

**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,
a corporation, and

PG&E Corporation,
a corporation.

Docket No. _____

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent El Paso Energy Corporation (“El Paso”) of all of the outstanding voting shares of PG&E Gas Transmission Teco, Inc., and PG&E Gas Transmission Texas Corp., owned by Respondent PG&E Corporation (“PG&E”), 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 which, 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, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“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 such Acts, and that a Complaint should issue stating its charges in that respect, 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 issues its Complaint, makes the following jurisdictional findings and issues the following Order:

1. Respondent El Paso 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, El Paso Energy Building, Houston, Texas 77002.
2. Respondent PG&E is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business at One Market Square, Spear Tower, Suite 2400, San Francisco, California 94105.
3. The Commission has jurisdiction of the subject matter of this proceeding and of 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 and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, business units, groups and affiliates controlled by El Paso, including PG&E Gas Transmission Teco, Inc., and PG&E Gas Transmission Texas Corp. after the Acquisition, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.
- B. "PG&E" means PG&E Corporation, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, business units, groups and affiliates controlled by PG&E, and the respective

directors, officers, employees, agents, and representatives, successors, and assigns of each.

- C. "Commission" means the Federal Trade Commission.
- D. "Aquila" means Aquila Gas Pipeline Corporation, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at Loop 410, Suite 1000, San Antonio, Texas 78216.
- E. "Acquirer" or "Acquirers" means the El Paso Oasis Buyer, the PG&E Teco Buyer, or the PG&E Matagorda Buyer or any other entity or entities that are approved by the Commission to acquire the Assets To Be Divested pursuant to Paragraphs II.B, II.D., and II.F. of this Order.
- F. "Acquisition" means the transaction described in the Stock Purchase Agreement between El Paso and PG&E, dated January 27, 2000, pursuant to which Respondent El Paso agreed to acquire all of the outstanding voting shares of PG&E Gas Transmission Teco, Inc., and PG&E Gas Transmission Texas Corp., owned by Respondent PG&E.
- G. "Assets To Be Divested" means El Paso Oasis, PG&E Teco, and PG&E Matagorda.
- H. "Divestiture Agreements" means each and all of the following:
 - 1. PG&E Teco Stock Purchase Agreement between El Paso and Duke, dated October 24, 2000, including, but not limited to, all the schedules, exhibits, and attachments to that agreement and the New Operating Agreement attached as Exhibit A thereto;
 - 2. PG&E Matagorda Pipeline System Asset Purchase Agreement between El Paso and Panther Pipeline, dated October 24, 2000, including, but not limited to, all the schedules, exhibits, and attachments to that agreement.
 - 3. El Paso Oasis Purchase Agreement between and among El Paso and Oasis Pipe Line Company, Aquila and Dow dated October 3, 2000, as amended by the First Amendment to Oasis Purchase Agreement, dated October 23, 2000, including, but not limited to, all the schedules, exhibits, and attachments to that agreement.
- I. "Dow" means Dow Hydrocarbons and Resources, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at P.O. Box 3387, Houston, Texas 77253-3387.

- J. “Duke” means Duke Energy Field Services, LLC, a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 370 17th Street, Suite 900, Denver, Colorado 80202.
- K. “El Paso Oasis” means all of El Paso’s direct or indirect interest in the Oasis Pipe Line Company.
- L. “El Paso Oasis Buyer” means an entity or entities proposing to acquire El Paso Oasis that receive(s) the prior approval of the Commission to acquire El Paso Oasis.
- M. “Firm Transportation” means the provision of natural gas pipeline transportation 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.
- N. “New Divestiture Agreements” means any agreement for the sale of any Assets To Be Divested, other than the Divestiture Agreements, and includes, but is not limited to any divestiture agreement between El Paso and PG&E Teco Buyer, El Paso and PG&E Matagorda Buyer, and El Paso and El Paso Oasis Buyer, which has received the prior approval of the Commission, and any agreement entered into by a trustee pursuant to Paragraph IV. of this Order.
- O. “Oasis Pipe Line Company” means Oasis Pipe Line Company a corporation organized and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 12012 Wickchester Lane, Suite 540, Houston, Texas 77079 and its joint ventures, subsidiaries, divisions, business units, groups and affiliates, successors and assigns, including, but not limited, to Oasis Pipe Line Company Texas L.P., Oasis Pipe Line Management Company, and Oasis pipeline (the thirty-six (36) inch pipeline that transports natural gas from Waha, Texas, to Katy, Texas). Oasis Pipe Line Company is currently co-owned by Dow, Aquila and El Paso Field Services Company (formerly known as Channel Gas Marketing Company).
- P. “Ownership Interest” means the interest of either El Paso, Duke or PG&E Teco Buyer as defined in New Operating Agreement.
- Q. “Panther Pipeline” means Panther Pipeline, Ltd., a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its principal place of business located at 100 Glenborough Drive, Suite 960, Houston, Texas 77067.

- R. “PG&E Matagorda” means the assets listed on the schedules to the PG&E Matagorda Pipeline System Asset Purchase Agreement between El Paso and Panther Pipeline, dated October 24, 2000.
- S. “PG&E Matagorda Buyer” means an entity or entities proposing to acquire PG&E Matagorda that receive(s) the prior approval of the Commission to acquire PG&E Matagorda.
- T. “PG&E Teco” means the assets listed on the schedules to the PG&E Teco Stock Purchase Agreement between El Paso and Duke, dated October 24, 2000.
- U. “PG&E Teco Buyer” means an entity or entities proposing to acquire PG&E Teco that receive(s) the prior approval of the Commission to acquire PG&E Teco.
- V. “Public Record Date” means the date that the Commission places the Consent Agreement on the public record pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34
- W. “New Operating Agreement” means any agreement between El Paso and Duke or the PG&E Teco Buyer that determines the governance, operation, and expansion of and the receipt, delivery and transport of natural gas on the pipeline segment of PG&E Teco running from Waha to New Braunfels.

II.

IT IS FURTHER ORDERED that:

- A. Not later than ten (10) days after the Public Record Date or the closing of the Acquisition, whichever is later, Respondents shall divest to Duke absolutely and in good faith, PG&E Teco pursuant to and in accordance with PG&E Teco Stock Purchase Agreement between El Paso and Duke, dated October 24, 2000, which Agreement shall not be read to vary or contradict the terms of this Order, and which Agreement is incorporated by reference into this Order and made a part hereof as non-public Appendix 1.
- B. If Respondents have divested PG&E Teco to Duke and have entered into the New Operating Agreement prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Duke is not an acceptable purchaser of PG&E Teco, that the manner in which the divestiture was accomplished is not acceptable, or that the New Operating Agreement is not acceptable, then Respondents shall immediately rescind the PG&E Teco Stock Purchase Agreement between El Paso and Duke, dated October 24, 2000, and shall divest to PG&E Teco Buyer absolutely and in

good faith, at no minimum price, PG&E Teco in a manner that receives prior approval of the Commission within one hundred twenty (120) days of the date that the Order becomes final. Provided, however, that Respondents shall not be required to divest any fixture, equipment, natural gas inventory, or any asset that PG&E Teco Buyer does not want to acquire, if the Commission approves the manner of the divestiture without those assets.

- C. Not later than ten (10) days after the Public Record Date or the closing of the Acquisition, whichever is later, Respondents shall divest to Oasis Pipe Line Company, Aquila and Dow absolutely and in good faith, El Paso Oasis pursuant to and in accordance with the El Paso Oasis Purchase Agreement between and among El Paso and Oasis Pipe Line Company, Aquila and Dow dated October 3, 2000, as amended by First Amendment to Oasis Purchase Agreement dated October 23, 2000, which Agreement shall not be read to vary or contradict the terms of this Order, and which Agreement is incorporated by reference into this Order and made a part hereof as non-public Appendix 2.
- D. If Respondents have divested El Paso Oasis to Oasis Pipe Line Company, Aquila and Dow prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that any of Oasis Pipe Line Company, Aquila or Dow is not an acceptable purchaser of El Paso Oasis or that the manner in which the divestiture was accomplished is not acceptable then Respondents shall immediately rescind the El Paso Oasis Purchase Agreement between and among El Paso and Oasis Pipe Line Company, Aquila and Dow dated October 3, 2000, as amended by First Amendment to Oasis Purchase Agreement dated October 23, 2000, and shall divest to El Paso Oasis Buyer absolutely and in good faith, at no minimum price, El Paso Oasis in a manner that receives prior approval of the Commission within one hundred fifty (150) days of the date that the Order becomes final. Provided, however, that Respondents shall not be required to divest any fixture, equipment, natural gas inventory, or any asset that El Paso Oasis Buyer does not want to acquire, if the Commission approves the manner of the divestiture without those assets.
- E. Not later than ten (10) days after the Public Record Date or the closing of the Acquisition, whichever is later, Respondents shall divest to Panther Pipeline absolutely and in good faith, PG&E Matagorda pursuant to and in accordance with the PG&E Matagorda Pipeline System Asset Purchase Agreement between El Paso and Panther Pipeline, dated October 24, 2000, which Agreement shall not be read to vary or contradict the terms of this Order, and which Agreement is incorporated by reference into this Order and made a part hereof as non-public Appendix 3.

- F. If Respondents have divested PG&E Matagorda to Panther Pipeline prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Panther Pipeline is not an acceptable purchaser of PG&E Matagorda or that the manner in which the divestiture was accomplished is not acceptable then Respondents shall immediately rescind the PG&E Matagorda Pipeline System Asset Purchase Agreement between and among El Paso and Panther Pipeline dated October 24, 2000, and shall divest to PG&E Matagorda Buyer absolutely and in good faith, at no minimum price, PG&E Matagorda in a manner that receives prior approval of the Commission within one hundred twenty (120) days of the date that the Order becomes final. Provided, however, that Respondents shall not be required to divest any fixture, equipment, natural gas inventory, or any asset that PG&E Matagorda Buyer does not want to acquire, if the Commission approves the manner of the divestiture without those assets.
- G. Respondents shall comply with the terms of the Divestiture Agreements and the New Operating Agreement, which terms are incorporated by reference into this Order, and made a part hereof. Any failure by Respondents to comply with the Divestiture Agreements or the New Operating Agreement shall constitute a failure to comply with this Order. Notwithstanding any paragraph, section, or other provision of the Divestiture Agreements or the New Operating Agreement, any failure to meet any condition precedent to closing (whether waived or not) or any modification of the Divestiture Agreements (excluding the New Operating Agreement, modifications to which shall be restricted only by the prior approval requirements of Paragraph III.A. of the Order) without the prior approval of the Commission, shall constitute a failure to comply with this Order. Provided, however, that no decision by the arbitrator or any arbitration panel under any the Divestiture Agreement or the New Operating Agreement shall constitute an interpretation of or determine the obligations of Respondents under the Order.
- H. The purpose of Paragraphs II. and III. of this Order is to ensure that the Assets To Be Divested continue to be used in the same businesses in which the Assets To Be Divested are engaged at the time of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

- A. Respondent El Paso shall not, without the prior approval of the Commission, directly or indirectly, make or agree to any modification or amendment of the voting rights as defined in Section 3.2 of New Operating Agreement, or the Ownership Interests as defined in Section 5.1 of New Operating Agreement.
- B. Respondent El Paso shall not, without the prior approval of the Commission, directly or indirectly:
 - (1) acquire any stock, share capital, equity, or other interest in the whole or any part of the Oasis Pipe Line Company or Assets To Be Divested; or
 - (2) acquire the whole or any part of the Oasis Pipe Line Company or Assets To Be Divested.

IV.

IT IS FURTHER ORDERED that:

- A. If Respondents fail to complete one or more of the divestitures required by Paragraph II. of this Order within the time periods specified therein, the Commission may appoint one or more Divestiture Trustees to divest those Assets To Be Divested that have not been divested to an Acquirer or Acquirers in a manner acceptable to the Commission. The Divestiture Trustee will have the authority and responsibility to divest the Assets To Be Divested absolutely and in good faith, and with the Commission's prior approval. Neither the decision of the Commission to appoint a Divestiture Trustee, nor the decision of the Commission not to appoint a Divestiture Trustee, to divest any of the assets under this Paragraph IV. 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 the Respondents to comply with this Order.
- B. If a Divestiture Trustee is appointed by the Commission or a court pursuant to Paragraph IV. of this Order to divest the Assets To Be Divested to an Acquirer or Acquirers, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustees powers, duties, authority, and responsibilities:

1. The Commission shall select the Divestiture 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 Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
2. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest the Assets To Be Divested to an Acquirer or Acquirers pursuant to the terms of this Order and to enter into a purchase and sale agreement(s) and, as applicable, an operating agreement with the Acquirer or Acquirers pursuant to the terms of this Order, which purchase and sale agreement(s) and, as applicable, operating agreement, shall be subject to the prior approval of the Commission.
3. Within ten (10) days after appointment of the Divestiture 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 Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to divest the Assets To Be Divested to an Acquirer or Acquirers and to enter into a purchase and sale agreement(s) and, as applicable, an operating agreement, with the Acquirer or Acquirers.
4. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph IV.B.3. of this Order to divest the Assets To Be Divested to Acquirer or Acquirers in a manner acceptable to the Commission. If, however, at the end of the applicable twelve-month period, the Divestiture Trustee has submitted to the Commission a plan of divestiture or believes that divestiture can be achieved within a reasonable time, such 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 such divestiture period only two (2) times.
5. The Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities of Respondents related to the Assets To Be Divested, or to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action

to interfere with or impede the Divestiture Trustee's accomplishment of his or her responsibilities.

6. The Divestiture 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 divestitures shall be made only to Acquirer or Acquirers and the divestitures 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, however, that Respondents shall select such entity within five (5) days of receiving written notification of the Commission's approval.
7. The Divestiture Trustee shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture 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 Respondents. The Divestiture Trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the Divestiture Trustee's locating an Acquirer or Acquirers and assuring compliance with this Order.
8. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture 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 Divestiture Trustee.

9. If the Commission determines that the Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute trustee in the same manner as provided in Paragraph IV. of this Order.
 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 Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to comply with the terms of this Order.
 11. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Assets To Be Divested.
 12. The Divestiture Trustee shall report in writing to the Commission every two (2) months concerning his or her efforts to divest the Assets To Be Divested and Respondents' compliance with the terms of this Order.
- C. Respondents shall maintain the viability, marketability, and competitiveness of the Assets To Be Divested, and shall not cause the wasting or deterioration of the Assets To Be Divested, nor shall they cause the 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. Respondents shall comply with the terms of this Paragraph until such time as Respondents or the Divestiture Trustee have divested the Assets To Be Divested pursuant to the terms of this Order. Respondents shall conduct the business of the Assets To Be Divested in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance efforts) and shall use their best efforts to preserve the existing relationship with suppliers, customers, employees, and others having business relationships with the Assets To Be Divested in the ordinary course of business and in accordance with past practice. Respondents shall not terminate the operations of any Assets To Be Divested. Respondents shall use their best efforts to keep the organization and properties of each Assets To Be Divested intact, including current business operations, physical facilities and working conditions, and a work force of equivalent size, training, and expertise associated with the Assets To Be Divested.

V.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents, such as dissolution, assignment, 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.

VI.

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.

VII.

IT IS FURTHER ORDERED that 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, El Paso 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. Each report shall describe any agreement whereby Respondents obtain Firm Transportation on any of the Assets to Be Divested.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate:

- A. With respect to Respondent El Paso, ten (10) years after the date the Order becomes final.
- B. With respect to Respondent PG&E, when the Acquisition has been completed.

By the Commission.

Donald S. Clark
Secretary

SEAL:

ISSUED: