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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

Entergy Corporation,
a corporation,

and

Entergy-Koch, LP,
a limited partnership.

No. C-3998

COMPLAINT

Pursuant to the provisions of the Âé¶¹´«Ã½ Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Âé¶¹´«Ã½ Trade Commission ("Commission"), having reason to believe that respondent Entergy Corporation ("Entergy") and Koch Industries, Inc., have formed a limited partnership, Entergy-Koch, LP ("EKLP"), subject to the jurisdiction of the Commission, and have entered into an agreement whereby EKLP will acquire, among other things the Gulf South Pipeline Company, LP, and Koch Energy Trading, and, if the terms of such agreement were to be consummated, would violate of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Âé¶¹´«Ã½ Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. Respondent Entergy Corporation

1. Entergy Corporation ("Entergy") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 639 Loyola Avenue, New Orleans, Louisiana 70113. Entergy had revenues of approximately $8.77 billion in 1999.

2. Entergy is, and at all times relevant herein has been, engaged in the generation, transmission, and distribution of electricity. Entergy provides retail electric service to customers in portions of Arkansas, Louisiana, Mississippi, and Texas. Entergy also owns the local natural gas distribution utility in New Orleans and Baton Rouge, Louisiana.

3. Respondent Entergy 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 is affecting commerce as "commerce" is defined in Section 4 of the Âé¶¹´«Ã½ Trade Commission Act, as amended, 15 U.S.C. § 44.

II. Koch Industries, Inc.

4. Koch Industries, Inc., ("Koch") is a corporation with offices and its principal place of business located at 4111 East 37th Street North, Wichita, Kansas 67220.

5. Koch, through subsidiaries and affiliates, markets natural gas, natural gas transportation, chemicals, petroleum products, minerals, and financial services. Koch conducts its natural gas business through wholly owned subsidiaries, including Gulf South (formerly Koch Gateway Pipeline Company) and Koch Energy Trading.

6. Gulf South is an interstate natural gas transmission company regulated by the Âé¶¹´«Ã½ Energy Regulatory Commission ("FERC"). Gulf South owns and operates the Gulf South pipeline. The Gulf South pipeline (formerly known as the Koch Gateway pipeline) is an interstate natural gas pipeline running through parts of the states of Texas, Louisiana, Mississippi, Alabama and Florida.

7. Koch Energy Trading markets natural gas, natural gas pipeline transportation, electric power, and weather derivatives.

8. Koch 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 is affecting commerce as "commerce" is defined in Section 4 of the Âé¶¹´«Ã½ Trade Commission Act, as amended, 15 U.S.C. § 44.

III. Entergy-Koch, LP

9. Respondent EKLP is a limited partnership, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 20 East Greenway Plaza, Houston, Texas 77046.

10. Entergy and Koch each own approximately 50 percent of EKLP and will share equally in the profits of EKLP. Upon consummation of the proposed transaction discussed in Paragraph IV. herein, EKLP will acquire Gulf South, Koch Energy Trading and other assets.

11. EKLP 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 is affecting commerce as "commerce" is defined in Section 4 of the Âé¶¹´«Ã½ Trade Commission Act, as amended, 15 U.S.C. § 44.

IV. The Proposed Transaction

12. On or about May 26, 2000, Entergy and Koch entered into an agreement to form EKLP and contribute certain assets. Pursuant to that agreement, EKLP will acquire, among other things, Entergy Power Marketing Corporation (Entergy's subsidiary that markets electricity and gas in the United States) from Entergy, and Gulf South, related storage assets, and Koch Energy Trading from Koch ("Proposed Transaction").

V. Trade and Commerce

13. Entergy owns Entergy Louisiana, Inc., an electric utility regulated by the Louisiana Public Service Commission. Through Entergy Louisiana, Inc., Entergy has the exclusive right to sell retail electricity in approximately 140 towns and communities in Louisiana.

14. Entergy owns Entergy Gulf States, Inc., an electric and natural gas utility regulated by the Louisiana Public Service Commission. Through Entergy Gulf States, Inc., Entergy has the exclusive right to sell retail electricity in approximately 67 towns and communities in Louisiana and the exclusive right to distribute natural gas in Baton Rouge, Louisiana.

15. Entergy owns Entergy New Orleans, Inc., an electric and natural gas utility regulated by the Council of the City of New Orleans. Through Entergy New Orleans, Inc., Entergy has the exclusive right to sell retail electricity and distribute natural gas in New Orleans, Louisiana.

16. Entergy owns Entergy Mississippi, Inc., an electric utility regulated by the Mississippi Public Service Commission. Through Entergy Mississippi, Inc., Entergy has the exclusive right to sell retail electricity in approximately 74 towns and communities in western Mississippi.

17. Entergy purchases substantial quantities of natural gas transportation on behalf of Entergy Louisiana, Inc., Entergy Gulf States, Inc., Entergy New Orleans, Inc., and Entergy Mississippi, Inc.

18. The Louisiana Public Service Commission, the Mississippi Public Service Commission, and the Council of the City of New Orleans permit, subject to review, the Entergy utilities

referred to above to recover 100 percent of the cost of natural gas and natural gas transportation by passing those costs directly to consumers.

19. Gulf South is a major supplier of natural gas transportation in Louisiana and Mississippi and can supply all of Entergy's regulated utilities in those states.

20. Gulf South sales of natural gas transportation are subject to regulation by FERC, which approves the maximum rate that a pipeline can charge to a customer.

21. After closing the Proposed Transaction, Entergy will own approximately 50 percent of Gulf South and earn about 50 percent of Gulf South's profits. For that reason, Entergy will have the incentive and ability, and is therefore likely, to pay EKLP prices for natural gas transportation above prevailing market prices and to purchase a level of service above what is necessary for effective operation of Entergy's facilities. Entergy will also have the incentive and ability, and is therefore likely, to accept prices from third parties above prevailing market prices to prevent regulators from detecting that Entergy paid artificially inflated prices to EKLP.

22. After closing the Proposed Transaction, it would be more difficult for the Louisiana Public Service Commission, the Council of the City of New Orleans, or the Mississippi Public Service Commission to determine whether Entergy improperly incurred inflated costs of natural gas transportation for several reasons: the decision regarding the purchase of natural gas transportation involves the consideration of multiple factors; the process by which Entergy purchases gas transportation is not transparent; and existing market benchmarks are inadequate to assist regulators in determining whether the cost was prudently incurred.

23. FERC regulations would not prevent Entergy from paying inflated costs because Gulf South's current rates are below the FERC maximum tariff.

24. It is difficult to enter into the business of selling retail electricity or distributing natural gas to customers in areas in which Entergy is currently the exclusive supplier. Entry by another utility requires approval from the State legislature or regulatory agencies in the jurisdictions involved.

Count I
Increased Prices For Retail Electricity

25. Paragraphs 1 - 24 are incorporated by reference as if fully set forth herein.

26. A relevant line of commerce in which to analyze the effects of the proposed transaction is the retail sale of electricity to consumers. There is no economic alternative to electricity for consumers in Louisiana and Mississippi.

27. Relevant sections of the country in which to analyze the effects of the proposed transaction are the areas in Louisiana and Mississippi served by:

    a. Entergy Louisiana, Inc.;
    b. Entergy Gulf States, Inc.;
    c. Entergy New Orleans, Inc.; and
    d. Entergy Mississippi, Inc.

28. Entergy is the monopoly supplier of retail electricity in each relevant section of the country.

29. Prices of retail electricity are likely to rise as a result of Entergy passing on inflated costs for natural gas transportation to consumers and the difficulties that regulators will have in reviewing and challenging Entergy's purchase of natural gas transportation.

30. It is difficult to enter into the business of selling retail electricity to consumers in the relevant sections of the country. Entry into the relevant sections of the country will not therefore be timely, likely or sufficient to prevent a price increase.

Count II
Increased Prices For Natural Gas Distribution

31. Paragraphs 1 - 24 are incorporated by reference as if fully set forth herein.

32. A relevant line of commerce in which to analyze the effects of the proposed transaction is the distribution of natural gas to consumers. There is no economic alternative to the distribution of natural gas to consumers in New Orleans and Baton Rouge, Louisiana.

33. Relevant sections of the country in which to analyze the effects of the proposed transaction are New Orleans and Baton Rouge, Louisiana.

34. Entergy is the monopoly distributor of natural gas in New Orleans and Baton Rouge, Louisiana.

35. Prices of natural gas are likely to rise as a result of Entergy passing on inflated costs for natural gas transportation to consumers and the difficulties that regulators will have in reviewing and challenging Entergy's purchase of natural gas transportation.

36. It is difficult to enter into the business of distributing natural gas to consumers in New Orleans and Baton Rouge. Entry into New Orleans and Baton Rouge will not therefore be timely, likely or sufficient to prevent a price increase.

VI. VIOLATIONS CHARGED

37. The Proposed Transaction, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Âé¶¹´«Ã½ Trade Commission Act, as amended, 15 U.S.C. § 45.

IN WITNESS WHEREOF, the Âé¶¹´«Ã½ Trade Commission, having caused this Complaint to be signed by the Secretary and its official seal affixed, at Washington, D.C., this thirty-first day of January, 2001, issues its complaint against respondent.

By the Commission, Commissioner Anthony recused.

SEAL

Donald S. Clark
Secretary