

IN THE UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)	
)	
ARCH COAL, INC.,)	
a corporation,)	
)	Docket No. 9316
NEW VULCAN COAL HOLDINGS, LLC,)	
a limited liability company,)	
)	
and)	
)	
TRITON COAL COMPANY, LLC,)	
a limited liability company.)	
)	
)	

**OPPOSITION OF RESPONDENTS TO COMPLAINT COUNSEL’S MOTION TO STAY
THIS PROCEEDING OR IN THE ALTERNATIVE TO STAY DISCOVERY**

By motion, Complaint Counsel seeks to stay this proceeding for approximately eight weeks, or in the alternative to stay discovery pending completion of the evidentiary hearing in the Federal Trade Commission’s Section 13(b) action in the United States District Court for the District of Columbia.

Respondents Arch Coal, Inc., New Vulcan Holdings, LLC, and Triton Coal Company, LLC, oppose Complaint Counsel’s motion. Following a telephonic scheduling conference with all parties during which your Honor pressed both sides on whether either wished to invoke Commission Rule 3.51 to stay this proceeding, and hearing that neither did, this Court entered its Scheduling Order on May 13, 2004. While Complaint Counsel now beats a hasty retreat from its original position, Respondents stand steadfast in opposition to any stay of the administrative proceeding.

An FTC merger review proceeding is by nature lengthy, projected to take a minimum of at least 13 months from commencement to final Commission decision. 16 C.F.R. § 3.11A(c)(3) Respondents advised this Court that, in the event a preliminary injunction issues in the pending federal court action, the transactions cannot survive so long a review process. Indeed, in such circumstances, no transaction can endure the wait the FTC has built into its review procedures for mergers and acquisitions -- which readily explains why, when the FTC prevails in a Section 13(b) judicial action, the follow-on administrative review has *never* gone forward.

In this instance, Defendants fully expect to prevail in the federal district court, and thus be allowed to finalize the Arch-Triton-Kiewit transactions promptly. If Complaint Counsel intends to nonetheless proceed with the instant proceeding, it should not be allowed to do so on whatever relaxed schedule suits its convenience. Respondents are entitled to a quick and decisive disposition. This Court is entitled to have its orders taken seriously, not treated with seeming indifference. And certainly after closure, the public interest is entitled to a process that moves with dispatch, not without noticeable purpose.

Accordingly, the Scheduling Order entered on May 13, 2004, should remain unaltered, and Complaint Counsel's Motion to Stay This Proceeding or in the Alternative to Stay Discovery should be denied.

Respectfully submitted,



Roxann E. Henry
Wm. Bradford Reynolds
J. Douglas Baldrige
Stephen Weissman

HOWREY SIMON ARNOLD & WHITE, LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 783-0800 (Phone)
(202) 383-6610 (Facsimile)

Attorneys for Defendant Arch Coal, Inc.

Richard G. Parker
Michael E. Antalics
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006

Charles E. Bachman
O'MELVENY & MYERS LLP
Times Square Tower
7 Times Square
New York, NY 10036

Attorneys for Defendants New Vulcan
Holdings, LLC, and Triton Coal Company, LLC

Dated: May 24, 2004

CERTIFICATE OF SERVICE

I HEREBY certify that copies of the foregoing Opposition Of Respondents To Complaint Counsel's Motion To Stay This Proceeding Or In The Alternative To Stay Discovery was served on the following parties on this 24th day of May, 2004.


Wm. Bradford Reynolds

Hon. D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
Room H-104
600 Pennsylvania Avenue, N.W.
Washington, DC 20530

(by hand)

COMPLAINT COUNSEL
E. Eric Elmore
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, DC 20530

(by e-mail)

Michael Knight
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, DC 20530

(by e-mail)