

## **Analysis to Aid Public Comment on the Provisionally Accepted Consent Order**

The Federal Trade Commission ("Commission") has accepted for public comment from Duke Energy Corporation ("Duke"), Phillips Petroleum Company ("Phillips"), and Duke Energy Field Services L.L.C. ("DEFS") an agreement containing Consent Order designed to remedy the anticompetitive effects resulting from: (1) Duke and Phillips' proposed merger of all of their natural gas gathering and processing businesses into DEFS; and (2) Duke's proposed acquisition of certain gas gathering and processing assets in central Oklahoma currently jointly owned by Conoco Inc. ("Conoco") and Mitchell Energy & Development Corporation ("Mitchell"). The Consent Order requires Duke to divest approximately 2780 miles of gas gathering pipeline in Kansas, Oklahoma, and Texas.

This agreement has been placed on the public record for thirty (30) days for the receipt of comments from interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's Order.

On December 16, 1999, Duke and Phillips signed a letter agreement to transfer their natural gas gathering and processing businesses to DEFS. Duke will be the majority owner of DEFS. The value of this transaction is approximately \$6 billion. On December 21, 1999, Duke agreed to acquire Conoco and Mitchell's jointly held central Oklahoma gas gathering and processing assets. Gas gathering is the pipeline transportation of natural gas from a wellhead or central delivery point to a gas transmission pipeline or gas processing plant. The Commission found that the merger and acquisition may create competitive problems in counties in Kansas, Oklahoma, and Texas. The Commission's complaint alleges that Duke, Phillips, and DEFS' merger agreement and Duke's acquisition agreement with Conoco and Mitchell violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and the merger and acquisition, if consummated, would violate Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

Seven relevant markets were identified where gas producers could only turn to the parties or, at most, to one other gas gatherer, for gas gathering services. In these areas, the proposed merger and acquisition would reduce competition in the provision of gas gathering services and would likely lead to anticompetitive increases in gathering rates and an overall reduction in gas drilling and production. It is unlikely that the competition eliminated by the proposed merger and acquisition would be replaced by new entry into the gas gathering market in these areas.

The proposed Consent Order requires Duke to divest pipeline systems in these markets areas, eliminating any overlap between Duke's current holdings and what it will acquire from Phillips and the Conoco/Mitchell joint venture. The gas gathering assets to be divested are listed in Schedules A-J, with maps depicting the assets listed in Schedules C-J. Of the 2,780 miles to be divested under this Consent Order, 2,250 miles will be divested to Duke's joint venture partners for these assets. On February 28, 2000, Duke divested its interest in the Schedule A assets, 800 miles of pipe in the Westana area of Oklahoma, to Western, co-owner of the Westana Gathering Company. Duke has agreed to divest its interest in the Schedule B assets, 1,450 miles of pipe in the Austin Chalk area of Texas, to Mitchell, co-owner of Ferguson-Burleson County Gas Gathering System. The remaining 530 miles will be sold to Commission-approved buyers. The purposes of the divestitures are to ensure the continued use of the assets as gas gathering assets and to remedy the lessening of competition resulting from the

acquisition.

Duke must divest the assets within 120 days of final acceptance of the Consent Order by the Commission. The Consent Order provides that if Duke fails to sell the 530 miles of pipe that currently does not have an identified buyer, it must offer additional assets for sale ("crown jewels"). If Duke fails to divest these assets, or if the sale to Mitchell is not completed, by the deadline, the Commission may appoint a trustee to sell the assets. Duke has entered into an Asset Maintenance Agreement, in which it has agreed to maintain the assets that are being divested (as well as the "crown jewel" assets) in their current condition and provide gas gathering services on the same terms and conditions available to customers on March 1, 2000, until the assets are sold.

The purpose of this analysis is to invite public comment concerning the consent order. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.