

**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,)	DECISION AND ORDER
a corporation,)	DOCKET NO. C-
)	
Enbridge Inc.,)	
a corporation,)	
)	
and)	
)	
NEXUS Gas Transmission, LLC,)	
a limited liability company;)	
)	

DECISION

The Federal Trade Commission (“Commission”) initiated an investigation of the proposed acquisition of Generation Pipeline LLC by Respondent NEXUS Gas Transmission, LLC, whose ultimate parent entities are Respondents DTE Energy Company (“DTE”) and Enbridge Inc. (“Enbridge”). The Commission’s Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge 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.

Respondents and the Bureau of Competition executed an agreement (“Agreement Containing Consent Order” or “Consent Agreement”) containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that

the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission's Rules, and (4) a proposed Decision and Order.

The Commission considered the matter and 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. The Commission accepts the executed Consent Agreement and places it on the public record for a period of 30 days for the receipt and consideration of public comments. In further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission issues its Complaint, makes the following jurisdictional findings, and issues the following Decision and Order ("Order"):

1. Respondent NEXUS Gas Transmission, LLC 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.
2. Respondent 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.
3. Respondent 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.
4. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

ORDER

I. Definitions

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

- A. "DTE" means DTE Energy Company, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates Controlled by DTE Energy Company, including NEXUS Gas Transmission, LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. "Enbridge" means Enbridge Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships,

divisions, groups, and affiliates Controlled by Enbridge Inc., including NEXUS Gas Transmission, LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- C. “NEXUS” means NEXUS Gas Transmission, LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, parents, subsidiaries, partnerships, divisions, groups, and affiliates Controlled by, or that Control, NEXUS Gas Transmission, LLC, including and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Commission” means the Federal Trade Commission.
- E. “Control” or “Controlled” means, holding at least 50% of the common voting stock or ordinary shares in, the right to appoint at least 50% of the directors of, the right to direct a general partner of, or any other arrangement resulting in the right to direct the management of, an Entity.
- F. “Entity” means an individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization or other business.
- G. “Master Interest PSA” means the Membership Interest Purchase and Sale Agreement dated January 11, 2019 by and among: NEXUS Gas Transmission, LLC (Buyer); Appalachian Midstream Partners, LLC; NM Gen, LLC; North Coast Gas Transmission LLC; JayWest Investments, LLC; SAG Partners LLC; Summit Ventures, LLC; and GAMESJJ, LLC (Sellers); Generation Pipeline LLC (the Company); and Avista Capital Holdings, L.P. (Sellers’ Representative); and all amendments, exhibits, attachments, agreements, and schedules thereto.
- H. “NCGT Pipeline” means the natural gas transportation pipeline that runs from Marion, Ohio to Toledo, Ohio owned by North Coast Gas Transmission LLC, an Ohio limited liability company (“NCGT”).
- I. “Pipeline Competitor” means an Entity other than a Respondent that owns, operates, or markets capacity on an existing or planned natural gas transportation pipeline that traverses (or will traverse) the Relevant Area.
- J. “Relevant Area” means the following counties in the State of Ohio: Lucas, Ottawa, and Wood.

II. Prohibition

IT IS FURTHER ORDERED that:

- A. Respondents shall not, individually or collectively, acquire an interest in Generation Pipeline LLC, through the Master Interest PSA or otherwise, until all parties to the Master Interest PSA have executed the Third Amendment to Membership Interest Purchase and Sale Agreement (attached hereto as Confidential Appendix A).
- B. Respondents, individually or collectively, shall not, without the prior approval of the Commission, enter into, enforce, or solicit an agreement or understanding, whether

written or oral, that restricts competition between one or more Respondents and a Pipeline Competitor to provide natural gas pipeline transportation in the Relevant Area.

III. Prior Notice

- A. For a period of 10 years from the date this Order is issued, Respondents shall not, collectively or individually, acquire, directly or indirectly, through subsidiaries or otherwise, an interest in the NCGT Pipeline or another natural gas transportation pipeline in the Relevant Area without providing prior written notice to the Commission. Notification shall be made pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a, or if notification is not required under Section 7A of the Clayton Act, as follows:
1. Prior written notice shall be provided 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 “a Notification”);
 2. The Respondent required to prepare and submit a Notification shall do so in accordance with the requirements of Part 803, except that Respondent shall not be required to pay a filing fee and shall submit the Notification the Secretary of the Commission at ElectronicFilings@ftc.gov and the Compliance Division at bccompliance@ftc.gov;
 3. The Respondent shall submit a Notification to the Commission at least 30 days prior to consummating the transaction for which the Notification is provided (this period is hereinafter referred to as the “first waiting period”);
 4. If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), the Respondent shall not consummate the relevant transaction until 30 days after submitting the requested information and documentary material (this period is hereinafter referred to as the “second waiting period”); and
 5. Respondent may request early termination of the first or second waiting period, and the Bureau of Competition may grant, where appropriate, such request via letter.

IV. Compliance Reports

IT IS FURTHER ORDERED that:

- A. Each Respondent shall file verified written reports (“compliance reports”) in accordance with the following:
1. Each Respondent shall submit an interim compliance report 30 days after the Order is issued; an annual compliance report one year after the Order is issued and for the following nine years on the anniversary of the date; and additional compliance reports as the Commission or its staff may request;

2. Each compliance report shall set forth in detail the manner and form in which the submitting Respondent intends to comply, is complying, and has complied with this Order. Conclusory statements that Respondent has complied with its obligations under the Order are insufficient. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether the submitting Respondent is complying with the Order and shall:
 - a. To the extent not provided in a prior compliance report, provide an executed copy of the Master Interest PSA and any amendments or revisions thereto; and
 - b. Describe any agreements, whether written or oral, between Respondent and a Pipeline Competitor that relate in any manner to the pipeline transportation of natural gas to the Relevant Area, including identifying all parties to such agreements and the general terms, purpose and duration of such agreements.
3. Each compliance report must be verified in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer of the submitting Respondent or another officer or employee specifically authorized to perform this function. The submitting Respondent shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov.

V. Change in Respondent

IT IS FURTHER ORDERED that Nexus Gas Transmission, LLC, DTE Energy Company, and Enbridge Inc. shall each notify the Commission at least 30 days prior to:

- A. Its proposed dissolution;
- B. Its proposed acquisition, merger or consolidation; or
- C. Any other change, including assignment or the creation, sale, or dissolution of its subsidiaries, if such change may affect its compliance obligations arising out of this Order.

VI. Access

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and 5 days' notice to a Respondent, made to its principal place of business as identified in this Order, registered office of its United States subsidiary, or its headquarters office, the notified Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; and
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

VII. Purpose

IT IS FURTHER ORDERED that the purpose of this Order is to remedy the harm to competition the Commission alleged in its Complaint.

VIII. Term

IT IS FURTHER ORDERED that this Order shall terminate 10 years from the date it is issued.

By the Commission.

April J. Tabor
Acting Secretary

SEAL

ISSUED:

In re DTE Energy Company, et al.
Confidential Appendix A

Third Amendment to Membership Interest Purchase and Sale Agreement