

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)	
)	
El Paso Energy Corporation,)	Docket No. C-3996
a corporation, and)	
)	
The Coastal Corporation,)	
a corporation.)	
_____)	

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent El Paso Energy Corporation of certain voting securities of Respondent The Coastal Corporation and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, 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; and

Respondents and Dominion Resources, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of the 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 thereupon issued its Complaint and its Order to Maintain Assets and having accepted the executed Consent Agreement and placed such Consent 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 Decision and Order (“Order”):

1. Respondent El Paso Energy Corporation 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 1001 Louisiana Street, Houston, Texas 77002.

2. Respondent The Coastal Corporation 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 Nine Greenway Plaza, Houston, Texas 77046.

3. Dominion Resources is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia with its office and principal place of business located at 120 Tredegar Street, Richmond, Virginia 23219.

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. “El Paso” means El Paso Energy Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by El Paso, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Coastal” means The Coastal Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Coastal, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Dominion Resources” means Dominion Resources, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Dominion Resources, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- D. “Acquisition” means the transaction described in the Agreement and Plan of Merger between El Paso and Coastal, dated January 17, 2000, pursuant to which El Paso agreed to acquire certain voting securities of Coastal.
- E. “Commission” means the Federal Trade Commission.
- F. “Development Area” means South Marsh Island Blocks 57 through 70, South Marsh Island South Addition Blocks 71 through 81 and 92 through 97, Eugene Island Blocks 201 through 266, Eugene Island South Addition Blocks 267 through 311, 315 through 330, 338 through 353, 361 through 374, and 384 through 389, Ewing Bank Blocks 937

northwest of Syracuse, New York.

- M. “Empire State Pipeline Company” means the Empire State Pipeline Company, Inc., a corporation organized, existing and doing business under and by virtue of the laws of New York, with its office and principal place of business located at 500 Renaissance Center, Detroit, Michigan 48243.
- N. “Empire Purchase Agreement” means the Stock Purchase and Sale Agreement between American Natural Resources Company and Westcoast Energy Enterprises (U.S.), Inc., dated November 6, 2000, including all related amendments, agreements, schedules, exhibits, and appendices.
- O. “Enterprise Products” means Enterprise Products Operating L.P., a limited partnership organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 2727 North Loop West, Suite 700, Houston, Texas 77008.
- P. “Green Canyon Gathering System” means the natural gas gathering system located in the central Gulf of Mexico consisting of approximately 68 miles of 10-inch to 20-inch diameter pipeline that transports natural gas from South Marsh Island, Eugene Island, Garden Banks, and Green Canyon areas to Transcontinental Gas Pipeline’s South Lateral in South Marsh Island Block 106, and related facilities.
- Q. “Green Canyon/Tarpon Acquirer” means the Person that acquires the Green Canyon/Tarpon Assets.
- R. “Green Canyon/Tarpon Assets” means (1) the assets listed on Exhibit A to the Green Canyon/Tarpon Purchase Agreement, and (2) all of El Paso’s rights, title, and interest in the Green Canyon Gathering System, Tarpon Pipeline, and Tarpon Transmission Company.
- S. “Green Canyon/Tarpon Purchase Agreement” means the Purchase and Sale Agreement by and among El Paso Energy Partners, L.P., Green Canyon Pipeline Company, L.P. and Williams Field Services - Gulf Coast Company, L.P., dated December 8, 2000, including all related amendments, agreements, schedules, exhibits, and appendices.
- T. “Guardian Pipeline” means the natural gas pipeline (with a planned initial capacity of approximately 750 million cubic feet per day) to be constructed at a point near Joliet, Illinois, and extending to a point near Ixonia, Wisconsin, as described in the Application of Guardian Pipeline, L.L.C. for Certificates of Public Convenience and Necessity, FERC Docket Nos. CP00-36-000, CP00-37-000, and CP00-38-000.
- U. “Guardian Interconnection” means a pipeline interconnection between MGT Pipeline and

Guardian Pipeline at or near Joliet, Illinois, with capacity of at least 450 million cubic feet per day of natural gas, to be constructed on commercially reasonable terms agreed to between the MGT Acquirer and the owner or representative of the Guardian Pipeline.

- V. “Gulfstream Acquirer” means the Person that acquires the Gulfstream Assets.
- W. “Gulfstream Assets” means all of Coastal’s rights, title, and interests in the Gulfstream Pipeline and Gulfstream Natural Gas System.
- X. “Gulfstream Confidential Information” means any information relating to the Gulfstream

States/Canadian border at Waddington, New York, and extends approximately 375 miles to Long Island, New York.

- EE. “Johnson Bayou Plant” means the production handling facility that provides liquids separation and gas dehydration services for UTOS Pipeline System that is located at the onshore terminus of UTOS Pipeline System in Cameron Parish, Louisiana.
- FF. “Long Term Firm Transportation” means the provision of natural gas pipeline transportation for a period greater than one year that is not subject to a prior claim by another pipeline customer or another class of transportation service and cannot be interrupted except in a situation of force majeure.
- GG. “Manta Ray Acquirer” means the Person that acquires the Manta Ray Assets.
- HH. “Manta Ray Assets” means all of El Paso’s rights, title, and interest in the Manta Ray Pipeline System, Nautilus Pipeline, Nemo Pipeline System, Sailfish Pipeline Company, and Moray Pipeline Company.
- II. “Moray Pipeline Company” means Moray Pipeline Company, L.L.C., a limited liability company organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 1001 Louisiana Street, Houston, Texas 77002.
- JJ. “Manta Ray Pipeline System” means the natural gas pipeline system known as Manta Ray Pipeline System located in the east central Gulf of Mexico, including but not limited to, approximately 237 miles of 12-inch to 24-inch diameter pipeline that transports natural gas within the areas of Green Canyon, Ewing Bank, Ship Shoal, Grand Isle, and South Timbalier areas to ANR Pipeline Company and Nautilus Pipeline Company in Ship Shoal Block 207 and CMS Trunkline in South Timbalier Block 280 and Transcontinental Gas Pipeline’s Southeast Louisiana lateral in Ship Shoal Block 332.
- KK. “Manta Ray Purchase Agreement” means the Purchase and Sale Agreement by and among El Paso Energy Partners, L.P. and El Paso Energy Partners Company and Enterprise Products Operating L.P., dated December 8, 2000, including all related amendments, agreements, schedules, exhibits, and appendices.
- LL. “MGT Acquirer” means the Person that acquires the MGT Assets.
- MM. “MGT Assets” means all of El Paso’s rights, title, and interest in the MGT Pipeline, Midwestern Gas Transmission Company, and Midwestern Gas Marketing Company.
- NN. “MGT Pipeline” means the natural gas pipeline known as the Midwestern Gas Transmission pipeline that originates near Portland, Tennessee, and extends approximately 350

miles to a point near Joliet, Illinois.

- OO. “Midwestern Gas Transmission Company” means Midwestern Gas Transmission Company, a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 1001 Louisiana Street, Houston, Texas 77002.
- PP. “Midwestern Gas Marketing Company” means Midwestern Gas Marketing Company, a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 1001 Louisiana Street, Houston, Texas 77002.
- QQ. “Monitor Trustee” means the Monitor Trustee appointed pursuant to Paragraph XI of this Order.
- RR. “Nautilus Pipeline System” means the natural gas pipeline system known as Nautilus Pipeline System located in the east central Gulf of Mexico, including but not limited to, approximately 101 miles of 30-inch diameter pipeline that transports natural gas from the Manta Ray junction platform in Ship Shoal Block 207 to delivery point interconnections downstream of the outlet of the Garden City Gas Processing Plant in St. Mary Parish, Louisiana and delivery point interconnects downstream at the outlet of the Neptune Gas Processing Plant.
- SS. “Nemo Pipeline” means the natural gas gathering system known as Nemo Pipeline under

- YY. “Restricted Development Area” means those portions of the Development Area to the south or southwest of Tarpon, including areas to the south or southwest of Tarpon in the following blocks: Ewing Bank Blocks 937 through 940, and 978 through 985, Green Canyon Blocks 8 through 15, and 54 through 59, Ship Shoal South Addition Blocks 273, 294 through 297, 318 through 321, 341 through 346, and 362 through 365, and Eugene Island South Addition Blocks 323, 324, 343 through 345, 346 through 350, 361 through 374, and 384 through 389.
- ZZ. “Sailfish Pipeline Company” means Sailfish Pipeline Company, L.L.C., a limited liability company organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 1001 Louisiana Street, Houston, Texas 77002.
- AAA. “Shell Gas Transmission” means Shell Gas Transmission, L.L.C., a limited liability company organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 1301 McKinney, Suite 700, Houston, Texas 77010.
- BBB. “Stingray Acquirer” means the Person that acquires the Stingray Assets.
- CCC. “Stingray Assets” means all of El Paso’s rights, title, and interest in the Stingray Pipeline System, West Cameron Dehydration Facility, Stingray Pipeline Company, West Cameron Dehydration Company, and East Breaks Gathering Company.
- DDD. “Stingray Pipeline Company” means Stingray Pipeline Company, L.L.C., a limited liability company organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 1001 Louisiana Street, Houston, Texas 77002.
- EEE. “Stingray Pipeline System” means the natural gas pipeline system known as Stingray Pipeline located in the central Gulf of Mexico, including but not limited to, approximately 325 miles of 6-inch to 36-inch diameter pipeline that transports natural gas from the High Island, West Cameron, East Cameron, Vermilion, and Garden Banks areas to onshore transmission systems at Holly Beach and Cameron Parish, Louisiana, and eighteen former NGPL laterals connected to the Stingray Pipeline and located in the East Cameron, Vermilion, and West Cameron areas.
- FFF. “Stingray Purchase Agreement” means the Purchase and Sale Agreement by and among Deepwater Holdings, L.L.C, and Enterprise Products Operating L.P., Shell Gas Transmission, L.L.C., and Newco, L.L.C., dated December 8, 2000, including all related amendments, agreements, schedules, exhibits, and appendices.
- GGG. “Tarpon Pipeline” means the natural gas gathering system known as Tarpon located in the

central Gulf of Mexico, including but not limited to, approximately 40 miles of 16-inch diameter pipeline that extends from Trunkline at Ship Shoal Block 274 to the Eugene Island area of the Gulf.

- HHH. “Tarpon Transmission Company” means the Tarpon Transmission Company, a corporation organized, existing and doing business under and by virtue of the laws of Texas, with its office and principal place of business located at 1001 Louisiana Street, Houston, Texas 77002.

- III. “Transitional Pipelines” means the Empire State Pipeline, MGT Pipeline, Stingray Pipeline System, and UTOS Pipeline, individually and collectively.

Baltimore, Tulsa, OK 74119.

RRR. “Williams Gas Pipeline” means Williams Gas Pipeline Company, a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 2800 Post Oak Boulevard, Houston, Texas 77056.

II.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest, absolutely and in good faith:
1. The Gulfstream Assets to Williams Gas Pipeline and Duke Energy, in accordance with the Gulfstream Purchase Agreement (which agreement shall not be construed to vary from or contradict the terms of this Order), no later than twenty days from the date the Commission accepts the Consent Agreement for public comment;
 2. The Empire Assets to Westcoast Energy, in accordance with the Empire Purchase Agreement (which agreement shall not be construed to vary from or contradict the

5. The Stingray Assets to Enterprise Products, Shell Gas Transmission, and Newco, in accordance with the Stingray Purchase Agreement (which agreement shall not be construed to vary from or contradict the terms of this Order), no later than twenty days from the date the Commission accepts the Consent Agreement for public comment; and
6. Each of the assets described in Paragraph II.A. of this Order shall be divested pursuant to and in accordance with the corresponding purchase agreement, which agreement shall be incorporated by reference into this Order and made a part hereof. Any failure by Respondents to comply with any term of any such purchase agreement shall constitute a failure to comply with this Order;

Provided, however, that if Respondents have divested any of the assets described in Paragraphs II.A.1., II.A.3., II.A.4., and II.A.5. prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission determines that any acquirer identified in Paragraphs II.A.1., II.A.3., II.A.4., and II.A.5. is not acceptable as the acquirer of the corresponding assets or that the corresponding purchase agreement is not an acceptable manner of divestiture, and so notifies Respondents, Respondents shall immediately rescind the applicable purchase agreement and divest the assets, at no minimum price, to another Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission, no later than 120 days from the date this Order becomes final.

- B. The purpose of the divestiture of the assets described in Paragraph II.A. of this Order is to ensure the continued use of the assets in the same businesses in which such assets were engaged at the time of the announcement of the proposed Acquisition by Respondents and to remedy the lessening of competition alleged in the Commission's complaint.

III.

IT IS FURTHER ORDERED that:

- A.
 1. Respondents shall divest at no minimum price, absolutely and in good faith the Iroquois Assets only to an acquirer or acquirers that receive the prior approval of the Commission and only in a manner that receives the prior approval of the Commission, no later than ninety days from the date the Commission accepts the Consent Agreement for public comment; provided, however, that Respondents shall not divest more than an 8.72% partnership interest in Iroquois Gas Transmission System to Dominion Resources;
 2. If Dominion Resources acquires a partnership interest in Iroquois Gas Transmission System pursuant to this Order, Dominion Resources shall not, for a period of

ten years following such acquisition, acquire any additional interest, in whole or in part, in Iroquois Gas Transmission System, without providing advance written notification to the Commission.

- B. Respondents shall divest at no minimum price, absolutely and in good faith the MGT Assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission, no later than 120 days from the date the Commission accepts the Consent Agreement for public comment; provided, however, that Respondents shall include and enforce a provision in the purchase agreement between Respondents and the MGT Acquirer requiring the MGT Acquirer to complete the Guardian Interconnection no later than the in-service date of the Guardian Pipeline.
- C. Respondents shall divest at no minimum price, absolutely and in good faith the UTOS Assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission, no later than April 1, 2001.
- D. The purpose of the divestiture of the assets described in Paragraph III of this Order is to ensure the continued use of the assets in the same businesses in which such assets were engaged at the time of the announcement of the proposed Acquisition by Respondents and to remedy the lessening of competition alleged in the Commission's complaint.

IV.

IT IS FURTHER ORDERED that between the date Respondents sign the Consent Agreement and the date the Pipeline Assets are completely divested pursuant to Paragraphs II and III of this Order, Respondents shall:

- A. Maintain the Pipeline Assets in substantially the same condition (except for normal wear and tear) existing on the date Respondents sign the Consent Agreement and shall continue to take such action that is consistent with the past practices of Respondents and is taken in the ordinary course of the normal day-to-day operations of Respondents.
- B. Use their best efforts to keep available the services of the current officers, employees, and agents relating to the Pipeline Assets; and maintain the relations and goodwill with suppliers, customers, landlords, creditors, employees, agents, and others having business relationships with the Pipeline Assets.
- C. Preserve the Pipeline Assets intact as ongoing businesses and not take any affirmative action, or fail to take any action within their control, as a result of which the viability, competitiveness, and marketability of the Pipeline Assets would be diminished.

V.

IT IS FURTHER ORDERED that:

- A. In connection with the divestitures required by Paragraphs II.A.2, II.A.5., III.B. and III.C. of this Order, Respondents shall provide services at the request of the applicable acquirer sufficient to operate the Transitional Pipelines pursuant to the following terms and conditions:
1. Respondents shall operate the Transitional Pipelines and provide related services on behalf of each pipeline's respective acquirer in a manner consistent with Respondents' past practices for a period up to nine months for each pipeline from the date Respondents divest such pipeline;
 2. Respondents shall use their best efforts to transfer the operation of the Transitional

1. Respondents shall provide each acquirer an opportunity to enter into an employment contract with each individual identified in the purchase agreement between Respondents and the acquirer (hereinafter “Key Employee”);
 2. Respondents shall allow the acquirer to inspect the personnel files and other documentation relating to each Key Employee, to the extent permissible under applicable laws, no later than ten days before the date the applicable assets are divested;
 3. Respondents shall take steps to cause each Key Employee to accept an offer of employment from the acquirer (such as payment of all current and accrued benefits and pensions, to which the employees are entitled). To incentivize each Key Employee to accept such an offer, Respondents shall pay a bonus to each Key Employee who accepts an offer of employment on or prior to the date of divestiture of the applicable assets and remains employed by the applicable acquirer for a period of twelve months (eighteen months if employed by the Gulfstream Acquirer), equal to 25% of the Key Employee’s current annual salary and commissions (including any annual bonuses) as of November 1, 2000;
 4. Respondents shall not interfere with the employment by the acquirer of any Key Employee; not offer any incentive to any Key Employee to decline employment with the acquirer; and shall remove any contractual impediments with Respondents that may deter any Key Employee from accepting employment with the acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondents that would affect the ability of the Key Employee to be employed by the acquirer; and
 5. For a period of one year from the date this Order becomes final, Respondents shall not, without the consent of the acquirer, directly or indirectly, hire or enter into any arrangement for the services of any Key Employee employed by the acquirer, unless the Key Employee’s employment has been terminated by the acquirer without the Key Employee’s consent.
- C.
1. Respondents shall provide consulting services at the request of the Gulfstream Acquirer, for a fee not to exceed Respondents’ costs of direct material and labor, for a period beginning from the date Respondents sign the Consent Agreement to the in-service date of the Gulfstream Pipeline, relating to any aspect of the Gulfstream Pipeline and furnished by any one or more individuals identified in the Gulfstream Purchase Agreement;
 2. Unless otherwise compelled by law, Respondents shall not provide, disclose or otherwise make available any Gulfstream Confidential Information to any Person (including any of Respondents’ employees, agents, or representatives) and shall

not use any Gulfstream Confidential Information for any reason or purpose (except in the course of providing consulting services to the Gulfstream Acquirer), and shall enforce the terms of this Paragraph V.C.2. as to any Person and take such action to the extent necessary to cause each such Person to comply with the terms of this Paragraph V.C.2., including all actions that Respondents would take to protect their own trade secrets and confidential information; and

3. Respondents shall not enter into any agreement to acquire any rights to Long Term Firm Transportation on the Gulfstream Pipeline except that nothing in this Paragraph V.C.3. shall preclude Respondents from acquiring Long Term Firm Transportation to serve the peak day needs of any planned or existing power plant of Respondent El Paso, or any other Long Term Firm Transportation where Respondent El Paso is the end user of the natural gas, and Respondent El Paso may release capacity so obtained so long as the term of the release is less than one year.

D. In connection with the divestiture required by Paragraph II.A.3. of this Order, Respondents shall pay to the Commission the sum of \$40 million, no later than ten days from the date Respondents divest the Green Canyon/Tarpon Assets, pursuant to the following terms and conditions:

1. The funds paid to the Commission shall be deposited into an interest-bearing account (“Development Fund”) administered by the Commission (which may designate an agent to administer the Development Fund) to be used in a manner consistent with this Paragraph V.D.;
2. Funds from the Development Fund (including earnings, but excluding costs of administration which shall be paid from the Development Fund) shall be made available to reimburse the Green Canyon/Tarpon Acquirer for the direct costs of constructing any Eligible Facility; provided, however, that no more than \$15 million shall be made available for construction in the Restricted Development Area;
3. The Green Canyon/Tarpon Acquirer may seek reimbursement for no more than the total direct costs of constructing, extending or expanding any Eligible Facility;
4. For each construction project for which the Green Canyon/Tarpon Acquirer may seek reimbursement from the Development Fund, the Green Canyon/Tarpon Acquirer shall (i) maintain records relating to the design and cost of the project and sufficient to identify all project expenditures and recipients of expenditures, and (ii) make available such records upon request to the Monitor Trustee or to representatives of the Commission;

5. To obtain reimbursement from the Development Fund, the Green Canyon/ Tarpon Acquirer shall make a written request to the Monitor Trustee, state the amount of reimbursement requested, provide a description of how the expenditures for which reimbursement is sought were made, and include an attestation that the reimbursement will not be inconsistent with the use of the Development Fund permitted by this Paragraph;
6. The Monitor Trustee shall have full authority to review the written request submitted by the Green Canyon/Tarpon Acquirer, request any additional information that may be necessary to determine whether the conditions imposed by this Paragraph V.D. for reimbursement has been met (to which the Green Canyon/Tarpon Acquirer shall promptly respond), and report to the Commission, provided, however, that no funds from the Development Fund shall be paid without approval by a duly authorized representative of the Commission;
7. The Monitor Trustee shall (i) not disclose any information received from the Green Canyon/Tarpon Acquirer to Respondents, (ii) maintain records of all information submitted by the Green Canyon/Tarpon Acquirer, and (iii) make available such records upon request to representatives of the Commission;
8. Funds for reimbursement of the Green Canyon/Tarpon Acquirer shall be made available from the Development Fund for a period of up to twenty years from the time the Development Fund is created at the end of which all funds remaining in the Development Fund shall be paid to Respondent El Paso; and
9. The Commission may on its own initiative or at the request of the Monitor Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with this Paragraph.

For purposes of this Paragraph V., “direct costs” means costs of direct material and labor, and variable overhead incurred in construction, but excluding administrative and general costs allocable to the Green Canyon/Tarpon Acquirer.

- E. In connection with any of the divestitures required by Paragraphs II.A.1., II.A.2., and III.B. of this Order, from the date Respondents sign the Consent Agreement until Respondents have divested the applicable pipeline, Respondents shall not enter into any agreement to acquire any rights to Long Term Firm Transportation on the Gulfstream Pipeline, Empire State Pipeline, or MGT Pipeline.

VI.

IT IS FURTHER ORDERED that between the date Respondents sign the Consent Agreement and the date the Iroquois Assets are divested, Respondents shall not serve on any

committee of Iroquois Gas Transmission System, attend any meeting of any such committee, exercise any vote as a partner in Iroquois Gas Transmission System or receive any information from Iroquois Gas Transmission System not made available to all shippers or to the public at large; provided, however, that Respondents shall vote (i) in favor of any expansion of the Iroquois Pipeline, (ii) in favor of the divestiture of the Iroquois Assets, and (iii) to create unanimity when unanimous action by all partners of a block within Iroquois Gas Transmission System is required and Respondents' vote is necessary to create unanimity; provided, further, that a representative of Respondents may observe meetings of any management committee and may receive and use nonpublic information of Iroquois Gas Transmission System solely for the purpose of effectuating the divestiture of the Iroquois Assets pursuant to this Order. Said representative shall be identified to the Commission, shall not divulge any nonpublic Iroquois Gas Transmission System information to Respondents (other than employees of Respondents whose sole responsibility is to effectuate the divestiture, and agents of Respondents specifically retained for the purpose of effectuating the divestiture), and shall acknowledge these obligations in writing to the Commission.

VII.

IT IS FURTHER ORDERED that for a period of ten years from the date this Order becomes final, Respondents shall not, without providing advance written notification to the Commission:

- A. Acquire, directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in any of the Pipeline Assets.
- B. Enter into any agreement that would result in Respondents holding any rights to Long Term Firm Transportation greater than 100,000 dekatherms per day on the Empire Pipeline or 100,000 dekatherms per day on the MGT Pipeline, except that any amount acquired to serve the peak day needs of any planned or existing power plant of Respondent El Paso, or any other Long Term Firm Transportation where Respondent El Paso is the end user of the natural gas shall not be included in calculating the 100,000 dekatherms per day limitation.

VIII.

IT IS FURTHER ORDERED that:

- A. The prior notification required by Paragraphs III.A.2. and VII.A. 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 that part, 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 the acquiring party and not of any other party to the transaction. The acquiring party shall provide the Notification to the Commission at least thirty (30) days prior to consummating the 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 or documentary material (within the meaning of 16 C.F.R. § 803.20), the acquiring party shall not consummate the transaction until twenty days (or such other duration that may hereinafter be determined by amendment to Section 7A of the Clayton Act, 15 U.S.C. 18a, as the second waiting period) after submitting such additional information or documentary material. 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 this Paragraph 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.

- B. The prior notification required by Paragraph VII.B. of this Order shall be provided in writing to the Commission at least twenty days prior to consummating the transaction and shall set forth the principal terms of the agreement, including the name of the pipeline on which the Long Term Firm Transportation rights are being acquired, identity of the seller, the volume to be acquired, the length of the contract, the date of expected execution, the receipt and delivery points, and the price.

IX.

IT IS FURTHER ORDERED that Respondents shall not:

- A. Engage in any unfair or deceptive act or practice that would prevent, hinder, or delay the construction or approval of the Guardian Pipeline;
- B. Take any affirmative action, directly or indirectly, or fail to take any action the result of which would prevent, hinder, or delay completion of the Guardian Interconnection; or
- C. Fail to publicly disclose to the Federal Energy Regulatory Commission and the Public Service Commission of Wisconsin funding by Respondents of third-party efforts to oppose the Guardian Pipeline.

X.

IT IS FURTHER ORDERED that Respondents shall provide a copy of this Order (i) to each of Respondent’s officers, employees, or agents having managerial responsibility for any of Respondent’s obligations under Paragraphs II through XIV of this Order, no later than ten days after Respondents sign the Consent Agreement, and (ii) subsequent to the date the Commission accepts the Consent Agreement for public comment, to any Person who Respondents propose to

acquire any of the assets to be divested pursuant to Paragraph III of this Order, prior to executing a purchase agreement with such proposed acquirer.

XI.

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement, the Commission may appoint one or more Persons to serve as Monitor Trustee to ensure that Respondents expeditiously perform their obligations as required by this Order and the Order to Maintain Assets.
- B. If a Monitor Trustee is appointed pursuant to this Paragraph XI, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor Trustee:
 - 1. The Commission shall select the Monitor Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed in writing, including the reasons for opposing, the selection of any proposed trustee within ten business days after 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. The Monitor Trustee shall have the power and authority (i) to monitor Respondents' compliance with the terms of this Order and the Order to Maintain Assets and (ii) to perform the responsibilities required by Paragraph V.D. of this Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor Trustee in a manner consistent with the purposes of this Order and the Order to Maintain Assets and in consultation with the Commission.
 - 3. Within ten business days after appointment of the Monitor Trustee, Respondents shall execute a trust agreement that, subject to the approval of the Commission, confers on the Monitor Trustee all the rights and powers necessary to permit the Monitor Trustee to monitor Respondents' compliance with the terms of this Order and the Order to Maintain Assets in a manner consistent with the purposes of these orders. Respondents may require the Monitor Trustee to sign a confidentiality agreement prohibiting the use, or disclosure to anyone other than the Commission, of any competitively sensitive or proprietary information gained as a result of his or her role as Monitor Trustee.
 - 4. The Monitor Trustee shall serve until Respondents have completed all obligations under this Order and the Order to Maintain Assets.

5. The Monitor Trustee shall have full and complete access to Respondents' books, records, documents, personnel, facilities and technical information relating to compliance with this Order and Order to Maintain Assets, or to any other relevant information, as the Monitor Trustee may reasonably request. Respondents shall cooperate with any reasonable request of the Monitor Trustee. Respondents shall take no action to interfere with or impede the Monitor Trustee's ability to monitor Respondents' compliance with this Order and Order to Maintain Assets.
6. The Monitor Trustee shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Monitor Trustee shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor Trustee's duties and responsibilities. The Monitor Trustee shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.
7. Respondents shall indemnify the Monitor Trustee and hold the Monitor Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Monitor Trustee's duties (including the duties of the Monitor Trustee's employees), 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 losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor Trustee.
8. If at any time the Commission determines that the Monitor Trustee has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute to serve as Monitor Trustee in the same manner as provided in this Paragraph XI.
9. The Commission may on its own initiative or at the request of the Monitor Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order and Order to Maintain Assets.
10. The Monitor Trustee shall report in writing to the Commission concerning Respondents' compliance with this Order and Order to Maintain Assets every sixty days for a period of six months from the date Respondents sign the Consent Agreement and annually thereafter on the anniversary of the date this Order becomes final during the remainder of the Monitor Trustee's period of appointment, and at such other time as representatives of the Commission may

request.

XII.

IT IS FURTHER ORDERED that:

- A. If Respondents have not divested, absolutely and in good faith any of the Pipeline Assets within the time and manner required by Paragraphs II and III of this Order, the Commission may at any time appoint one or more persons as trustee to divest such assets.
- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) 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 XII 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 § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.
- C. If a trustee is appointed by the Commission or a court pursuant to this Paragraph XII, 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 the Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures and may be the same

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 the divestiture for which he or she has been appointed.

4. The trustee shall have twelve months from the date the Commission approves the trust agreement described in Paragraph XII.C. to accomplish the divestiture, which shall be subject to 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 this period only two times.
5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the 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 divestiture. 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, but shall divest expeditiously at no minimum price. The divestiture shall be made only to an acquirer that receives the prior approval of the Commission, and the divestiture shall be accomplished only in a manner that receives the prior approval of the Commission; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Respondents from among those approved by the Commission; provided, further, that Respondents shall select such entity within five business days of receiving written notification of the Commission's approval.
7. The trustee shall serve, without bond or other security, at the cost and expense of Respondents, 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 Respondents 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 divestiture 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 the Respondents, 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.

8. Respondents 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 the duties of the trustee's employees), 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. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in this Paragraph XII.
10. 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 the divestitures required by this Order.
11. The trustee shall have no obligation or authority to operate or maintain the assets to be divested.
12. The trustee shall report in writing to the Commission every sixty days concerning the trustee's efforts to accomplish the divestiture.

XIII.

IT IS FURTHER ORDERED that no later than sixty days from the date this Order becomes final and annually thereafter, on the anniversary of the date this Order becomes final, until the Order terminates, and at other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order; provided, however, that if, at the time this Order becomes final, Respondents are required to file one or more written reports pursuant to the Order to Maintain Assets, Respondents shall file the first report required by this Paragraph no later than sixty days from the date Respondents file their final report pursuant to the Order to Maintain Assets.

XIV.

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

XV.

IT IS FURTHER ORDERED that for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to its principal United States offices, 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; and
- B. Upon five 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.

XVI.

IT IS FURTHER ORDERED that this Order shall terminate twenty years from the date this Order becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED:

