

Complaint

IN THE MATTER OF
SOUTHERN UNION COMPANY, 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-4087; File No. 0310068
Complaint, July 16, 2003--Decision, July 16, 2003

This consent order addresses the acquisition of the Panhandle Eastern Pipeline Company by Respondent Southern Union Company – which distributes and sells natural gas to residential, commercial and industrial customers in Missouri, Pennsylvania, Rhode Island, Massachusetts, and other states, and manages the operation of the Central Pipeline – and American International General (“AIG”), which owns the Central Pipeline – from Respondent CMS Energy Corporation – which engages in the business of oil and gas exploration, natural gas transportation, liquefied natural gas services, independent power production, gas and electricity distribution, and marketing and management services. The order, among other things, requires Respondent Southern Union to terminate its Management Services Agreement with AIG for management of the Central Pipeline. The order also prohibits the respondents from transferring any ownership interest in the Panhandle Pipeline to AIG. In addition, the order prohibits Respondent Southern Union from acquiring any ownership interest in AIG or the Central Pipeline, and prohibits the respondents from transferring any ownership interest in Southern Union, Panhandle or the Panhandle Pipeline to AIG.

Participants

For the Commission: *Dennis F. Johnson, Patricia V. Galvan, Anant Raut, Anne E. Klosterman, Phillip L. Broyles, Susan A. Creighton, Eric D. Rohlck, Daniel P. Ducore, Daniel Gaynor, Louis M. Silvia and Mary T. Coleman.*

For the Respondents: *R. Bruce Beckner and James Moriarty, Fleischman and Walsh, and C. Benjamin Crisman and Brian Mohr, Skadden, Arps, Slate, Meagher & Flom LLP.*

Complaint

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission (“FTC” or “Commission”), having reason to believe that Respondent Southern Union Company (“Southern Union” or “SU”) and Respondent CMS Energy Corporation (“CMS”) have entered into an agreement whereby Southern Union proposes to acquire all of the issued and outstanding shares of Panhandle Eastern Pipeline Company (“Panhandle”) from CMS Gas Transmission Company, a wholly-owned subsidiary of CMS, that such an agreement violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENTS**Southern Union Company**

1. Respondent Southern Union is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at One PEI Center, Wilkes-Barre, Pennsylvania 18711.
2. Respondent Southern Union is, and at all times relevant herein has been, engaged either directly or through affiliates in the distribution and sale of natural gas to residential, commercial and industrial customers located in certain states, including Missouri, Pennsylvania, Rhode Island and Massachusetts.
3. Pursuant to an agreement executed November 20, 2002, which continued until it was terminated on May 12, 2003 in order to resolve competitive issues arising from this transaction, respondent Southern Union’s subsidiary, Energy Worx, Inc.

Complaint

(“Energy Worx”), served as the operator and manager of the Central pipeline. The Central pipeline, which transports natural gas to customers in certain Midwestern states, including Kansas and Missouri, is owned by American International Group, Inc. (“AIG”) through its affiliate Southern Star Central Corp. (“Southern Star”).

4. Respondent Southern Union is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

CMS Energy Corporation

5. Respondent CMS is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at Fairlane Plaza South, 330 Town Center Drive, Suite 1100, Dearborn, Michigan 48126.
6. Respondent CMS is, and at all times relevant herein has been, engaged either directly or through affiliates in the business of oil and gas exploration, natural gas transportation, liquefied natural gas services, independent power production, gas and electricity distribution, and marketing and management services.
7. Panhandle Eastern Pipeline Company (“Panhandle”), a subsidiary of CMS, owns and operates the Panhandle pipeline, which transports natural gas to customers in certain Midwestern states, including Kansas and Missouri.
8. Respondent CMS is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as

Complaint

“commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED TRANSACTION

9. Pursuant to an agreement dated December 21, 2002, and a letter of understanding dated December 20, 2002, Southern Union and affiliates of AIG agreed to acquire all of the capital stock of Panhandle from CMS. The agreement provided that Southern Union would own approximately 77.9%, and affiliates of AIG would own approximately 22.1%, of the equity interest in Panhandle. On May 12, 2003, in order to resolve competitive issues arising from this transaction, Southern Union, Southern Union Panhandle Corp., and CMS Gas Transmission Company entered into an amended and restated stock purchase agreement pursuant to which Southern Union Panhandle Corp., a wholly-owned subsidiary of Southern Union, intends to purchase all of the capital stock of Panhandle from CMS Gas Transmission Company, a wholly-owned subsidiary of CMS. AIG is not a party to the revised transaction and will have no ownership interest in Panhandle. The total value of the transaction is approximately \$1.8 billion.

III. TRADE AND COMMERCE***A. Relevant Product Market***

10. A relevant line of commerce, or product market, in which to analyze the effects of the proposed acquisition is the transportation of natural gas by pipeline. The only way to economically transport commercial quantities of natural gas over significant distances is through large diameter, high pressure pipelines. Buyers of natural gas transportation services could not and would not switch to other means of transportation, or to alternative fuels, if the cost of pipeline transportation of natural gas were to increase by 5% to 10%.

Complaint

B. Relevant Geographic Market

11. A relevant section of the country, or geographic market, in which to analyze the proposed acquisition is the Kansas City area, consisting of Cass, Henry, Jackson, Johnson, Lafayette, Pettis and Saline Counties in Missouri, and Anderson, Butler, Chase, Coffey, Franklin, Johnson, Lyon, Marion, Miami and Osage Counties in Kansas. Buyers of natural gas in this geographic market can receive natural gas only from pipelines that travel through or terminate in that geographic market, and cannot economically access natural gas pipelines outside that area.

C. Market Structure

12. Pursuant to a Management Services Agreement with an affiliate of AIG, Southern Union's subsidiary, Energy Worx, served as the operator and manager of the Central pipeline until the parties to that Management Services Agreement terminated it on May 12, 2003, in order to resolve competitive issues arising from this transaction. The Central pipeline transports a significant portion of the natural gas delivered to the relevant geographic market. Pursuant to the Management Services Agreement, Southern Union had managerial and operational control over the business of the Central pipeline, access to confidential competitive information about the Central pipeline, and a financial interest in the Central pipeline. The Management Services Agreement also contemplated that Southern Union would have an equity position in the Central pipeline.
13. The only pipelines that transport natural gas to the relevant geographic market are the Panhandle pipeline, the Central pipeline, and two smaller pipelines that service only part of the western portion of the relevant geographic market. These other two pipelines could not act as a competitive constraint on Central or Panhandle because of operational limitations, capacity constraints, distance factors, and

Complaint

related issues. For many buyers of natural gas transportation services in the relevant geographic market, Central and Panhandle are the only viable alternatives.

14. The market for the pipeline transportation of natural gas into the relevant geographic market is highly concentrated and would become significantly more concentrated as a result of the proposed acquisition. As originally proposed, common ownership interest and/or common management and control would exist between the only two alternatives for the transportation of natural gas for many buyers in the relevant geographic market.

D. Entry Conditions

15. Entry into the relevant line of commerce in the relevant section of the country is difficult and would not be timely, likely or sufficient to prevent anticompetitive effects that are likely to result from the proposed acquisition. Building a new pipeline is capital intensive, is subject to significant regulatory constraints, and would require more than two years to accomplish. As a result, new entry would not be able to prevent a 5-10% increase in the price of pipeline transportation of natural gas.

IV. EFFECTS OF THE TRANSACTION

16. The effect of the proposed acquisition, if consummated, may be substantially to lessen competition in the transportation of natural gas by pipeline into the relevant geographic market, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:
 - a. by eliminating direct competition between the Panhandle pipeline and the Central pipeline;

Complaint

- b. by placing the Panhandle pipeline and the Central pipeline under common ownership and/or common management and control;
- c. by increasing the likelihood that unilateral market power would be exercised in the relevant geographic market; and
- d. by increasing the likelihood of, or facilitating, collusion or coordinated interaction in the relevant geographic market,

each of which increases the likelihood that the price of transporting natural gas by pipeline will increase in the relevant geographic market.

V. VIOLATIONS CHARGED

- 17. The proposed acquisition violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and would, if consummated, 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this sixteenth day of July, 2003, issues its complaint against said Respondents.

By the Commission.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition of Panhandle Eastern Pipeline Company (“Panhandle”) from Respondent CMS Energy Corporation (“CMS”) by Respondent Southern Union Company (“SU”) (SU and CMS hereinafter referred to as “Respondents”), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts as set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission, having thereafter considered the matter and having determined that it had reason to believe that the Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comment received from an interested person pursuant to section 2.34 of its Rules now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the

Decision and Order

following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Southern Union Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at One PEI Center, Wilkes-Barre, Pennsylvania 18711.
2. Respondent CMS Energy Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at Fairlane Plaza South, 330 Town Center Drive, Suite 1100, Dearborn, Michigan 48126.
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.

I.

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

- A. “SU” means Southern Union Company, its officers, directors, employees, agents and representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Southern Union Company (including, but not limited to, Missouri Gas Energy, Energy Worx, Inc., and SUPC); and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.
- B. “CMS” means CMS Energy Corporation, its officers, directors, employees, agents and representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by CMS Energy Corporation (including, but not limited to, CMS

Decision and Order

Enterprises Company, CMS Gas Transmission Company and Panhandle); and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.

- C. “Commission” means the Federal Trade Commission.
- D. “Acquisition” means the proposed acquisition of Panhandle from CMS by SU as described in the Stock Purchase Agreement.
- E. “Acquisition Date” means the date on which the Acquisition is consummated.
- F. “AIG” means American International Group, Inc., 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 70 Pine Street, New York, New York 10270, its joint ventures, subsidiaries, divisions, equity funds, groups and affiliates controlled by American International Group, Inc. (including, but not limited to, AIG Global Investment Corp., AIG Highstar Capital GP, L.P., AIG Highstar Capital L.P., AIG Highstar II Funding Corp., and Southern Star Central Corp.).
- G. “Central Pipeline” means the Central Pipeline acquired by AIG, through AIG Highstar Capital, L.P. and Southern Star Central Corp., from The Williams Companies, that transports natural gas from producing locations in Kansas, Oklahoma, Texas, Wyoming and Colorado to consuming areas in the Midwest.
- H. “Management Services Agreement” means the agreement made and entered into as of November 20, 2002, by and between Southern Star Central Corp. and Energy Worx, Inc., a wholly-owned subsidiary of Southern Union Company, for the operation and management of the

Decision and Order

Central Pipeline by Energy Worx, Inc., and any amendments thereto.

- I. “Non-Public Ownership Interest” means an Ownership Interest that is not registered for sale pursuant to the Securities Act of 1933.
- J. “Ownership Interest” means any stock, share capital, equity, or other interest, or any present or contingent right to such stock, share capital, equity or other interest.
- K. “Panhandle” means Panhandle Eastern Pipeline Company, 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 5444 Westheimer Road, Houston, Texas 77056.
- L. “Panhandle Pipeline” means the natural gas pipeline owned by Panhandle that transports natural gas from producing locations in Texas, Oklahoma, and Kansas to consuming areas in the Midwest.
- M. “Person” means any individual, partnership, firm, trust, association, corporation, joint venture, unincorporated organization, equity fund, or other business or governmental entity.
- N. “Respondents” means SU and CMS, individually and collectively, and the Person resulting from the Acquisition.
- O. “Stock Purchase Agreement” means the Amended and Restated Stock Purchase Agreement By and Among CMS Gas Transmission Company, Southern Union Company and Southern Union Panhandle Corp., dated as of May 12, 2003, and any amendments thereto.
- P. “SUPC” means Southern Union Panhandle Corporation, its officers, directors, employees, agents and

Decision and Order

representatives, successors, and assigns; its parents, joint ventures, subsidiaries, divisions, groups and affiliates controlled by Southern Union Panhandle Corporation, and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.

II.

IT IS FURTHER ORDERED that:

- A. Prior to the Acquisition Date, Respondent SU shall:
 - 1. secure the consent or waiver of AIG for the termination of the Management Services Agreement; and
 - 2. absolutely terminate the Management Services Agreement.
- B. Respondents SU and CMS shall not consummate the Acquisition until the Management Services Agreement has been terminated.
- C. Following the Acquisition Date, Respondent SU shall not, directly or indirectly, operate or manage the Central Pipeline.
- D. Respondent SU shall not, directly or indirectly, through subsidiaries, partnerships, or otherwise, acquire any Ownership Interest in AIG, including, but not limited to, the Central Pipeline or Southern Star Central Corp.
- E. The purpose of this Paragraph is to ensure that Respondents do not consummate the Acquisition before the Management Services Agreement is terminated, and to ensure that, following the Acquisition, Respondent SU will have no interest in AIG or the Central Pipeline, or any role in managing or operating the Central Pipeline, to

Decision and Order

remedy the lessening of competition from the proposed Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. Respondents SU and CMS shall not sell, give, transfer, or otherwise provide, directly or indirectly, through subsidiaries, partnerships, or otherwise, any Ownership Interest in SU, SUPC, Panhandle, or the Panhandle Pipeline, to AIG.
- B. If either Respondent SU or CMS sells, gives, transfers, or otherwise provides any Non-Public Ownership Interest in SU, SUPC, Panhandle, or the Panhandle Pipeline to any person other than AIG, such Respondent shall transfer such Non-Public Ownership Interest subject to a restriction that prohibits the sale of such Non-Public Ownership Interest to AIG.
- C. The purpose of this Paragraph is to prevent AIG from obtaining an interest in SU, SUPC, Panhandle, or the Panhandle Pipeline, from Respondents, to remedy the lessening of competition from the proposed Acquisition as alleged in the Commission's Complaint.

IV.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order becomes final, and every thirty (30) days thereafter until Respondent SU has fully complied with Paragraph II.A. of this Order and Respondents SU and CMS have fully complied with Paragraph II.B. of this Order, Respondents SU and CMS shall each submit to the Commission a verified written report setting forth in detail the manner

Decision and Order

and form in which they have complied, are complying, and will comply with Paragraph II of this Order. 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 Order and copies of all written communications to and from all persons relating to this Order.

- B. Within thirty (30) days after the date this Order becomes final, and annually for ten (10) years on the anniversary of the date this Order becomes final, Respondents SU and CMS shall submit to the Commission a verified written report setting forth in detail the manner and form in which they have complied, are complying, and will comply with this Order. Respondents SU and CMS 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 Order and copies of all written communications to and from all persons relating to this Order.

V.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the Order.

VI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their principal United

Decision and Order

States offices, Respondents shall permit any duly authorized representative 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 any matters contained in this Order; and
- B. Upon five (5) days' notice and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding any such matters.

VII.

IT IS FURTHER ORDERED that this Order shall terminate on July 16, 2013.

By the Commission.

Analysis

Analysis of Proposed Consent Order to Aid Public Comment**I. Introduction**

The Federal Trade Commission ("Commission" or "FTC") has made public a draft complaint ("Complaint") alleging that the proposed acquisition of Panhandle Eastern Pipeline Company ("Panhandle") from Respondent CMS Energy Corporation ("CMS") by Respondent Southern Union Company ("Southern Union" or "SU") 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 has entered into an agreement containing consent order ("Agreement Containing Consent Order") pursuant to which Respondents agree to be bound by a proposed consent order ("Proposed Consent Order") that remedies the likely anticompetitive effects arising from the proposed acquisition, as alleged in the Complaint.

II. Description of the Parties and the Transaction

Southern Union, headquartered in Wilkes-Barre, Pennsylvania, is engaged either directly or through affiliates in the distribution and sale of natural gas to residential, commercial and industrial customers located in certain states, including Missouri, Pennsylvania, Rhode Island and Massachusetts. For the fiscal year ended June 30, 2002, SU reported sales of nearly \$1.3 billion and assets of approximately \$2.67 billion.

Pursuant to an agreement executed November 20, 2002, which continued until the agreement was terminated on May 12, 2003, Respondent SU's subsidiary, Energy Worx, Inc. ("Energy Worx"), served as the operator and manager of the Central pipeline. The Central pipeline, which transports natural gas to customers in certain Midwestern states, including Kansas and Missouri, is owned by American International Group, Inc. ("AIG") through its affiliate Southern Star Central Corp. ("Southern Star").

Analysis

CMS, headquartered in Dearborn, Michigan, is engaged either directly or through affiliates in the business of oil and gas exploration, natural gas transportation, liquefied natural gas services, independent power production, gas and electricity distribution, and marketing and management services. Panhandle, a subsidiary of CMS, owns and operates the Panhandle pipeline, which transports natural gas to customers in certain Midwestern states, including Kansas and Missouri.

Pursuant to an agreement dated December 21, 2002, and a letter of understanding dated December 20, 2002, Southern Union and affiliates of AIG agreed to acquire all of the capital stock of Panhandle from CMS. The agreement provided that Southern Union would own approximately 77.9%, and affiliates of AIG would own approximately 22.1%, of the equity interest in Panhandle. On May 12, 2003, in order to resolve competitive issues arising from this transaction, Southern Union, Southern Union Panhandle Corp., and CMS Gas Transmission Company entered into an amended and restated stock purchase agreement pursuant to which Southern Union Panhandle Corp., a wholly-owned subsidiary of Southern Union, intends to purchase all of the capital stock of Panhandle from CMS Gas Transmission Company, a wholly-owned subsidiary of CMS. AIG is not a party to the revised transaction and will have no ownership interest in Panhandle. The total value of the transaction is approximately \$1.8 billion.

III. The Complaint

The Complaint alleges that the acquisition of Panhandle from Respondent CMS by Respondent SU 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, by substantially lessening competition in the transportation of natural gas by pipeline into the Kansas City area. To remedy the alleged anticompetitive effects of the merger, the Proposed Order requires Respondent Southern Union, prior to the proposed acquisition, to terminate the Management Services Agreement with AIG for the

Analysis

management of the Central pipeline. The proposed order also prohibits Southern Union from acquiring an equity position in AIG or the Central Pipeline. In addition, the Proposed Order prohibits Respondents Southern Union and CMS from transferring or otherwise providing any ownership interest in the Panhandle pipeline to AIG.

The Complaint alleges that a relevant line of commerce, or product market, in which to analyze the effects of the proposed acquisition is the transportation of natural gas by pipeline. The only way to economically transport commercial quantities of natural gas over significant distances is through large diameter, high pressure pipelines. Transportation of natural gas by other methods would be unsafe, prohibitively expensive, and otherwise not viable. Buyers of natural gas transportation services could not and would not switch to other means of transportation, or to alternative fuels, if the cost of pipeline transportation of natural gas were to increase by 5% to 10%.

The Complaint further alleges that the proposed transaction would lessen competition in a geographic market in the Kansas City area, consisting of Cass, Henry, Jackson, Johnson, Lafayette, Pettis and Saline Counties in Missouri, and Anderson, Butler, Chase, Coffey, Franklin, Johnson, Lyon, Marion, Miami and Osage Counties in Kansas. Buyers of natural gas in this geographic market can receive natural gas only from pipelines that travel through or terminate in that geographic market, and cannot economically access natural gas pipelines outside that area.

The only pipelines that transport natural gas to the relevant geographic market are the Panhandle pipeline, the Central pipeline, and two smaller pipelines that service only part of the western portion of the relevant geographic market. These other two pipelines could not act as a pricing constraint on Central or Panhandle because of operational limitations, capacity constraints, and distance limitations. As a result, for many buyers of natural gas transportation services in the relevant geographic market, Central and Panhandle are the only viable alternatives.

Analysis

Pursuant to a Management Services Agreement with an affiliate of AIG, Southern Union's subsidiary, Energy Worx, served as the operator and manager of the Central pipeline from November 20, 2002, until the parties to that Management Services Agreement terminated it on May 12, 2003, in order to resolve competitive issues arising from this transaction. The Central pipeline transports a significant portion of the natural gas delivered to the relevant geographic market. Pursuant to the Management Services Agreement, Southern Union had effective control over the business of the Central pipeline, access to confidential competitive information about the Central pipeline, and a financial interest in the Central pipeline. The Management Services Agreement also contemplated that Southern Union would have an equity position in the Central pipeline.

The market for the pipeline transportation of natural gas to the relevant geographic market is highly concentrated and would become significantly more concentrated as a result of the proposed acquisition. As originally proposed, common ownership interest and/or common management and control would exist between the only two alternatives for the transportation of natural gas for many buyers in the relevant geographic market.

Entry into the relevant line of commerce in the relevant section of the country is difficult and would not be timely, likely or sufficient to prevent anticompetitive effects that are likely to result from the proposed acquisition. Building a new pipeline is capital intensive, would involve significant sunk costs, is subject to significant regulatory constraints, and would require more than two years to accomplish. As a result, new entry would not be able to prevent a 5-10% increase in the price of pipeline transportation of natural gas.

The Complaint charges that the proposed acquisition, absent relief, is likely to substantially lessen competition and lead to higher prices for the transportation of natural gas by pipeline to the Kansas City area, by eliminating direct competition between the Panhandle pipeline and the Central pipeline; by placing the

Analysis

Panhandle pipeline and the Central pipeline under common ownership and/or common management and control; by increasing the likelihood that unilateral market power would be exercised in the relevant geographic market; and by increasing the likelihood of, or facilitating, collusion or coordinated interaction in the relevant geographic market.

Resolution of the Competitive Concerns

The Commission has provisionally entered into an Agreement Containing Consent Order with Respondents Southern Union and CMS in settlement of the Complaint. The Agreement Containing Consent Order contemplates that the Commission would issue the Complaint and enter the Proposed Order to remedy the likely anticompetitive effects arising from the proposed acquisition, as alleged in the Complaint.

The parties have agreed to a proposed consent order that requires Southern Union to terminate the Management Services Agreement with AIG for the management of the Central pipeline by Southern Union's wholly-owned subsidiary, Energy Worx, prior to the proposed acquisition. Southern Union and AIG terminated the Management Services Agreement on May 12, 2003. In addition, the Proposed Order prohibits Southern Union and CMS from transferring any ownership interest in the Panhandle pipeline to AIG. The Proposed Order remedies the anticompetitive effects that are likely to result from common ownership and/or common management of the Panhandle pipeline and the Central pipeline in the relevant geographic market.

Paragraph II of the Proposed Order requires Respondents SU and CMS, prior to the acquisition date, to secure the consent or waiver of AIG for the termination of the Management Services Agreement and to absolutely terminate the Management Services Agreement. The Proposed Order explicitly prohibits Southern Union and CMS from consummating the proposed transaction until the agreement has been terminated. Following the acquisition, Respondent SU shall not, directly or indirectly,

Analysis

operate or manage the Central Pipeline. Additionally, the Proposed Order prohibits Respondent SU from acquiring any ownership interest in AIG or the Central pipeline. This paragraph is designed to ensure that Southern Union will not have an ownership interest in AIG, or any role in managing or operating the Central pipeline.

Paragraph III of the Proposed Order prohibits Respondents Southern Union and CMS from transferring any ownership interest in Southern Union, Panhandle or the Panhandle pipeline to AIG. If either Respondent SU or CMS transfers a non-public ownership interest in Southern Union, Panhandle, or the Panhandle Pipeline to someone other than AIG, it must transfer such interest subject to a restriction that prohibits the sale of such interest to AIG. Paragraph III is designed to prevent the parties from providing any interest in the Panhandle pipeline to AIG.

Paragraphs IV through VII contain standard reporting, notice and access provisions. Pursuant to Paragraph IV, Respondents are required to submit to the Commission a verified written report of compliance every thirty days until the Order is complied with and annually for nine years after the first year the Order becomes final. Paragraph V of the Proposed Order provides for notification to the Commission in the event of any corporate changes in the Respondents. Paragraph VI requires that Respondents provide the Commission with access to their facilities and employees for the purposes of determining or securing compliance with the Proposed Order. Finally, Paragraph VII terminates the Order ten years from the date it becomes final.

IV. Opportunity for Public Comment

The Proposed Order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this thirty day comment period will become part of the public record. After thirty (30) days, the Commission will again review the Proposed Order and the comments received and will decide whether it should withdraw

Analysis

from the Proposed Order or make final the agreement's Proposed Order.

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 and to aid the Commission in its determination of whether it should make final the Proposed Order contained in the agreement. 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

SPA HEALTH ORGANIZATION

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

Docket C-4088; File No. 0110197
Complaint, July 17, 2003--Decision, July 17, 2003

This consent order, among other things, prohibits Respondent SPA Health Organization, doing business as Southwest Physician Associates – a nonprofit corporation that contracts with third-party payors for the provision of medical services on behalf of its approximately 1,000 participating physicians in the eastern part of the Dallas-Fort Worth metropolitan area – from entering into or facilitating agreements among physicians (1) to negotiate on behalf of any physician with any payor; (2) to deal, refuse to deal, or threaten to refuse to deal with any payor; (3) regarding any term upon which any physicians deal, or are willing to deal, with any payor; and (4) not to deal individually with any payor or through any arrangement other than the respondent. The order also prohibits the respondent from exchanging or facilitating the transfer of information among physicians concerning any physician's willingness to deal with a payor, or the terms or conditions, including price terms, on which the physician is willing to deal. In addition, the order prohibits the respondent from attempting to engage in – or from encouraging, pressuring, or attempting to induce any person to engage in – any action prohibited by the order. The order also requires the respondent to terminate, without penalty, payor contracts that it had entered into during the collusive period, at any such payor's request.

Participants

For the Commission: *Michael Joel Bloom, Susan M. Gelles, Barbara Anthony, D. Bruce Hoffman and Thomas R. Iosso.*

For the Respondent: *Lewis Noonberg and F. Martin Dajani, Piper Rudnick LLP.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that SPA Health Organization (“SPA”),