

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Timothy J. Muris, Chairman  
Sheila F. Anthony  
Mozelle W. Thompson  
Orson Swindle  
Thomas B. Leary

\_\_\_\_\_)  
In the Matter of )  
)  
**SOUTHERN UNION COMPANY,** )  
a corporation, )  
) Docket No. \_\_\_\_\_  
and )  
)  
**CMS ENERGY CORPORATION,** )  
a corporation. )  
\_\_\_\_\_)

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition of Panhandle Eastern Pipeline Company (“Panhandle”) from Respondent CMS Energy Corporation (“CMS”) by Respondent Southern Union Company (“SU”) (SU and CMS hereinafter referred to as “Respondents”), and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts as 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 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 accepted the executed Consent Agreement and placed such Consent 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 Decision and Order (“Order”):

1. Respondent Southern Union 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 One PEI Center, Wilkes-Barre, Pennsylvania 18711.
2. Respondent CMS Energy Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at Fairlane Plaza South, 330 Town Center Drive, Suite 1100, Dearborn, Michigan 48126.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

## I.

**IT IS ORDERED** that, as used in this Order, the following definitions shall apply:

- A. “SU” means Southern Union Company, its officers, directors, employees, agents and representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Southern Union Company (including, but not limited to, Missouri Gas Energy, Energy Worx, Inc., and SUPC); and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.
- B. “CMS” means CMS Energy Corporation, its officers, directors, employees, agents and representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by CMS Energy Corporation (including, but not limited to, CMS Enterprises Company, CMS Gas Transmission Company and Panhandle); and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.
- C. “Commission” means the Federal Trade Commission.
- D. “Acquisition” means the proposed acquisition of Panhandle from CMS by SU as described in the Stock Purchase Agreement.

- E. “Acquisition Date” means the date on which the Acquisition is consummated.
- F. “AIG” means American International Group, Inc., 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 70 Pine Street, New York, New York 10270, its joint ventures, subsidiaries, divisions, equity funds, groups and affiliates controlled by American International Group, Inc. (including, but not limited to, AIG Global Investment Corp., AIG Highstar Capital GP, L.P., AIG Highstar Capital L.P., AIG Highstar II Funding Corp., and Southern Star Central Corp.).
- G. “Central Pipeline” means the Central Pipeline acquired by AIG, through AIG Highstar Capital, L.P. and Southern Star Central Corp., from The Williams Companies, that transports natural gas from producing locations in Kansas, Oklahoma, Texas, Wyoming and Colorado to consuming areas in the Midwest.
- H. “Management Services Agreement” means the agreement made and entered into as of November 20, 2002, by and between Southern Star Central Corp. and Energy Worx, Inc., a wholly-owned subsidiary of Southern Union Company, for the operation and management of the Central Pipeline by Energy Worx, Inc., and any amendments thereto.
- I. “Non-Public Ownership Interest” means an Ownership Interest that is not registered for sale pursuant to the Securities Act of 1933.
- J. “Ownership Interest” means any stock, share capital, equity, or other interest, or any present or contingent right to such stock, share capital, equity or other interest.
- K. “Panhandle” means Panhandle Eastern Pipeline Company, 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 5444 Westheimer Road, Houston, Texas 77056.
- L. “Panhandle Pipeline” means the natural gas pipeline owned by Panhandle that transports natural gas from producing locations in Texas, Oklahoma, and Kansas to consuming areas in the Midwest.
- M. “Person” means any individual, partnership, firm, trust, association, corporation, joint venture, unincorporated organization, equity fund, or other business or governmental entity.
- N. “Respondents” means SU and CMS, individually and collectively, and the Person resulting from the Acquisition.

- O. “Stock Purchase Agreement” means the Amended and Restated Stock Purchase Agreement By and Among CMS Gas Transmission Company, Southern Union Company and Southern Union Panhandle Corp., dated as of May 12, 2003, and any amendments thereto.
- P. “SUPC” means Southern Union Panhandle Corporation, its officers, directors, employees, agents and representatives, successors, and assigns; its parents, joint ventures, subsidiaries, divisions, groups and affiliates controlled by Southern Union Panhandle Corporation, and the respective officers, directors, employees, agents, representatives, successors, and assigns of each.

## II.

### **IT IS FURTHER ORDERED** that:

- Q. Prior to the Acquisition Date, Respondent SU shall:
  - 1. secure the consent or waiver of AIG for the termination of the Management Services Agreement; and
  - 2. absolutely terminate the Management Services Agreement.
- R. Respondents SU and CMS shall not consummate the Acquisition until the Management Services Agreement has been terminated.
- S. Following the Acquisition Date, Respondent SU shall not, directly or indirectly, operate or manage the Central Pipeline.
- T. Respondent SU shall not, directly or indirectly, through subsidiaries, partnerships, or otherwise, acquire any Ownership Interest in AIG, including, but not limited to, the Central Pipeline or Southern Star Central Corp.
- U. The purpose of this Paragraph is to ensure that Respondents do not consummate the Acquisition before the Management Services Agreement is terminated, and to ensure that, following the Acquisition, Respondent SU will have no interest in AIG or the Central Pipeline, or any role in managing or operating the Central Pipeline, to remedy the lessening of competition from the proposed Acquisition as alleged in the Commission’s Complaint.

### III.

**IT IS FURTHER ORDERED** that:

- A. Respondents SU and CMS shall not sell, give, transfer, or otherwise provide, directly or indirectly, through subsidiaries, partnerships, or otherwise, any Ownership Interest in SU, SUPC, Panhandle, or the Panhandle Pipeline, to AIG.
- B. If either Respondent SU or CMS sells, gives, transfers, or otherwise provides any Non-Public Ownership Interest in SU, SUPC, Panhandle, or the Panhandle Pipeline to any person other than AIG, such Respondent shall transfer such Non-Public Ownership Interest subject to a restriction that prohibits the sale of such Non-Public Ownership Interest to AIG.
- C. The purpose of this Paragraph is to prevent AIG from obtaining an interest in SU, SUPC, Panhandle, or the Panhandle Pipeline, from Respondents, to remedy the lessening of competition from the proposed Acquisition as alleged in the Commission's Complaint.

### IV.

**IT IS FURTHER ORDERED** that:

- A. Within thirty (30) days after the date this Order becomes final, and every thirty (30) days thereafter until Respondent SU has fully complied with Paragraph II.A. of this Order and Respondents SU and CMS have fully complied with Paragraph II.B. of this Order, Respondents SU and CMS shall each submit to the Commission a verified written report setting forth in detail the manner and form in which they have complied, are complying, and will comply with Paragraph II of this Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with the Order and copies of all written communications to and from all persons relating to this Order.
- B. Within thirty (30) days after the date this Order becomes final, and annually for ten (10) years on the anniversary of the date this Order becomes final, Respondents SU and CMS shall submit to the Commission a verified written report setting forth in detail the manner and form in which they have complied, are complying, and will comply with this Order. Respondents SU and CMS shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with the Order and copies of all written communications to and from all persons relating to this Order.

**V.**

**IT IS FURTHER ORDERED** that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the Order.

**VI.**

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their principal United States offices, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondents and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to any matters contained in this Order; and
- B. Upon five (5) days' notice and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding any such matters.

**VII.**

**IT IS FURTHER ORDERED** that this Order shall terminate ten (10) years from the date the Order becomes final.

By the Commission.

Donald S. Clark  
Secretary

SEAL  
ISSUED: