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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Joseph J. Simons, Chairman**
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

In the Matter of	
DTE Energy Company, **a corporation,**	**Docket No.**
Enbridge Inc., **a corporation,**	**PUBLIC**
and	
NEXUS Gas Transmission LLC, **a limited liability corporation.**	

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act ("FTC Act"), and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that Respondent NEXUS Gas Transmission LLC, a joint venture between Respondents DTE Energy Company and Enbridge Inc., entered into a transaction to acquire Generation Pipeline LLC, in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and which, if the acquisition is consummated, may substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

I. RESPONDENTS

1. Respondent DTE Energy Company ("DTE") is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Michigan with its executive offices and principal place of business located at One Energy Plaza, Detroit, Michigan, 48226.

2. Respondent Enbridge Inc. ("Enbridge") is a corporation organized, existing, and doing business under, and by virtue of, the laws of Canada with its executive offices and principal place of business located at 200 Fifth Avenue Place, Calgary, Alberta, T2P 3L8.

3. Respondent NEXUS Gas Transmission LLC ("Nexus") is a limited liability company organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware with its executive offices and principal place of business located at 5400 Westheimer Court, Houston, Texas, 77056. Nexus is a 50/50 joint venture between DTE and Enbridge.

II. JURISDICTION

4. Respondents, either directly or through corporate entities under their control, are, and at all relevant times have been, engaged in commerce or in activities affecting "commerce," as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

III. PROPOSED TRANSACTION

5. North Coast Gas Transmission LLC ("NCGT") is a wholly-owned subsidiary of Somerset Gas Transmission Company, LLC, a private company that invests in natural gas pipeline opportunities throughout the United States. NCGT's primary asset is a 280-mile natural gas transmission pipeline system spanning thirteen counties in Ohio, including Lucas, Ottawa, and Wood counties (the "North Coast Pipeline").

6. Generation Pipeline LLC ("Generation") owns and operates a 23-mile intrastate pipeline that serves customers in the Toledo, Ohio area (the "Generation Pipeline"). NCGT formed Generation as a wholly owned subsidiary in 2015, and NCGT is currently a minority owner of Generation.

7. In January 2019, Respondent Nexus agreed to pay $160 million to acquire Generation from NCGT and Generation's other owners (the "Transaction"). The Transaction's sale agreement forbids NCGT from competing to provide natural gas transportation within a restricted area encompassing parts of Lucas, Ottawa, and Wood counties in Ohio for a period of three years post-closing (the "Non-Compete"). Following the transaction, NCGT will continue to own and operate the North Coast Pipeline.

8. The Transaction constitutes an acquisition subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

IV. THE RELEVANT MARKET

9. A relevant line of commerce within which to analyze the effects of the Transaction is natural gas pipeline transportation.

10. A relevant geographic market within which to analyze the effects of the Transaction is an area no broader than Lucas, Ottawa, and Wood counties in Ohio (the "Relevant Area"), which contains the closest geographic overlaps between the Generation Pipeline and the North Coast Pipeline. Although pipeline options may vary by customer delivery location, all customers for whom the Generation Pipeline and the North Coast Pipeline are both competitive options are located within the Relevant Area.

11. No economic or practical alternatives to natural gas pipeline transportation exist. Other natural gas delivery methods are significantly more costly, less reliable, and potentially more hazardous than pipeline transportation.

V. MARKET STRUCTURE

12. The Generation Pipeline and the North Coast Pipeline are two of few natural gas pipeline transportation options capable of serving customers in the Relevant Area. Moreover, the Generation Pipeline and the North Coast Pipeline represent the best natural gas pipeline transportation alternatives for certain existing or potential customers located reasonably close to both pipelines.

VI. ENTRY CONDITIONS

13. Entry, repositioning, or fringe firm growth would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Transaction. Significant barriers to entry or expansion include the time and cost of constructing a new natural gas pipeline or expanding existing pipelines, as these projects may take several years to complete, require numerous regulatory approvals, and cost millions of dollars.

VII. EFFECTS OF THE TRANSACITON

14. By prohibiting NCGT from competing to provide natural gas transportation within the restricted area, the Non-Compete would harm customers who would otherwise benefit from competition from NCGT.

15. The Non-Compete is not reasonably limited in scope to protect a legitimate business interest. A mere general desire to be free from competition is not a legitimate business interest. The Non-Compete does not protect any intellectual property, goodwill, or customer relationship necessary to protect Nexus' investment. Moreover, even if a legitimate interest existed, the geographic scope of the Non-Compete is broader than reasonably necessary, because it prevents NCGT from competing for any opportunity in the restricted area, even for opportunities that were unforeseen at the time of the Transaction.

16. The effects of the Transaction would be a substantial lessening of competition in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. Specifically, the agreement would:

a. eliminate actual and potential competition among market participants in the relevant markets; and

b. increase Respondents' ability to exercise market power unilaterally in the relevant markets.

VIII. VIOLATIONS CHARGED

17. The allegations contained in Paragraphs 1 through 16 above are hereby incorporated by reference as though fully set forth here.

18. The Transaction agreement constitutes an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. The Transaction, including the Non-Compete, constitutes a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this ___ day of August, 2019, issues its complaint against Respondents.

By the Commission.

April J. Tabor
Secretary

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