**ANALYSIS OF THE COMPLAINT AND PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT**

## I. Introduction

The Federal Trade Commission ("Commission") has accepted for public comment an Agreement Containing Consent Orders and a proposed Decision and Order ("proposed Order") with El Paso Energy Corporation ("El Paso"), The Coastal Corporation ("Coastal"), and Dominion Resources, Inc. ("Dominion"). The proposed Order seeks to remedy the anticompetitive effects of El Paso's acquisition of Coastal by requiring El Paso and Coastal ("Respondents") to divest their interests in ten pipelines and one pipeline yet to be constructed. The divestitures are in locations where the Respondents already own additional pipelines and their

Coastal, a Delaware corporation, is a diversified energy and petroleum products company. Coastal explores for, produces, gathers, processes, transports, stores, markets and sells natural

users must purchase long term firm transportation. For these customers, other pipeline services and periodic resales of transportation by holders of long term transportation rights are not reasonably interchangeable. Another relevant market in which to analyze the effects of the proposed Acquisition is the provision of tailored services. Tailored services allow users of natural gas to balance their changes in natural gas demand with their supply of natural gas and transportation. Tailored services include limited notice and no notice service, and are typically sold in conjunction with natural gas storage services.

The Complaint further alleges that the proposed Acquisition, if consummated, will eliminate actual and direct competition between the two companies in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, in the following 20 sections of the country (*i.e.*, the geographic markets): (a) Central Florida, (b) metropolitan areas of Buffalo, Rochester, Syracuse, and Albany, New York; (c) the metropolitan area of Milwaukee, Wisconsin; (d) the metropolitan area of Evansville, Indiana; and (e) 13 areas in the Gulf of Mexico. The Complaint alleges that each of these markets is highly concentrated, and the acquisition would substantially increase that concentration. In each of the relevant markets, pipelines owned by El Paso and Coastal are two of the most significant competitors. In some instances, El Paso and Coastal are the only two options available to customers, and in other instances, they represent two of three options. The merger not only eliminates existing competition between El Paso and Coastal pipelines but also threatens to forestall potential new competition as well. After the proposed acquisition, with the elimination of competition between El Paso and Coastal, it is likely that prices of transportation will increase

and output of transportation will be reduced in the relevant markets, thereby increasing the cost of electricity and natural gas service.

The Complaint further alleges that new entry into the relevant geographic markets would not be likely, timely, or sufficient to prevent or counteract these anticompetitive effects and to prevent the Respondents from maintaining a price increase above pre-acquisition levels. There are substantial barriers to entering these markets, as building additional pipelines to natural gas production areas, to natural gas consuming areas, to natural gas storage fields, or outside the geographic market is expensive and would take more than two years. Major pipeline projects require approval from the Federal Energy Regulatory Commission, which is likely to take three or four years. In addition, it requires considerable time for a new entrant to secure rights of way, overcome landowner and environmental hurdles, secure sufficient advance commitments from customers, and obtain regulatory approvals in the face of opposition from competition.

## IV. Terms of the Proposed Order

The proposed Order is designed to remedy the alleged anticompetitive effects of the proposed Acquisition. Under the terms of the proposed Order, the Respondents must, within twenty days from the date upon which the Commission places the proposed Order on the public record, divest their interests in: Gulfstream Natural Gas System to Duke Energy and Williams Gas Pipeline; the Empire pipeline to Westcoast Energy; the Green Canyon and Tarpon pipelines to Williams Field Services; the Manta Ray, Nautilus, and Nemo pipelines to Enterprise Products; and the Stingray pipeline to Shell Gas Transmission and Enterprise Products. The Respondents must also divest their interests in the Midwestern Gas Transmission pipeline ("MGT") within 120 days of the date upon which the Commission places the proposed Order on the public record,

UTOS by April 1, 2001, and the Iroquois pipeline within 90 days of the date upon which the Commission places the proposed Order on the public record.

The Commission is satisfied that the acquirers identified in the proposed Order are well-qualified acquirers and will compete vigorously with the Respondents. The Commission will

disclosing or making available any Gulfstream confidential information to any person. The Respondents are further prohibited from using any Gulfstream confidential information, except to provide consulting services to the buyer of Gulfstream.

In connection with the divestiture of the MGT pipeline, the proposed Order requires the Respondents to include and enforce a provision in the MGT purchase and sale agreement that requires the MGT acquirer to connect MGT to the Guardian pipeline ("Guardian Interconnection"). The Respondents are prohibited by the proposed Order from engaging in any action, or failing to take any action, the result of which would prevent, hinder, or delay completion of the Guardian Interconnection. Furthermore, the proposed Order prohibits the Respondents from engaging in any unfair or deceptive practice that would prevent, hinder, or delay construction of the Guardian pipeline; and requires Respondents to notify publicly the Federal Energy Regulatory Commission and the Public Service Commission of Wisconsin if Respondents fund any third-party effort to oppose the Guardian pipeline. These provisions are designed to ensure the effectiveness of the Commission's remedy. With regard to the MGT divestiture, the Respondents must divest MGT to a buyer approved by the Commission within 120 days from the date upon which the Commission places the proposed Order on the public record.

In connection with the divestiture of its interests in the Iroquois pipeline, the proposed Order prohibits Respondents from divesting more than 8.72% of their partnership interest in Iroquois pipeline to Dominion Resources. This limitation prevents Dominion Resources from acquiring additional control or influence over the Iroquois pipeline that could be used to thwart competition. The proposed Order also prohibits Respondents from serving on any committee of

the Iroquois pipeline, attending any meeting of any such committee, or receiving any information from the Iroquois pipeline not made available to all shippers or to the public at large. Furthermore, until the Respondents are removed from the Iroquois Management Committee, the proposed Order requires that the Respondents' vote be cast in favor of expansion, if such a vote should arise. The Respondents are also deemed, by the proposed Order, to vote to create unanimity when unanimous action is required within a voting bloc in order to cast that bloc's vote. These provisions prevent the Respondents from gaining access to competitively sensitive

The proposed Order further requires that the Respondents assist the acquirers of the Gulfstream, Empire, Iroquois, MGT, Green Canyon, Tarpon, Nautilus, Manta Ray, Nemo, Stingray, and UTOS pipelines in obtaining any approval, consent, ratification, waiver, or other authorization (including governmental) that is or will become necessary to complete the divestitures required by the proposed Order.

Additionally, for a period of 10 years after the proposed Order becomes final, the Respondents must provide written notice to the Commission prior to acquiring any interest in any of the assets which are required to be divested by the proposed Order. The proposed Order also prohibits the Respondents from entering into any agreement to acquire any rights to long term firm transportation on the Gulfstream, Empire, or MGT pipelines from the date Respondents sign the Agreement Containing Consent Orders until Respondents have divested the applicable pipeline. After that date, and for a period of ten years, Respondents must provide advance written notification before entering into an agreement to purchase long term firm transportation greater than 100,000 dekatherms per day on either the Empire or MGT pipeline. There is an exception to these restrictions where the purchase of the transportation is for the Respondents' own end use. Furthermore, the Respondents must provide the Commission with a report of compliance with the proposed Order within 60 days after the proposed Order becomes final, annually thereafter until the order terminates, and at other times as the Commission may require.

The parties will also be subject to an "Order to Maintain Assets," to be issued by the Commission. Under the Order to Maintain Assets, between the date the Respondents sign the Agreement Containing Consent Orders and the date of divestiture of the applicable asset, the Respondents must maintain the assets to be divested in substantially the same condition as existing

on the date the Respondents signed the Agreement Containing Consent Orders; use their best efforts to keep available the services of current personnel relating to the assets to be divested and to maintain the relations and good will of those entities which have business relationships with the assets to be divested; and preserve the assets to be divested intact as an ongoing business. Under the Order to Maintain Assets, the Respondents must also provide the acquirers of the assets to be divested an opportunity to transfer employment relationships from the Respondents to the acquirers. In addition, the Order to Maintain Assets imposes several obligations on the Respondents which are also imposed by the proposed Order and which are mentioned earlier in this notice.

Further, Dominion Resources, which already owns 16% of the Iroquois pipeline, has been made a party to the proposed Order for the purposes of requiring it to provide the Commission with advance written notification before increasing its interest in the Iroquois pipeline.

Finally, under the terms of the proposed Order, in the event that El Paso does not divest the assets required to be divested under the terms and time constraints of the proposed Order, the Commission may appoint a trustee to divest those assets, expeditiously, and at no minimum price. The proposed Order also authorizes the Commission to appoint a Monitor Trustee to oversee the Development Fund by ensuring that those funds are used in a manner consistent with the terms of the proposed Order.

## V. Opportunity for Public Comment

The proposed Order has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the

comments received and will decide whether it should withdraw from the proposed Order or make it final. By accepting the proposed Order subject to final approval, the Commission anticipates that the competitive problems alleged in the Complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed Order, including the proposed divestitures, to aid the Commission in its determination of whether to make the proposed Order final. This analysis is not intended to constitute an official interpretation of the proposed Order, nor is it intended to modify the terms of the proposed Order in any way.