

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

In the Matter of

DUKE ENERGY CORPORATION,

PHILLIPS PETROLEUM COMPANY,

and

DUKE ENERGY FIELD SERVICES, LLC

Docket No. C-3932

PUBLIC VERSION

PETITION OF RESPONDENTS DUKE ENERGY CORPORATION,

PHILLIPS PETROLEUM COMPANY, AND DUKE ENERGY FIELD SERVICES, LLC

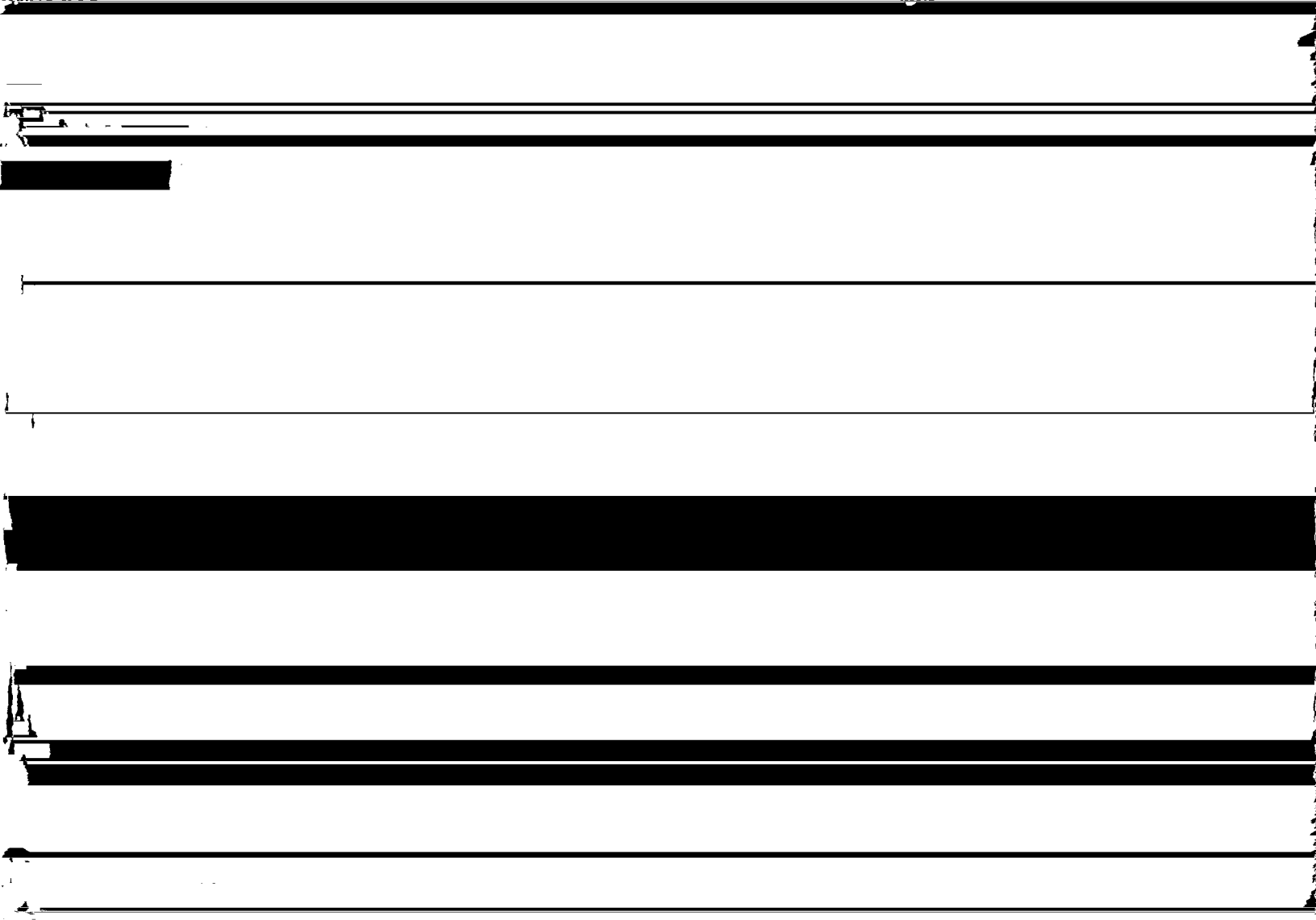
owner; and (2) Duke Energy's acquisition of certain natural gas gathering and processing assets from Conoco, Inc. ("Conoco") and Mitchell Energy & Development Corporation ("Mitchell"), which were consolidated into DEFS. Under the Order, Duke Energy and DEFS were required to divest approximately 2,780 miles of gas gathering pipeline in certain "Relevant Areas" in Kansas, Oklahoma, and Texas, and to notify certain future acquisitions of natural gas gathering and processing assets or interests in the Relevant Areas. At all times since the entry of the Order, Duke Energy and DEFS have complied with the Order in all respects.

I. BACKGROUND

A. Initial Transaction and Complaint

This matter was initiated in January 2000 with the simultaneous filings, under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the “HSR Act”), on two transactions involving Duke Energy: (1) the merger of the midstream natural gas businesses of Duke Energy and Phillips into DEFS; and (2) Duke Energy’s acquisition of certain midstream natural gas assets of Conoco and Mitchell. The Commission’s HSR Act review focused on the merger’s potential competitive effects in natural gas gathering, i.e., the transportation, for oneself or for other persons, of natural gas from the wellhead or producing area to a natural gas transmission pipeline or natural gas processing plant.

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B. The Order

On May 5, 2000, the Commission, in conformity with procedures described in § 2.34 of its Rules, entered the Order. To address the concern that DEFS would be able to substantially lessen competition in natural gas gathering in the Relevant Areas, the Order was designed to reduce concentration in the market. Paragraphs II and III of the Order seek to accomplish this through a number of divestitures. These divestitures were completed, following Commission approval, during 2000.

Other provisions of the Order impose certain notification and reporting requirements on the Respondents, including the requirements to notify certain acquisitions affecting the Relevant Areas (§§ IV and V), to report annually on compliance (§ VI), and to notify changes in any Respondents that may affect compliance (§ VII).

C. Respondents' Compliance with the Order

At all times since the entry of the Order, the Respondents have been in compliance with the Order. The Respondents filed their previous Annual Reports of Compliance with the

D. Duke Energy's Spin-off Transaction

On December 21, 2006, Duke Energy notified the Commission of its intention to spin off most of its natural gas business, including its 50% interest in DEFS, to Spectra Energy, a newly formed independent company. See Exhibit 2. Spectra Energy became a publicly traded stand-

Marc Manly, attached as Exhibit 4, at ¶6. This statement should be of limited importance in this

Duke Energy into midstream natural gas in the Relevant Areas would not create a need for

coverage under the Order but, instead, would be unambiguously procompetitive.

Duke Energy's spin-off of Spectra Energy constitutes a changed condition of fact that

justifies the Commission to reopen and modify the Order to relieve Respondent Duke Energy of

its obligations under the Order because the Spin-off Transaction leaves Duke Energy with no

Make a *prima facie* showing of a legitimate “public interest” reason or reasons justifying relief. [T]his showing requires the requester to demonstrate, for example, that there is a more effective or efficient way of achieving the purposes of the order, that the order in whole or in part is no longer needed, or that there is some other clear public

mean the requested relief.

anticompetitive acquisition. *Id.* at 39,746. DCP, which remains a competitor in the Relevant Areas, would remain subject to the Order.

III. CONCLUSION

For the reasons listed above, Respondents Duke Energy, Spectra Energy, and DCP respectfully request that the Commission reopen and vacate the Order as it applies to Duke Energy, or to otherwise modify the Order to relieve Duke Energy of any continuing obligations thereunder. Such a modification is justified by the changed conditions of fact and is consistent

with the public interest and the underlying purposes of the Order. The attached Declarations and

Exhibits

Exhibit 1: Decision & Order in Docket No. C-3932
(excluding schedules and other related
documents)

Exhibit 2: Notice Letter dated December 21, 2006

(excluding attachment)

Exhibit 3: Spectra Energy News Release, dated January 2,
2007 (“New Natural Gas Midstream Company
Launched in Houston”)

Exhibit 4: Declaration of Marc E. Manly, Duke Energy

Exhibit 5: Declaration of Brent L. Backes, DCP