PUBLIC VERSION

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of	)	
Conoco Inc.,	)	
a corporation,	)	
	)	Docket No. C-4058
and	)	File No. 021-0040
	)	
Phillips Petroleum Company,	)	
a corporation.	)	
	)	

PETITION OF CONOCOPHILLIPS FOR APPROVAL OF PROPOSED DIVESTITURE OF THE TEXAS ASSETS

Pursuant to Section 2.41(f) of the Federal Trade Commission ("Commission") Rules of Practice and Procedure, 16 C.F.R. § 2.41(f) (2002), and Paragraph VIII.B. of the Decision and Order issued by the Commission in this matter (the "Decision and Order"), ConocoPhillips hereby petitions the Commission to approve the divestiture of the Texas Assets (as defined in the Decision and Order) to West Texas Gas Inc., ("WTG") and the related agreements provided for in Paragraph VIII.C. of the Decision and Order.[1]

Background

On August 2, 2002, Conoco Inc. ("Conoco") and Phillips Petroleum Company ("Phillips") (individually and collectively, "Respondents") executed an Agreement Containing Consent Orders that included the Decision and Order and an Order to Hold Separate and Maintain Assets (collectively, the "Consent Agreement") to settle the

Commission's charges that the proposed merger of Conoco and Phillips, if consummated, would violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. On August 30, 2002, the Commission accepted the Consent Agreement for public comment, and Conoco and Phillips thereafter consummated their merger, thereby forming a new entity, ConocoPhillips.[2] The Consent Agreement was made final by the Commission on February 7, 2003.

Because this petition and its attachments contain confidential and competitively sensitive business information relating to the divestiture of the Texas Assets – the disclosure of which may prejudice ConocoPhillips and WTG, cause harm to the ongoing competitiveness of the Texas Assets, and impair ConocoPhillips' ability to comply with its obligations under the Consent Agreement – ConocoPhillips has redacted such confidential information from the public version of this petition and its attachments. Pursuant to Sections 2.41(f)(4) and 4.9(c) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(4) & 4.9(c) (2002), ConocoPhillips requests that the confidential version of this petition and its attachments and the information contained herein be accorded confidential treatment. The confidential version of this petition should be accorded such confidential treatment under 5 U.S.C. § 552 and Section 4.10(a)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 4.10(a)(2) (2002). The confidential version of this petition is also exempt from disclosure under Exemptions 4, 7(A), 7(B), and 7(C) of the Freedom of Information Act, 5 U.S.C. §§ 552(b)(4),

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[1] Capitalized terms that are not defined within this petition shall have the meanings set forth in the Decision and Order.

[2] After the merger, Conoco and Phillips remain as corporate entities, but both are now wholly-owned subsidiaries of and included within ConocoPhillips.

552(b)(7)(A), 552(b)(7)(B), & 552(b)(7)(C), and the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a(h).

ConocoPhillips desires to complete the proposed divestiture of the Texas Assets as soon as possible, following Commission approval thereof, and by no later than May 2, 2003. Prompt consummation will further the purposes of the Decision and Order and is in the interests of the public, WTG, and ConocoPhillips, because it will allow WTG to move forward with its business plans for the competitive operation of the assets to be divested. It will also allow ConocoPhillips to fulfill its obligations under the Consent Agreement. ConocoPhillips accordingly requests that the Commission promptly commence the period of public comment pursuant to Section 2.41(f)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(2) (2002), limit the public comment period to the customary 30-day period, and grant this petition by approving the divestiture of the Texas Assets to WTG and the execution and initiation of the other required agreements as soon as practicable after the close of the public comment period.

I. The Proposed Divestiture is Consistent with the Terms of the Decision and Order

Paragraph VIII of the Decision and Order requires Respondents to divest the Texas Assets (and, at the acquirer's option, to enter into a gas processing agreement with the acquirer) by May 2, 2003 (nine months from the date Respondents executed the Agreement Containing Consent Orders). Pursuant to this requirement, Respondents have diligently sought a buyer that would be acceptable to the Commission and negotiated all appropriate agreements.

On ConocoPhillips entered into a Purchase and Sale Agreement (the "Sale Agreement") with WTG, which, subject to Commission approval, requires ConocoPhillips to sell the Texas Assets to WTG, and a Gas Processing Contract (the "Processing Agreement"), under which ConocoPhillips will process for WTG gas gathered by WTG on the Texas Assets. The Sale Agreement is attached as Confidential Exhibit 1.

A. The Sale Agreement is Consistent with the Terms of the Decision and Order

1. Paragraphs VIII.A. and VIII.B. of the Decision and Order require that Respondents divest the Texas Assets absolutely and in good faith to an acquirer within nine months from the date Respondents executed the Agreement Containing Consent Orders. Pursuant to the Sale Agreement, WTG will acquire all of the Texas Assets.

. The assets described in the Sale Agreement comprise all of the Texas Assets as defined in Paragraph I.BM. of the Decision and Order.

2. Paragraph VIII.E. of the Decision and Order provides that the purpose of the Decision and Order's provisions concerning the divestiture of the Texas Assets is to ensure the continued use of the Texas Assets in the same business in which they were engaged at the time of the announcement of the proposed Merger, and to remedy the lessening of competition in

Gas Gathering alleged in the Commission's Complaint. As discussed in greater detail below, WTG is an established, successful gas gathering and processing company.

B. The Processing Agreement is Consistent with the Terms of the Decision and Order

1. Paragraph VIII.C. of the Decision and Order provides that the Respondents shall, at the acquirer's option, enter into an agreement with the acquirer of the Texas Assets to process the natural gas gathered by the Texas Assets. On ConocoPhillips and WTG entered into the Processing Agreement, under which, subject to Commission approval, ConocoPhillips will process for WTG gas gathered by WTG on the Texas Assets.[3]

2. Paragraph VIII.C.1. of the Decision and Order provides that the gas processed under the Processing Agreement shall be processed at ConocoPhillips' Mertzon facility.

3. Paragraph VIII.C.2. of the Decision and Order provides that the gas processing fee shall not exceed Respondents' Cost (as defined in Paragraph I.U. of the Decision and Order) of processing.

4. Paragraph VIII.C.3. of the Decision and Order provides that the amount of gas to be processed shall be up to the amount gathered by the Texas Assets as of the date Respondents executed the Agreement Containing Consent Orders.

5. Paragraph VIII.C.4. of the Decision and Order provides that the term of the Processing Agreement shall be no less than seven years.

6. Paragraph VIII.C.5. of the Decision and Order provides that the Processing Agreement shall be subject to termination by the acquirer with no more than twelve months' notice.

7. Paragraph VIII.C.6. of the Decision and Order provides that, at the acquirer's option and subject to the prior approval of the Commission, the Processing Agreement shall provide for the transportation at Cost to the Mertzon facility of natural gas gathered on the Texas Assets.

II. The Proposed Acquirer Will be a Strong and Effective Competitor

Founded by Mr. J. L. Davis in 1976, WTG is an experienced and successful competitor in natural gas production, gathering, processing, and distribution.

The Bureau of Competition's A Study of the Commission's Divestiture Process (1999) (the "Divestiture Study") discussed a number of factors that help to identify a promising divestiture buyer. The Divestiture Study cited the buyer's experience in the relevant industry and knowledge of the assets to be purchased as key to a successful divestiture. "Frequently, the most knowledgeable and best buyer was the fringe competitor or an entrant expanding geographically." Divestiture Study, p. 34.

* * *

ConocoPhillips and WTG have entered into agreements relating to the divestiture of the Texas Assets that fully comply with the Commission's Decision and Order. Accordingly, ConocoPhillips hereby seeks expeditious Commission approval of the proposed divestiture –

along with the related Processing Agreement – pursuant to Paragraphs VIII.B. and VIII.C. of the Decision and Order.

Conclusion

For the foregoing reasons, ConocoPhillips respectfully requests that the Commission expeditiously approve the proposed divestiture of the Texas Assets to WTG, as in the manner provided in the Agreements, as soon as practicable after expiration of the public comment period.

Respectfully submitted,

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Dated: February 26, 2003

Confidential Exhibit 1

Purchase and Sale Agreement

[REDACTED]

Confidential Exhibit 2

Map of WTG Gathering and Processing Assets in Western Texas and Oklahoma

[REDACTED]