

PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

03 10 2020
597881

In the Matter of:

Peabody Energy Corporation,
a public company;

and

Arch Coal, Inc.,
a public company.

DOCKET NO. 9391

ORIGINAL

PUBLIC

RESPONDENT ARCH COAL INC.'S ANSWER AND AFFIRMATIVE DEFENSES

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ARCH'S ANSWER AND AFFIRMATIVE DEFENSES

projects that it will remain well below that mark for the foreseeable future. In fact, today, natural gas prices are below \$2/mmBTU. As natural gas prices fall, generating electricity from coal becomes even more uneconomic. And renewable fuel sources like wind and solar are expected to continue to grow and displace coal throughout the U.S. The prospects for coal have deteriorated further in 2020.

The parties cannot alter these forces. Instead, to compete, coal producers must lower their costs. Peabody and Arch have wrung costs out of their businesses, but they still struggle to compete with increasingly low-priced natural gas. They—and three of the other five companies mining coal in the SPRB—were forced into bankruptcy in recent years as a result of these dynamics.

Peabody and Arch formed this Joint Venture to combine their mines in Colorado and the SPRB to lower their costs in an attempt to remain competitive in a declining market. Critically, the Joint Venture will dissolve a seven-mile border that separates their largest two mines, slashing costs across the supply chain. Highly skilled personnel, industry experts, and recent experience integrating two contiguous mines involving the very same mining complex substantiate the parties' conservative estimates of over \$1 billion in net present value of merger-specific cost savings over the venture's first ten years. These savings are based on the parties' conservative estimates of over \$1 billion in net present value of merger-specific cost savings over the venture's first ten years. These savings are based on the parties' conservative estimates of over \$1 billion in net present value of merger-specific cost savings over the venture's first ten years.

5. Arch admits that, to the extent new entry means greenfield entry of new producers of SPRB coal, such new entry is unlikely to occur in the near term under current market conditions. Arch denies the remainder of Paragraph 5.

6. Arch denies Paragraph 6 of the Complaint.

II. JURISDICTION

7. Arch avers that Paragraph 7 states legal conclusions to which no response is required. To the extent a response is required, Arch admits it is engaged in commerce.

8. Arch avers that Paragraph 8 states legal conclusions to which no response is required. To the extent a response is required, Arch admits the Joint Venture is a transaction.

III. RESPONDENTS

9. Arch admits the first four sentences of Paragraph 9 except that it is without knowledge or information about the FTC's meaning of "reserves" to respond. Arch is without knowledge or information sufficient to form a belief as to the truth of the allegations in the fifth and sixth sentences.

10. Arch admits the first two sentences except that it is without knowledge or information about the FTC's meaning of "reserves" to respond. Arch admits the third and fourth sentences as a correct description of Arch's production and revenues across the entire company's portfolio two years ago but avers that the figures are misleading as stated.

IV. THE JOINT VENTURE

11. Arch admits Paragraph 11 of the Complaint.

V. RELEVANT MARKETS

greater distances typically result in greater shipping costs. Arch is without knowledge or information sufficient to form a belief as to the truth of the last sentence of Paragraph 17.

18. Arch denies the first sentence of Paragraph 18. Arch is without knowledge or information sufficient to form a belief as to the truth of the second sentence of Paragraph 18.

19. Arch admits that public sources indicate that the total demand for SPRB coal in the economy has been falling over time but expect that there will continue to be sales in the future, but otherwise is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19.

20. Arch admits the first sentence of Paragraph 20 and denies the remainder.

B. Relevant Geographic market

21. Arch avers that Paragraph 21 of the Complaint states legal conclusions to which no response is required. To the extent that it makes any assertion of fact, it is denied, except that Arch admits that SPRB coal is mined in the SPRB.

22. Arch avers that the first sentence of Paragraph 22 of the Complaint states legal conclusions to which no response is required. To the extent that it makes any assertion of fact, it is denied. Arch is without knowledge or information sufficient to form a belief as to the truth of the second sentence.

23. Arch avers that the first sentence of Paragraph 23 of the Complaint states legal conclusions to which no response is required. To the extent that it makes any assertion of fact, it is denied. Arch is without knowledge or information sufficient to form a belief as to the truth of the second sentence but admits that SPRB coal is sold in each of the sixteen identified states, among others. Paragraph 23 is otherwise denied.

VI. MARKET CONCENTRATION AND THE JOINT VENTURE'S PRESUMPTIVE

ILLEGALITY

24. Arch denies the first sentence of Paragraph 24. Arch admits that public sources indicate that Respondents produced more than 60% of all SPRB coal mined in 2018 but otherwise is without knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence.

25. Arch admits that besides Arch and Peabody there are five other producers of SPRB coal but otherwise is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence. Arch admits the second sentence. Arch is without knowledge or information sufficient to form a belief as to the meaning of the phrase “meaningfully compete” and otherwise is without knowledge or information sufficient to form a belief as to the truth of the allegations in the third sentence. Arch admits the fourth sentence. Arch is without knowledge or information sufficient to form a belief as to the truth of other producers’ future scale or reserves, or the measure used to compare SPRB coal “reserves” but admits that public information would confirm the remainder of the fifth sentence.

26. Arch admits that the Merger Guidelines measure concentration using HHIs but deny that those Guidelines are binding on the agency, let alone courts. Arch admits that the second, third and fourth sentences accurately summarize how “HHI” is described in the non-binding Merger Guidelines. Arch denies the remainder of Paragraph 26.

VII. ANTICOMPETITIVE EFFECTS

27. Arch denies Paragraph 27.

28. Arch denies Paragraph 28.

29. Arch denies Paragraph 29.

30. Arch denies Paragraph 30.

31. Arch denies Paragraph 31.

32. Arch denies Paragraph 32.

VIII. LACK OF COUNTERVAILING FACTORS.

A. Barriers to Entry and Expansion

33. Arch denies Paragraph 33.

34. Arch denies Paragraph 34.

35. Arch denies Paragraph 35.

B. Efficiencies

36. Arch denies Paragraph 36.

IX. VIOLATION

Count I – Illegal Agreement

37. Arch avers that no response is required to Paragraph 37.

38. Arch avers that Paragraph 38 states legal conclusions to which no response is required. To the extent a response is required, Arch denies Paragraph 38 of the Complaint.

Count II – Illegal Joint Venture

39. Arch avers that no response is required to Paragraph 39.

40. Arch avers that Paragraph 40 states legal conclusions to which no response is required. To the extent a response is required, Arch denies Paragraph 40 of the Complaint.

ARCH'S AFFIRMATIVE DEFENSES

Arch asserts the following defenses, without assuming the burden of proof on such defenses that would otherwise rest with the Plaintiff:

1. The Complaint fails to state a claim on which relief can be granted.
2. Granting the relief sought is contrary to the public interest.

Dated March 10, 2020

Respectfully submitte

/s/ William Lavery
Stephen Weissman (pro hac vice)
Michael Perry (pro hac vice)
William Lavery (pro hac vice)
Matthew Adler (pro hac vice pending)
Elisa Benezet (pro hac vice)
Jarad Daniels (pro hac vice)

CERTIFICATE OF SERVICE

Notice of Electronic Service

I hereby certify that on March 10, 2020, I filed an electronic copy of the foregoing 2020-03-10 RESPONDENT ARCH Answer and Affirmative Defenses, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
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Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
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I hereby certify that on March 10, 2020, I served via E-Service an electronic copy of the foregoing 2020-03-10 RESPONDENT ARCH Answer and Affirmative Defenses, upon:

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