061 0114

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
Pamela Jones Har

c. the Eastern Midwest; and

d. the Southeast.

9. For the purposes of this complaint, the relevant geographic area in which to analyze the effects of the acquisition on the bulk refined helium market is the world.

V. THE STRUCTURE OF THE MARKET

10. The relevant markets are highly concentrated whether measured by Herfindahl-Hirschman ("HHI") or two-firm and four-firm concentration ratios.

11. Respondents are actual competitors in the relevant markets.

VI. ENTRY CONDITIONS

12. New entry into the relevant markets would not occur in a timely manner sufficient to deter or counteract the likely adverse competitive effects of the acquisition because it would take over two years for an entrant to accomplish the steps required for entry and achieve a significant market impact.

13. Entry into the liquid oxygen and liquid nitrogen markets is costly, difficult, and unlikely because of, among other things, the time and cost required to construct the air separation units that produce liquid oxygen and liquid nitrogen. Constructing one air separation unit large enough to be viable in the market would cost at least $30 to $40 million, most of which are sunk costs. Moreover, it is not economically justifiable to build an air separation unit unless a sufficient amount of the plant's capacity has been pre-sold prior to construction, either to an on-site customer or to liquid customers with commitments under contract. Such pre-sale opportunities occur infrequently and unpredictably.

14. Entry into the bulk refined helium market is also costly, difficult, and unlikely, because of, among other things, the time and cost required to gain access to a source of crude helium, build a refinery, and acquire helium distribution assets. There are no sources of refined helium available that are not committed in long term contracts. A new entrant would need to locate a new source of crude helium and build a refinery. Constructing a helium refinery large enough to be viable in the market would cost between $25 to $100 million dollars, most of which are sunk costs. In addition, tens of millions of dollars would be needed to acquire the necessary infrastructure and distribution assets, including transfill facilities, cryogenic storage trailers, high-pressure tube trailers and liquid dewars, capable of transporting helium from the refinery to customers.

VII. EFFECTS OF THE ACQUISITION

15. The effects of the Acquisition, if consummated, may be to substantially lessen competition and to tend to create a monopoly in the relevant markets in violation of 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 the following ways, among others:

a. By eliminating actual, direct, and substantial competition between Respondents;

b. By increasing the likelihood that Respondents would unilaterally exercise market power in the Northeast, Chicago-Milwaukee, Eastern Midwest, and Southeast liquid oxygen and liquid nitrogen markets;

c. By enhancing the likelihood of collusion or coordinated interaction between or among the remaining firms in the Northeast, Chicago-Milwaukee, Eastern Midwest, and Southeast liquid oxygen and liquid nitrogen markets;

d. By enhancing the likelihood of collusion or coordinated interaction between or among the remaining firms in the bulk refined helium market; and

e. By increasing the likelihood that consumers would be forced to pay higher prices for liquid oxygen, liquid nitrogen, and bulk refined helium in the relevant geographic areas.

VIII. VIOLATIONS CHARGED

16. The Acquisition described in Paragraph 6 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

17. The Acquisition described in Paragraph 6, if consummated, would constitute a violation of 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this seventeenth day of July, 2006, issues its Complaint against said Respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL: