

**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. C-3932  
ORDER TO MAINTAIN ASSETS**

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. as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by 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 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 respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

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, 4<sup>th</sup> 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 17<sup>th</sup> 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. "Consent Agreement" means the Agreement Containing Consent Orders, including the proposed Decision and Order accompanying that agreement.

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

F. "Commission" means the Federal Trade Commission.

G. "Schedule A Assets" means all of the assets listed in Schedule A of the Consent Agreement.

H. "Schedule B Assets" means all of the assets listed in Schedule B of the Consent Agreement.

I. "Schedule C Assets" means all of the assets listed in Schedule C of the Consent Agreement.

J. "Schedule D Assets" means all of the assets listed in Schedule D of the Consent Agreement.

K. "Schedule E Assets" means all of the assets listed in Schedule E of the Consent

Agreement.

L. "Schedule F Assets" means all of the assets listed in Schedule F of the Consent Agreement.

M. "Schedule G Assets" means all of the assets listed in Schedule G of the Consent Agreement.

N. "Schedule H Assets" means all of the assets listed in Schedule H of the Consent Agreement.

O. "Schedule I Assets" means all of the assets listed in Schedule I of the Consent Agreement.

P. "Schedule J Assets" means all of the assets listed in Schedule J of the Consent Agreement.

Q. "Schedule CC Assets" means all of the assets listed in Schedule CC of the Consent Agreement.

R. "Schedule DD Assets" means all of the assets listed in Schedule DD of the Consent Agreement.

S. "Schedule EE Assets" means all of the assets listed in Schedule EE of the Consent Agreement.

T. "Schedule FF Assets" means all of the assets listed in Schedule FF of the Consent Agreement.

U. "Schedule GG Assets" means all of the assets listed in Schedule GG of the Consent Agreement.

V. "Schedule HH Assets" means all of the assets listed in Schedule HH of the Consent Agreement.

W. "Schedule II Assets" means all of the assets listed in Schedule II of the Consent Agreement.

X. "Schedule JJ Assets" means all of the assets listed in Schedule JJ of the Consent Agreement.

Y. "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.

Z. "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.

## **II.**

**IT IS FURTHER ORDERED** that:

A. Respondents shall maintain the viability, marketability, and competitiveness of the Assets To Be Divested and the Substitute Assets To Be Divested, and shall not cause

the wasting or deterioration of the Assets To Be Divested or the Substitute Assets To Be Divested, nor shall they cause the Assets To Be Divested or the Substitute Assets To Be Divested to be operated in a manner inconsistent with applicable laws, nor shall they sell, transfer, encumber or otherwise impair the viability, marketability or competitiveness of the Assets To Be Divested or the Substitute Assets To Be Divested. Respondents shall conduct or cause to be conducted the business of the Assets To Be Divested and the Substitute Assets To Be Divested in the regular and ordinary course and in accordance with past practice (including regular repair and maintenance efforts) and shall use their best efforts to preserve the existing relationships with suppliers, customers, employees, and others having business relations with the Assets To Be Divested and the Substitute Assets To Be Divested in the ordinary course of business and in accordance with past practice.

B. Respondents shall comply with the terms of Paragraph II.A.:

1. with respect to the Schedule A Assets, until the Schedule A Assets have been divested pursuant to the terms of the Consent Agreement or until this Order to Maintain Assets is terminated pursuant to Paragraph VI.A., whichever comes first;
2. with respect to the Schedule B Assets, until the Schedule B Assets have been divested pursuant to the terms of the Consent Agreement or until this Order to Maintain Assets is terminated pursuant to Paragraph VI.A., whichever comes first;
3. with respect to the Schedule C Assets and the Schedule CC Assets, until the Schedule C Assets or the Schedule CC Assets have been divested pursuant to the terms of the Consent Agreement or until this Order to Maintain Assets is terminated pursuant to Paragraph VI.A., whichever comes first;
4. with respect to the Schedule D Assets and the Schedule DD Assets, until the Schedule D Assets or the Schedule DD Assets have been divested pursuant to the terms of the Consent Agreement or until this Order to Maintain Assets is terminated pursuant to Paragraph VI.A., whichever comes first;
5. with respect to the Schedule E Assets and the Schedule EE Assets, until the Schedule E Assets or the Schedule EE Assets have been divested pursuant to the terms of the Consent Agreement or until this Order to Maintain Assets is terminated pursuant to Paragraph VI.A., whichever comes first;
6. with respect to the Schedule F Assets and the Schedule FF Assets, until the Schedule F Assets or the Schedule FF Assets have been divested pursuant to the terms of the Consent Agreement or until this Order to Maintain Assets is terminated pursuant to Paragraph VI.A., whichever comes first;
7. with respect to the Schedule G Assets and the Schedule GG Assets, until the Schedule G Assets or the Schedule GG Assets have been divested pursuant to the terms of the Consent Agreement or until this Order to Maintain Assets is terminated pursuant to Paragraph VI.A., whichever comes first;
8. with respect to the Schedule H Assets and the Schedule HH Assets, until the Schedule H Assets or the Schedule HH Assets have been divested pursuant to the terms of the Consent Agreement or until this Order to Maintain Assets is terminated pursuant to Paragraph VI.A., whichever comes first;
9. with respect to the Schedule I Assets and the Schedule II Assets, until the Schedule I Assets or the Schedule II Assets have been divested pursuant to the

terms of the Consent Agreement or until this Order to Maintain Assets is terminated pursuant to Paragraph VI.A., whichever comes first; and

10. with respect to the Schedule J Assets and the Schedule JJ Assets, until the Schedule J Assets or the Schedule JJ Assets have been divested pursuant to the terms of the Consent Agreement or until this Order to Maintain Assets is terminated pursuant to Paragraph VI.A., whichever comes first.

### III.

**IT IS FURTHER ORDERED** that:

A. Respondents shall offer to purchase, gather, transport, treat, and process gas from wells connected to Respondents' assets and located within five miles from any Assets To Be Divested on the same terms and conditions that Respondents had agreed to with respect to the gas from such wells as of March 1, 2000.

B. If a producer, operator, or shipper executes a waiver of its rights under Paragraph III.A., Respondents may contract on such other terms and conditions as they may deem appropriate.

C. Respondents shall comply with the terms of Paragraph III.A.:

1. with respect to gas from wells located within five (5) miles of any Schedule A Assets, until thirty (30) days after the Schedule A Assets have been divested pursuant to the terms of the Consent Agreement or until this Order to Maintain Assets is terminated pursuant to Paragraph VI.A., whichever comes first;

2. with respect to gas from wells located within five (5) miles of any Schedule B Assets, until thirty (30) days after the Schedule B Assets have been divested pursuant to the terms of the Consent Agreement or until this Order to Maintain Assets is terminated pursuant to Paragraph VI.A., whichever comes first;

3. with respect to gas from wells located within five (5) miles of any Schedule C Assets, until thirty (30) days after the Schedule C Assets or the Schedule CC Assets have been divested pursuant to the terms of the Consent Agreement or until this Order to Maintain Assets is terminated pursuant to Paragraph VI.A., whichever comes first;

4. with respect to gas from wells located within five (5) miles of any Schedule D Assets, until thirty (30) days after the Schedule D Assets or the Schedule DD Assets have been divested pursuant to the terms of the Consent Agreement or until this Order to Maintain Assets is terminated pursuant to Paragraph VI.A., whichever comes first;

5. with respect to gas from wells located within five (5) miles of any Schedule E Assets, until thirty (30) days after the Schedule E Assets or the Schedule EE Assets have been divested pursuant to the terms of the Consent Agreement or until this Order to Maintain Assets is terminated pursuant to Paragraph VI.A., whichever comes first;

6. with respect to gas from wells located within five (5) miles of any Schedule F Assets, until thirty (30) days after the Schedule F Assets or the Schedule FF Assets have been divested pursuant to the terms of the Consent Agreement or until this Order to Maintain Assets is terminated pursuant to Paragraph VI.A.,

whichever comes first;

7. with respect to gas from wells located within five (5) miles of any Schedule G Assets, until thirty (30) days after the Schedule G Assets or the Schedule GG Assets have been divested pursuant to the terms of the Consent Agreement or until this Order to Maintain Assets is terminated pursuant to Paragraph VI.A., whichever comes first;

8. with respect to gas from wells located within five (5) miles of any Schedule H Assets, until thirty (30) days after the Schedule H Assets or the Schedule HH Assets have been divested pursuant to the terms of the Consent Agreement or until this Order to Maintain Assets is terminated pursuant to Paragraph VI.A., whichever comes first;

9. with respect to gas from wells located within five (5) miles of any Schedule I Assets, until thirty (30) days after the Schedule I Assets or the Schedule II Assets have been divested pursuant to the terms of the Consent Agreement or until this Order to Maintain Assets is terminated pursuant to Paragraph VI.A., whichever comes first; and

10. with respect to gas from wells located within five (5) miles of any Schedule J Assets, until thirty (30) days after the Schedule J Assets or the Schedule JJ Assets have been divested pursuant to the terms of the Consent Agreement or until this Order to Maintain Assets is terminated pursuant to Paragraph VI.A., whichever comes first.

#### IV.

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

#### V.

**IT IS FURTHER ORDERED** that for the purposes of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, Respondents shall permit any duly authorized representatives of the Commission:

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

B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

#### VI.

**IT IS FURTHER ORDERED** that this Order to Maintain Assets shall terminate at the earlier of:

A. three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or

B. all Assets To Be Divested or corresponding Substitute Assets To Be Divested have been divested pursuant to the terms of the Consent Agreement.

By the Commission, Commissioner Leary recused.

Donald S. Clark

Secretary

SEAL

ISSUED: March 30, 2000