Schenectady-Troy MSA. Building additional pipelines to natural gas production areas or pipelines out of any of those MSAs would be unlikely, take over two years, and not prevent Respondents from raising prices above pre-Acquisition levels.

Complaint

Milwaukee-Waukesha PMSA

30. A section of the country in which to analyze effect of the Acquisition is the natural gas consuming area in or around the Milwaukee-Waukesha, Wisconsin, Primary Metropolitan Statistical Area (“Milwaukee-Waukesha PMSA”).
31. The major buyers of natural gas in the Milwaukee-Waukesha PMSA include local natural gas distribution companies. These entities buy large quantities of natural gas to resell.
32. Consumption of natural gas in this section of the country is substantially higher than production, with the result that most natural gas consumed in the Milwaukee-Waukesha PMSA must be transported by natural gas pipelines.
33. Natural gas users in the Milwaukee-Waukesha PMSA only can receive natural gas from those pipelines that travel through the Milwaukee-Waukesha PMSA. Natural gas users in the Milwaukee-Waukesha PMSA have no effective alternative to natural gas pipeline transportation within that PMSA and cannot economically access natural gas pipelines outside of the Milwaukee-Waukesha PMSA.
34. Coastal’s ANR pipeline is the only supplier of natural gas transportation to the Milwaukee-Waukesha PMSA. The ANR pipeline is the only pipeline that currently allows Wisconsin users of natural gas to access storage fields in Michigan and is the only current supplier of tailored services to the Milwaukee-Waukesha PMSA.
35. Guardian Pipeline L.L.C. has proposed building the Guardian pipeline to compete with ANR in the Milwaukee-Waukesha PMSA in the provision of natural gas pipeline transportation and tailored services. Guardian expects to enter service in the fall of 2002.

Complaint

36. El Paso's Midwest Gas Transmission ("MGT") pipeline likely will offer tailored services to customers within the Milwaukee-Waukesha PMSA by acting as an upstream supplier to the Guardian pipeline once it enters service. MGT terminates near the origin of the Guardian pipeline. MGT is the only supplier of tailored services that would allow Guardian to access low-cost natural gas storage fields in Michigan.
37. Together Respondents will own or control a significant share of all the pipeline capacity capable of offering tailored services to the Milwaukee-Waukesha PMSA that accesses gas storage fields in Michigan. For tailored services buyers in the Milwaukee-Waukesha PMSA, Respondents' pipeline systems in combination with the Guardian pipeline will form the only two routes to associated natural gas storage facilities.
38. Respondents' pipelines are significant actual potential and perceived potential competitors in the provision of tailored services in the Milwaukee-Waukesha PMSA. Specifically, the merged entity will be in a position to deny the rival Guardian pipeline timely and reliable access to tailored services or competitive prices for tailored services. El Paso's MGT pipeline forms the only link to alternate sources of storage needed to provide tailored services that will compete directly with ANR in the Milwaukee-Waukesha PMSA, once Guardian is in service. Together Respondents will control both MGT and ANR, preventing Guardian from competing effectively.
39. There are substantial barriers to entering the Milwaukee-Waukesha PMSA. Offering tailored services requires a pipeline with appropriate tariff services as well as access to low-cost natural gas storage fields in Michigan. Building additional pipelines to natural gas production areas and natural gas storage fields or pipelines outside the

Complaint

geographic market would be unlikely, take over two years and not prevent Respondents from maintaining prices at pre-Acquisition levels and denying Guardian access to tailored services.

Evansville Area

40. A section of the country in which to analyze the effect of the Acquisition is the natural gas consuming area in or around the Indiana counties of Posey, Vanderburgh and Warrick counties in Indiana (“Evansville Area”).
41. The major buyers of natural gas in the Evansville Area include local natural gas distribution companies, electric power generating utilities, and industrial customers. These entities buy large quantities of natural gas to resell, to use as fuel to generate electricity, or for industrial processes.
42. Consumption of natural gas in the Evansville Area is substantially higher than production, with the result that most natural gas consumed in the Evansville Area must be transported by natural gas pipelines.
43. Natural gas users in the Evansville Area can only receive natural gas from those pipelines that travel through the Evansville Area. Natural gas users in the Evansville Area have no effective alternative to natural gas pipeline transportation within the Evansville Area and cannot economically access natural gas pipelines outside of the Evansville Area.
44. El Paso’s MGT pipeline transports natural gas into the Evansville Area. MGT is one of the major suppliers of natural gas transportation in the Evansville Area.
45. Coastal’s ANR pipeline transports natural gas into the Evansville Area. ANR is one of the major suppliers of natural gas transportation to the Evansville Area.

Complaint

46. Together Respondents own or control a significant share of all pipeline capacity into the Evansville Area. For some natural gas buyers, Respondents' pipelines are the only alternatives. For some natural gas buyers, Respondents' pipelines are two of the only three transportation options.
47. El Paso and Coastal are ongoing competitors, actual potential competitors and perceived potential competitors in the Evansville Area. Competition between the El Paso and Coastal pipeline systems has resulted in significant competition to transport natural gas to the Evansville Area.
48. There are substantial barriers to entering the Evansville Area. Building additional pipelines to natural gas production areas or pipelines out of the Evansville Area would be unlikely, take over two years and not prevent Respondents from raising prices above pre-Acquisition levels.

Central Gulf of Mexico

49. Sections of the country in which to analyze the effect of the Acquisition are the following offshore natural gas producing areas in the Central Gulf of Mexico (collectively and individually referred to as "Central Gulf Sections"):
 - a. eastern Eugene Island South Addition (the area bounded by the following blocks: Eugene Island 282, Eugene Island 279, Ewing Bank 982, Ewing Bank, 979);
 - b. northwestern Eugene Island South Addition (the area bounded by the following blocks: Eugene Island 334, Eugene Island 267, Eugene Island 274, Eugene Island 327);
 - c. southwestern Eugene Island South Addition (the area bounded by the following blocks: Eugene Island 395, Eugene Island 335, Eugene Island 341, Ewing Bank 978);

Complaint

- d. southern Vermilion South Addition (the area bounded by the following blocks: Vermilion 410, Vermilion 327, Vermilion 333, Vermilion 413);
- e. central and southern Ship Shoal South Addition (the area bounded by the following blocks: Ship Shoal 290, Ship Shoal 288, Ewing Bank 989, Ewing Bank 983, Ship Shoal 364, Ship Shoal 319, Ship Shoal 314);
- f. northwestern Ship Shoal South Addition (the area bounded by the following blocks: Ship Shoal 296, Ship Shoal 247, Ship Shoal 243, Ship Shoal 300);
- g. the area around the western part of the Bluewater Header (the area bounded by the following blocks: South Marsh Island 57, South Marsh Island 63, South Marsh Island 95, South Marsh Island 105, South Marsh Island 89, South Marsh Island 86);
- h. the area around the central part of the Bluewater Header (the area bounded by the following blocks: Eugene Island 267, Eugene Island 201, Eugene Island 211, Eugene Island 257);
- i. the area around the eastern part of the Bluewater Header (the area bounded by the following blocks: Ship Shoal 127, Ship Shoal 128, Ship Shoal 207, Ship Shoal 231, Ship Shoal 224); and
- j. the central Gulf deepwater (the area bounded by the following blocks: Garden Banks 26, Garden Banks 35, Garden Banks 79, Garden Banks 80, Garden Banks 85, Green Canyon 49, Green Canyon 5, Green Canyon 35, Green Canyon 1003, Green Canyon 969, Garden Banks 994).

The central part of the Gulf of Mexico is off the coast of Louisiana in or around portions of the areas known by the

Complaint

Department of Interior assigned names of Ewing Bank, Ship Shoal, Ship Shoal South Addition, Eugene Island, Eugene Island South Addition, South Marsh Island, South Marsh Island South Addition, Vermilion, Vermilion South Addition, Garden Banks and Green Canyon.

50. Consumption of natural gas in each Central Gulf Section is well below natural gas production levels. Most production is transported to areas in the Midwestern and Eastern United States.
51. Central Gulf of Mexico producers either contract directly with natural gas consumers or sell the natural gas to marketers who resell the natural gas. Neither the producers nor the marketers of Central Gulf of Mexico natural gas have an alternative to using the natural gas pipelines located in each Central Gulf Section to transport natural gas out that Section.
52. El Paso, through its subsidiaries, owns all or part of the Bluewater, TTT, Green Canyon, Tarpon, Manta Ray and Nautilus pipelines and related facilities. El Paso is one of the major transporters of natural gas out of each Central Gulf Section.
53. Coastal, through its subsidiaries, owns the ANR (Patterson) pipeline and related facilities. Coastal is one of the major transporters of natural gas out of each Central Gulf Section.
54. Together Respondents own or control a significant share of all pipeline capacity out of each Central Gulf Section. For some natural gas producers, Respondents' pipelines are the only alternatives.
55. El Paso and Coastal are ongoing, actual potential and perceived potential competitors in each Central Gulf Section. Competition between the El Paso and Coastal

Complaint

pipeline systems has resulted in significant competition to transport natural gas from each Central Gulf Section.

56. There are substantial barriers to entering any Central Gulf Section. Building additional pipelines to transport natural gas out of each Central Gulf Section would be unlikely, take over two years and not prevent Respondents from raising prices above pre-Acquisition levels.

West Central Gulf of Mexico

57. Sections of the country in which to analyze the effect of the Acquisition are the following offshore natural gas producing areas in the West Central Gulf of Mexico (collectively and individually referred to as “West Central Gulf Sections”):
- a. northern West Cameron (the area bounded by the following blocks: West Cameron 148; West Cameron 144, West Cameron 248, West Cameron 244);
 - b. northwestern West Cameron and Northern West Cameron West Addition (the area bounded by the following blocks: West Cameron 53, West Cameron 56, West Cameron 168, West Cameron 185, West Cameron West Addition 288, West Cameron West Addition 161); and
 - c. West Cameron 167 (the area consisting of block West Cameron 167).

The west central part of the Gulf of Mexico is off the coast of Louisiana in or around portions of the areas known by the Department of Interior assigned names of West Cameron, West Cameron West Addition, West Cameron South Addition, East Cameron, East Cameron South Addition, Vermilion South Addition, High Island South Addition, High Island East Addition South Extension, East Breaks, Alaminos Canyon, Keathley Canyon and Garden Banks.

Complaint

58. Consumption of natural gas in each West Central Gulf Section is well below natural gas production levels. Most production is transported to areas in the Midwestern and Eastern United States.
59. West Central Gulf of Mexico producers either contract directly with natural gas consumers or sell the natural gas to marketers who resell the natural gas. Neither the producers nor the marketers of West Central Gulf of Mexico natural gas have an alternative to using the natural gas pipelines located in each West Central Gulf Section to transport natural gas out that Section.
60. El Paso, through its subsidiaries or 50% ownership of Deepwater Holdings L.L.C. (50% owned by Coastal), owns all or part of the Bluewater (southwest leg), High Island Offshore System, U-T Offshore System, Stingray and East Breaks Gathering System pipelines and related facilities. El Paso is one of the major transporters of natural gas out of each West Central Gulf Section.
61. Coastal, through its subsidiaries or 50% ownership of Deepwater Holdings L.L.C., owns all or part of the ANR (Grand Chenier), High Island Offshore System, U-T Offshore System, Stingray and the East Breaks Gathering System pipelines and related facilities. Coastal is one of the major transporters of natural gas out of each West Central Gulf Section.
62. Together Respondents own or control a significant share of all pipeline capacity out of each West Central Gulf Section. For some natural gas producers, Respondents' pipelines are the only alternatives.
63. El Paso and Coastal are ongoing, actual potential, and perceived potential competitors in each West Central Gulf Section. Competition between the El Paso and Coastal

Complaint

pipeline systems has resulted in significant competition to transport natural gas from each West Central Gulf Section.

64. There are substantial barriers to entering any West Central Gulf Section. Building additional pipelines to transport natural gas out of each West Central Gulf Section would be unlikely, take over two years and not prevent Respondents from raising prices above pre-Acquisition levels.

**COUNT I:
LOSS OF COMPETITION IN CENTRAL FLORIDA**

65. Paragraphs 1 - 64 are incorporated by reference as if fully set forth herein.
66. One relevant product market in which to assess the effect of the Acquisition is long term firm transportation of natural gas.
67. One relevant geographic market in which to assess the effect of the Acquisition is Central Florida.
68. Central Florida is a highly concentrated market and the Acquisition, if consummated, will substantially increase that concentration.
69. Entry into the Central Florida market would not be timely, likely or sufficient to prevent likely anticompetitive effects arising from the Acquisition.
70. The Acquisition will eliminate ongoing competition, actual potential competition and perceived potential competition between Respondents with the likely result of maintaining prices and reducing output of natural gas transportation in Central Florida, and thereby increasing the cost of natural gas service, electricity and industrial products.

Complaint

**COUNT II:
LOSS OF COMPETITION IN THE
BUFFALO-NIAGARA FALLS, ROCHESTER, SYRACUSE,
AND ALBANY-SCHENECTADY-TROY MSAs**

71. Paragraphs 1 - 64 are incorporated by reference as if fully set forth herein.
72. One relevant product market in which to assess the effect of the Acquisition is long term firm transportation of natural gas.
73. Relevant geographic markets in which to assess the effect of the Acquisition are the Buffalo-Niagara Falls, Rochester, Syracuse and Albany-Schenectady-Troy MSAs.
74. These relevant markets are highly concentrated and the Acquisition, if consummated, will substantially increase that concentration.
75. Entry into any of the Buffalo-Niagara Falls, Rochester, Syracuse and Albany-Schenectady-Troy MSA markets would not be timely, likely or sufficient to prevent likely anticompetitive effects arising from the Acquisition.
76. The Acquisition will eliminate ongoing competition in each relevant market between Respondents with the likely result of raising rates and reducing output of natural gas transportation in each relevant market, and thereby increasing the cost of natural gas service, electricity and industrial products.

**COUNT III:
LOSS OF COMPETITION IN THE
MILWAUKEE-WAUKESHA PMSA**

77. Paragraphs 1 - 64 are incorporated by reference as if fully set forth herein.

Complaint

78. One relevant product market in which to assess the effect of the Acquisition is the provision of tailored services.
79. One relevant geographic market in which to assess the effect of the Acquisition is the Milwaukee-Waukesha PMSA.
80. The Milwaukee-Waukesha PMSA market is highly concentrated and the Acquisition, if consummated, will substantially increase that concentration.
81. Entry into the Milwaukee-Waukesha PMSA market would not be timely, likely or sufficient to prevent likely anticompetitive effects arising from the Acquisition.
82. The Acquisition will threaten ongoing competition, actual potential competition and perceived potential competition by permitting the Respondents to deny the rival Guardian pipeline and any potential rivals of Coastal's ANR pipeline timely access to tailored services or competitive prices for tailored services across El Paso's MGT pipeline with the likely result of maintaining rates and reducing output of tailored services in the relevant market, and thereby increasing the cost of natural gas service.

**COUNT IV:
LOSS OF COMPETITION IN THE EVANSVILLE AREA**

83. Paragraphs 1 - 64 are incorporated by reference as if fully set forth herein.
84. One relevant product market in which to assess the effect of the Acquisition is long term firm transportation of natural gas.
85. One relevant geographic market in which to assess the effect of the Acquisition is the Evansville Area.

Complaint

86. The Evansville Area market is highly concentrated and the Acquisition, if consummated, will substantially increase that concentration.
87. Entry into the Evansville Area market would not be timely, likely or sufficient to prevent likely anticompetitive effects arising from the Acquisition.
88. The Acquisition will eliminate ongoing competition between Respondents with the likely result of raising rates and reducing output of natural gas transportation in the Evansville Area market and thereby increasing the cost of natural gas service, electricity and industrial products.

**COUNT V:
LOSS OF COMPETITION IN THE CENTRAL GULF OF
MEXICO**

89. Paragraphs 1 - 64 are incorporated by reference as if fully set forth herein.
90. One relevant product market in which to assess the effect of the Acquisition is transportation of natural gas.
91. Relevant geographic markets in which to assess the effect of the Acquisition are the Central Gulf Sections identified in Paragraph 49.
92. The Central Gulf Sections are highly concentrated markets and the Acquisition, if consummated, will substantially increase that concentration.
93. Entry into any Central Gulf Section would not be timely, likely or sufficient to prevent likely anticompetitive effects arising from the Acquisition.
94. The Acquisition will eliminate ongoing, actual potential and perceived potential competition between Respondents with

Complaint

the likely result of raising rates and reducing output of natural gas transportation in each Central Gulf Section, and diminishing production of natural gas in each Central Gulf Section.

**COUNT VI:
LOSS OF COMPETITION IN THE WEST CENTRAL
GULF OF MEXICO**

95. Paragraphs 1 - 64 are incorporated by reference as if fully set forth herein.
96. One relevant product market in which to assess the effect of the Acquisition is transportation of natural gas.
97. Relevant geographic markets in which to assess the effect of the Acquisition are the West Central Gulf Sections identified in Paragraph 57.
98. Each West Central Gulf Section is a highly concentrated market and the Acquisition, if consummated, will substantially increase that concentration.
99. Entry into any West Central Gulf Section would not be timely, likely or sufficient to prevent likely anticompetitive effects arising from the Acquisition.
100. The Acquisition will eliminate ongoing and potential competition between Respondents with the likely result of raising rates and reducing output of natural gas transportation in each West Central Gulf Section, and diminishing production of natural gas in each West Central Gulf Section.

Complaint

IV. VIOLATIONS CHARGED

101. The merger agreement entered into by Respondents El Paso and Coastal constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.
102. 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 official seal affixed, at Washington, D.C., this twenty-ninth day of January, 2001, issues its complaint against respondent.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent El Paso Energy Corporation of certain voting securities of Respondent The Coastal Corporation 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 that, 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 and Dominion Resources, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of the 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 its Order to Maintain Assets 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 makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

Decision and Order

1. Respondent El Paso Energy Corporation 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, Houston, Texas 77002.
2. Respondent The Coastal Corporation 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 Nine Greenway Plaza, Houston, Texas 77046.
3. Dominion Resources is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia with its office and principal place of business located at 120 Tredegar Street, Richmond, Virginia 23219.
4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

- A. “El Paso” means El Paso Energy Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by El Paso, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Coastal” means The Coastal Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Coastal, and the respective directors, officers,

Decision and Order

employees, agents, representatives, successors, and assigns of each.

- C. “Dominion Resources” means Dominion Resources, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Dominion Resources, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Acquisition” means the transaction described in the Agreement and Plan of Merger between El Paso and Coastal, dated January 17, 2000, pursuant to which El Paso agreed to acquire certain voting securities of Coastal.
- E. “Commission” means the Federal Trade Commission.
- F. “Development Area” means South Marsh Island Blocks 57 through 70, South Marsh Island South Addition Blocks 71 through 81 and 92 through 97, Eugene Island Blocks 201 through 266, Eugene Island South Addition Blocks 267 through 311, 315 through 330, 338 through 353, 361 through 374, and 384 through 389, Ewing Bank Blocks 937 through 940 and 978 through 985, Green Canyon Blocks 8 through 15 and 54 through 59, Ship Shoal Blocks 149 through 154, 172 through 179, and 196 through 203, and Ship Shoal South Addition Blocks 248, 249, 270 through 273, 294 through 297, 318 through 321, 341 through 346, and 362 through 365.
- G. “Duke Energy” means Duke Energy Gas Transmission Corporation, 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 5400 East Heimer Court, Houston, Texas 77056.
- H. “East Breaks Gathering Company” means East Breaks Gathering Company, L.L.C., a limited liability company organized, existing and doing business under and by virtue

Decision and Order

of the laws of Delaware, with its office and principal place of business located at 1001 Louisiana Street, Houston, Texas 77002.

- I. “Eligible Facility” means any natural gas pipeline or facility directly connected to such pipeline that (i) serves producers in the Development Area, (ii) originates at any pipeline owned by the Green Canyon/Tarpon Acquirer, or any subsidiary or affiliate of the Green Canyon/Tarpon Acquirer, and (iii) extends to a point more than two miles from any pipeline owned by the Green Canyon/Tarpon Acquirer, or any subsidiary or affiliate of the Green Canyon/Tarpon Acquirer, immediately after it acquires the Green Canyon/ Tarpon Assets.
- J. “Empire Acquirer” means the Person that acquires the Empire Assets.
- K. “Empire Assets” means all of Coastal’s rights, title, and interest in the Empire State Pipeline and Empire State Pipeline Company.
- L. “Empire State Pipeline” means the natural gas pipeline known as the Empire State Pipeline that originates near Niagara, New York, and extends approximately 157 miles to its interconnection with the facilities of Niagara Mohawk Power Corporation, 15 miles northwest of Syracuse, New York.
- M. “Empire State Pipeline Company” means the Empire State Pipeline Company, Inc., a corporation organized, existing and doing business under and by virtue of the laws of New York, with its office and principal place of business located at 500 Renaissance Center, Detroit, Michigan 48243.
- N. “Empire Purchase Agreement” means the Stock Purchase and Sale Agreement between American Natural Resources Company and Westcoast Energy Enterprises (U.S.), Inc., dated November 6, 2000, including all related amendments, agreements, schedules, exhibits, and appendices.

Decision and Order

- O. “Enterprise Products” means Enterprise Products Operating L.P., a limited partnership organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 2727 North Loop West, Suite 700, Houston, Texas 77008.
- P. “Green Canyon Gathering System” means the natural gas gathering system located in the central Gulf of Mexico consisting of approximately 68 miles of 10-inch to 20-inch diameter pipeline that transports natural gas from South Marsh Island, Eugene Island, Garden Banks, and Green Canyon areas to Transcontinental Gas Pipeline’s South Lateral in South Marsh Island Block 106, and related facilities.
- Q. “Green Canyon/Tarpon Acquirer” means the Person that acquires the Green Canyon/ Tarpon Assets.
- R. “Green Canyon/Tarpon Assets” means (1) the assets listed on Exhibit A to the Green Canyon/Tarpon Purchase Agreement, and (2) all of El Paso’s rights, title, and interest in the Green Canyon Gathering System, Tarpon Pipeline, and Tarpon Transmission Company.
- S. “Green Canyon/Tarpon Purchase Agreement” means the Purchase and Sale Agreement by and among El Paso Energy Partners, L.P., Green Canyon Pipeline Company, L.P. and Williams Field Services - Gulf Coast Company, L.P., dated December 8, 2000, including all related amendments, agreements, schedules, exhibits, and appendices.
- T. “Guardian Pipeline” means the natural gas pipeline (with a planned initial capacity of approximately 750 million cubic feet per day) to be constructed at a point near Joliet, Illinois, and extending to a point near Ixonia, Wisconsin, as described in the Application of Guardian Pipeline, L.L.C. for Certificates of Public Convenience and Necessity, FERC Docket Nos. CP00-36-000, CP00-37-000, and CP00-38-000.

- U. “Guardian Interconnection” means a pipeline interconnection between MGT Pipeline and Guardian Pipeline at or near Joliet, Illinois, with capacity of at least 450 million cubic feet per day of natural gas, to be constructed on commercially reasonable terms agreed to between the MGT Acquirer and the owner or representative of the Guardian Pipeline.
- V. “Gulfstream Acquirer” means the Person that acquires the Gulfstream Assets.
- W. “Gulfstream Assets” means all of Coastal’s rights, title, and interests in the Gulfstream Pipeline and Gulfstream Natural Gas System.
- X. “Gulfstream Confidential Information” means any information relating to the Gulfstream Assets obtained by Respondent El Paso in the course of evaluating the Acquisition or obtained from any Coastal employee, agent, or representative who remains or becomes employed by Respondents, provided, however, that Gulfstream Confidential Information shall not include information already within the public domain.
- Y. “Gulfstream Natural Gas System” means Gulfstream Natural Gas System, L.L.C., a limited liability company organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at Nine Greenway Plaza, Houston, Texas 77046.
- Z. “Gulfstream Pipeline” means the natural gas pipeline (with a planned initial capacity of approximately 1.1 billion cubic feet per day) to be constructed at a point near Mobile Bay, Alabama, and extending across the Gulf of Mexico to a point south of Tampa, Florida, and extending on land in an easterly direction branching out to serve markets across central and

Decision and Order

southern Florida, as described in the Application of Gulfstream Natural Gas System, L.L.C. for Certificate of Public Convenience and Necessity, FERC Docket Nos. CP00-6-000, CP00-7-000, and CP00-8-000.

- AA. “Gulfstream Purchase Agreement” means the Amended and Restated Acquisition Agreement by and among Duke Energy Gas Transmission Corporation, Williams Gas Pipeline Company, ANR Gulfstream, L.L.C. and Coastal Southern Pipeline Company, dated December 8, 2000, including all related amendments, agreements, schedules, exhibits, and appendices.
- BB. “Iroquois Assets” means all of Coastal’s rights, title, and interest in the Iroquois Gas Transmission System.
- CC. “Iroquois Gas Transmission System” means Iroquois Gas Transmission System, L.P., a limited partnership organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at One Corporate Drive, Suite 600, Shelton, Connecticut 06484.
- DD. “Iroquois Pipeline” means the natural gas pipeline that originates near the United States/Canadian border at Waddington, New York, and extends approximately 375 miles to Long Island, New York.
- EE. “Johnson Bayou Plant” means the production handling facility that provides liquids separation and gas dehydration services for UTOS Pipeline System that is located at the onshore terminus of UTOS Pipeline System in Cameron Parish, Louisiana.
- FF. “Long Term Firm Transportation” means the provision of natural gas pipeline transportation for a period greater than one year that is not subject to a prior claim by another pipeline customer or another class of transportation service

Decision and Order

and cannot be interrupted except in a situation of force majeure.

- GG. “Manta Ray Acquirer” means the Person that acquires the Manta Ray Assets.
- HH. “Manta Ray Assets” means all of El Paso’s rights, title, and interest in the Manta Ray Pipeline System, Nautilus Pipeline, Nemo Pipeline System, Sailfish Pipeline Company, and Moray Pipeline Company.
- II. “Moray Pipeline Company” means Moray Pipeline Company, L.L.C., a limited liability company organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 1001 Louisiana Street, Houston, Texas 77002.
- JJ. “Manta Ray Pipeline System” means the natural gas pipeline system known as Manta Ray Pipeline System located in the east central Gulf of Mexico, including but not limited to, approximately 237 miles of 12-inch to 24-inch diameter pipeline that transports natural gas within the areas of Green Canyon, Ewing Bank, Ship Shoal, Grand Isle, and South Timbalier areas to ANR Pipeline Company and Nautilus Pipeline Company in Ship Shoal Block 207 and CMS Trunkline in South Timbalier Block 280 and Transcontinental Gas Pipeline’s Southeast Louisiana lateral in Ship Shoal Block 332.
- KK. “Manta Ray Purchase Agreement” means the Purchase and Sale Agreement by and among El Paso Energy Partners, L.P. and El Paso Energy Partners Company and Enterprise Products Operating L.P., dated December 8, 2000, including all related amendments, agreements, schedules, exhibits, and appendices.
- LL. “MGT Acquirer” means the Person that acquires the MGT Assets.

Decision and Order

- MM. “MGT Assets” means all of El Paso’s rights, title, and interest in the MGT Pipeline, Midwestern Gas Transmission Company, and Midwestern Gas Marketing Company.
- NN. “MGT Pipeline” means the natural gas pipeline known as the Midwestern Gas Transmission pipeline that originates near Portland, Tennessee, and extends approximately 350 miles to a point near Joliet, Illinois.
- OO. “Midwestern Gas Transmission Company” means Midwestern Gas Transmission Company, 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 1001 Louisiana Street, Houston, Texas 77002.
- PP. “Midwestern Gas Marketing Company” means Midwestern Gas Marketing Company, 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 1001 Louisiana Street, Houston, Texas 77002.
- QQ. “Monitor Trustee” means the Monitor Trustee appointed pursuant to Paragraph XI of this Order.
- RR. “Nautilus Pipeline System” means the natural gas pipeline system known as Nautilus Pipeline System located in the east central Gulf of Mexico, including but not limited to, approximately 101 miles of 30-inch diameter pipeline that transports natural gas from the Manta Ray junction platform in Ship Shoal Block 207 to delivery point interconnections downstream of the outlet of the Garden City Gas Processing Plant in St. Mary Parish, Louisiana and delivery point interconnects downstream at the outlet of the Neptune Gas Processing Plant.

Decision and Order

- SS. “Nemo Pipeline” means the natural gas gathering system known as Nemo Pipeline under construction in the east central Gulf of Mexico, including but not limited to, approximately 24 miles of 20-inch diameter pipeline that will transport natural gas from the Brutus and Glider deepwater development properties to Manta Ray Pipeline System.
- TT. “Newco” means Starfish Pipeline Company, L.L.C., a limited liability company to be owned by Enterprise Products and Shell Gas Transmission and organized and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 1301 McKinney, Suite 700, Houston, Texas 77010.
- UU. “Order to Maintain Assets” means the Order to Maintain Assets incorporated into and made a part of the Consent Agreement.
- VV. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity.
- WW. “Pipeline Assets” means the assets to be divested pursuant to Paragraphs II and III of this Order.
- XX. “Respondents” means El Paso and Coastal, individually and collectively.
- YY. “Restricted Development Area” means those portions of the Development Area to the south or southwest of Tarpon, including areas to the south or southwest of Tarpon in the following blocks: Ewing Bank Blocks 937 through 940, and 978 through 985, Green Canyon Blocks 8 through 15, and 54 through 59, Ship Shoal South Addition Blocks 273, 294 through 297, 318 through 321, 341 through 346, and 362 through 365, and Eugene Island South Addition Blocks

Decision and Order

323, 324, 343 through 345, 346 through 350, 361 through 374, and 384 through 389.

- ZZ. “Sailfish Pipeline Company” means Sailfish Pipeline Company, L.L.C., a limited liability company organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 1001 Louisiana Street, Houston, Texas 77002.
- AAA. “Shell Gas Transmission” means Shell Gas Transmission, L.L.C., a limited liability company organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 1301 McKinney, Suite 700, Houston, Texas 77010.
- BBB. “Stingray Acquirer” means the Person that acquires the Stingray Assets.
- CCC. “Stingray Assets” means all of El Paso’s rights, title, and interest in the Stingray Pipeline System, West Cameron Dehydration Facility, Stingray Pipeline Company, West Cameron Dehydration Company, and East Breaks Gathering Company.
- DDD. “Stingray Pipeline Company” means Stingray Pipeline Company, L.L.C., a limited liability company organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 1001 Louisiana Street, Houston, Texas 77002.
- EEE. “Stingray Pipeline System” means the natural gas pipeline system known as Stingray Pipeline located in the central Gulf of Mexico, including but not limited to, approximately 325 miles of 6-inch to 36-inch diameter pipeline that transports natural gas from the High Island, West Cameron, East Cameron, Vermilion, and Garden Banks areas to

Decision and Order

onshore transmission systems at Holly Beach and Cameron Parish, Louisiana, and eighteen former NGPL laterals connected to the Stingray Pipeline and located in the East Cameron, Vermilion, and West Cameron areas.

- FFF. “Stingray Purchase Agreement” means the Purchase and Sale Agreement by and among Deepwater Holdings, L.L.C., and Enterprise Products Operating L.P., Shell Gas Transmission, L.L.C., and Newco, L.L.C., dated December 8, 2000, including all related amendments, agreements, schedules, exhibits, and appendices.
- GGG. “Tarpon Pipeline” means the natural gas gathering system known as Tarpon located in the central Gulf of Mexico, including but not limited to, approximately 40 miles of 16-inch diameter pipeline that extends from Trunkline at Ship Shoal Block 274 to the Eugene Island area of the Gulf.
- HHH. “Tarpon Transmission Company” means the Tarpon Transmission Company, a corporation organized, existing and doing business under and by virtue of the laws of Texas, with its office and principal place of business located at 1001 Louisiana Street, Houston, Texas 77002.
- III. “Transitional Pipelines” means the Empire State Pipeline, MGT Pipeline, Stingray Pipeline System, and UTOS Pipeline, individually and collectively.
- JJJ. “UTOS Acquirer” means the Person that acquires the UTOS Assets.
- KKK. “UTOS Assets” means all of El Paso’s rights, title, and interest in the UTOS Pipeline, Johnson Bayou Plant, and U-T Offshore System.
- LLL. “U-T Offshore System” means U-T Offshore System, L.L.C., a limited liability company organized, existing and doing business under and by virtue of the laws of Delaware,

Decision and Order

with its office and principal place of business located at 1001 Louisiana Street, Houston, Texas 77002.

- MMM. “UTOS Pipeline” means the system known as the U-T Offshore System located in the Gulf of Mexico, including but not limited to, approximately 30 miles of 42-inch diameter pipeline that transports natural gas from an interconnection with the HIOS system at West Cameron Block 167 to the Johnson Bayou Plant.
- NNN. “West Cameron Dehydration Facility” means the dehydration facility located at Holly Beach, Cameron Parish, Louisiana, and connected to the onshore terminus of Stingray Pipeline System at Holly Beach, and related facilities.
- OOO. “West Cameron Dehydration Company” means West Cameron Dehydration Company, L.L.C., a limited liability company organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 1001 Louisiana Street, Houston, Texas 77002.
- PPP. “Westcoast Energy” means Westcoast Energy, Inc., a corporation organized, existing and doing business under and by virtue of the laws of Canada, with its office and principal place of business located at 1333 West Georgia Street, Vancouver, British Columbia, Canada V8E 3K0.
- QQQ. “Williams Field Services” means Williams Field Services - Gulf Coast Company LP, a Delaware limited partnership organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 1800 South Baltimore, Tulsa, OK 74119.
- RRR. “Williams Gas Pipeline” means Williams Gas Pipeline Company, a corporation organized, existing and doing

Decision and Order

business under and by virtue of the laws of Delaware, with its office and principal place of business located at 2800 Post Oak Boulevard, Houston, Texas 77056.

II.**IT IS FURTHER ORDERED** that:

- A. Respondents shall divest, absolutely and in good faith:
1. The Gulfstream Assets to Williams Gas Pipeline and Duke Energy, in accordance with the Gulfstream Purchase Agreement (which agreement shall not be construed to vary from or contradict the terms of this Order), no later than twenty days from the date the Commission accepts the Consent Agreement for public comment;
 2. The Empire Assets to Westcoast Energy, in accordance with the Empire Purchase Agreement (which agreement shall not be construed to vary from or contradict the terms of this Order). If, at the time the Commission determines to make this Order final, the Commission determines that Westcoast Energy is not acceptable as the Empire Acquirer or that the Empire Purchase Agreement is not an acceptable manner of divestiture, and so notifies Respondents, Respondents shall immediately terminate the Empire Purchase Agreement and divest the Empire Assets, at no minimum price, to another Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission. Respondents shall divest to Westcoast or such Person no earlier than the date this Order becomes final and no later than ten days after the later of (1) the date this Order becomes final or (2) the date Respondents receive approval from the New York Public Service Commission, and in any event, no later than 150 days from the date this Order becomes final;

Decision and Order

3. The Green Canyon/Tarpon Assets to Williams Field Services, in accordance with the Green Canyon/Tarpon Purchase Agreement (which agreement shall not be construed to vary from or contradict the terms of this Order), no later than twenty days from the date the Commission accepts the Consent Agreement for public comment;
4. The Manta Ray Assets to Enterprise Products, in accordance with the Manta Ray Purchase Agreement (which agreement shall not be construed to vary from or contradict the terms of this Order), no later than twenty days from the date the Commission accepts the Consent Agreement for public comment;
5. The Stingray Assets to Enterprise Products, Shell Gas Transmission, and Newco, in accordance with the Stingray Purchase Agreement (which agreement shall be construed to vary from or contradict the terms of this Order), no later than twenty days from the date the Commission accepts the Consent Agreement for public comment; and
6. Each of the assets described in Paragraph II.A. of this Order shall be divested pursuant to and in accordance with the corresponding purchase agreement, which agreement shall be incorporated by reference into this Order and made a part hereof. Any failure by Respondents to comply with any term of any such purchase agreement shall constitute a failure to comply with this Order;

Provided, however, that if Respondents have divested any of the assets described in Paragraphs II.A.1., II.A.3., II.A.4., and II.A.5. prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission determines that any acquirer identified in Paragraphs II.A.1., II.A.3., II.A.4., and II.A.5. is not acceptable as the acquirer of the corresponding assets or that the corresponding purchase agreement is not an acceptable manner

Decision and Order

of divestiture, and so notifies Respondents, Respondents shall immediately rescind the applicable purchase agreement and divest the assets, at no minimum price, to another Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission, no later than 120 days from the date this Order becomes final.

- B. The purpose of the divestiture of the assets described in Paragraph II.A. of this Order is to ensure the continued use of the assets in the same businesses in which such assets were engaged at the time of the announcement of the proposed Acquisition by Respondents and to remedy the lessening of competition alleged in the Commission's complaint.

III.**IT IS FURTHER ORDERED** that:

- A. 1. Respondents shall divest at no minimum price, absolutely and in good faith the Iroquois Assets only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission, no later than ninety days from the date the Commission accepts the Consent Agreement for public comment; provided, however, that Respondents shall not divest more than an 8.72% partnership interest in Iroquois Gas Transmission System to Dominion Resources;
2. If Dominion Resources acquires a partnership interest in Iroquois Gas Transmission System pursuant to this Order, Dominion Resources shall not, for a period of ten years following such acquisition, acquire any additional interest, in whole or in part, in Iroquois Gas Transmission System, without providing advance written notification to the Commission.
- B. Respondents shall divest at no minimum price, absolutely and in good faith the MGT Assets only to an acquirer that receives

Decision and Order

the prior approval of the Commission and only in a manner that receives the prior approval of the Commission, no later than 120 days from the date the Commission accepts the Consent Agreement for public comment; provided, however, that Respondents shall include and enforce a provision in the purchase agreement between Respondents and the MGT Acquirer requiring the MGT Acquirer to complete the Guardian Interconnection no later than the in-service date of the Guardian Pipeline.

- C. Respondents shall divest at no minimum price, absolutely and in good faith the UTOS Assets 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, no later than April 1, 2001.
- D. The purpose of the divestiture of the assets described in Paragraph III of this Order is to ensure the continued use of the assets in the same businesses in which such assets were engaged at the time of the announcement of the proposed Acquisition by Respondents and to remedy the lessening of competition alleged in the Commission's complaint.

IV.

IT IS FURTHER ORDERED that between the date Respondents sign the Consent Agreement and the date the Pipeline Assets are completely divested pursuant to Paragraphs II and III of this Order, Respondents shall:

- A. Maintain the Pipeline Assets in substantially the same condition (except for normal wear and tear) existing on the date Respondents sign the Consent Agreement and shall continue to take such action that is consistent with the past practices of Respondents and is taken in the ordinary course of the normal day-to-day operations of Respondents.

Decision and Order

- B. Use their best efforts to keep available the services of the current officers, employees, and agents relating to the Pipeline Assets; and maintain the relations and goodwill with suppliers, customers, landlords, creditors, employees, agents, and others having business relationships with the Pipeline Assets.
- C. Preserve the Pipeline Assets intact as ongoing businesses and not take any affirmative action, or fail to take any action within their control, as a result of which the viability, competitiveness, and marketability of the Pipeline Assets would be diminished.

V.**IT IS FURTHER ORDERED** that:

- A. In connection with the divestitures required by Paragraphs II.A.2, II.A.5., III.B. and III.C. of this Order, Respondents shall provide services at the request of the applicable acquirer sufficient to operate the Transitional Pipelines pursuant to the following terms and conditions:
 - 1. Respondents shall operate the Transitional Pipelines and provide related services on behalf of each pipeline's respective acquirer in a manner consistent with Respondents' past practices for a period up to nine months for each pipeline from the date Respondents divest such pipeline;
 - 2. Respondents shall use their best efforts to transfer the operation of the Transitional Pipelines from Respondents to each applicable acquirer no later than nine months from the date Respondents divest each pipeline;

Decision and Order

3. From the date they divest each of the Transitional Pipelines, Respondents shall have no role in negotiating or setting rates, terms or conditions of service, making expansion or interconnection decisions, or marketing any services relating to the transportation of natural gas (or related products) through each of the Transitional Pipelines; provided, however, that Respondents, in providing transitional services may assist in submitting any necessary regulatory filings and facilitating expansions or interconnections;
 4. Respondents shall (i) use all information obtained in the course of operating the Transitional Pipelines solely to fulfill Respondents' obligations under this Paragraph V.A., and (ii) make available such information only to those persons employed by Respondents having a need to know and who agree in writing to maintain the confidentiality of such information; and
 5. Respondents shall provide the services required by this Paragraph V.A. to any applicable acquirer for a fee agreed to by Respondents and acquirer and included in the applicable purchase agreement.
- B. In connection with the divestitures required by Paragraphs II and III of this Order, Respondents shall provide each acquirer of the Pipeline Assets an opportunity to transfer employment relationships from Respondents to the acquirer, pursuant to the following terms and conditions:
1. Respondents shall provide each acquirer an opportunity to enter into an employment contract with each individual identified in the purchase agreement between Respondents and the acquirer (hereinafter "Key Employee");
 2. Respondents shall allow the acquirer to inspect the personnel files and other documentation relating to each Key Employee, to the extent permissible under applicable

Decision and Order

laws, no later than ten days before the date the applicable assets are divested;

3. Respondents shall take steps to cause each Key Employee to accept an offer of employment from the acquirer (such as payment of all current and accrued benefits and pensions, to which the employees are entitled). To incentivize each Key Employee to accept such an offer, Respondents shall pay a bonus to each Key Employee who accepts an offer of employment on or prior to the date of divestiture of the applicable assets and remains employed by the applicable acquirer for a period of twelve months (eighteen months if employed by the Gulfstream Acquirer), equal to 25% of the Key Employee's current annual salary and commissions (including any annual bonuses) as of November 1, 2000;
 4. Respondents shall not interfere with the employment by the acquirer of any Key Employee; not offer any incentive to any Key Employee to decline employment with the acquirer; and shall remove any contractual impediments with Respondents that may deter any Key Employee from accepting employment with the acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondents that would affect the ability of the Key Employee to be employed by the acquirer; and
 5. For a period of one year from the date this Order becomes final, Respondents shall not, without the consent of the acquirer, directly or indirectly, hire or enter into any arrangement for the services of any Key Employee employed by the acquirer, unless the Key Employee's employment has been terminated by the acquirer without the Key Employee's consent.
- C. 1. Respondents shall provide consulting services at the request of the Gulfstream Acquirer, for a fee not to exceed Respondents' costs of direct material and labor, for a period

Decision and Order

beginning from the date Respondents sign the Consent Agreement to the in-service date of the Gulfstream Pipeline, relating to any aspect of the Gulfstream Pipeline and furnished by any one or more individuals identified in the Gulfstream Purchase Agreement;

2. Unless otherwise compelled by law, Respondents shall not provide, disclose or otherwise make available any Gulfstream Confidential Information to any Person (including any of Respondents' employees, agents, or representatives) and shall not use any Gulfstream Confidential Information for any reason or purpose (except in the course of providing consulting services to the Gulfstream Acquirer), and shall enforce the terms of this Paragraph V.C.2. as to any Person and take such action to the extent necessary to cause each such Person to comply with the terms of this Paragraph V.C.2., including all actions that Respondents would take to protect their own trade secrets and confidential information; and
 3. Respondents shall not enter into any agreement to acquire any rights to Long Term Firm Transportation on the Gulfstream Pipeline except that nothing in this Paragraph V.C.3. shall preclude Respondents from acquiring Long Term Firm Transportation to serve the peak day needs of any planned or existing power plant of Respondent El Paso, or any other Long Term Firm Transportation where Respondent El Paso is the end user of the natural gas, and Respondent El Paso may release capacity so obtained so long as the term of the release is less than one year.
- D. In connection with the divestiture required by Paragraph II.A.3. of this Order, Respondents shall pay to the Commission the sum of \$40 million, no later than ten days from the date Respondents divest the Green Canyon/Tarpon Assets, pursuant to the following terms and conditions:

Decision and Order

1. The funds paid to the Commission shall be deposited into an interest-bearing account (“Development Fund”) administered by the Commission (which may designate an agent to administer the Development Fund) to be used in a manner consistent with this Paragraph V.D.;
2. Funds from the Development Fund (including earnings, but excluding costs of administration which shall be paid from the Development Fund) shall be made available to reimburse the Green Canyon/Tarpon Acquirer only for the total direct costs of constructing any Eligible Facility; provided, however, that no more than \$15 million shall be made available for construction in the Restricted Development Area;
3. For each construction project for which the Green Canyon/Tarpon Acquirer may seek reimbursement from the Development Fund, the Green Canyon/Tarpon Acquirer shall (i) maintain records relating to the design and cost of the project and sufficient to identify all project expenditures and recipients of expenditures, and (ii) make available such records upon request to the Monitor Trustee or to representatives of the Commission;
4. To obtain reimbursement from the Development Fund, the Green Canyon/ Tarpon Acquirer shall make a written request to the Monitor Trustee, state the amount of reimbursement requested, provide a description of how the expenditures for which reimbursement is sought were made, and include an attestation that the reimbursement will not be inconsistent with the use of the Development Fund permitted by this Paragraph;
5. The Monitor Trustee shall have full authority to review the written request submitted by the Green Canyon/Tarpon Acquirer, request any additional information that may be necessary to determine whether the conditions imposed by this Paragraph V.D. for reimbursement has been met (to

Decision and Order

which the Green Canyon/Tarpon Acquirer shall promptly respond), and report to the Commission, provided, however, that no funds from the Development Fund shall be paid without approval by a duly authorized representative of the Commission;

6. The Monitor Trustee shall (i) not disclose any information received from the Green Canyon/Tarpon Acquirer to Respondents, (ii) maintain records of all information submitted by the Green Canyon/Tarpon Acquirer, and (iii) make available such records upon request to representatives of the Commission;
7. The Green Canyon/Tarpon Acquirer may seek reimbursement from the Development Fund for a period of twenty years from the date the Development Fund is created, including reimbursement for any Eligible Facility that is constructed after the twenty year period if the Green Canyon/Tarpon Acquirer committed to such construction prior to the end of the twenty year period and such construction is completed within two years after the twenty year period has ended. After all appropriate reimbursements have been paid to the Green Canyon/Tarpon Acquirer, all funds remaining in the Development Fund shall be paid to Respondent El Paso; and
8. The Commission may on its own initiative or at the request of the Monitor Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with this Paragraph.

For purposes of this Paragraph V., “direct costs” means costs of direct material and labor, and variable overhead incurred in construction, but excluding administrative and general costs allocable to the Green Canyon/Tarpon Acquirer.

Decision and Order

- E. In connection with any of the divestitures required by Paragraphs II.A.1., II.A.2., and III.B. of this Order, from the date Respondents sign the Consent Agreement until Respondents have divested the applicable pipeline, Respondents shall not enter into any agreement to acquire any rights to Long Term Firm Transportation on the Gulfstream Pipeline, Empire State Pipeline, or MGT Pipeline.

VI.

IT IS FURTHER ORDERED that between the date Respondents sign the Consent Agreement and the date the Iroquois Assets are divested, Respondents shall not serve on any committee of Iroquois Gas Transmission System, attend any meeting of any such committee, exercise any vote as a partner in Iroquois Gas Transmission System or receive any information from Iroquois Gas Transmission System not made available to all shippers or to the public at large; provided, however, that Respondents shall vote (i) in favor of any expansion of the Iroquois Pipeline, (ii) in favor of the divestiture of the Iroquois Assets, and (iii) to create unanimity when unanimous action by all partners of a block within Iroquois Gas Transmission System is required and Respondents' vote is necessary to create unanimity; provided, further, that a representative of Respondents may observe meetings of any management committee and may receive and use nonpublic information of Iroquois Gas Transmission System solely for the purpose of effectuating the divestiture of the Iroquois Assets pursuant to this Order. Said representative shall be identified to the Commission, shall not divulge any nonpublic Iroquois Gas Transmission System information to Respondents (other than employees of Respondents whose sole responsibility is to effectuate the divestiture, and agents of Respondents specifically retained for the purpose of effectuating the divestiture), and shall acknowledge these obligations in writing to the Commission.

Decision and Order

VII.

IT IS FURTHER ORDERED that for a period of ten years from the date this Order becomes final, Respondents shall not, without providing advance written notification to the Commission:

- A. Acquire, directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in any of the Pipeline Assets.
- B. Enter into any agreement that would result in Respondents holding any rights to Long Term Firm Transportation greater than 100,000 dekatherms per day on the Empire Pipeline or 100,000 dekatherms per day on the MGT Pipeline, except that any amount acquired to serve the peak day needs of any planned or existing power plant of Respondent El Paso, or any other Long Term Firm Transportation where Respondent El Paso is the end user of the natural gas shall not be included in calculating the 100,000 dekatherms per day limitation.

VIII.

IT IS FURTHER ORDERED that:

- A. The prior notification required by Paragraphs III.A.2. and VII.A. of this Order shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as “the Notification”), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not

Decision and Order

be made to the United States Department of Justice, and notification is required only of the acquiring party and not of any other party to the transaction. The acquiring party shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), the acquiring party shall not consummate the transaction until twenty days (or such other duration that may hereinafter be determined by amendment to Section 7A of the Clayton Act, 15 U.S.C. 18a, as the second waiting period) after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. Provided, however, that prior notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

- B. The prior notification required by Paragraph VII.B. of this Order shall be provided in writing to the Commission at least twenty days prior to consummating the transaction and shall set forth the principal terms of the agreement, including the name of the pipeline on which the Long Term Firm Transportation rights are being acquired, identity of the seller, the volume to be acquired, the length of the contract, the date of expected execution, the receipt and delivery points, and the price.

IX.

IT IS FURTHER ORDERED that Respondents shall not:

- A. Engage in any unfair or deceptive act or practice that would prevent, hinder, or delay the construction or approval of the Guardian Pipeline;

Decision and Order

- B. Take any affirmative action, directly or indirectly, or fail to take any action the result of which would prevent, hinder, or delay completion of the Guardian Interconnection; or
- C. Fail to publicly disclose to the Federal Energy Regulatory Commission and the Public Service Commission of Wisconsin funding by Respondents of third-party efforts to oppose the Guardian Pipeline.

X.

IT IS FURTHER ORDERED that Respondents shall provide a copy of this Order (i) to each of Respondent's officers, employees, or agents having managerial responsibility for any of Respondent's obligations under Paragraphs II through XIV of this Order, no later than ten days after Respondents sign the Consent Agreement, and (ii) subsequent to the date the Commission accepts the Consent Agreement for public comment, to any Person who Respondents propose to acquire any of the assets to be divested pursuant to Paragraph III of this Order, prior to executing a purchase agreement with such proposed acquirer.

XI.

IT IS FURTHER ORDERED that:

- D. At any time after Respondents sign the Consent Agreement, the Commission may appoint one or more Persons to serve as Monitor Trustee to ensure that Respondents expeditiously perform their obligations as required by this Order and the Order to Maintain Assets.
- E. If a Monitor Trustee is appointed pursuant to this Paragraph XI, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor Trustee:

Decision and Order

1. The Commission shall select the Monitor 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 trustee within ten business days after notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.
2. The Monitor Trustee shall have the power and authority (i) to monitor Respondents' compliance with the terms of this Order and the Order to Maintain Assets and (ii) to perform the responsibilities required by Paragraph V.D. of this Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor Trustee in a manner consistent with the purposes of this Order and the Order to Maintain Assets and in consultation with the Commission.
3. Within ten business days after appointment of the Monitor Trustee, Respondents shall execute a trust agreement that, subject to the approval of the Commission, confers on the Monitor Trustee all the rights and powers necessary to permit the Monitor Trustee to monitor Respondents' compliance with the terms of this Order and the Order to Maintain Assets in a manner consistent with the purposes of these orders. Respondents may require the Monitor Trustee to sign a confidentiality agreement prohibiting the use, or disclosure to anyone other than the Commission, of any competitively sensitive or proprietary information gained as a result of his or her role as Monitor Trustee.
4. The Monitor Trustee shall serve until Respondents have completed all obligations under this Order and the Order to Maintain Assets.
5. The Monitor Trustee shall have full and complete access to Respondents' books, records, documents, personnel,

Decision and Order

facilities and technical information relating to compliance with this Order and Order to Maintain Assets, or to any other relevant information, as the Monitor Trustee may reasonably request. Respondents shall cooperate with any reasonable request of the Monitor Trustee. Respondents shall take no action to interfere with or impede the Monitor Trustee's ability to monitor Respondents' compliance with this Order and Order to Maintain Assets.

6. The Monitor Trustee shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Monitor Trustee shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor Trustee's duties and responsibilities. The Monitor Trustee shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.
7. Respondents shall indemnify the Monitor Trustee and hold the Monitor Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Monitor Trustee's duties (including the duties of the Monitor Trustee's employees), 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 losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor Trustee.
8. If at any time the Commission determines that the Monitor Trustee has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute to serve as Monitor Trustee in the same manner as provided in this Paragraph XI.

Decision and Order

9. The Commission may on its own initiative or at the request of the Monitor Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order and Order to Maintain Assets.
10. The Monitor Trustee shall report in writing to the Commission concerning Respondents' compliance with this Order and Order to Maintain Assets every sixty days for a period of six months from the date Respondents sign the Consent Agreement and annually thereafter on the anniversary of the date this Order becomes final during the remainder of the Monitor Trustee's period of appointment, and at such other time as representatives of the Commission may request.

XII.**IT IS FURTHER ORDERED** that:

- A. If Respondents have not divested, absolutely and in good faith any of the Pipeline Assets within the time and manner required by Paragraphs II and III of this Order, the Commission may at any time appoint one or more persons as trustee to divest such assets.
- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph XII 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 § 5(l) of the Federal Trade Commission Act, or any

Decision and Order

other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.

C. If a trustee is appointed by the Commission or a court pursuant to this Paragraph XII, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of the Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures and may be the same person as the Monitor Trustee appointed pursuant to Paragraph XI of this Order. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten business days after receipt of written notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.
2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to effect the divestiture for which he or she has been appointed.
3. Within ten business days after appointment of the trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture for which he or she has been appointed.
4. The trustee shall have twelve months from the date the Commission approves the trust agreement described in Paragraph XII.C. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period the trustee has submitted a plan of divestiture or believes that

Decision and Order

divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court appointed trustee, by the court; provided, however, the Commission may extend this period only two times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the assets to be divested, or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.
6. The trustee shall 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 divestiture shall be made only to an acquirer that receives the prior approval of the Commission, and the divestiture 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, that Respondents shall select such entity within five business days of receiving written notification of the Commission's approval.
7. The trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and

Decision and Order

customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondents such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the assets.

8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties (including the duties of the trustee's employees), including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.
9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in this Paragraph XII.
10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this Order.

Decision and Order

11. The trustee shall have no obligation or authority to operate or maintain the assets to be divested.
12. The trustee shall report in writing to the Commission every sixty days concerning the trustee's efforts to accomplish the divestiture.

XIII.

IT IS FURTHER ORDERED that no later than sixty days from the date this Order becomes final and annually thereafter, on the anniversary of the date this Order becomes final, until the Order terminates, and at other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order; provided, however, that if, at the time this Order becomes final, Respondents are required to file one or more written reports pursuant to the Order to Maintain Assets, Respondents shall file the first report required by this Paragraph no later than sixty days from the date Respondents file their final report pursuant to the Order to Maintain Assets.

XIV.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty days prior to any proposed change in the corporate Respondents such as dissolution, assignment, or 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.

XV.

IT IS FURTHER ORDERED that for the purposes of determining or securing compliance with this Order, and subject

Decision and Order

to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to its principal United States offices, 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 Respondents relating to compliance with this Order; and
- B. Upon five 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.

XVI.

IT IS FURTHER ORDERED that this Order shall terminate on March 19, 2021.

By the Commission.

Order

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent El Paso Energy Corporation of certain voting securities of Respondent The Coastal Corporation 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 that, 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 and Dominion Resources, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of the 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 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 Maintain Assets:

1. Respondent El Paso Energy Corporation 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

Order

place of business located at 1001 Louisiana Street, Houston, Texas 77002.

2. Respondent The Coastal Corporation 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 Nine Greenway Plaza, Houston, Texas 77046.
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 HEREBY ORDERED that, as used in this Order to Maintain Assets, the following definitions shall apply:

- A. “El Paso” means El Paso Energy Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by El Paso, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Coastal” means The Coastal Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Coastal, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Commission” means the Federal Trade Commission.
- D. “Decision and Order” means the Decision and Order incorporated into and made a part of the Consent Agreement.

Order

- E. “Empire State Pipeline” means the natural gas pipeline known as the Empire State Pipeline that originates near Niagara, New York, and extends approximately 157 miles to its interconnection with the facilities of Niagara Mohawk Power Corporation, 15 miles northwest of Syracuse, New York.
- F. “Guardian Pipeline” means the natural gas pipeline (with a planned initial capacity of approximately 750 million cubic feet per day) to be constructed at a point near Joliet, Illinois, and extending to a point near Ixonia, Wisconsin, as described in the Application of Guardian Pipeline, L.L.C. for Certificates of Public Convenience and Necessity, FERC Docket Nos. CP00-36-000, CP00-37-000, and CP00-38-000.
- G. “Guardian Interconnection” means a pipeline interconnection between MGT Pipeline and Guardian Pipeline at or near Joliet, Illinois, with capacity of at least 450 million cubic feet per day of natural gas, to be constructed on commercially reasonable terms agreed to between the MGT Acquirer and the owner or representative of the Guardian Pipeline.
- H. “Gulfstream Acquirer” means the Person that acquires the Gulfstream Assets.
- I. “Gulfstream Confidential Information” means any information relating to the Gulfstream Assets obtained by Respondent El Paso in the course of evaluating the Acquisition or obtained from any Coastal employee, agent, or representative who remains or becomes employed by Respondents, provided, however, that Gulfstream Confidential Information shall not include information already within the public domain.
- J. “Gulfstream Pipeline” means the natural gas pipeline (with a planned initial capacity of approximately 1.1 billion cubic feet per day) to be constructed at a point near Mobile Bay, Alabama, and extending across the Gulf of Mexico to a point south of Tampa, Florida, and extending on land in an easterly

Order

direction branching out to serve markets across central and southern Florida, as described in the Application of Gulfstream Natural Gas System, L.L.C. for Certificate of Public Convenience and Necessity, FERC Docket Nos. CP00-6-000, CP00-7-000, and CP00-8-000.

- K. “Gulfstream Purchase Agreement” means the Amended and Restated Acquisition Agreement by and among Duke Energy Gas Transmission Corporation, Williams Gas Pipeline Company, ANR Gulfstream, L.L.C. and Coastal Southern Pipeline Company, dated December 8, 2000, including all related amendments, agreements, schedules, exhibits, and appendices.
- L. “Iroquois Assets” means all of Coastal’s rights, title, and interest in the Iroquois Gas Transmission System.
- M. “Iroquois Gas Transmission System” means Iroquois Gas Transmission System, L.P., a limited partnership organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at One Corporate Drive, Suite 600, Shelton, Connecticut 06484.
- N. “Iroquois Pipeline” means the natural gas pipeline that originates near the United States/Canadian border at Waddington, New York, and extends approximately 375 miles to Long Island, New York.
- O. “MGT Pipeline” means the natural gas pipeline known as the Midwestern Gas Transmission pipeline that originates near Portland, Tennessee, and extends approximately 350 miles to a point near Joliet, Illinois.
- P. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity.
- Q. “Pipeline Assets” means the assets to be divested pursuant to Paragraphs II and III of the Decision and Order.

Order

- R. “Respondents” means El Paso and Coastal, individually and collectively.

II.**IT IS FURTHER ORDERED** that:

- A. Between the date Respondents sign the Consent Agreement and the date the Pipeline Assets are completely divested pursuant to Paragraphs II and III of the Decision and Order, Respondents shall:
1. Maintain the Pipeline Assets in substantially the same condition (except for normal wear and tear) existing on the date Respondents sign the Consent Agreement and shall continue to take such action that is consistent with the past practices of Respondents and is taken in the ordinary course of the normal day-to-day operations of Respondents;
 2. Use their best efforts to keep available the services of the current officers, employees, and agents relating to the Pipeline Assets; and maintain the relations and goodwill with suppliers, customers, landlords, creditors, employees, agents, and others having business relationships with the Pipeline Assets; and
 3. Preserve the Pipeline Assets intact as ongoing businesses and not take any affirmative action, or fail to take any action within their control, as a result of which the viability, competitiveness, and marketability of the Pipeline Assets would be diminished.
- B. The purpose of this Order to Maintain Assets is to: (i) preserve the Pipeline Assets as viable, competitive, and ongoing businesses and (ii) prevent interim harm to competition.

Order

III.

IT IS FURTHER ORDERED that:

- A. In connection with the divestitures required by Paragraphs II and III of the Decision and Order, Respondents shall provide each acquirer of the Pipeline Assets an opportunity to transfer employment relationships from Respondents to the acquirer, pursuant to the following terms and conditions:
1. Respondents shall provide each acquirer an opportunity to enter into an employment contract with each individual identified in the purchase agreement between Respondents and the acquirer (hereinafter “Key Employee”);
 2. Respondents shall allow the acquirer to inspect the personnel files and other documentation relating to each Key Employee, to the extent permissible under applicable laws, no later than ten days before the date the applicable assets are divested;
 3. Respondents shall take steps to cause each Key Employee to accept an offer of employment from the acquirer (such as payment of all current and accrued benefits and pensions, to which the employees are entitled). To incentivize each Key Employee to accept such an offer, Respondents shall pay a bonus to each Key Employee who accepts an offer of employment on or prior to the date of divestiture of the applicable assets and remains employed by the applicable acquirer for a period of twelve months (eighteen months if employed by the Gulfstream Acquirer), equal to 25% of the Key Employee’s current annual salary and commissions (including any annual bonuses) as of November 1, 2000;
 4. Respondents shall not interfere with the employment by the acquirer of any Key Employee; not offer any incentive to any Key Employee to decline employment with the acquirer; and shall remove any contractual impediments with Respondents that may deter any Key Employee from

Order

accepting employment with the acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondents that would affect the ability of the Key Employee to be employed by the acquirer; and

5. For a period of one year from the date this Order becomes final, Respondents shall not, without the consent of the acquirer, directly or indirectly, hire or enter into any arrangement for the services of any Key Employee employed by the acquirer, unless the Key Employee's employment has been terminated by the acquirer without the Key Employee's consent.
- B. 1. Respondents shall provide consulting services at the request of the Gulfstream Acquirer, for a fee not to exceed Respondents' costs of direct material and labor, for a period beginning from the date Respondents sign the Consent Agreement to the in-service date of the Gulfstream Pipeline, relating to any aspect of the Gulfstream Pipeline and furnished by any one or more individuals identified in the Gulfstream Purchase Agreement;
2. Unless otherwise compelled by law, Respondents shall not provide, disclose or otherwise make available any Gulfstream Confidential Information to any Person (including any of Respondents' employees, agents, or representatives) and shall not use any Gulfstream Confidential Information for any reason or purpose (except in the course of providing consulting services to the Gulfstream Acquirer), and shall enforce the terms of this Paragraph III.B.2. as to any Person and take such action to the extent necessary to cause each such Person to comply with the terms of this Paragraph III.B.2., including all actions that Respondents would take to protect their own trade secrets and confidential information; and
3. Respondents shall not enter into any agreement to acquire any rights to Long Term Firm Transportation on the

Order

Gulfstream Pipeline except that nothing in this Paragraph III.B.3. shall preclude Respondents from acquiring Long Term Firm Transportation to serve the peak day needs of any planned or existing power plant of Respondent El Paso, or any other Long Term Firm Transportation where Respondent El Paso is the end user of the natural gas, and Respondent El Paso may release capacity so obtained so long as the term of the release is less than one year.

- C. In connection with any of the divestitures required by Paragraphs II.A.1., II.A.2., and III.B. of the Decision and Order, from the date Respondents sign the Consent Agreement until Respondents have divested the applicable pipeline, Respondents shall not enter into any agreement to acquire any rights to Long Term Firm Transportation on the Gulfstream Pipeline, Empire State Pipeline, or MGT Pipeline.

IV.

IT IS FURTHER ORDERED that between the date Respondents sign the Consent Agreement and the date the Iroquois Assets are divested, Respondents shall not serve on any committee of Iroquois Gas Transmission System, attend any meeting of any such committee, exercise any vote as a partner in Iroquois Gas Transmission System or receive any information from Iroquois Gas Transmission System not made available to all shippers or to the public at large; provided, however, that Respondents shall vote (i) in favor of any expansion of the Iroquois Pipeline, (ii) in favor of the divestiture of the Iroquois Assets, and (iii) to create unanimity when unanimous action by all partners of a block within Iroquois Gas Transmission System is required and Respondents' vote is necessary to create unanimity; provided, further, that a representative of Respondents may observe meetings of any management committee and may receive and use nonpublic information of Iroquois Gas Transmission System solely for the purpose of effectuating the divestiture of the Iroquois Assets pursuant to this Order. Said representative shall be identified to the Commission, shall not divulge any nonpublic Iroquois Gas Transmission System information to Respondents

Order

(other than employees of Respondents whose sole responsibility is to effectuate the divestiture, and agents of Respondents specifically retained for the purpose of effectuating the divestiture), and shall acknowledge these obligations in writing to the Commission.

V.

IT IS FURTHER ORDERED that Respondents shall not:

- A. Engage in any unfair or deceptive act or practice that would prevent, hinder, or delay the construction or approval of the Guardian Pipeline;
- B. Take any affirmative action, directly or indirectly, or fail to take any action the result of which would prevent, hinder, or delay completion of the Guardian Interconnection; or
- C. Fail to publicly disclose to the Federal Energy Regulatory Commission and the Public Service Commission of Wisconsin funding by Respondents of third-party efforts to oppose the Guardian Pipeline.

VI.

IT IS FURTHER ORDERED that Respondents shall provide a copy of this Order to Maintain Assets (i) to each of Respondent's officers, employees, or agents having managerial responsibility for any of Respondent's obligations under Paragraphs II through VIII of this Order to Maintain Assets, no later than ten days after Respondents sign the Consent Agreement, and (ii) subsequent to the date the Commission accepts the Consent Agreement for public comment, to any Person who Respondents propose to acquire any of the assets to be divested pursuant to Paragraph III of the Decision and Order, prior to executing a purchase agreement with such proposed acquirer.

Order

VII.

IT IS FURTHER ORDERED that no later than thirty (30) days from the date this Order to Maintain Assets becomes final and every thirty (30) days thereafter until this Order to Maintain Assets terminates, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with the Decision and Order and this Order to Maintain Assets. 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 the Decision and Order and this Order to Maintain Assets, including a description of all substantive contacts or negotiations relating to the divestitures required by Paragraphs II and III of the Decision and Order. Respondents shall include in their compliance reports copies, other than of privileged materials, of all written communications to and from such parties and all reports and recommendations concerning the divestitures. The final compliance report required by this Paragraph shall include a statement that the divestitures have been accomplished in the manner approved by the Commission and shall include the dates the divestitures were accomplished.

VIII.

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, or 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 to Maintain Assets.

IX.

IT IS FURTHER ORDERED that for the purposes of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon

Order

written request with reasonable notice to Respondents made to its principal United States offices, 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 Respondents relating to compliance with this Order to Maintain Assets; and
- 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.

X.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the earlier of:

- A. Three business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. Three business days after the divestiture of the assets required by Paragraphs II and III of the Decision and Order.

By the Commission.

Analysis

**Analysis of the Complaint and Proposed Consent Order to
Aid Public Comment**

Issued when the Commission tentatively approved a proposed consent order on December 21, 2000

I. Introduction

The Federal Trade Commission (“Commission”) has accepted for public comment an Agreement Containing Consent Orders and a proposed Decision and Order (“proposed Order”) with El Paso Energy Corporation (“El Paso”), The Coastal Corporation (“Coastal”), and Dominion Resources, Inc. (“Dominion”). The proposed Order seeks to remedy the anticompetitive effects of El Paso’s acquisition of Coastal by requiring El Paso and Coastal (“Respondents”) to divest their interests in ten pipelines and one pipeline yet to be constructed. The divestitures are in locations where the Respondents already own additional pipelines and their ownership of the pipelines to be divested would likely injure competition. Additionally, the proposed Order seeks to remedy competition by establishing a development fund to be made available to the purchaser of the Green Canyon and Tarpon pipelines for the purpose of paying to construct pipelines into a defined area of competitive concern.

II. Description of the Parties and the Proposed Acquisition

El Paso, a Delaware corporation, is 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. El Paso owns or has interests in more than 38,000 miles of interstate and intrastate natural gas pipelines connecting the nation’s principal natural gas supply to consuming regions. In 1999, El Paso had revenues of \$10.6 billion and earnings of \$191 million, before interest and taxes.

Coastal, a Delaware corporation, is a diversified energy and petroleum products company. Coastal explores for, produces,

Analysis

gathers, processes, transports, stores, markets and sells natural gas throughout the United States. It is also engaged in refining, marketing, and distributing petroleum products; coal mining; and marketing power. Coastal owns or has interest in more than 18,000 miles of natural gas pipelines that serve the Rocky Mountain area, the Midwest, the south central United States, New York State, and other areas of the northeastern United States. In 1999, Coastal reported revenues of \$8.2 billion, and earnings of \$996.1 million before interest and taxes.

El Paso will acquire all of Coastal's common stock and the former Coastal shareholders will, as a result, own approximately 53% of El Paso's voting securities ("proposed Acquisition"). The total dollar value of the transaction (which includes about \$6 billion in debt and preferred securities) is estimated to be \$16 billion. The Respondents will have an asset base of approximately \$31.5 billion.

III. The Complaint

The Complaint alleges that the relevant line of commerce (*i.e.*, the product market) in which to analyze the proposed Acquisition is the transportation of natural gas via pipeline. For many end users, there are no substitutes for natural gas, and there is no practical alternative to pipeline transportation. The relevant market can be further delineated by focusing on long term firm transportation, which is a type of natural gas transportation service requiring the pipeline company to guarantee for one year or more that it will transport a specified daily quantity of natural gas from one destination to another, without interruption. Many natural gas users cannot bear the risk of interruption and, in areas where pipeline capacity is constrained periodically, these users must purchase long term firm transportation. For these customers, other pipeline services and periodic resales of transportation by holders of long term transportation rights are not reasonably interchangeable. Another relevant market in which to analyze the effects of the proposed Acquisition is the provision of tailored services. Tailored services allow users of natural gas to balance

Analysis

their changes in natural gas demand with their supply of natural gas and transportation. Tailored services include limited notice and no notice service, and are typically sold in conjunction with natural gas storage services.

The Complaint further alleges that the proposed Acquisition, if consummated, will eliminate actual and direct competition between the two companies in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, in the following 20 sections of the country (*i.e.*, the geographic markets): (a) Central Florida, (b) metropolitan areas of Buffalo, Rochester, Syracuse, and Albany, New York; (c) the metropolitan area of Milwaukee, Wisconsin; (d) the metropolitan area of Evansville, Indiana; and (e) 13 areas in the Gulf of Mexico. The Complaint alleges that each of these markets is highly concentrated, and the acquisition would substantially increase that concentration. In each of the relevant markets, pipelines owned by El Paso and Coastal are two of the most significant competitors. In some instances, El Paso and Coastal are the only two options available to customers, and in other instances, they represent two of three options. The merger not only eliminates existing competition between El Paso and Coastal pipelines but also threatens to forestall potential new competition as well. After the proposed acquisition, with the elimination of competition between El Paso and Coastal, it is likely that prices of transportation will increase and output of transportation will be reduced in the relevant markets, thereby increasing the cost of electricity and natural gas service.

The Complaint further alleges that new entry into the relevant geographic markets would not be likely, timely, or sufficient to prevent or counteract these anticompetitive effects and to prevent the Respondents from maintaining a price increase above pre-acquisition levels. There are substantial barriers to entering these markets, as building additional pipelines to natural gas production areas, to natural gas consuming areas, to natural gas storage fields, or outside the geographic market is expensive and would take more than two years. Major pipeline projects require approval

Analysis

from the Federal Energy Regulatory Commission, which is likely to take three or four years. In addition, it requires considerable time for a new entrant to secure rights of way, overcome landowner and environmental hurdles, secure sufficient advance commitments from customers, and obtain regulatory approvals in the face of opposition from competition.

IV. Terms of the Proposed Order

The proposed Order is designed to remedy the alleged anticompetitive effects of the proposed Acquisition. Under the terms of the proposed Order, the Respondents must, within twenty days from the date upon which the Commission places the proposed Order on the public record, divest their interests in: Gulfstream Natural Gas System to Duke Energy and Williams Gas Pipeline; the Empire pipeline to Westcoast Energy; the Green Canyon and Tarpon pipelines to Williams Field Services; the Manta Ray, Nautilus, and Nemo pipelines to Enterprise Products; and the Stingray pipeline to Shell Gas Transmission and Enterprise Products. The Respondents must also divest their interests in the Midwestern Gas Transmission pipeline ("MGT") within 120 days of the date upon which the Commission places the proposed Order on the public record, UTOS by April 1, 2001, and the Iroquois pipeline within 90 days of the date upon which the Commission places the proposed Order on the public record.

The Commission is satisfied that the acquirers identified in the proposed Order are well-qualified acquirers and will compete vigorously with the Respondents. The Commission will evaluate additional proposed acquirers for assets to be divested under the proposed Order to make certain that such acquirers will not present competitive problems.

In connection with the divestiture of their interests in the Empire, MGT, Stingray, and UTOS pipelines, the proposed Order requires the Respondents to provide transitional services to the purchaser of these pipelines, at a reasonable fee, sufficient to operate the assets. The Respondents must provide these services

Analysis

for a period of up to nine months. Also, in connection with the divestiture of these assets, the Order requires the Respondents to give the acquirers an opportunity to transfer applicable employment relationships from either Coastal or El Paso to each acquirer. These provisions of the proposed Order help assure that there will be a successful and reasonably short transition of the pipelines to the new owners.

The proposed Order also contains additional provisions with respect to the divestiture of Gulfstream Natural Gas System. Gulfstream Natural Gas System is beginning to construct a 140-mile natural gas pipeline that will originate near Mobile Bay, Alabama; extend across the Gulf of Mexico to the west coast of Florida near Tampa; and extend inland to various destinations in the Florida peninsula. To ensure that the pipeline meets its scheduled in-service date of June 1, 2002, the proposed Order requires Respondents to provide consulting services, at a reasonable fee, to the buyer of Gulfstream until June 2002. The proposed Order prohibits the Respondents from acquiring any long term firm capacity on Gulfstream (except for their own end use) and from disclosing or making available any Gulfstream confidential information to any person. The Respondents are further prohibited from using any Gulfstream confidential information, except to provide consulting services to the buyer of Gulfstream.

In connection with the divestiture of the MGT pipeline, the proposed Order requires the Respondents to include and enforce a provision in the MGT purchase and sale agreement that requires the MGT acquirer to connect MGT to the Guardian pipeline ("Guardian Interconnection"). The Respondents are prohibited by the proposed Order from engaging in any action, or failing to take any action, the result of which would prevent, hinder, or delay completion of the Guardian Interconnection. Furthermore, the proposed Order prohibits the Respondents from engaging in any unfair or deceptive practice that would prevent, hinder, or delay construction of the Guardian pipeline; and requires Respondents to notify publicly the Federal Energy Regulatory Commission and

Analysis

the Public Service Commission of Wisconsin if Respondents fund any third-party effort to oppose the Guardian pipeline. These provisions are designed to ensure the effectiveness of the Commission's remedy. With regard to the MGT divestiture, the Respondents must divest MGT to a buyer approved by the Commission within 120 days from the date upon which the Commission places the proposed Order on the public record.

In connection with the divestiture of its interests in the Iroquois pipeline, the proposed Order prohibits Respondents from divesting more than 8.72% of their partnership interest in Iroquois pipeline to Dominion Resources. This limitation prevents Dominion Resources from acquiring additional control or influence over the Iroquois pipeline that could be used to thwart competition. The proposed Order also prohibits Respondents from serving on any committee of the Iroquois pipeline, attending any meeting of any such committee, or receiving any information from the Iroquois pipeline not made available to all shippers or to the public at large. Furthermore, until the Respondents are removed from the Iroquois Management Committee, the proposed Order requires that the Respondents' vote be cast in favor of expansion, if such a vote should arise. The Respondents are also deemed, by the proposed Order, to vote to create unanimity when unanimous action is required within a voting bloc in order to cast that bloc's vote. These provisions prevent the Respondents from gaining access to competitively sensitive information that could be used to prevent competition between Respondents and the Iroquois pipeline, and keep the Respondents from limiting the ability of the Iroquois pipeline to expand in the Albany market.

The proposed Order also requires that the Respondents to create a fund to encourage expansions of the Tarpon and Green Canyon pipelines by providing \$40 million, within ten days from the date of the divestiture of the Tarpon and Green Canyon pipelines, to be deposited in an interest-bearing account. The Tarpon and Green Canyon pipelines will be permitted to use the fund to pay the direct costs of constructing a natural gas pipeline or related facility that originates at any pipeline owned by the

Analysis

Green Canyon and Tarpon acquirer, and which extends to a location within a specified area. The fund will ensure that competition is maintained by allowing the Tarpon and Green Canyon acquirer to extend its pipelines into an area of competitive concern and to compete against the Respondents in that area. Without this fund competition would be reduced and the Tarpon and Green Canyon acquirer would be at a competitive disadvantage due to the longer distance between the acquiring firm's pipelines and the areas of concern. Any money remaining in the fund after twenty years will be paid to Respondent El Paso.

The proposed Order further requires that the Respondents assist the acquirers of the Gulfstream, Empire, Iroquois, MGT, Green Canyon, Tarpon, Nautilus, Manta Ray, Nemo, Stingray, and UTOS pipelines in obtaining any approval, consent, ratification, waiver, or other authorization (including governmental) that is or will become necessary to complete the divestitures required by the proposed Order.

Additionally, for a period of 10 years after the proposed Order becomes final, the Respondents must provide written notice to the Commission prior to acquiring any interest in any of the assets which are required to be divested by the proposed Order. The proposed Order also prohibits the Respondents from entering into any agreement to acquire any rights to long term firm transportation on the Gulfstream, Empire, or MGT pipelines from the date Respondents sign the Agreement Containing Consent Orders until Respondents have divested the applicable pipeline. After that date, and for a period of ten years, Respondents must provide advance written notification before entering into an agreement to purchase long term firm transportation greater than 100,000 dekatherms per day on either the Empire or MGT pipeline. There is an exception to these restrictions where the purchase of the transportation is for the Respondents' own end use. Furthermore, the Respondents must provide the Commission with a report of compliance with the proposed Order within 60 days after the proposed Order becomes final, annually thereafter

Analysis

until the order terminates, and at other times as the Commission may require.

The parties will also be subject to an “Order to Maintain Assets,” to be issued by the Commission. Under the Order to Maintain Assets, between the date the Respondents sign the Agreement Containing Consent Orders and the date of divestiture of the applicable asset, the Respondents must maintain the assets to be divested in substantially the same condition as existing on the date the Respondents signed the Agreement Containing Consent Orders; use their best efforts to keep available the services of current personnel relating to the assets to be divested and to maintain the relations and good will of those entities which have business relationships with the assets to be divested; and preserve the assets to be divested intact as an ongoing business. Under the Order to Maintain Assets, the Respondents must also provide the acquirers of the assets to be divested an opportunity to transfer employment relationships from the Respondents to the acquirers. In addition, the Order to Maintain Assets imposes several obligations on the Respondents which are also imposed by the proposed Order and which are mentioned earlier in this notice.

Further, Dominion Resources, which already owns 16% of the Iroquois pipeline, has been made a party to the proposed Order for the purposes of requiring it to provide the Commission with advance written notification before increasing its interest in the Iroquois pipeline.

Finally, under the terms of the proposed 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 Order, the Commission may appoint a trustee to divest those assets, expeditiously, and at no minimum price. The proposed Order also authorizes the Commission to appoint a Monitor Trustee to oversee the Development Fund by ensuring that those funds are used in a manner consistent with the terms of the proposed Order.

V. Opportunity for Public Comment

Analysis

The proposed Order has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed Order and the comments received and will decide whether it should withdraw from the proposed Order or make it final. By accepting the proposed Order subject to final approval, the Commission anticipates that the competitive problems alleged in the Complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed Order, including the proposed divestitures, to aid the Commission in its determination of whether to make the proposed Order final. This analysis is not intended to constitute an official interpretation of the proposed Order, nor is it intended to modify the terms of the proposed Order in any way.

Complaint

IN THE MATTER OF**RHI AG****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-4005; File No. 9910281**Complaint, March 21, 2001--Decision, March 21, 2001*

This consent order addresses the acquisition by Respondent RHI AG of Global Industrial Technologies, Inc. The order, among other things, requires the respondent to divest two North American plants that manufacture refractories -- brick- and cement-like products made from certain natural minerals and materials that are used to line and protect furnaces in industries that require heating or containing solids, liquids, or gases at high temperatures -- and certain assets relating to refractory products currently produced at a third North American manufacturing plant to Resco Products, Inc., another refractories producer. The order also requires the respondent to enter into a one year high purity magnesite supply contract -- renewable for two additional one year terms at Resco's option and with most favored nation pricing -- to give Resco time to assimilate the relevant products into its own line of refractory products, to perfect the production processes, and to test other sources of high purity magnesite without jeopardizing customer contracts in the meantime.

Participants

For the Commission: *Gregg H. Vicinanza, Kristin Malmberg, John R. Hoagland, Morris A. Bloom, Arthur M. Strong, Daniel P. Ducore, Fred Martin, and Daniel O'Brien.*

For the Respondent: *Tom D. Smith and Peter Laun, Jones, Day, Reavis & Pogue.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that RHI AG has agreed to acquire Global Industrial Technologies, Inc., both corporations 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 ("FTC Act"), as amended, 15