

**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*  
**DUKE ENERGY CORPORATION**, a corporation,  
**PHILLIPS PETROLEUM COMPANY**, a corporation,  
and  
**DUKE ENERGY FIELD SERVICES L.L.C.**, a limited liability company.

**DOCKET NO.  
DECISION AND ORDER**

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed merger of certain assets of Duke Energy Corporation and Phillips Petroleum Company into Duke Energy Field Services L.L.C. and of the proposed acquisition by Duke Energy Corporation of certain assets of Conoco Inc. and Mitchell Energy & Development Corporation; and

Duke Energy Corporation, Phillips Petroleum Company, and Duke Energy Field Services L.L.C. (collectively, "respondents") having been furnished thereafter with a draft of Complaint that the Southwest Region presented to the Commission for its consideration and which, if issued by the Commission, would charge the 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

The respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by the 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 the respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such 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 makes the following jurisdictional findings and issues the following Order:

1. Duke Energy Corporation 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. Phillips Petroleum Company 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, 4<sup>th</sup> and Keeler, Bartlesville, Oklahoma 74004.

3. Duke Energy Field Services L.L.C. 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 17<sup>th</sup> Street, Suite 900, Denver, Colorado 80202.

4. 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.



Schedule A Assets.

FF. "Mitchell" means Mitchell Gas Services L.P. and Mitchell Energy & Development Corporation.

GG. "Mitchell Agreement" means the Exchange Agreement between Mitchell and Duke executed on March 10, 2000, which provides, in part, for the divestiture by Duke to Mitchell of the Schedule B Assets.

HH. "Gas Gathering" means pipeline transportation, for oneself or other persons, of natural gas over any part or all of the distance between a well and a gas transmission pipeline or gas processing plant.

II. "Processing" means the separation of natural gas liquids, including propane, ethane, butanes, and pentanes-plus, from methane.

**II.**

**IT IS FURTHER ORDERED** that:

A. Respondents shall divest, absolutely and in good faith, the Schedule A Assets to Western Gas, in accordance with the Western Agreement (which agreement shall not be construed to vary or contradict the terms of this Order), no later than twenty (20) days after the Duke-Phillips Transaction Date or twenty (20) days after the Public Record Date, whichever comes first. Failure by Respondents to comply with the Western Agreement shall also constitute a violation of this Order.

B. Respondents shall divest, absolutely and in good faith, the Schedule B Assets to Mitchell, in accordance with the Mitchell Agreement (which agreement shall not be construed to vary or contradict the terms of this Order), no later than twenty (20) days after the Duke-Phillips Transaction Date or twenty (20) days after the Public Record Date, whichever comes first. Failure by Respondents to comply with those provisions in the Mitchell Agreement relating to the divestiture of the Schedule B Assets shall also constitute a violation of this Order.

C. Respondents shall divest absolutely, in good faith, and at no minimum price, the Schedule C Assets to a single acquirer no later than one hundred twenty (120) days after the Public Record Date.

D. Respondents shall divest absolutely, in good faith, and at no minimum price, the Schedule D Assets to a single acquirer no later than one hundred twenty (120) days after the Public Record Date.

E. Respondents shall divest absolutely, in good faith, and at no minimum price, the Schedule E Assets to a single acquirer no later than one hundred twenty (120) days after the Public Record Date.

F. Respondents shall divest absolutely, in good faith, and at no minimum price, the Schedule F Assets to a single acquirer no later than one hundred twenty (120) days after the Public Record Date.

G. Respondents shall divest absolutely, in good faith, and at no minimum price, the Schedule G Assets to a single acquirer no later than one hundred twenty (120) days after the Public Record Date.

H. Respondents shall divest absolutely, in good faith, and at no minimum price, the Schedule H Assets to a single acquirer no later than one hundred twenty (120) days after the Public Record Date.

I. Respondents shall divest absolutely, in good faith, and at no minimum price, the Schedule I Assets to a single acquirer no later than one hundred twenty (120) days after the Public Record Date. **Provided that**, if for any reason Respondents do not fully own and control any Schedule I Assets at any time within thirty (30) days after the Public Record Date and before the Schedule I Assets are to be divested pursuant to this Paragraph, then Respondents shall, for purposes of complying with the requirements of this Paragraph, substitute the Schedule II Assets for the Schedule I Assets.

J. Respondents shall divest absolutely, in good faith, and at no minimum price, the Schedule J Assets to a single acquirer no later than one hundred twenty (120) days after the Public Record Date.

K. Respondents shall divest the Assets To Be Divested or the Substitute Assets To Be Divested pursuant to Paragraphs II.C. II.D., II.E., II.F., II.G., II.H., II.I., and II.J., only to acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.

time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously at no minimum price. The divestitures shall be made only in a manner that receives the prior approval of the Commission, and only to an acquirer or acquirers that receives the prior approval of the Commission, as set out in Paragraph II of this Order; provided, however, if the trustee receives bona fide offers for an asset to be divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest such asset to the acquiring entity or entities selected unanimously by Respondents from among those approved by the Commission; provided further, however, that Respondents shall unanimously select such entity within five (5) days of receiving notification of the Commission's approval.

7. The trustee shall serve, without bond or other security, at the cost and expense of Duke and DEFS, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Duke and DEFS, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestitures and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Duke and DEFS, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Assets To Be Divested or the corresponding Substitute Assets To Be Divested.

8. Duke and DEFS shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. Duke and DEFS shall each be jointly and severally liable for all financial obligations accruing from Paragraphs III.C.7. and III.C.8.

10. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this Order.

11. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish each divestiture required by this Order.

12. In the event that the trustee determines that he or she is unable to divest the Assets To Be Divested or the Substitute Assets To Be Divested in a manner consistent with the Commission's purpose as described in Paragraph II.M., the







By the Commission.

Donald S. Clark  
Secretary

SEAL:  
ISSUED:

## **Schedule A**

### **Westana Area (Oklahoma)**

Duke's interest in the Westana Gathering Company, which has been divested pursuant to the Western Agreement.

## **Schedule B**

### **Austin Chalk Area (Texas)**

All interests held by Duke or DEFS prior to the Duke-Phillips Transaction Date in assets

1. located in Brazos, Burleson, Grimes, Lee, or Washington Counties in Texas, and
2. used in natural gas gathering, treating, or processing,

except those specifically excluded by this schedule. The following assets are excluded from this schedule: (a) the North Fayette Treater in Fayette County, Texas, and the gas gathering assets connecting that treater to the seven gas wells closest to it, (b) the Bryan Plant in Brazos County, Texas, and (c) the A & M Plant in Burleson County, Texas.