

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of
DUKE ENERGY CORPORATION, a corporation,
PHILLIPS PETROLEUM COMPANY, a corporation,
and
DUKE ENERGY FIELD SERVICES L.L.C., a limited liability company.

Docket No. C-3932
COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission") having reason to believe that Respondents Duke Energy Corporation ("Duke"), Phillips Petroleum Company ("Phillips"), and Duke Energy Field Services L.L.C. ("DEFS") have entered into an agreement that Duke and Phillips would merge certain of their assets into DEFS and that Respondent Duke and Conoco Inc. ("Conoco") and Mitchell Energy & Development Corporation ("Mitchell") have entered into an agreement that Duke would acquire certain assets jointly owned by Conoco and Mitchell, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act ("FTC 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 pursuant to Section 11 of the Clayton Act, as amended, 15 U.S.C. § 21, and Section 5(b) of the FTC Act, as amended, 15 U.S.C. § 45(b), stating its charges as follows:

Duke

1. Duke is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its office and principal place of business located at 526 South Church Street, Charlotte, North Carolina 28202.
2. Duke is one of the largest natural gas gatherers and marketers in the United States as well as one of the largest producers and marketers of electric power. In 1998, Duke had revenues of over \$17.5 billion and had assets totaling almost \$27 billion.
3. At all times relevant herein, Respondent Duke has been and is now 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 affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

Phillips

4. Phillips 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 The Phillips Building, 4th and Keeler, Bartlesville, Oklahoma 74004.
5. Phillips is an integrated oil and gas company that is also engaged in the manufacturing and sale of chemicals and plastics and the development of technology. In 1998, the company had revenues of \$11.8 billion and had assets of \$10.2 billion.
6. At all times relevant herein, Respondent Phillips has been and is now 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 affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

DEFS

7. DEFS is a limited liability company 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 370 17th Street, Suite 900, Denver, Colorado 80202.

8. DEFS was created to own, operate and manage the natural gas gathering assets of Duke and Phillips. Once DEFS acquires these assets, the company will have assets of approximately \$6 billion.

9. At all times relevant herein, Respondent DEFS has been and is now 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 affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

The Proposed Merger and Acquisition

10. Pursuant to a Letter Agreement among Duke, Phillips, and DEFS, dated December 16, 2009 (in, vzy 15Tm (t5dC.)-55(,obillion.)]4pU6, C14

16. Respondent Duke, through its partnership in Westana, and Phillips were direct and substantial competitors in the business of natural gas gathering in the relevant section of the country set out in Complaint Paragraph 13.

17. The business of natural gas gathering in the relevant section of the country set out in Complaint Paragraph 13 is highly concentrated. The Duke/Phillips Asset Merger would have significantly increased concentration in portions of this relevant section of the country. In this relevant section of the country as a whole, the Duke/Phillips Asset Merger would have increased the Herfindahl-Hirschman Index (commonly referred to as "HHI") by over 1600 to over 3400. In certain portions of this relevant section of the country, the Duke/Phillips Asset Merger would have increased the HHI to 10,000.

18. The effect of the proposed Duke/Phillips Asset Merger, if consummated, may have been substantially to lessen competition or tend to create a monopoly in the gathering of natural gas in the relevant section of the country set out in Complaint Paragraph 13, in violation 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, in the following ways, among others:

- a. the Duke/Phillips Asset Merger would have eliminated actual and potential competition between Duke and Phillips to provide natural gas gathering services to existing gas wells in this relevant section of the country;
- b. the Duke/Phillips Asset Merger would have eliminated actual and potential competition between Duke and Phillips to provide natural gas gathering services for new natural gas wells in this relevant section of the country;
- c. the Duke/Phillips Asset Merger would have increased concentration in the gathering of natural gas in this relevant section of the country, therefore increasing the likelihood of collusion;
- d. DEFS would have been likely to exact anticompetitive price increases from producers in this relevant section of the country for performance of natural gas gathering in this relevant section of the country; and
- e. producers may have been less likely to do exploratory and developmental drilling for new natural gas in this relevant section of the country than prior to the Duke/Phillips Asset Merger.

19. Entry would not have been timely, likely, or sufficient to prevent anticompetitive effects in the relevant section of the country set out in Complaint Paragraph 13.

Count Two - Austin Chalk Area of Central Texas

20. One relevant line of commerce is 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 a natural gas processing plant.

21. One relevant section of the country is the Austin Chalk Area of Central Texas that contains Brazos, Burleson, Grimes, Lee and Washington Counties.

22. Respondent Duke holds a 55 percent ownership interest in a Texas joint venture with Mitchell named Ferguson-Burleson County Gas Gathering System ("Ferguson-Burleson"). Ferguson-Burleson owns and operates natural gas gathering systems which gather natural gas in various areas in the Austin Chalk Area of Central Texas, including Brazos, Burleson, Grimes, Lee and Washington Counties.

23. Respondent Phillips owns and operates natural gas gathering systems which gather natural gas in various areas in the Austin Chalk Area of Central Texas, including

Brazos, Burleson, Grimes, Lee and Washington Counties.

24. Respondent Duke, through its partnership in Ferguson-Burleson, and Phillips are direct and substantial compTullips;>>Bu3rTJ 03(Pusineslli43(ofgton)-Pagurantiat)-gasgton;>>Bu3rTJ

32. Respondent Duke and Respondent Phillips are direct and substantial competitors in the business of natural gas gathering in the relevant section of the country set out in

40. Respondent Duke and Respondent Phillips are direct and substantial competitors in the business of natural gas gathering in the relevant section of the country set out in Complaint Paragraph 37.

62. One relevant section of the country is the Northeast Logan County, Oklahoma Area that contains portions of Payne, Lincoln, and Logan Counties.

63. Respondent Duke owns and operates natural gas gathering systems which gathers natural gas in the Northeast Logan County, Oklahoma Area, including Payne, Lincoln, and Logan Counties.

64. Conoco and Mitchell, through a variety of general partnerships and joint ventures, jointly own and operate natural gas gathering systems which gather natural gas in the Northeast Logan County, Oklahoma Area, including Payne, Lincoln, and Logan Counties.

65. Respondent Duke and Conoco and Mitchell, through their jointly owned assets, are direct and substantial competitors in the business of natural gas gathering in the relevant section of the country set out in Complaint Paragraph 62.

66. The business of natural gas gathering in the relevant section of the country set out in Complaint Paragraph 62 is highly concentrated. The Conoco/Mitchell Asset Acquisition will significantly increase concentration in portions of this relevant section of the country. In this relevant section of the country as a whole, the Conoco/Mitchell Asset Acquisition would increase the HHI by over 4600 to 10,000.

67. The effect of the Conoco/Mitchell Asset Acquisition, if consummated, may be substantially to lessen competition or tend to create a monopoly in the gathering of natural gas in the relevant section of the country set out in Complaint Paragraph 62, in violation 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, in the following ways, among other ways,

country. In this relevant relevab.g

U.S.C. § 45.

WHEREFORE THE PREMISES CONSIDERED, the Federal Trade Commission, on this thirtieth day of March, 2000, issues its Complaint against said Respondents.

By the Commission, Commissioner Leary recused.

Donald S. Clark
Secretary

SEAL: