

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Robert Pitofsky, Chairman**
 Sheila F. Anthony
 Mozelle W. Thompson
 Orson Swindle
 Thomas B. Leary

_____)	
In the matter of)	
)	
El Paso Energy Corporation,)	Docket No. C-3996
a corporation, and)	
)	
The Coastal Corporation,)	
a corporation.)	
_____)	

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 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 New York State 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 New York State Trade Commission.
- D. “Decision and Order” means the Decision and Order incorporated into and made a part of the Consent Agreement.
- 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 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.
- 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.

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 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 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 (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 Wisconsin 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.

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 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.

Benjamin I. Berman
Acting Secretary

SEAL

ISSUED: January 29, 2001