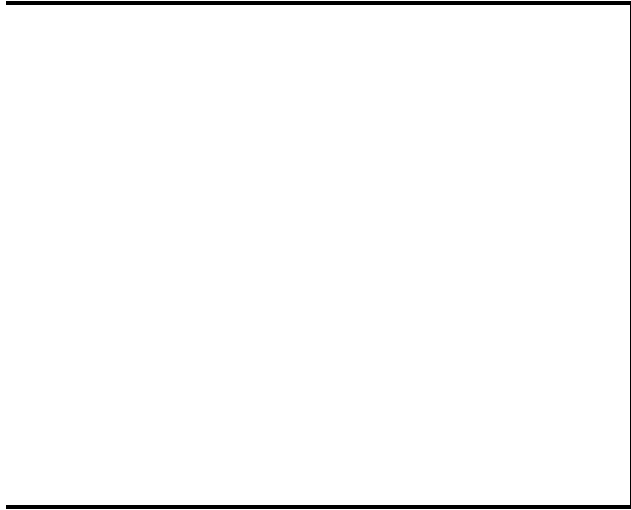


**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

**Commissioners:**



stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent DTE Energy Company 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 at 2000 2nd Avenue, Detroit, Michigan 48226.

2. Respondent MCN Energy Group Inc. 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 at 500 Griswold Street, Detroit, Michigan 48226.

3. 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. “DTE” means DTE Energy Company, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by DTE (including, but not limited to, The Detroit Edison Company), and the respective directors, officers, employees, agents and representatives, predecessors, successors, and assigns of each.
- B. “MCN” means MCN Energy Group Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by MCN (including, but not limited to, Michigan Consolidated Gas Company), and the respective directors, officers, employees, agents and representatives, predecessors, successors, and assigns of each.
- C. “Respondents” means DTE and MCN, individually and collectively.
- D. "Commission" means the Federal Trade Commission.

- E. “Acquirer” means either Exelon or such other entity approved by the Commission to which Respondents or a trustee divest the Divested Assets pursuant to the requirements of this Order.
- F. “Auditor Agreement” means the Amended and Restated Auditor Agreement made as

7. all federal, state, and local regulatory agency registrations, permits, licenses, easements, authorizations, franchises, and applications, and all documents related thereto; and
8. all items of prepaid expense;

*Provided, however,* if Respondents divest to Exelon under the terms set forth in the Divestiture Agreement pursuant to Paragraph II.A. of this Order, “Divested Assets” means the easement and all rights and other assets conveyed by the Divestiture Agreement.

- H. “Divestiture Agreement” means both of the following agreements, if approved by the Commission: (1) the Easement Agreement, and (2) the Auditor Agreement.
- I. “Easement Agreement” means the Amended and Restated Easement Agreement made and entered into as of the 8th day of February, 2001, between Michigan Consolidated Gas Company and Exelon, which is contained in Appendix A to this Order.
- J. “Electric Displacement Equipment” means any natural gas powered equipment that displaces or that can be used in lieu of electric equipment, including, but not limited to, chillers, air compressors, and commercial dishwashers and fryers; *provided, however,* that Electric Displacement Equipment does not include equipment used for direct-fired space heating and hot water applications.
- K. “Electric Displacement Load” or “EDL” means natural gas consumption for:
  1. On-Site Power Generation,
  2. Electric Displacement Equipment, or
  3. General Generation.
- L. “Exelon” means Exelon Energy 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 at 2315 Enterprise Drive, Westchester, Illinois 60154, and its successors and assigns.
- M. “General Generation” means up to 8,750,000 kWh of non-On-Site Power Generation per year per each unit of Generation Equipment served by the Acquirer of the Divested Assets in the Overlap Area; *provided, however,* that General Generation may not exceed 8,750,000 kWh at any Contiguous Customer Location, where a “Contiguous

Customer Location” shall consist of the buildings or parts of buildings situated upon the same parcel or contiguous parcels of land and occupied and used by the customer as a unitary enterprise at one location and under one management.

- N. “Generation Equipment” means power generation equipment, including, but not limited to, engines, turbines, or fuel cells.
- O. “MCN Distribution System” means the natural gas distribution system operated by MCN in the Overlap Area, including, but not limited to, the gas pipelines and all related equipment, systems, components, rights and other assets used for, associated with, or necessary for the transportation, distribution or storage of natural gas within the Overlap Area.
- P. “Merger” means the merger of DTE and MCN described in the Agreement and Plan of Merger Among DTE Energy Company, MCN Energy Group Inc., and DTE Enterprises, Inc., dated October 4, 1999, as amended November 12, 1999.
- Q. “New Divestiture Agreement” means any agreement, other than the Divestiture Agreement between the Respondents and Exelon, for the sale of the Divested Assets that has been approved by the Commission to accomplish the requirements of this Order, including any agreement(s) entered into by a trustee pursuant to Paragraph III of this Order.
- R. “Non-EDL” means natural gas consumption for applications or uses that are not Electric Displacement Load.
- S. “Non-Utility Entity” means an entity that has no obligation under state or local law to provide utility service (*i.e.*, the local distribution of electricity or natural gas) to the public in the Overlap Area.
- T. “On-Site Power Generation” means electrical generation from Generation Equipment to the extent that the electrical conductors between the Generation Equipment and facility consuming output from the Generation Equipment: (1) are owned or operated either by a Non-Utility Entity that owns or operates the Generation Equipment, or by the entity that owns or operates the facility consuming output from the Generation Equipment, or both such entities, or (2) are owned or operated by a municipal entity, including a city, village, township or county.
- U. “Overlap Area” means the geographic areas in Macomb, Monroe, Oakland, Washtenaw, and Wayne Counties, Michigan, in which both DTE distributes electricity and MCN distributes natural gas.



Respondents and the Acquirer and all other duties and responsibilities set forth in the Divestiture Agreement. The Auditor shall have the power to take all actions as in the Auditor's judgment are necessary and appropriate to effectuate the purposes of the Divestiture Agreement, including the right to propose changes to the Divestiture Agreement necessary to ensure the competitive viability of the Acquirer under the Divestiture Agreement, and shall have free access to all of Respondents' books, records, information, systems, and facilities as deemed reasonably necessary by the Auditor to monitor Respondents' performance under the Divestiture Agreement; *provided, however,* that the Auditor shall have no authority to modify any agreement between Respondents and the Acquirer, or otherwise to modify any obligations of the Respondents under this Order.

4. No later than ten (10) days after the date on which this Order becomes final, Respondents shall have no obligation to provide any information or documents to the Auditor.

execute a New Divestiture Agreement with the Acquirer (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order). Such New Divestiture Agreement shall divest the Divested Assets to the Acquirer pursuant to terms and conditions that receive the prior approval of the Commission, and shall require Respondents to:

1. Grant the Acquirer such natural gas transportation and distribution capacity, storage capacity, and other rights in and to the MCN Distribution System that, in the sole discretion of the Commission, are necessary to insure that the Acquirer will be:
  - a. economically viable; and
  - b. able to transport and distribute natural gas for Electric Displacement Load competitively with Respondents and in a manner that achieves the purposes of this Order.
2. Operate and expand the MCN Distribution System in a manner that:
  - a. is reasonable and non-discriminatory and complies fully with all rules and regulations adopted by any federal, state or political subdivision, or any agency of any federal, state or political subdivision, having jurisdiction over any aspect of the MCN Distribution System;
  - b. enables the Acquirer to fulfill the purposes of this Order; and
  - c. reasonably allocates, consistent with the purposes of this Order, the cost of any expansion between Respondents and the Acquirer.
3. Appoint an independent Auditor, subject to the approval of the Commission, to mediate and arbitrate any dispute between Respondents and the Acquirer arising under the New Divestiture Agreement in good faith and in an expeditious manner consistent with the purposes of this Order.
4. Accept for transportation through the MCN Distribution System at all receipt points that exist at the time of the divestiture of the Divested Assets, or which shall be created during any period that the Divestiture Agreement is in effect, any natural gas nominated by the Acquirer, *provided, however*, that Respondents may condition acceptance of such natural gas on terms and conditions:



- a. required by rules and regulations adopted by any federal, state or political subdivision, or any agency of any federal, state or political subdivision, having jurisdiction over any aspect of the MCN Distribution System; or
  - b. required for the efficient, non-discriminatory operation of the MCN Distribution System.
5. Provide that the New Divestiture Agreement shall not be modified or assigned without the prior approval of the Commission.
6. Require the Acquirer to agree to the exercise of powers by the independent Auditor as provided in Paragraph II.B.3. of this Order.
7. Permit the Acquirer to sell, lease, or otherwise convey to other persons a portion of any capacity to transport or store natural gas in or through the MCN Distribution System acquired by the Acquirer pursuant to the New Divestiture Agreement; *provided, however,*
  - a. Respondents shall prohibit the Acquirer from assigning all of its rights under or interest in the New Divestiture Agreement to any person without the prior approval of the Commission; and
  - b. Respondents may prohibit the Acquirer from assigning any portion or all of the Acquirer's obligations under the New Divestiture Agreement, but may permit such assignment with the prior approval of the Commission.
8. Indemnify and hold the Acquirer harmless from suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons in connection with the MCN Distribution System.
9. Convey to the Acquirer all of the rights, title, and interest in any customer contracts, customer information, marketing studies, or other assets surrendered back, assigned, sold, or otherwise conveyed by Exelon to Respondents if the New Divestiture Agreement is executed following the termination of the Divestiture Agreement.
10. Undertake such additional contractual obligations as, in the sole discretion of the Commission, are necessary to effectuate the purposes of this Order.

*Provided, however,* that with respect to the assets that are to be divested and the contracts that are to be entered into pursuant to this Paragraph II.C, Respondents need not divest such assets or enter into such contracts if: (a) the Acquirer chooses not to acquire such assets or enter into such contracts; and (b) the Commission approves the New Divestiture Agreement without such assets or contracts.

- D. Respondents shall comply with the terms of the Divestiture Agreement or the New Divestiture Agreement, as applicable, which agreement, if approved by the Commission, is incorporated by reference into this Order and made a part hereof. Any failure by Respondents to comply with the terms of the Divestiture Agreement or the New Divestiture Agreement, as applicable, shall constitute a failure to comply with this Order. Further, nothing in the Divestiture Agreement or New Divestiture Agreement shall preclude, or be deemed to preclude, the Commission from bringing any action as may be appropriate under the Federal Trade Commission Act or any other statute enforced by the Commission for any failure by Respondents to comply with this Order. Notwithstanding any paragraph, section, or other provision of the Divestiture Agreement or the New Divestiture Agreement, as applicable, any failure to comply with any condition precedent to closing (whether or not waived), or any modification or assignment of the Divestiture Agreement or the New Divestiture Agreement, as applicable, without the prior approval of the Commission, shall constitute a failure to comply with this Order.
- E. Pending divestiture of the Divested Assets pursuant to the Divestiture Agreement or the New Divestiture Agreement, as applicable, Respondents shall take such actions as are necessary to maintain the viability, marketability and competitiveness of the Divested Assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Divested Assets.
- F. The purpose of the divestiture of the Divested Assets is to ensure the continuation of a viable and competitive alternative supplier of natural gas transportation and distribution services to EDL customers in the Overlap Area after the Merger, and to remedy any lessening of competition resulting from the Merger as alleged in the Commission's

1. Respondents fail to complete the divestitures required by Paragraph II. of this Order within the time periods specified therein;
- 2.

transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to divest the Divested Assets to an Acquirer and to enter into a New Divestiture Agreement with the Acquirer.

4. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III. of this Order to divest the Divested Assets and to enter into a New Divestiture Agreement with an Acquirer in a manner that satisfies the requirements of Paragraph II. of this Order. If, however, at the end of the applicable twelve-month period, the Divestiture Trustee has submitted to the Commission a plan of divestiture or believes that divestiture can be achieved within a reasonable time, such divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; *provided, however, the*



**IT IS FURTHER ORDERED** that:

- A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until Respondents have fully complied with the divestiture provisions of Paragraphs II or III of this Order, as applicable, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II or III of this Order, as applicable. 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 Paragraphs II or III of the Order, as applicable, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.
  
- B. One year (1) from the date this Order becomes final, annually for the next nineteen (19) years on the anniversary of the date this Order becomes final, 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 they have complied and are complying with this Order.

**V.**

**IT IS FURTHER ORDERED** that each Respondent shall notify the Commission at least  
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records and documents in the possession or under the control of Respondents relating to any matters contained in this Order; and

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

**VII.**

**IT IS FURTHER ORDERED** that this Order shall terminate twenty (20) years from the date this Order becomes final.

By the Commission.

Donald S. Clark  
Secretary

SEAL:

ISSUED: