

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS:

Robert Pitofsky, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

In the Matter of
DUKE ENERGY CORPORATION, a corporation,
PHILLIPS PETROLEUM COMPANY, a corporation,
and
DUKE ENERGY FIELD SERVICES L.L.C., a limited liability company.

**DOCKET NO.
DECISION AND ORDER**

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed merger of certain assets of Duke Energy Corporation and Phillips Petroleum Company into Duke Energy Field Services L.L.C. and of the proposed acquisition by Duke Energy Corporation of certain assets of Conoco Inc. and Mitchell Energy & Development Corporation; and

Duke Energy Corporation, Phillips Petroleum Company, and Duke Energy Field Services L.L.C. (collectively, "respondents") having been furnished thereafter with a draft of Complaint that the Southwest Region presented to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Order:

1. Duke Energy Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its office and principal place of business located at 526 South Church Street, Charlotte, North Carolina 28202.

2. Phillips Petroleum Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at The Phillips Building, 4th and Keeler, Bartlesville, Oklahoma 74004.

3. Duke Energy Field Services L.L.C. is a limited liability company organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 370 17th Street, Suite 900, Denver, Colorado 80202.

4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Duke" means Duke Energy Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Duke Energy Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "Phillips" means Phillips Petroleum Company, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Phillips Petroleum Company, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "DEFS" means Duke Energy Field Services L.L.C., its members, managers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Duke Energy Field Services L.L.C., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

D. "Respondents" means Duke, Phillips, and DEFS.

E. "Duke-Phillips Transaction Date" means the date, if any, on which Duke or Phillips first transfers any assets into DEFS pursuant to a letter agreement between Duke and Phillips, dated December 16, 1999.

F. "Public Record Date" means the date, if any, that the Agreement Containing Consent Order is placed on the public record by the Commission pursuant to Commission Rule 2.32, 16 C.F.R. § 2.32.

G. "Commission" means the Federal Trade Commission.

H. "Person" means any natural person, partnership, corporation, company, association, trust, joint venture or other business or legal entity, including any governmental agency.

I. "Relevant Geographic Areas" means:

1. Clark, Meade, Morton, and Seward Counties of Kansas;

2. Alfalfa, Beaver, Blaine, Canadian, Cleveland, Cimarron, Dewey, Ellis, Grady, Harper, Kingfisher, Lincoln, Logan, Major, Oklahoma, Payne, Roger Mills, Texas, Woods, and Woodward Counties of Oklahoma; and
3. Brazos, Burleson, Grimes, Lee, and Washington Counties of Texas.

- J. "Schedule A Assets" means all of the assets listed in Schedule A of this Order.
- K. "Schedule B Assets" means all of the assets listed in Schedule B of this Order.
- L. "Schedule C Assets" means all of the assets listed in Schedule C of this Order.
- M. "Schedule D Assets" means all of the assets listed in Schedule D of this Order.
- N. "Schedule E Assets" means all of the assets listed in Schedule E of this Order.
- O. "Schedule F Assets" means all of the assets listed in Schedule F of this Order.
- P. "Schedule G Assets" means all of the assets listed in Schedule G of this Order.
- Q. "Schedule H Assets" means all of the assets listed in Schedule H of this Order.
- R. "Schedule I Assets" means all of the assets listed in Schedule I of this Order.
- S. "Schedule J Assets" means all of the assets listed in Schedule J of this Order.
- T. "Schedule CC Assets" means all of the assets listed in Schedule CC of this Order.
- U. "Schedule DD Assets" means all of the assets listed in Schedule DD of this Order.
- V. "Schedule EE Assets" means all of the assets listed in Schedule EE of this Order.
- W. "Schedule FF Assets" means all of the assets listed in Schedule FF of this Order.
- X. "Schedule GG Assets" means all of the assets listed in Schedule GG of this Order.
- Y. "Schedule HH Assets" means all of the assets listed in Schedule HH of this Order.
- Z. "Schedule II Assets" means all of the assets listed in Schedule II of this Order.
- AA. "Schedule JJ Assets" means all of the assets listed in Schedule JJ of this Order.
- BB. "Assets To Be Divested" means the Schedule A Assets, the Schedule B Assets, the Schedule C Assets, the Schedule D Assets, the Schedule E Assets, the Schedule F Assets, the Schedule G Assets, the Schedule H Assets, the Schedule I Assets, and the Schedule J Assets.
- CC. "Substitute Assets To Be Divested" means the Schedule CC Assets, the Schedule DD Assets, the Schedule EE Assets, the Schedule FF Assets, the Schedule GG Assets, the Schedule HH Assets, the Schedule II Assets, and the Schedule JJ Assets.
- DD. "Western Gas" means Western Gas Resources - Oklahoma, Inc. and Western Gas Resources, Inc.
- EE. "Western Agreement" means the Partnership Interest Purchase Agreement between Western Gas and Panhandle Gathering Company, a wholly-owned indirect subsidiary of Duke, executed on February 24, 2000, for the divestiture by Duke to Western Gas of the

Schedule A Assets.

FF. "Mitchell" means Mitchell Gas Services L.P. and Mitchell Energy & Development Corporation.

GG. "Mitchell Agreement" means the Exchange Agreement between Mitchell and Duke executed on March 10, 2000, which provides, in part, for the divestiture by Duke to Mitchell of the Schedule B Assets.

HH. "Gas Gathering" means pipeline transportation, for oneself or other persons, of natural gas over any part or all of the distance between a well and a gas transmission pipeline or gas processing plant.

II. "Processing" means the separation of natural gas liquids, including propane, ethane, butanes, and pentanes-plus, from methane.

II.

IT IS FURTHER ORDERED that:

A. Respondents shall divest, absolutely and in good faith, the Schedule A Assets to Western Gas, in accordance with the Western Agreement (which agreement shall not be construed to vary or contradict the terms of this Order), no later than twenty (20) days after the Duke-Phillips Transaction Date or twenty (20) days after the Public Record Date, whichever comes first. Failure by Respondents to comply with the Western Agreement shall also constitute a violation of this Order.

B. Respondents shall divest, absolutely and in good faith, the Schedule B Assets to Mitchell, in accordance with the Mitchell Agreement (which agreement shall not be construed to vary or contradict the terms of this Order), no later than twenty (20) days after the Duke-Phillips Transaction Date or twenty (20) days after the Public Record Date, whichever comes first. Failure by Respondents to comply with those provisions in the Mitchell Agreement relating to the divestiture of the Schedule B Assets shall also constitute a violation of this Order.

C. Respondents shall divest absolutely, in good faith, and at no minimum price, the Schedule C Assets to a single acquirer no later than one hundred twenty (120) days after the Public Record Date.

D. Respondents shall divest absolutely, in good faith, and at no minimum price, the Schedule D Assets to a single acquirer no later than one hundred twenty (120) days after the Public Record Date.

E. Respondents shall divest absolutely, in good faith, and at no minimum price, the Schedule E Assets to a single acquirer no later than one hundred twenty (120) days after the Public Record Date.

F. Respondents shall divest absolutely, in good faith, and at no minimum price, the Schedule F Assets to a single acquirer no later than one hundred twenty (120) days after the Public Record Date.

G. Respondents shall divest absolutely, in good faith, and at no minimum price, the Schedule G Assets to a single acquirer no later than one hundred twenty (120) days after the Public Record Date.

H. Respondents shall divest absolutely, in good faith, and at no minimum price, the Schedule H Assets to a single acquirer no later than one hundred twenty (120) days after the Public Record Date.

I. Respondents shall divest absolutely, in good faith, and at no minimum price, the Schedule I Assets to a single acquirer no later than one hundred twenty (120) days after the Public Record Date. **Provided that**, if for any reason Respondents do not fully own and control any Schedule I Assets at any time within thirty (30) days after the Public Record Date and before the Schedule I Assets are to be divested pursuant to this Paragraph, then Respondents shall, for purposes of complying with the requirements of this Paragraph, substitute the Schedule II Assets for the Schedule I Assets.

J. Respondents shall divest absolutely, in good faith, and at no minimum price, the Schedule J Assets to a single acquirer no later than one hundred twenty (120) days after the Public Record Date.

K. Respondents shall divest the Assets To Be Divested or the Substitute Assets To Be Divested pursuant to Paragraphs II.C. II.D., II.E., II.F., II.G., II.H., II.I., and II.J., only to acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

L. At the time Respondents apply to the Commission for approval of the divestiture of the Schedule E Assets, the Schedule F Assets, the Schedule G Assets, the Schedule H Assets, and the Schedule I Assets pursuant to Paragraphs II.D., II.E., II.F., II.G., II.H., and II.I., Respondents shall certify to the Commission that all interconnecting pipe specified in such schedule has been installed. If Respondents fail to install all interconnecting pipe specified in a schedule prior to one hundred twenty (120) days after the Public Record Date, then with the approval of the Commission the trustee may substitute for the assets in such schedule the corresponding Substitute Assets To Be Divested pursuant to Paragraph III.A.

M. The purpose of Paragraphs II.A., II.B., II.C. II.D., II.E., II.F., II.G., II.H., II.I., II.J., II.K., and II.L. is to ensure the continuation of the Assets To Be Divested or the Substitute Assets To Be Divested as, or as part of, ongoing viable enterprises engaged in the natural gas gathering and processing business and to remedy the lessening of competition resulting from the merger and acquisitions alleged in the Commission's complaint.

III.

IT IS FURTHER ORDERED that:

A. If Respondents have not divested, absolutely and in good faith and with the Commission's prior approval, the Assets To Be Divested or the Substitute Assets To Be Divested within the time and in the manner required by Paragraph II of this Order, the Commission may appoint a trustee to divest those assets; provided, however, that the trustee may, subject to the approval of the Commission, substitute the following assets for the assets described in the applicable paragraph or paragraphs: (1) in connection with Paragraph II.C., the Schedule CC Assets, (2) in connection with Paragraph II.D., the Schedule DD Assets, (3) in connection with Paragraph II.E., the Schedule EE Assets, (4) in connection with Paragraph II.F., the Schedule FF Assets, (5) in connection with Paragraph II.G., the Schedule GG Assets, (6) in connection with Paragraph II.H., the Schedule HH Assets, (7) in connection with Paragraph II.I., the Schedule II Assets, and (8) in connection with Paragraph II.J., the Schedule JJ Assets. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(I) of the

Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.

B. Within sixty (60) days after Respondents have been notified by the Commission that it has approved pursuant to Paragraph III.A. the divestiture by the trustee of any Substitute Assets To Be Divested, Respondents shall install any and all interconnecting pipe specified in the schedule or schedules for such Substitute Assets To Be Divested.

C. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this Order, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after receipt of written notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Assets To Be Divested or the corresponding Substitute Assets To Be Divested.

3. Within ten (10) days after appointment of the trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect each divestiture required by this Order.

4. The trustee shall have twelve (12) months from the date the Commission or court approves the trust agreement described in Paragraph III.C.3. to accomplish the divestitures, which shall be subject to the prior approval of the Commission, and in a manner, and pursuant to an agreement, that receive the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend the period for no more than two (2) additional periods.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Assets To Be Divested, to the Substitute Assets To Be Divested, or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by Respondents shall extend the

time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously at no minimum price. The divestitures shall be made only in a manner that receives the prior approval of the Commission, and only to an acquirer or acquirers that receives the prior approval of the Commission, as set out in Paragraph II of this Order; provided, however, if the trustee receives bona fide offers for an asset to be divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest such asset to the acquiring entity or entities selected unanimously by Respondents from among those approved by the Commission; provided further, however, that Respondents shall unanimously select such entity within five (5) days of receiving notification of the Commission's approval.

7. The trustee shall serve, without bond or other security, at the cost and expense of Duke and DEFS, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Duke and DEFS, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestitures and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Duke and DEFS, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Assets To Be Divested or the corresponding Substitute Assets To Be Divested.

8. Duke and DEFS shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. Duke and DEFS shall each be jointly and severally liable for all financial obligations accruing from Paragraphs III.C.7. and III.C.8.

10. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this Order.

11. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish each divestiture required by this Order.

12. In the event that the trustee determines that he or she is unable to divest the Assets To Be Divested or the Substitute Assets To Be Divested in a manner consistent with the Commission's purpose as described in Paragraph II.M., the

trustee may divest additional ancillary assets of Respondents and effect such arrangements as are necessary to satisfy the requirements of this Order.

13. The trustee shall have no obligation or authority to operate or maintain the Assets To Be Divested or the Substitute Assets To Be Divested.

14. The trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish each divestiture required by this Order.

IV.

IT IS FURTHER ORDERED that, for a period of ten (10) years from the date this Order becomes final, Respondents shall not, without prior notification to the Commission, directly or indirectly:

A. Acquire any of the Assets To Be Divested or the Substitute Assets To Be Divested after their divestiture pursuant to this Order;

B. Acquire any stock, share capital, equity, or other interest in any person engaged in, or in any assets used in, gas gathering within the Relevant Geographic Areas at any time within the two years preceding such acquisition; or

C. Enter into any agreements or other arrangements with any person, within any 18 month period, that would confer direct or indirect ownership or control of more than five (5) miles of pipeline previously used for gas gathering and suitable for use for gas gathering within the Relevant Geographic Areas.

V.

IT IS FURTHER ORDERED that the prior notifications required by Paragraph IV of this Order shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of Part 803, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondents. In lieu of furnishing (1) documents filed with the Securities and Exchange Commission, (2) annual reports, (3) annual audit reports, (4) regularly prepared balance sheets, or (5) Standard Industrial Code (SIC) information in response to certain items in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, Respondents shall provide a map showing the location of the pipeline whose acquisition is proposed and other pipelines used for gas gathering in the Relevant Geographic Area and a statement showing, for the most recent 12 month period for which volume information is available, the quantity of gas that flowed through the pipeline whose acquisition is proposed. Respondents shall provide the Notification to the Commission at least thirty days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until twenty days after substantially complying with such request for additional information. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. Provided, however, that prior notification shall not be required by Paragraph IV of this Order for a transaction for which notification is required to be

made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a, and that nothing in this Order shall be construed to relieve Respondents of their obligation to comply with any notification requirement of that statute.

VI.

IT IS FURTHER ORDERED that:

A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until having fully complied with its obligations under Paragraphs II or III of this Order, each Respondent shall each submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II and III of this Order and with the Order to Maintain Assets. Respondents shall include in such compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of the Order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order is entered, and at such other times as the Commission may require, each Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order.

VII.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the Respondent, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of this Order.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, upon written request, Respondents shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents relating to any matters contained in this Order; and

B. Upon five (5) days' notice to Respondents and without restraint or interference from it, to interview officers, directors, employees, agents or independent contractors of Respondents, who may have counsel present, relating to any matters contained in this Order.

IX.

IT IS FURTHER ORDERED that this Order will terminate ten (10) years after the date it becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED:

Schedule A

Westana Area (Oklahoma)

Duke's interest in the Westana Gathering Company, which has been divested pursuant to the Western Agreement.

Schedule B

Austin Chalk Area (Texas)

All interests held by Duke or DEFS prior to the Duke-Phillips Transaction Date in assets

1. located in Brazos, Burleson, Grimes, Lee, or Washington Counties in Texas, and
2. used in natural gas gathering, treating, or processing,

except those specifically excluded by this schedule. The following assets are excluded from this schedule: (a) the North Fayette Treater in Fayette County, Texas, and the gas gathering assets connecting that treater to the seven gas wells closest to it, (b) the Bryan Plant in Brazos County, Texas, and (c) the A & M Plant in Burleson County, Texas.