

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.)	

**ANSWER OF DEFENDANT ARCH COAL INC. TO THE FEDERAL TRADE
COMMISSION’S ADMINISTRATIVE COMPLAINT**

Defendant Arch Coal, Inc. (“Arch”), by counsel, answers the Administrative Complaint (“Complaint”) filed by the Federal Trade Commission (“FTC”).

RESPONDENT ARCH

1. Arch admits the allegations contained in Paragraph 1.
2. Arch admits it is a producer of 8800 SPRB coal, but denies the remainder of the allegations contained in Paragraph 2.

RESPONDENTS NEW VULCAN AND TRITON

3. Arch denies the allegations contained in the first sentence, and admits the allegations contained in the second sentence of Paragraph 3.
4. Arch admits Triton Coal Company, LLC is a limited liability company with its principal place of business at 113 South Gillette Ave., Suite 203, Gillette, Wyoming, 82716. Arch denies the remainder of the allegations contained in Paragraph 4.
5. Arch admits that Triton is a producer of 8800 SPRB coal, but denies the remainder of the allegations contained in Paragraph 5.

JURISDICTION

6. The allegations contained in paragraph 6 are legal conclusions to which no response is required.

7. The allegations contained in paragraph 7 are legal conclusions to which no response is required.

THE ACQUISITION AND THE PROPOSED SALE OF BUCKSKIN

8. Arch admits the allegations contained in paragraph 8.

9. Arch admits that, pursuant to an Asset Purchase Agreement, dated as of January 30, 2004 between Kiewit and Arch, Arch agreed to divest, for \$82 million, Triton's Buckskin mine and related assets to Kiewit concurrent with its acquisition of the assets of Triton. In all other respects, the allegations contained in Paragraph 9 are denied.

10. The allegations contained in paragraph 10 are legal conclusions to which no response is required.

11. Arch admits that, on March 30, 2004, it was informed by the FTC that, over the dissent of Commissioner Leary, the FTC Commissioners had voted to commence an action under Section 13(b) of the FTC Act for preliminary relief.

RELEVANT MARKET

12. Arch denies the allegations contained in paragraph 12.

13. Arch denies the allegations contained in paragraph 13.

GEOGRAPHIC MARKET

14. Arch denies the allegations contained in paragraph 14.

COAL FROM THE SPRB

15. Arch admits that coal is a leading energy source in the United States, and further admits that coal-fired generating plants account for a significant percentage of coal consumption and electric-power generation in the United States, but otherwise denies the allegations contained in the first and second sentences of paragraph 15. The allegations contained in the third sentence of Paragraph 15 are admitted. Arch further admits that coal produced in the Powder River Basin ("PRB"), including the SPRB, like coal produced in other regions throughout the United States, is burned by electric generators. The approximations contained in the last sentence of Paragraph 15 are just that, approximations, and require neither an admission nor a denial.

16. Arch admits that the PRB, including SPRB, is a region in the United States that serves as a source of low sulfur coal for consumers in the United States, and states that such coal

typically has an energy content along a spectrum that includes approximately 8100 and 8900 BTU per pound, which complies with current sulfur emission limits imposed on coal-fired generators by the 1990 Clean Air Act. Arch further admits that coal mined in the SPRB is low in ash and sodium content. In all other respects, the allegations contained in Paragraph 16 are denied.

THE THREE TIERS IN THE SPRB

17. Arch denies the allegations contained in the first sentence of Paragraph 17. Arch admits that the allegations contained in the second sentence are generally correct.

18. Arch denies the allegations contained in paragraph 18.

19. Arch admits that mines north, south, and east of Gillette, Wyoming, produce 8400 BTU coal, and that some of these mines to the south of Gillette, Wyoming, also produce 8800 BTU coal. In all other respects, the allegations in Paragraph 19 are denied.

20. Arch denies the allegations contained in paragraph 20.

21. Arch admits that Arch, Peabody, Kennecott, and Triton are four of the largest coal producers in the SPRB. All operate mines in the southern portion of the PRB, as well as elsewhere in the PRB. Arch's Black Thunder mine and Triton's North Rochelle mine are both located in the southern portion of the PRB. Arch's Coal Creek mine and Triton's Buckskin mine are located near Gillette, Wyoming. Arch further admits that R.A.G. is another significant producer of coal that has mines located in the PRB, including SPRB. In all other respects, the allegations in Paragraph 21 are denied.

USE OF SPRB COAL

22. Arch denies the allegations contained in paragraph 22.

23. Arch denies the allegations contained in paragraph 23.

24. Arch denies the allegations contained in paragraph 24.

25. Arch admits that coal mined in the PRB, including SPRB, is available to customers in states nationwide, but otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 25, and therefore denies them.

26. Arch admits the allegations contained in the second sentence of Paragraph 26. In all other respects, the allegations contained in Paragraph 26 are denied.

27. Arch denies the allegations contained in paragraph 27.

MARKET STRUCTURE

28. Arch denies the allegations contained in paragraph 28.

29. Arch admits it is a producer of 8800 SPRB coal, but denies the remainder of the allegations contained in paragraph 29.

30. Arch admits that Triton is a producer of 8800 SPRB coal, but denies the remainder of the allegations contained in Paragraph 30.

31. Arch admits that, in or about July 2000, it idled its coal-mining operations at Coal Creek. In all other respects, the allegations contained in Paragraph 31 are denied.

32. Arch denies the allegations contained in paragraph 32.

33. Arch denies the allegations contained in paragraph 33.

34. Arch admits that it and Triton, as well as many other coal producers, compete for the sale of coal throughout the United States based on a variety of factors. In all other respects, the allegations contained in Paragraph 24 are denied.

THE SPRB COAL MARKET IS SUSCEPTIBLE TO COORDINATION

35. Arch denies the allegations contained in paragraph 35.

36. Arch denies the allegations contained in Paragraph 36 insofar as they have reference to Arch. In all other respects, Arch lacks knowledge or information sufficient to form a belief as to said allegations, and therefore denies them.

37. Arch denies the allegations contained in paragraph 37.

38. Arch denies the allegations contained in paragraph 38.

39. Arch denies the general allegations in Paragraph 39. With respect to the several subparagraphs, Arch states:

a. Arch admits it issued a press release on or about May 18, 2000, which contained the sentence quoted. Arch further admits that Mr. Leer spoke at the Western Coal Council Spring Forum on or about May 23, 2000, and noted that coal prices had been trending downward and that Arch's production levels were lower. In all other respects, the allegations contained in subparagraph a. are denied.

b. Arch admits that Mr. Leer delivered an address at the Western Coal Transportation Association meeting on or about April 17, 2001, during which he stated, "We've had offers to open up Coal Creek for one year at extremely attractive pricing. And the answer is no. I think other producers are in the same boat." In all other respects, the allegations contained in subparagraph b. are denied.

c. Arch admits that the PRNewswire-FirstCall published material on or about March 18, 2002, and, without averring to its truth or accuracy, refers to the publication of that data to determine what was reported. In all other respects, the allegations contained in subparagraph c. are denied.

d. Arch admits that Coal & Energy published material on or about July 18, 2002, and, without averring to its truth or accuracy, refers to the publication of that date to determine what was reported. In all other respects, the allegations contained in subparagraph d. are denied.

e. Arch admits that, on or about April 21, 2003, it issued a release announcing Arch's First Quarter 2003 results, in which it stated, "We continue to believe that our strategic decision to leave uncommitted tons in the ground, rather than sell them at a price that does not provide an adequate return, is sound." In all other respects, the allegations contained in subparagraph e. are denied.

40. Except as otherwise set forth by way of specific response below, Arch lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 40, and therefore denies them. In all other respects, Arch states:

b. Irl Engelhardt, Chairman and CEO of Peabody Coal, spoke to the Western Coal Transportation Association on April 25, 2000, and his reprinted remarks are a matter of record. Without averring to the truth or accuracy of those remarks, Arch refers to the published remarks to determine what they state.

d. Arch admits that on May 15, 2000, Coal Outlook published an article, and, without averring to its truth or accuracy, refers to said publication to determine what it states.

e. Insofar as the allegations contained in subparagraph (e) have reference to discussions in which Arch was, or may have been, a participant, said allegations are denied. In all other respects, Arch lacks knowledge or information sufficient to form a belief as to their truth, and therefore denies them.

To the extent not otherwise answered above, the remaining allegations contained in Paragraph 40 are denied.

**PRIOR TO THE PROPOSED ACQUISITION, TRITON'S NORTH
ROCHELLE MINE HAS BEEN THE PRINCIPAL SOURCE OF OUTPUT
EXPANSION IN THE SPRB DURING THE PRECEDING FIVE YEARS**

41. Arch admits there has been consistent and substantial expansion of output by coal producers with mines in the PRB, including SPRB, since 1998, but otherwise lacks knowledge or

information sufficient to form a belief as to the truth of the allegations contained in Paragraph 41, and therefore denies them.

42. Arch lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 42.

43. Arch denies the allegations contained in paragraph 43.

ANTICOMPETITIVE EFFECTS OF THE ACQUISITION

44. Arch denies the allegations contained in paragraph 44.

45. Arch denies the allegations contained in paragraph 45.

46. Arch denies the allegations contained in paragraph 46.

47. Arch denies the allegations contained in paragraph 47 in their entirety, including the allegations contained in the subparts thereof.

ENTRY CONDITIONS

48. Arch denies the allegations contained in paragraph 48.

VIOLATIONS CHARGED

COUNT I – ILLEGAL ACQUISITION

49. Except as where specifically admitted above, the allegations contained in the Complaint are denied.

50. Arch denies the allegations contained in paragraph 50.

COUNT II – ILLEGAL ACQUISITION AGREEMENT

51. Except as where specifically admitted above, the allegations contained in the Complaint are denied.

52. Arch denies the allegations contained in paragraph 52.

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The contemplated relief would not be in the public interest.

THIRD DEFENSE

The Transactions will result in substantial merger-specific efficiencies.

OTHER DEFENSES

Arch reserves the right to assert other defenses as discovery proceeds.

WHEREFORE, Arch respectfully requests that the ALJ (i) deny the FTC's contemplated relief, (ii) dismiss the Complaint in its entirety with prejudice, (iii) award Arch its costs of suit, including attorneys' fees, and (iv) award such other and further relief as the ALJ may deem proper.

Respectfully submitted,



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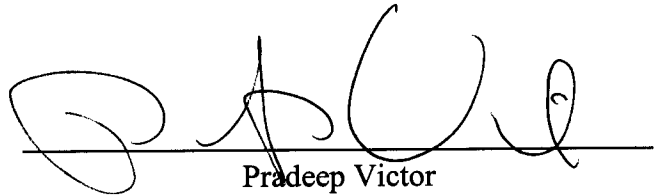
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Attorneys for Defendant Arch Coal, Inc.

Dated: April 28, 2004

CERTIFICATE OF SERVICE

I HEREBY certify that copies of the foregoing Answers of Defendant Arch Coal, Inc. to the FTC's Administrative Complaint were served on the following parties on this 28th day of April, 2004.



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