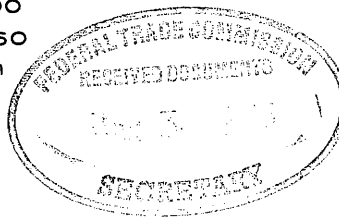


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March 3, 2005

BY HAND

Donald S. Clark, Secretary
Secretary
Office of the Secretary
Federal Trade Commission
601 Pennsylvania Avenue, N.W.
Washington, DC 20580

RE: In the Matter of Entergy Corporation, and Entergy-Koch, LP, Decision and Order, Docket No. C-3998

Dear Mr. Clark:

Please accept for filing the enclosed original and 12 copies of the Petition to Reopen and Set Aside Order of Entergy Corporation and Entergy-Koch, LP ("EKLP") in connection with the above-referenced docket. Pursuant to 16 C.F.R. § 4.2(c)(3), an electronic copy of this filing is being submitted to you today by e-mail. If you have questions concerning this matter, please call the undersigned at (202) 371-7333.

Sincerely,

A handwritten signature in cursive script, appearing to read "John H. Lyons".

John H. Lyons

Enclosures

cc: Anne R. Schenof, Esq.
Federal Trade Commission

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**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

----- X
In the Matter of)
)
Entergy Corporation,)
a corporation,) Docket No. C-3998
)
and) **Public Version**
)
Entergy-Koch, LP,)
A limited partnership.)
----- X

PETITION OF ENTERGY AND EKLP TO REOPEN AND SET ASIDE ORDER

1. Pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), and Section 2.51 of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 2.51, Entergy Corporation ("Entergy") and Entergy-Koch, LP ("EKLP"), by and through undersigned counsel, hereby move the Commission for an Order to reopen and set aside the Decision and Order dated January 31, 2001 ("Order"), attached hereto as Exhibit A, in the above-captioned matter. The Order was accompanied by an Agreement Containing Consent Order ("Consent Agreement"), attached hereto as Exhibit B; a Complaint, attached hereto as Exhibit C; and an Analysis to Aid Public Comment ("Analysis"), attached hereto as Exhibit D.

2. The Order establishes procedures for Entergy and EKLP to follow in connection with Entergy's procurement of natural gas transportation services ("Relevant Product") to carry natural gas to any electric power generating facility or local natural gas distribution facility that uses, distributes, stores, or transports natural gas, and is owned (partially or wholly, directly or indirectly), operated, or controlled by an Entergy

subsidiary that is subject to a State Regulator's rules governing the recovery of the cost of buying the Relevant Product ("Covered Facility"). *See* Exhibit A, Order ¶ II.C.

Paragraph II of the Order was intended to "create a competitive, transparent process to make it easier for regulators to detect whether Entergy purchased gas supplies . . . at inflated prices or a level of service that is above that necessary for effective operation, in the wake of a joint venture that gave Entergy a 50% interest in Gulf South." *See* Exhibit D, Analysis at 5. Gulf South was and is a major supplier of natural gas transportation in Louisiana and Mississippi. *See* Exhibit C, Complaint ¶ 19.

3. Entergy and EKLP have fully complied with all provisions of the Order.

4. EKLP sold Gulf South to TGT Pipeline, LLC ("TGT"), a subsidiary of Loews Corporation, on December 29, 2004, eliminating Entergy's indirect 50% ownership interest in Gulf South. *See* Affidavit of Jack Adams, dated Feb. 23, 2005 ("Adams Aff.") ¶ 9, attached hereto as Exhibit E.

5. Because Entergy no longer has any ownership interest in or control over Gulf South, Entergy no longer has any arguable incentive to pay inflated natural gas transportation prices to Gulf South. Consequently, there is no longer a basis for the remedy contained in the Order. Moreover, there is no longer any justification for continuing to require Entergy and EKLP to bear the costs and administrative burdens of complying with the Order. Therefore, Entergy hereby petitions the Commission to reopen and set aside the Order.

BACKGROUND

6. In paragraphs 7 through 15 below, Entergy and EKLP repeat a number of the jurisdictional facts set forth in the Complaint in order to provide context for their

legal argument to reopen and set aside the Order. The repetition of such jurisdictional facts does not constitute an admission by Entergy and EKLP that the law was violated as alleged in the Complaint. *See* Exhibit B, Consent Agreement ¶ 4.

A. EKLP Transaction

7. On May 26, 2000, affiliates of Entergy and Koch entered into an agreement to form EKLP and contribute certain assets to EKLP. Pursuant to the agreement, EKLP acquired Entergy Power Marketing Corporation from Entergy, and Gulf South, related storage assets, and Koch Energy Trading from Koch. *See* Exhibit C, Complaint ¶ 12.

8. At the time of the agreement Entergy had the exclusive right to sell retail electricity in approximately 67 towns and communities in Louisiana and the exclusive right to distribute natural gas in Baton Rouge, Louisiana through Entergy Gulf States, Inc. Through Entergy Louisiana, Inc., Entergy had the exclusive right to sell retail electricity to approximately 140 towns and communities in Louisiana. Through Entergy New Orleans, Inc., Entergy had the exclusive right to sell retail electricity and distribute natural gas in New Orleans, Louisiana. Through Entergy Mississippi, Inc. Entergy had the exclusive right to sell retail electricity in approximately 74 towns and communities in western Mississippi. *See id.*, Complaint ¶ 13-16.

9. All of Entergy's above mentioned utilities in Paragraph 7 were regulated by the Louisiana Public Service Commission, the Mississippi Public Service Commission, or the Council of the City of New Orleans. *See id.*, Complaint ¶ 13-16.

10. At the time of the agreement, Entergy purchased substantial quantities of natural gas transportation on behalf of Entergy Louisiana, Inc., Entergy Gulf States, Inc., Entergy New Orleans, Inc., and Entergy Mississippi, Inc. *See id.*, Complaint ¶ 17.

11. At the time of EKLP's establishment, Gulf South was a major supplier of natural gas transportation in Louisiana and Mississippi, capable of supplying all of Entergy's regulated utilities in those states. *See id.*, Complaint ¶ 19.

12. At the time of the agreement, Louisiana Public Service Commission, the Mississippi Public Service Commission, and the Council of the City of New Orleans all permitted the Entergy utilities previously mentioned in Paragraph 7 to recover 100 percent of the cost of natural gas and natural gas transportation by passing those costs directly to customers. *See id.*, Complaint ¶ 18.

13. In January 2001, the Commission furnished Entergy and EKLP with a copy of a draft complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would have charged Entergy and EKLP with violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The Complaint alleged that the formation of EKLP would likely lead to increases in prices of retail electricity in Louisiana and Mississippi, and to increases in prices of retail natural gas in New Orleans and Baton Rouge, Louisiana. *See Exhibit C*, Complaint ¶¶ 29 and 35.

14. Due to Entergy's indirect 50% ownership interest in Gulf South, the Commission was concerned that Entergy would "have the incentive and ability ... to pay EKLP prices for natural gas transportation above prevailing market prices and to

purchase a level of service above what was necessary for effective operation of Entergy's facilities." *See id.*, Complaint ¶ 21. The Commission was also concerned that "[p]rices of retail electricity are likely to rise as a result of Entergy passing on inflated costs for natural gas transportation to consumers and the difficulties that regulators will have in reviewing and challenging Entergy's purchase of natural gas transportation." *See id.*, Complaint ¶ 29. The Commission also alleged that prices for natural gas in New Orleans and Baton Rouge would increase as a result of Entergy passing along inflated costs for natural gas transportation to consumers. *See id.*, Complaint ¶ 35.

B. The Order

15. To address concerns that the EKLP joint venture would unjustly increase retail electricity and natural gas prices, Entergy agreed to adhere to a comprehensive process when entering into any agreement to buy any Relevant Product.

16. For Long-Term Purchases, at least thirty (30) days before buying any Relevant Product under a contract whose term is one (1) year or longer or at least fourteen (14) days before buying any Relevant Product under a contract whose term is more than three (3) months, but less than one (1) year, Entergy agreed: (1) to post a Request for Proposal ("RFP") on the Entergy-Website; and (2) to provide a copy of every RFP to every natural gas pipeline connected to any Covered Facility included in the RFP and request that each such pipeline post all RFPs on that pipeline's electronic bulletin board ("EBB") and website. *See Exhibit A, Order ¶ II.C.1.b. and c.* Additionally, EKLP agreed to ensure that Gulf South posted on its EBB each RFP within twenty-four (24) hours of receiving any such RFP from Entergy and before submitting any proposal to Entergy. *See id.*, Order ¶ II.C.1.d. Finally, for Long-Term Purchases, Entergy agreed to

consider all proposals received for Relevant Product from any potential supplier. *See id.*, Order ¶ II.C.1.f.

17. For Short-Term Purchases, Entergy agreed to request proposals to supply Relevant Product by publishing on the Entergy-Website an announcement of its intention to buy Relevant Product at various receipt and delivery points and the Relevant Product Specifications that would enable potential suppliers to determine whether they could satisfy Entergy's requirements for Relevant Product. *See id.*, Order ¶ II.C.2.a. Entergy agreed to publish announcements to buy Relevant Product for a term of at least one (1) month at least seventy-two (72) hours before considering any proposal. *See id.* Prior to considering any proposal, Entergy also agreed to supply a copy of every announcement to every natural gas pipeline connected to any Covered Facility included in the request and request that each such pipeline post each announcement on that pipeline's EBB and website. *See id.*, Order ¶ II.C.2.b. EKLP agreed to ensure that Gulf South posts each announcement on its EBB before submitting any proposal to Entergy. *See id.*, Order ¶ II.C.2.d. Entergy also agreed to consider all proposals received for Relevant Product from any potential supplier and to create a written or electronic log that documents the date, time, seller, and terms of all offers received and indicates the selected proposal(s). *See id.*, Order ¶ II.C.2.e. and f.

18. For Daily Purchases, Entergy agreed to request proposals to supply Relevant Product by publishing on the Entergy-Website an announcement of its intention to buy Relevant Product at various receipt and delivery points. *See id.*, Order ¶ II.C.3.a. Entergy also agreed, upon request, to provide to any potential supplier the specific terms and conditions for supplying Relevant Product. *See id.*, Order ¶ II.C.3.b. Finally, with

regard to Daily Purchases, Entergy also agreed to consider all proposals received for Relevant Product from any potential supplier and to create a written or electronic log that documents the date, time, seller, and terms of all offers received, and indicates the selected proposal(s). *See id.*, Order ¶¶ II.C.3.c. and d.

19. On January 31, 2001, the Commission issued the Order in accordance with the procedures described in the Commission's Rules of Practice 2.34, 16 C.F.R. § 2.34.

20. Entergy and EKLP have fully complied with the procedures for buying any Relevant Product as described within the Order.

ARGUMENT

THE COMMISSION SHOULD REOPEN AND SET ASIDE THE ORDER

A. Standard of Review

21. Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), and Section 2.51(b) of the Commission's Rules of Practice, 16 C.F.R. § 2.51(b) provide that the Commission shall reopen an order to consider whether it should be modified if the parties seeking to have orders reopened and modified established "a satisfactory showing that changed conditions of law or fact require the rule or order to be altered, modified, or set aside ... or that the public interest so requires." 16 C.F.R. § 2.51(b).

22. The Commission has previously stated that "a satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order...." *In re Eli Lilly and Company*, (Docket No. C-3594), Order Reopening and Setting Aside Order at 2 (May 13, 1999).

23. As discussed below, the Commission should reopen and set aside the Order because the fundamental factual premise of the Order – Entergy's indirect 50% ownership interest in Gulf South – is no longer present. Indeed, because Entergy no longer has any interest in Gulf South, Entergy no longer has an incentive to pay Gulf South above-market rates for natural gas transportation services. Consequently, there is no longer any justification for requiring Entergy and EKLP to bear the costs and administrative burdens of complying with the Order.

B. Changed Conditions Warrant Reopening and Setting Aside of the Order

24. In issuing the Order, the Commission's stated concern centered on Entergy's incentive to accept inflated prices for natural gas transportation due to Entergy's interest in Gulf South. *See* Exhibit C, Complaint ¶ 21. The Commission's goal was to neutralize the incentive created by Entergy's ownership interest in Gulf South by making Entergy's procurement processes more transparent and thus helping Entergy's state regulators detect whether Entergy paid above-market prices for natural gas supplies and transportation. *See* Exhibit D, Analysis at 5.

25. EKLP sold Gulf South to TGT on December 29, 2004. *See* Exhibit E, Adams Aff. ¶ 9. Consequently, Entergy no longer has any ownership or financial interest in or control over Gulf South, *see id.*, and Entergy no longer has an incentive to accept inflated prices in the natural gas transportation market. Therefore, there is no longer any factual basis for the Commission's concerns as expressed in the Complaint and addressed by the Order.

26. Moreover, with the sale of Gulf South to TGT, EKLP is no longer able to ensure that Gulf South posts on its EBB and website the announcements concerning

Entergy's procurement intentions. *See* Exhibit A, Order ¶¶ II.C.1.d. & II.C.2.d.

Significantly, the obligations in the Order run to Entergy and EKLP; the Order did not impose any obligations on Gulf South. Indeed, the Order contemplated that if EKLP sold Gulf South, the acquiring person would not be required to fulfill EKLP's obligations under the Order:

EKLP shall not include any Person who acquires any share capital, equity or other ownership interest in Gulf South Pipeline or in any particular segment of the Gulf South Pipeline if: (a) that Person has no share capital, equity or other ownership interest, direct or indirect, in Entergy; and (b) Entergy has no share capital, equity or other ownership interest, direct or indirect,, in that Person.

See Exhibit A, Order ¶ I.C. (definition of "EKLP"). This definition is further evidence that the Commission's concerns stemmed from Entergy's indirect 50% ownership interest in Gulf South, and that the elimination of Entergy's ownership interest in Gulf South constitutes a substantial change in conditions that justifies reopening and setting aside the Order.

C. Setting Aside the Order is in the Public Interest

27. Due at least in part to the Order, Entergy's procurement of natural gas transportation and supplies have become extraordinarily transparent during the last four years. *See* Exhibit E, Adams Aff. ¶¶ 10-12. Participants in the natural gas marketplace have received an abundance of information concerning Entergy's natural gas requirements and consumption patterns. There are unlikely to be dramatic changes in those requirements and consumption patterns going forward. Thus, the marketplace has already received whatever transparency benefits were provided by the Order. *See id.*, Adams Aff. ¶ 11.

28. At the same time, transparency has carried with it a level of risk that participants in the marketplace could use the information about Entergy's procurement intentions to engage in anticompetitive behavior that could disadvantage Entergy as a purchaser of natural gas transportation and supplies, and, consequently, Entergy's customers. *See id.*, Adams Aff. ¶ 12. Now that Entergy no longer has an ownership or financial interest in Gulf South, there is no longer any reason for Entergy or its customers to be exposed to the anticompetitive risks associated with the procurement transparency required by the Order. Therefore, the public interest in protecting Entergy and Entergy's customers from the anticompetitive risks of transparency warrants setting aside the Order.

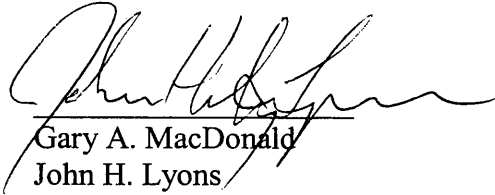
29. In addition, given that the fundamental factual basis for the Order no longer exists, there is no justification for continuing to require Entergy and EKLP to bear the ongoing costs and administrative burdens of complying with the Order. Because it is in the public interest to eliminate unnecessary regulatory burdens, it is therefore in the public interest to reopen and set aside the Order.

CONCLUSION

30. For the foregoing reasons, the Commission should grant Entergy's Petition to Reopen and Set Aside the Order. A (Proposed) Order to Reopen and Set Aside Order is attached hereto as Exhibit F for the Commission's convenience.

Dated: March 3, 2005

Respectfully submitted,



Gary A. MacDonald
John H. Lyons

Skadden, Arps, Slate,
Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, DC 20005
(202) 371-7000

Attorneys for Entergy Corporation
and Entergy-Koch, LP

Exhibit A

The Commission having thereafter considered the matter and having determined that it had reason to believe that the Contribution Agreement for Entergy-Koch, LP, dated as of May 26, 2000, as amended and restated effective January 31, 2001, between Koch Energy, Inc., Koch Industries International Limited, Entergy Power International Holdings Corporation, EK Holding I, LLC, EK Holding II, LLC, and Entergy Trading & Marketing, Limited, if consummated, would violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint 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 finding and issues the following Decision and Order (“Order”):

- a. Respondent Entergy is 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 639 Loyola Avenue, New Orleans, Louisiana 70113.
- b. Koch is a privately held corporation organized, existing and doing business under and by virtue of the laws of Kansas, with its office and principal place of business located at 4111 East 37th Street North, Wichita, Kansas 67220.
- c. Respondent EKLP is a limited partnership, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 20 East Greenway Plaza, Houston, Texas 77046.
- d. The Federal Trade 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. “Entergy” means Entergy Corporation, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Entergy Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- B. “Koch” means Koch Industries, Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Koch Industries, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “EKLP” means the limited partnership, currently known as Entergy-Koch, LP, that is to be formed pursuant to the Contribution Agreement for Entergy-Koch, LP, dated as of May 26, 2000, as amended and restated effective January 31, 2001, between Koch Energy, Inc., Koch Industries International Limited, Entergy Power International Holdings Corporation, EK Holding I, LLC, EK Holding II, LLC, and Entergy Trading & Marketing, Limited, and was the subject of a June 21, 2000, application before FERC, Docket No. EC00-106-000. EKLP shall include directors, officers, employees, agents and representatives, predecessors, successors, and assigns of EKLP; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by EKLP (including Gulf South or any of its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Gulf South), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. EKLP shall not include any Person who acquires any share capital, equity or other ownership interest in Gulf South Pipeline or in any particular segment of the Gulf South Pipeline if: (a) that Person has no share capital, equity or other ownership interest, direct or indirect, in Entergy; and (b) Entergy has no share capital, equity or other ownership interest, direct or indirect, in that Person.
- D. “Commission” means Federal Trade Commission.
- E. “Covered Facility” means any electric power generating facility (or any portion thereof) or local natural gas distribution facility that:
1. uses, distributes, stores, or transports natural gas; and
 2. is owned (partially or wholly, directly or indirectly), operated, or controlled by an Entergy subsidiary that is subject to a State Regulator's rules governing the recovery of the cost of buying the Relevant Product.
- Covered Facility shall also include any facility (or any portion thereof) at which an Entergy subsidiary subject to regulation by any State Regulator has a contractual right to store natural gas.
- F. “Daily Purchases” means any contract to purchase the Relevant Product having an initial term of:
1. twenty-four (24) hours; or

2. forty-eight (48) hours if the purchase is for a holiday and the following business day; or
 3. seventy-two hours (72) if the purchase is for Saturday, Sunday, and Monday; or for a holiday that precedes and/or follows a weekend.
- G. “EBB” means electronic bulletin board.
- H. “Entergy-Website” means an address on the worldwide web owned, operated or controlled by Entergy, currently located at www.energy.com.
- I. “FERC” means the Federal Energy Regulatory Commission.
- J. “Force Majeure Event” means an event or occurrence or circumstance beyond the reasonable control of, and without the fault or negligence of, Entergy, which may include acts of God, labor disputes (including strikes), floods, earthquakes, storms, fires, lightning, epidemics, wars, riots, civil disturbances, sabotage, acts of public enemy, explosions, curtailments, orders, regulations or restrictions imposed by governmental, military, or lawfully established civilian authorities, or any other event or cause which is beyond Entergy's reasonable control. A Force Majeure Event does not include an act of negligence or intentional wrongdoing.
- K. “Gulf South” means the Gulf South Pipeline Company, LP (formerly known as Koch Gateway Pipeline Company), which currently owns Gulf South Pipeline.
- L. “Gulf South Pipeline” means the pipeline that was formerly known as the Koch Gateway pipeline. Gulf South Pipeline is an interstate natural gas pipeline running through parts of the states of Texas, Louisiana, Mississippi, Alabama and Florida and is being contributed to EKLP.
- M. “Implementation Trustee” means any Person appointed by the Commission pursuant to Paragraph III. of this Order.
- N. “Long-Term Purchases” means any contract to purchase the Relevant Product having an initial term longer than three (3) months.
- O. “Person” means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.
- P. “Relevant Product” means natural gas delivered to a Covered Facility or Transportation to a Covered Facility.

- Q. “Relevant Product Specifications” means the terms included in an agreement to buy Relevant Product, which may include, but are not limited to, average daily and maximum daily volumes required; the duration of requirement; delivery pressure; type of service (types of services are often referred to in the industry as “firm,” “no-notice,” or “interruptible”); the priority of gas supply or transportation in the event of a disruption; the right to vary the volume taken during any day; the location(s) of the receipt and delivery points, including the need to take natural gas at multiple delivery points; and the procedures that determine the time at which a shipper must identify the amount of gas that is to be delivered and received at particular points (sometimes referred to as nomination procedures).
- R. “Respondents” means Entergy and EKLP, individually and collectively.
- S. “RFP” means a written request for proposal to sell Relevant Product, which shall, for the purpose of complying with the terms of this Order, include at least the following information:
1. the criteria that suppliers of Relevant Product must satisfy to be eligible for consideration; and
 2. the Relevant Product Specifications, as reviewed by the Implementation Trustee.
- T. “Short-Term Purchases” means any contract to purchase the Relevant Product having an initial term longer than Daily Purchases and less than or equal to three (3) months.
- U. “State Regulators” means the Mississippi Public Service Commission, the Louisiana Public Service Commission, and the Council of the City of New Orleans.
- V. “Transaction Date” means the date upon which Entergy obtains any interest, direct or indirect, in Gulf South Pipeline.
- W. “Transportation” means the movement of natural gas by pipeline and includes storage, exchange, backhaul and displacement.

II.**IT IS FURTHER ORDERED** that:

A. Entergy and EKLP shall:

1. comply with Paragraph II.C. of this Order within fifteen (15) business days of the later of the Transaction Date or the date on which the Commission accepts the Consent Agreement, excluding Paragraphs II.C.2.f. and II.C.3.d. of this Order;
2. comply with Paragraphs II.C.2.f. and II.C.3.d. of this Order within forty-five (45) business days of the later of the Transaction Date or the date on which the Commission accepts the Consent Agreement;
3. begin to implement all other terms of Paragraph II. of this Order upon the later of the Transaction Date or the date on which the Commission accepts the Consent Agreement;
4. provide a copy of this Order to the officers and directors of Entergy and EKLP, to the employees of Entergy responsible for the purchase of Relevant Product, and to the employees of EKLP responsible for direct marketing to Covered Facilities, within ten (10) days of the later of the Transaction Date or the date on which the Commission accepts the Consent Agreement; and
5. unless otherwise specified in this Order, comply fully with all other terms of Paragraph II. of this Order within one hundred and twenty (120) days of the later of the Transaction Date or the date on which the Commission accepts the Consent Agreement.

B. Entergy shall prepare a written plan for all Long-Term Purchases before issuing an RFP and for all Short-Term Purchases before requesting proposals as required in Paragraph II.C.2.a. of this Order (individually or collectively “portfolio supply plan”). Each such portfolio supply plan shall include, but not be limited to:

1. a statement of the goals for Long-Term Purchases and Short-Term Purchases, as applicable, and an analysis setting forth the reasons for selecting the volume requirement and degree of reliability and flexibility requirements for Relevant Product (all such analyses shall include or list all calculations, workpapers and databases relied upon to develop the portfolio supply plan);

2. Relevant Product Specifications, as reviewed by the Implementation Trustee, and the reasons for selecting the Relevant Product Specifications;
 3. storage injection and withdrawal requirements; and
 4. estimated location-specific transportation charges and natural gas price differentials from an established trading area (*e.g.*, Henry Hub) to each Covered Facility for which a Relevant Product is being solicited.
- C. Entergy shall enter into any agreement to buy any Relevant Product in the following manner:
1. For Long-Term Purchases:
 - a. Entergy shall request proposals to supply Relevant Product using an RFP;
 - b. at least thirty (30) days before buying any Relevant Product under a contract whose term is one (1) year or longer, Entergy shall:
 - (1) post each RFP on the Entergy-Website; and
 - (2) provide a copy of every RFP to every natural gas pipeline connected to any Covered Facility included in the RFP and request that each such pipeline post all RFPs on that pipeline's EBB and website;
 - c. at least fourteen (14) days before buying any Relevant Product under a contract whose term is more than three (3) months but less than one (1) year, Entergy shall:
 - (1) post each RFP on the Entergy-Website; and
 - (2) provide a copy of every RFP to every natural gas pipeline connected to any Covered Facility included in the RFP and request that each such pipeline post all RFPs on that pipeline's EBB and website;
 - d. EKLP shall ensure that Gulf South posts on its EBB each RFP within twenty-four (24) hours of receiving any such RFP from Entergy and before submitting any proposal to Entergy;

- e. Entergy shall provide an RFP to any potential supplier who requests one; and
 - f. Entergy shall consider all proposals received for Relevant Product from any potential supplier.
2. For Short-Term Purchases:
- a. Entergy shall request proposals to supply Relevant Product by publishing on the Entergy-Website an announcement of its intention to buy Relevant Product at various receipt and delivery points and the Relevant Product Specifications that would enable potential suppliers to determine whether they could satisfy Entergy's requirements for Relevant Product; *provided, however,* that Entergy shall publish announcements to buy Relevant Product for a term of at least one (1) month at least seventy-two (72) hours before considering any proposal;
 - b. prior to considering any proposal, Entergy shall provide a copy of every such announcement to every natural gas pipeline connected to any Covered Facility included in the request and shall request that each such pipeline post each announcement on that pipeline's EBB and website;
 - c. upon request, Entergy shall provide to any potential supplier the specific terms and conditions for supplying Relevant Product, including the Relevant Product Specifications;
 - d. EKLP shall ensure that Gulf South posts each announcement on its EBB before submitting any proposal to Entergy;
 - e. Entergy shall consider all proposals received for Relevant Product from any potential supplier;
 - f. Entergy shall create a written or electronic log that documents the date, time, seller, and terms of all offers received (where such offers include price, delivery dates, delivery location, and delivery specifications), and indicates the selected proposal(s); and
 - g. notwithstanding any of the provisions of Paragraph II.A. of this Order, Entergy shall not enter into any agreement with EKLP for Short-Term Purchases of Relevant Product whose term is automatically renewable unless that agreement is entered into pursuant to the terms of Paragraph II.C.2. of this Order.

3. For Daily Purchases:
 - a. Entergy shall request proposals to supply Relevant Product by publishing on the Entergy-Website an announcement of its intention to buy Relevant Product at various receipt and delivery points;
 - b. upon request, Entergy shall provide to any potential supplier the specific terms and conditions for supplying Relevant Product;
 - c. Entergy shall consider all proposals received for Relevant Product from any potential supplier; and
 - d. Entergy shall create a written or electronic log that documents the date, time, seller, and terms of all offers received (where such offers include price, delivery dates, delivery location, and delivery specifications), and indicates the selected proposal(s).

For purposes of Paragraph II.C. of this Order, the initial term of any agreement to purchase Relevant Product shall be determined without reference to whether the contract can be renewed automatically without notice so long as the price term or price formula cannot change upon such automatic renewal.

Provided, however, that Entergy may suspend complying with the requirements of Paragraphs II.B. (Short-Term Purchases only), II.C.2, and II.C.3 if:

- (1)(a) there was a Force Majeure Event preventing Entergy from complying with the terms of this Order;
 - (b) there was an unexpected loss of an Entergy owned, operated or controlled electric generation unit not fueled by natural gas that resulted in Entergy buying an unexpected amount of Relevant Product; or
 - (c) there was an unexpected disruption in a power purchase commitment that resulted in Entergy buying an unexpected amount of Relevant Product; and
- (2) Entergy is exerting reasonable best efforts to expeditiously return to full compliance with its obligations under Paragraphs II.B. (Short-Term Purchases only), II.C.2, and II.C.3.

Entergy shall bear the burden of proof with regard to demonstrating that its non-compliance was caused by any of the events identified above and that it was exerting

reasonable best efforts to expeditiously return to full compliance with its obligations under Paragraphs II.B. (Short-Term Purchases only), II.C.2, and II.C.3.

- D. For any Long-Term Purchases or Short-Term Purchases, Entergy shall, upon request by a State Regulator, within thirty (30) days of such request, prepare a written analysis for the time period requested by any State Regulator explaining how any winning proposal by EKLP satisfies the goals set forth in the applicable portfolio supply plan when measured against other comparable proposals.
- E. Entergy shall submit a copy of this Order to each State Regulator within ten (10) days of the later of the Transaction Date or the date on which the Commission accepts the Consent Agreement.
- F. Entergy shall notify (in writing or electronic mail, with return receipt request) each of the suppliers of Relevant Product with which Entergy regularly does business of the posting requirements of this Order within ten (10) days of the later of the Transaction Date or the date on which the Commission accepts the Consent Agreement.
- G. Entergy and EKLP shall retain, for a period of five (5) years from the date of its creation or use, all plans, analyses, materials referenced in or supporting any plan or analysis, RFPs, announcements, logs, requests, notifications to suppliers of Relevant Product and return receipts, responses, proposals or any other documents, materials or other information called for, required by or relied upon to comply with Paragraph II. of this Order.
- H. Entergy shall, within thirty (30) days, comply with any request by any State Regulator for documents, materials or other information required to be retained by Paragraph II. of this Order where such request is related to the recovery of the costs of purchasing Relevant Product.
- I. The purpose of this Order is to establish a competitive and transparent process to prevent Entergy from having the ability to evade rate regulation by the State Regulators as alleged in the Commission's Complaint in this matter. Nothing in this Order is intended to preempt otherwise applicable state law, or alter the provisions governing the public disclosure of Entergy confidential information submitted to any State Regulator pursuant to state law contained in any agreement between Entergy and any State Regulator.

III.

IT IS FURTHER ORDERED that Stephen P. Reynolds shall serve as Implementation Trustee to monitor Respondents' implementation of Paragraphs II.B. and II.C. of this Order, which Implementation Trustee shall have the rights, duties, and responsibilities as described below:

- A. Within ten (10) business days of signing the Consent Agreement, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, confers on the Implementation Trustee all the power and authority necessary to permit the Implementation Trustee to monitor Respondents' implementation of Paragraphs II.B. and II.C. of this Order, in a manner consistent with the purposes of this Order.
- B. The Implementation Trustee shall have the power and authority to monitor Respondents' implementation of Paragraphs II.B. and II.C. of this Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Implementation Trustee in a manner consistent with the purposes of this Order in consultation with the Commission.
- C. The Implementation Trustee shall have full and complete access to all personnel, books, records, documents, and facilities of Respondents related to Respondents' implementation of Paragraphs II.B. and II.C. of this Order or to any other relevant information, as the Implementation Trustee may reasonably request, including but not limited to all documents and records kept in the normal course of business that relate to Respondents' obligations under Paragraphs II.B. and II.C. of this Order. Respondents shall provide such financial or other information as such Implementation Trustee may reasonably request and shall cooperate with the Implementation Trustee. Respondents shall take no action to interfere with or impede the Implementation Trustee's ability to perform his responsibilities or to monitor Respondents' implementation of Paragraphs II.B. and II.C. of this Order.
- D. Respondents may require the Implementation Trustee to sign a confidentiality agreement prohibiting the disclosure of any information gained as a result of his role as Implementation Trustee to anyone other than the Commission.
- E. The Implementation Trustee shall serve, without bond or other security, at the cost and expense of EKLP, on reasonable and customary terms commensurate with the Implementation Trustee's experience and responsibilities. Respondents shall indemnify the Implementation Trustee and hold the Implementation Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Implementation 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 Implementation Trustee.

- F. The Implementation Trustee shall have no responsibility or obligation for the operation of, or the right to operate, Respondents' businesses.
- G. The term of the Implementation Trustee shall end one year from the later of the Transaction Date or the date on which the Commission accepts the Consent Agreement, or earlier if the Implementation Trustee certifies to the Commission that Respondents have put in place adequate procedures in accordance with Paragraphs II.B. and II.C. of this Order and the Commission accepts such certification.
- H. If the Commission determines that the Implementation Trustee has ceased to act or failed to act diligently or is otherwise unable to perform his or her duties, the Commission may appoint a substitute Implementation Trustee who shall have all the rights, duties, powers, authorities, and responsibilities described in Paragraph III. of this Order. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed substitute Implementation Trustee within five (5) business days after notice by the staff of the Commission to Respondents of the identity of any proposed substitute Implementation Trustee, Respondents shall be deemed to have consented to the selection of the proposed substitute Implementation Trustee. Within five (5) business days after the appointment of the substitute Implementation Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, confers on the substitute Implementation Trustee all the power and authority necessary to permit the substitute Implementation Trustee to monitor Respondents' implementation of Paragraphs II.B. and II.C. of this Order, in a manner consistent with the purposes of the Order.
- I. The Commission may on its own initiative or at the request of the Implementation Trustee issue such additional orders or directions as may be necessary or appropriate to assure Respondents' compliance with the requirements of this Order, in a manner consistent with the purposes of this Order.
- J. The Implementation Trustee shall report in writing to the Commission concerning Respondents' compliance with the Order thirty (30) days after execution of the trustee agreement and every ninety (90) days thereafter until the Implementation Trustee's term expires.

IV.

IT IS FURTHER ORDERED that each Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in such Respondent 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 the Order.

V.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date Entergy and EKLP execute the Consent Agreement, within ninety (90) days thereafter, and annually thereafter until termination of this Order, Entergy and EKLP shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying and have complied with this Order. Entergy and EKLP shall include in their compliance reports a full description of the efforts being made to comply with this Order, including, but not limited to, the efforts being made to assure that anyone responsible for implementing or supervising the compliance with any requirement of Paragraph II. of this Order understands that requirement and understands the purpose of this Order.
- B. Respondents shall describe in detail and provide supporting documentation for all events implicating the proviso of Paragraph II.C. in the next compliance report required to be filed with the Commission pursuant to Paragraph V. of this Order or within thirty (30) days of a Commission request.

VI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Entergy and EKLP, Entergy and EKLP 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 non-privileged books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Entergy and EKLP relating to any matter contained in this Order; and

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

VII.

IT IS FURTHER ORDERED that this Order shall terminate on January 31, 2007.

By the Commission, Commissioner Anthony recused.

Donald S. Clark
Secretary

SEAL

ISSUED: January 31, 2001

Exhibit B

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

In the Matter of)	
)	
Entergy Corporation,)	
a corporation,)	
)	
and)	File No. 001-0172
)	
Entergy-Koch, LP,)	
a limited partnership.)	

AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the formation of Entergy-Koch, LP (“EKLP”), by Entergy Corporation (“Entergy”) and Koch Industries, Inc. (“Koch”), and it now appearing that Entergy and EKLP, hereinafter sometimes referred to as “Proposed Respondents,” are willing to enter into this Agreement Containing Consent Order (“Consent Agreement”) to implement certain safeguards to ensure a competitive process for the procurement of natural gas and transportation of natural gas (“Procurement Policy”) and provide for other relief:

IT IS HEREBY AGREED by and between Proposed Respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent Entergy is 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 639 Loyola Avenue, New Orleans, Louisiana 70113.
2. Koch is a privately held corporation organized, existing and doing business under and by virtue of the laws of Kansas, with its office and principal place of business located at 4111 East 37th Street North, Wichita, Kansas 67220.
3. Proposed Respondent EKLP is a limited partnership, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 20 East Greenway Plaza, Houston, Texas 77046.
4. Proposed Respondents admit all the jurisdictional facts set forth in the draft of Complaint here attached.

5. Proposed Respondents waive:
 - a. any further procedural steps;
 - b. the requirement that the Commission's Decision and Order, attached hereto and made a part hereof, contain a statement of findings of fact and conclusions of law;
 - c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Decision and Order entered pursuant to this Consent Agreement; and
 - d. any claim under the Equal Access to Justice Act.
6. Entergy and EKLP shall submit a report within thirty (30) days of the date they execute this Consent Agreement and every thirty (30) days thereafter until the Decision and Order becomes final, pursuant to Section 2.33 of the Commission's Rules, 16 C.F.R. § 2.33, signed by Entergy and EKLP, setting forth in detail the manner in which Entergy and EKLP have complied with, have prepared to comply with, and will comply with the Decision and Order. Such reports will not become part of the public record unless and until the accompanying Consent Agreement and Decision and Order are accepted by the Commission for public comment.
7. This Consent Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Consent Agreement is accepted by the Commission, it, together with the Complaint contemplated hereby, will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Consent Agreement and so notify Entergy and EKLP, in which event it will take such action as it may consider appropriate, or issue or amend its Complaint (as the circumstances may require) and issue its Decision and Order, in disposition of the proceeding.
8. This Consent Agreement is for settlement purposes only and does not constitute an admission by Entergy and EKLP that the law has been violated as alleged in the draft Complaint here attached, or that the facts as alleged in the draft Complaint, other than jurisdictional facts, are true.
9. The Commission retains the discretion, at the time it accepts this Consent Agreement for public comment, to issue and serve its Complaint corresponding in form and substance with the draft of Complaint, and a Final Decision and Order incorporating the attached Decision and Order.

10. This Consent Agreement contemplates that, if it is accepted by the Commission, the Commission may (1) immediately issue and serve its Complaint corresponding in form and substance with the draft of Complaint here attached, (2) issue and serve the attached Decision and Order, and (3) make information public with respect thereto. If the Commission has not immediately issued and served its Complaint and Decision and Order, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission may, without further notice to Entergy and EKLP, thereupon issue the Complaint and the Decision and Order containing an order to implement the Procurement Policy in disposition of the proceeding. When final, the Decision and Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Decision and Order shall become final upon service. Delivery of the Complaint and Decision and Order to Entergy and EKLP by any means specified in Commission Rule 4.4(a), 16 C.F.R. § 4.4(a), shall constitute service. Entergy and EKLP waive any right they may have to any other manner of service. The Complaint may be used in construing the terms of the Decision and Order, and no agreement, understanding, representation, or interpretation not contained in the Decision and Order or the Consent Agreement may be used to vary or contradict the terms of the Decision and Order.
11. By signing this Consent Agreement, Entergy and EKLP represent and warrant that they can comply with the provisions of the attached Decision and Order, and that all parents of Entergy and all subsidiaries, affiliates, and successors of Entergy and EKLP necessary to effectuate the full relief contemplated by this Consent Agreement are parties to the Consent Agreement and are bound thereby as if they had signed this Consent Agreement and were made parties to this proceeding and the Decision and Order.
12. Entergy and EKLP have read the draft Complaint and Decision and Order contemplated hereby. Entergy and EKLP understand that once the Decision and Order have been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Entergy and EKLP agree to comply with the proposed Decision and Order from the date they execute this Consent Agreement in accordance with the time frames set forth in the Decision and Order. Entergy and EKLP understand that they may be liable for civil penalties in the amount provided by law for each violation of the Decision and Order after it becomes final.

Signed this ____ day of January, 2001

ENERGY CORPORATION:

FEDERAL TRADE COMMISSION:

By:

Leo P. Denault
Authorized Signatory
Entergy Corporation

By:

Frank Lipson
Attorney
Bureau of Competition

Approved:

Michael G. Thompson, Esq.
Senior Vice President &
General Counsel
Entergy Corporation

William R. Vigdor
Deputy Assistant Director
Bureau of Competition

C. Benjamin Crisman, Jr., Esq.
Gary A. MacDonald, Esq.
John H. Lyons, Esq.
Kimberly A. Webb, Esq.
Skadden, Arps, Slate, Meagher &
Flom LLP
Counsel for Entergy Corporation

Phillip L. Broyles
Assistant Director
Bureau of Competition

Michael E. Antalics
Acting Deputy Director
Bureau of Competition

ENERGY-KOCH, LP:

By:

Christopher J. Bernard, Esq.
General Counsel
Entergy-Koch, LP

Molly S. Boast
Acting Director
Bureau of Competition

Exhibit C

3. Respondent Entergy is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or is affecting commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. Koch Industries, Inc.

4. Koch Industries, Inc., (“Koch”) is a corporation with offices and its principal place of business located at 4111 East 37th Street North, Wichita, Kansas 67220.
5. Koch, through subsidiaries and affiliates, markets natural gas, natural gas transportation, chemicals, petroleum products, minerals, and financial services. Koch conducts its natural gas business through wholly owned subsidiaries, including Gulf South (formerly Koch Gateway Pipeline Company) and Koch Energy Trading.
6. Gulf South is an interstate natural gas transmission company regulated by the Federal Energy Regulatory Commission (“FERC”). Gulf South owns and operates the Gulf South pipeline. The Gulf South pipeline (formerly known as the Koch Gateway pipeline) is an interstate natural gas pipeline running through parts of the states of Texas, Louisiana, Mississippi, Alabama and Florida.
7. Koch Energy Trading markets natural gas, natural gas pipeline transportation, electric power, and weather derivatives.
8. Koch is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or is affecting commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

III. Entergy-Koch, LP

9. Respondent EKLP is a limited partnership, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 20 East Greenway Plaza, Houston, Texas 77046.
10. Entergy and Koch each own approximately 50 percent of EKLP and will share equally in the profits of EKLP. Upon consummation of the proposed transaction discussed in Paragraph IV. herein, EKLP will acquire Gulf South, Koch Energy Trading and other assets.

11. EKLP is, and at all times relevant herein has been, engaged in commerce as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and is a corporation whose business is in or is affecting commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

IV. The Proposed Transaction

12. On or about May 26, 2000, Entergy and Koch entered into an agreement to form EKLP and contribute certain assets. Pursuant to that agreement, EKLP will acquire, among other things, Entergy Power Marketing Corporation (Entergy’s subsidiary that markets electricity and gas in the United States) from Entergy, and Gulf South, related storage assets, and Koch Energy Trading from Koch (“Proposed Transaction”).

V. Trade and Commerce

13. Entergy owns Entergy Louisiana, Inc., an electric utility regulated by the Louisiana Public Service Commission. Through Entergy Louisiana, Inc., Entergy has the exclusive right to sell retail electricity in approximately 140 towns and communities in Louisiana.
14. Entergy owns Entergy Gulf States, Inc., an electric and natural gas utility regulated by the Louisiana Public Service Commission. Through Entergy Gulf States, Inc., Entergy has the exclusive right to sell retail electricity in approximately 67 towns and communities in Louisiana and the exclusive right to distribute natural gas in Baton Rouge, Louisiana.
15. Entergy owns Entergy New Orleans, Inc., an electric and natural gas utility regulated by the Council of the City of New Orleans. Through Entergy New Orleans, Inc., Entergy has the exclusive right to sell retail electricity and distribute natural gas in New Orleans, Louisiana.
16. Entergy owns Entergy Mississippi, Inc., an electric utility regulated by the Mississippi Public Service Commission. Through Entergy Mississippi, Inc., Entergy has the exclusive right to sell retail electricity in approximately 74 towns and communities in western Mississippi.
17. Entergy purchases substantial quantities of natural gas transportation on behalf of Entergy Louisiana, Inc., Entergy Gulf States, Inc., Entergy New Orleans, Inc., and Entergy Mississippi, Inc.
18. The Louisiana Public Service Commission, the Mississippi Public Service Commission, and the Council of the City of New Orleans permit, subject to review, the Entergy utilities

referred to above to recover 100 percent of the cost of natural gas and natural gas transportation by passing those costs directly to consumers.

19. Gulf South is a major supplier of natural gas transportation in Louisiana and Mississippi and can supply all of Entergy's regulated utilities in those states.
20. Gulf South sales of natural gas transportation are subject to regulation by FERC, which approves the maximum rate that a pipeline can charge to a customer.
21. After closing the Proposed Transaction, Entergy will own approximately 50 percent of Gulf South and earn about 50 percent of Gulf South's profits. For that reason, Entergy will have the incentive and ability, and is therefore likely, to pay EKLP prices for natural gas transportation above prevailing market prices and to purchase a level of service above what is necessary for effective operation of Entergy's facilities. Entergy will also have the incentive and ability, and is therefore likely, to accept prices from third parties above prevailing market prices to prevent regulators from detecting that Entergy paid artificially inflated prices to EKLP.
22. After closing the Proposed Transaction, it would be more difficult for the Louisiana Public Service Commission, the Council of the City of New Orleans, or the Mississippi Public Service Commission to determine whether Entergy improperly incurred inflated costs of natural gas transportation for several reasons: the decision regarding the purchase of natural gas transportation involves the consideration of multiple factors; the process by which Entergy purchases gas transportation is not transparent; and existing market benchmarks are inadequate to assist regulators in determining whether the cost was prudently incurred.
23. FERC regulations would not prevent Entergy from paying inflated costs because Gulf South's current rates are below the FERC maximum tariff.
24. It is difficult to enter into the business of selling retail electricity or distributing natural gas to customers in areas in which Entergy is currently the exclusive supplier. Entry by another utility requires approval from the State legislature or regulatory agencies in the jurisdictions involved.

Count I
Increased Prices For Retail Electricity

25. Paragraphs 1 - 24 are incorporated by reference as if fully set forth herein.

26. A relevant line of commerce in which to analyze the effects of the proposed transaction is the retail sale of electricity to consumers. There is no economic alternative to electricity for consumers in Louisiana and Mississippi.
27. Relevant sections of the country in which to analyze the effects of the proposed transaction are the areas in Louisiana and Mississippi served by:
 - a. Entergy Louisiana, Inc.;
 - b. Entergy Gulf States, Inc.;
 - c. Entergy New Orleans, Inc.; and
 - d. Entergy Mississippi, Inc.
28. Entergy is the monopoly supplier of retail electricity in each relevant section of the country.
29. Prices of retail electricity are likely to rise as a result of Entergy passing on inflated costs for natural gas transportation to consumers and the difficulties that regulators will have in reviewing and challenging Entergy's purchase of natural gas transportation.
30. It is difficult to enter into the business of selling retail electricity to consumers in the relevant sections of the country. Entry into the relevant sections of the country will not therefore be timely, likely or sufficient to prevent a price increase.

Count II
Increased Prices For Natural Gas Distribution

31. Paragraphs 1 - 24 are incorporated by reference as if fully set forth herein.
32. A relevant line of commerce in which to analyze the effects of the proposed transaction is the distribution of natural gas to consumers. There is no economic alternative to the distribution of natural gas to consumers in New Orleans and Baton Rouge, Louisiana.
33. Relevant sections of the country in which to analyze the effects of the proposed transaction are New Orleans and Baton Rouge, Louisiana.
34. Entergy is the monopoly distributor of natural gas in New Orleans and Baton Rouge, Louisiana.
35. Prices of natural gas are likely to rise as a result of Entergy passing on inflated costs for natural gas transportation to consumers and the difficulties that regulators will have in reviewing and challenging Entergy's purchase of natural gas transportation.

36. It is difficult to enter into the business of distributing natural gas to consumers in New Orleans and Baton Rouge. Entry into New Orleans and Baton Rouge will not therefore be timely, likely or sufficient to prevent a price increase.

VI. VIOLATIONS CHARGED

37. The Proposed Transaction, if consummated, would violate 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.

IN WITNESS WHEREOF, the Federal Trade Commission, having caused this Complaint to be signed by the Secretary and its official seal affixed, at Washington, D.C., this thirty-first day of January, 2001, issues its complaint against respondent.

By the Commission, Commissioner Anthony recused.

SEAL

Donald S. Clark
Secretary

Exhibit D

ANALYSIS OF THE COMPLAINT AND CONSENT ORDER TO AID PUBLIC COMMENT

I. Introduction

The Federal Trade Commission has accepted for public comment an Agreement Containing Consent Order ("Consent Agreement") with Entergy Corporation and Entergy-Koch, LP ("EKLP"), a limited partnership owned equally by Entergy and Koch Industries, Inc., and has issued a Complaint and the Decision and Order ("Order") contained in the Consent Agreement. The Order seeks to remedy the anticompetitive effects of EKLP's acquisition from Koch of the Gulf South Pipeline Company, LP (formerly the Koch Gateway Pipeline Company and referred to herein as "Gulf South"). As a result of this acquisition, Entergy will own 50 percent of the Gulf South pipeline, a major natural gas pipeline serving Entergy's regulated utilities in Louisiana and Mississippi. The Order requires Entergy to adopt an open-solicitation process for its purchase of natural gas and gas transportation. Adoption of these measures will avoid affiliate bias in Entergy's purchase of gas supplies and the resulting higher energy prices.

II. Description of the Parties and the Proposed Joint Venture

Entergy, a Delaware corporation, is engaged in the generation, transmission, and distribution of electricity. Entergy provides retail electric service to customers in portions of Arkansas, Louisiana, Mississippi, and Texas. Entergy also owns the local natural gas distribution utility in New Orleans and Baton Rouge, Louisiana. In 1999, Entergy had revenues of approximately \$8.77 billion and net income of approximately \$595 million.

Koch is a privately held corporation headquartered in Wichita, Kansas. Through its subsidiaries and affiliates, Koch markets natural gas, natural gas transportation, chemicals, petroleum products, minerals, and financial services. Koch conducts its

natural gas business through Koch Energy Trading and Gulf South. Koch Energy Trading markets natural gas, electric power, and weather derivatives. Gulf South owns and operates the Gulf South pipeline (formerly known as the Koch Gateway pipeline). The Gulf South pipeline consists of about 10,000 miles of natural gas pipeline serving parts of the states of Texas, Louisiana, Mississippi, Alabama and Florida.

On May 26, 2000, Entergy and Koch entered into an agreement to form EKLP. Pursuant to that agreement, EKLP will acquire, among other things, Entergy Power Marketing Corporation (Entergy's subsidiary that markets electricity and gas in the United States) and Gulf South and Koch Energy Trading from Koch. As a result of the joint venture agreement, Entergy will own 50 percent of Gulf South and Koch Energy Trading.

III. The Complaint

The Complaint alleges that consummation of the joint venture agreement would violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The Complaint alleges two markets in which the proposed joint venture is likely to lessen competitive discipline on prices substantially: the sale of electricity to consumers in areas of Louisiana and western Mississippi where Entergy subsidiaries are the regulated electric utilities (Count I); and the distribution of natural gas to consumers in New Orleans and Baton Rouge, where Entergy subsidiaries are the regulated natural gas distribution utilities (Count II). The Complaint alleges that prices in these relevant markets are "likely to rise as a result of Entergy passing on inflated costs for natural gas transportation to consumers and the difficulties that regulators will have in reviewing and challenging Entergy's purchase of natural gas transportation."

According to the Complaint, Entergy, through its regulated subsidiaries, has the exclusive right to sell retail electricity in parts of Louisiana and Mississippi. Entergy subsidiaries also have the exclusive right to distribute natural gas in New Orleans and Baton

Rouge, Louisiana. Entergy purchases substantial quantities of natural gas transportation for its regulated subsidiaries.

Under the current regulatory framework of the States of Louisiana and Mississippi and the City of New Orleans, Entergy is permitted, subject to review, to recover 100 percent of the cost of natural gas transportation purchased for its natural gas and electric utilities by passing on this cost directly to consumers. The Complaint alleges that, once Entergy shares in the profits of Gulf South, it will have the incentive and ability, and is therefore likely, to pay higher prices for the transportation on Gulf South, and purchase a level of transportation service from Gulf South above what is necessary for effective operation of Entergy's utilities.

The Complaint alleges that after EKLP acquires the Gulf South pipeline it would be difficult for state and local regulators to determine whether Entergy improperly incurred inflated costs of natural gas transportation than before the transaction. Entergy's natural gas transportation purchasing decisions involve the consideration of multiple factors; the process by which Entergy purchases gas transportation is not transparent; and existing market benchmarks are inadequate to assist regulators in determining whether the cost was prudently incurred. Entergy's ownership of EKLP and the Gulf South pipeline increases Entergy's incentive to evade regulation and therefore, it is more likely that regulators will need to address such evasion.

IV. Terms of the Order

The Order issued by the Commission remedies the alleged anticompetitive effects of the proposed joint venture by establishing a transparent process that will increase the potential for competition and provide a benchmark that will make it easier for regulators to detect possible rate evasion. The Order affects how Entergy purchases its gas supply, whether it purchases pipeline transportation to deliver natural gas to facilities operated by its regulated utilities or it purchases delivered natural gas.

The Order recognizes Entergy's requirement to purchase a flexible,

reliable, and economical gas supply. For this reason, the Order provisions are tailored to reflect the duration of Entergy's contracts. Paragraph II. B. of the Order applies to long-term (over three months) and short-term purchases (longer than one day but less than or equal to three months) and requires Entergy to prepare a written plan before requesting proposals for gas supply. This plan must include, among other things, a statement explaining the goals Entergy is attempting to achieve (e.g., reliable supply of gas at certain plants). These planning documents will allow state and local regulators to compare actual purchases with Entergy's forecasted gas supply requirements.

The Order also requires Entergy to post information about its gas supply requirements on its website. The information posted and the timing of the post are based on the duration of the contract terms and the pace of the market activity. For long-term purchases (Paragraph II.C.1.), Entergy must post a request for proposal ("RFP") where each RFP must contain, among other things, the criteria that suppliers must satisfy to be eligible for consideration and the types of services, the amount of gas, and the duration of the contract. Entergy must post this RFP at least 30 days before any purchase under a contract whose term is one year or more, and at least 14 days in advance of any purchase under a contract whose term is between three months and one year. These time frames provide suppliers with adequate time to prepare their bids, without causing unnecessary delay. Further, the Order requires Entergy to provide requests for proposals to any potential supplier upon its request, and to consider any proposal from any potential supplier.

The process is similar for short-term purchases (Paragraph II.C.2.). Entergy must post this information at least 72 hours before considering any proposal for a term of at least one month. As with long-term purchases, the Order requires EKLP to ensure that Gulf South posts each announcement on its electronic bulletin board before submitting a proposal to Entergy, and requires Entergy to consider all proposals from any potential supplier. The Order requires Entergy to create a log for all short-term purchases documenting the date, time, seller, and terms of all offers received,

and indicating the selected proposal(s).

For daily purchases, (Paragraph II.C.3.), the Order requires Entergy to publish on its website its intention to purchase gas supplies at various receipt and delivery points. The information contained in this notice is more limited than the requests that Entergy must publish for short-term and long-term purchases. The Order requires Entergy to provide potential suppliers, upon request, with the specific terms and conditions for which it seeks to purchase gas supplies. Entergy must maintain a log containing the same information that is required for short-term purchases. The Order does not require Entergy to develop a planning document for its daily purchases, which is required for the other types of purchases.

These procedures will create a competitive, transparent process that will make it easier for regulators to detect whether Entergy purchased gas supplies at inflated costs. The planning documents will provide regulators with Entergy's operational requirements for gas and gas transportation. The open-solicitation process will create competition to supply Entergy and establish a market price for gas supplies. Regulators will then be able to compare Entergy's operational requirements, Entergy's purchases and the market prices to identify whether Entergy purchased gas supplies from EKLP at inflated prices or a level of service that is above that necessary for effective operation.

The Order also designates Stephen P. Reynolds as Implementation Trustee. Mr. Reynolds has the expertise to determine the precise information that should be included in an RFP or other solicitation package, or information to be contained in a gas purchasing planning document. EKLP must bear all of the trustee's costs and expenses. The Implementation Trustee will serve until the earlier of one year or the date on which he certifies to the Commission that the parties have put in place adequate procedures in accordance with the Order and the Commission accepts such certification.

V. Effective Date of Order and Opportunity for Public

Comment

The Commission issued the Complaint and the Decision and Order, and served them upon the respondents; at the same time it accepted the Consent Agreement for public comment. As a result of this action, the Order has already become effective. The Commission, in August 1999, adopted procedures to allow for immediate effectiveness of an Order prior to a public comment period. The Commission announced that it "contemplates doing so only in exceptional cases where, for example, it believes that the allegedly unlawful conduct to be prohibited threatens substantial and imminent public harm." 64 Fed. Reg. 46267 (1999).

This case is an appropriate one in which to issue a final order before receiving public comment because it preserves an effective remedy for the Commission by subjecting the respondents to civil penalties for failing to comply with the Order. This ensures that the safeguards embodied in the Order will be implemented on schedule.

The Order has also been placed on the public record for 30 days for receipt of comments by interested persons, and comments received during this period will become part of the public record. Thereafter, the Commission will review the Order, and may determine, on the basis of the comments or otherwise, that the Order should be modified.(1)

The Commission anticipates that the Order, as issued, will resolve the competitive problems alleged in the Complaint. The purpose of this analysis is to invite public comment on the Order to aid the Commission in determining whether to modify the Order in any respect. This analysis is not intended to constitute an official interpretation of the Order, nor is it intended to modify the terms of the Order in any way.

Endnotes

1. If the respondents do not agree to such modifications, the Commission may (1) initiate a proceeding to reopen and modify the Order in accordance with Rule 3.72(b), 16 CFR § 3.72(b), or (2) commence a new administrative

proceeding by issuing an administrative complaint in accordance with Rule 3.11, 16 CFR § 3.11. See 16 CFR § 2.34(e)(2).

Exhibit E

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

----- X
In the Matter of)
)
Entergy Corporation,)
a corporation,)
) Docket No. C-3998
and)
)
Entergy-Koch, LP,)
A limited partnership.)
----- X

**AFFIDAVIT IN SUPPORT OF PETITION OF ENTERGY AND
ENTERGY-KOCH, LP TO REOPEN AND SET ASIDE ORDER**

John M. Adams, Jr., pursuant to 28 U.S.C. § 1746, declares:

1. I am Associate General Counsel of Entergy Services, Inc., a subsidiary of Entergy Corporation ("Entergy"), and have been employed in that capacity since January 2001.
2. I have read and am familiar with the Decision and Order dated January 31, 2001, issued by the Federal Traded Commission (the "Commission") in the above-captioned matter (the "Order").
3. I am familiar with the efforts of Entergy and Entergy-Koch, LP ("EKLP") to comply with the Order. I have coordinated the preparation of the compliance filings Entergy and EKLP have submitted to the Commission pursuant to the Order.
4. I am also familiar with the transaction pursuant to which EKLP sold the Gulf South Pipeline Company, LP ("Gulf South") to TGT Pipeline, LLC ("TGT").
5. The information in this affidavit is based on my personal knowledge and on information conveyed to me by management employees of Entergy and EKLP.

6. I affirm that to the best of my knowledge and belief, the facts and statements contained in Entergy's and EKLP's Petition to Reopen and Set Aside Order are true and correct.

7. On November 22, 2004, Entergy announced that EKLP entered into a definitive agreement to sell Gulf South to TGT (the "Transaction").

8. On November 23, 2004, Entergy and others filed their premerger notifications in accordance with the Hart-Scott-Rodino Act ("HSR Act") concerning the Transaction. Also on that date, Entergy, through counsel, notified the Commission of the Transaction pursuant to Paragraph IV of the Order.

9. On December 23, 2004, the HSR Act's waiting period expired. On December 29, 2004, the Transaction was consummated. *See* Loews Corporation News Release entitled, "Loews Corporation Completes Acquisition of Gulf South Pipeline, LP" and dated December 29, 2004, attached hereto at Tab 1. Since then, neither Entergy nor EKLP has owned any interest in Gulf South.

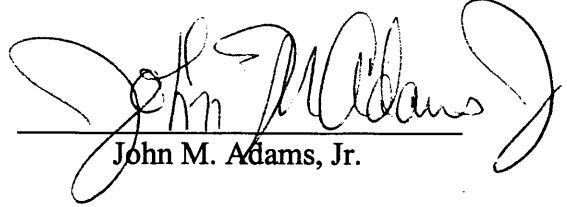
10. During the four years since the Commission issued the Order, Entergy and EKLP have expended considerable resources and changed their ordinary business practices to comply, and remain in compliance, with the terms of the Order. Accordingly, Entergy and EKLP have filed six compliance reports with the Commission, most recently on January 21, 2005.

11. Specifically, Entergy and EKLP hired at their expense a Commission-approved Implementation Trustee, who reviewed, and later certified, their efforts to establish and implement systems and procedures for making Entergy's procurement of natural gas supplies and transportation more transparent to market participants, and for creating and maintaining auditable records of its procurement activities. Among other things, Entergy instituted more formal record-keeping protocols for its natural gas procurement planning activities, developed requests for proposals ("RFPs") for procuring natural gas and transportation, and undertook affirmatively to identify and disseminate its RFPs to all potential suppliers of natural gas and transportation. In addition, both Entergy and EKLP established mechanisms by which Entergy's natural gas-related procurement needs were published on each company's website or electronic bulletin board. Neither Entergy nor EKLP would have incurred the initial and ongoing administrative costs of these systems and procedures but for the Order.

12. In addition, Entergy remains concerned that by mandating the widespread publication of its natural gas and transportation needs, the Order may actually weaken Entergy's bargaining position with suppliers and, consequently, may prevent Entergy from negotiating prices and other contract terms as favorable as it might absent the Order. Moreover, although Entergy does not believe and does not have evidence to suggest that supplier collusion has occurred in connection with its procurements of natural gas and transportation, Entergy remains concerned that the transparency mandated by the Order could facilitate collusive activity among potential suppliers.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


Executed on February 23, 2005



John M. Adams, Jr.

STATE OF LOUISIANA)
)
CITY OF NEW ORLEANS)

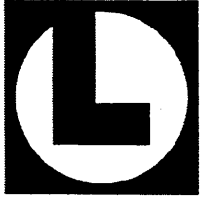
Sworn to and subscribed before me,
Notary Public, this 23rd day of
February, 2005, at
New Orleans, Louisiana.



Christopher T. Screen
Notary Public, State of Louisiana
My Commission expires at death.

CHRISTOPHER T. SCREEN
NOTARY PUBLIC (Bar # 11887)
For the State of Louisiana
Commission Issued For Life

Attachment 1



LOEWS
CORPORATION
NEWS RELEASE

Contact: Peter W. Keegan
Senior Vice President
(212) 521-2950

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FOR IMMEDIATE RELEASE

LOEWS CORPORATION COMPLETES ACQUISITION OF
GULF SOUTH PIPELINE, LP

NEW YORK, December 29, 2004 — Loews Corporation (NYSE:LTR) today announced that its wholly owned subsidiary, TGT Pipeline, LLC has completed its previously announced acquisition of Gulf South Pipeline, LP from Entergy-Koch, LP, a venture between Entergy Corporation (NYSE: ETR) and Koch Energy, Inc., a subsidiary of privately-owned Koch Industries, Inc. TGT Pipeline, LLC funded the \$1.136 billion purchase price with \$575 million of proceeds from an interim loan and the remaining approximately \$561 million from cash provided by Loews.

Gulf South Pipeline owns and operates an 8,000-mile interstate natural gas pipeline, gathering and storage system located in the U.S. Gulf Coast. Gulf South is headquartered in Houston with field offices located in Texas, Louisiana, Mississippi, Alabama and Florida. The Gulf South pipeline system is comprised of approximately 6,800 miles of interstate transmission pipeline, 1,200 miles of gathering pipeline and 68.5 billion cubic feet of working gas storage capacity.

Loews Corporation, a holding company, is one of the largest diversified financial corporations in the United States. Its principal subsidiaries are CNA Financial Corporation, Lorillard, Inc., Diamond Offshore Drilling, Inc., Texas Gas Transmission, LLC, Loews Hotels, Bulova Corporation and Gulf South Pipeline, LP.

###

Exhibit F

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

----- X		
In the Matter of)	
)	
Entergy Corporation,)	
a corporation,)	
)	Docket No. C-3998
and)	
)	
Entergy-Koch, LP,)	
A limited partnership.)	
----- X		

(PROPOSED) ORDER TO REOPEN AND SET ASIDE ORDER

On March 2, 2005, Entergy Corporation ("Entergy") and Entergy-Koch, LP ("EKLP") (together, the "Petitioners") filed a Petition to Reopen and Set Aside Order ("Petition"), pursuant to Section 5(b) of the Federal Trade Commission Act (the "FTC Act"), 15 U.S.C. § 45(b), and Section 2.51 of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.51. In its Petition, Entergy requests that the Commission reopen and set aside its January 31, 2001 Decision and Order in Docket No. C-3998 ("Order"), thus relieving Entergy and EKLP of all ongoing compliance obligations under the Order. The Petition was placed on the public record for thirty days pursuant to Section 2.51(c) of the Commission's Rules of Practice and Procedure. For the reasons stated below, the Commission has determined to grant the Petition.

The initial Complaint filed with the Order ("Complaint") stated that, due to Entergy's indirect 50% ownership interest in Gulf South Pipeline Company, LP ("Gulf South"), the Commission was concerned that Entergy would "have the incentive and ability...to pay EKLP prices for natural gas transportation above prevailing market prices

and to purchase a level of service above what was necessary for effective operation of Entergy's facilities."¹ Gulf South was and is a major supplier of natural gas transportation in Louisiana and Mississippi. The Commission was also concerned that "[p]rices of retail electricity are likely to rise as a result of Entergy passing on inflated costs for natural gas transportation to consumers and the difficulties that regulators will have in reviewing and challenging Entergy's purchase of natural gas transportation."² The Commission also alleged that prices for natural gas in New Orleans and Baton Rouge would likely increase as a result of Entergy passing along inflated costs for natural gas transportation to consumers.³

To address these concerns, Paragraph II of the Order established procedures for Entergy and EKLP to follow in connection with Entergy's procurement of natural gas transportation services ("Relevant Product") to carry natural gas to any electric power generating facility or local natural gas distribution facility that uses, distributes, stores, or transports natural gas, and is owned (partially or wholly, directly or indirectly), operated, or controlled by an Entergy subsidiary that is subject to a State Regulator's rules governing the recovery of the cost of buying the Relevant Product ("Covered Facility"). Paragraph II set forth separate, detailed procedures relating to Entergy's Long-Term Purchases, Short-Term Purchase and Daily Purchases of the Relevant Product. Entergy and EKLP state that but for the Order they would not have adopted the procedures required by Paragraph II of the Order.

¹ Complaint ¶ 21

² Complaint ¶ 29

³ Complaint ¶ 35.

Paragraph II of the Order was intended to "create a competitive, transparent process that will make it easier for regulators to detect whether Entergy purchased gas supplies...at inflated prices or a level of service that is above that necessary for effective operation," in the wake of a joint venture that gave Entergy an indirect 50% ownership interest in Gulf South.⁴ The Order is scheduled to expire, pursuant to Paragraph VII of the Order, on January 31, 2007.

The Petitioners make their request to reopen and set aside the Order under Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 2.51(b) of the Commission's Rules of Practice, 16 C.F.R. § 2.51(b). The FTC Act and the Commission's Rules of Practice provide that the Commission shall reopen an order to consider whether it should be modified if the Petitioner makes "a satisfactory showing that changed conditions of law or fact require the rule or order to be altered, modified, or set aside ... or that the public interest so requires."⁵ With regard to changed conditions of law or fact, a "satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition."⁶ To obtain a modification based on the public interest standard, the Commission has stated:

[A] "satisfactory showing" requires, with respect to "public interest" requests, that the requester make a prima facie showing of a legitimate

⁴ Complaint ¶ 19

⁵ 16 C.F.R. §2.51(b).

⁶ *In re Eli Lilly and Company*, Docket No. C-3594, Order Reopening and Setting Aside Order (May 13, 1999), at 2, *citing* Rep. No. 96-500, 96th Cong., 1st Sess. 9 (1979) and *Louisiana-Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4 (unpublished).

"public interest" reason or reasons justifying relief.... [T]his showing requires the requester to demonstrate, for example, that there is a more effective or efficient way of achieving the purpose of the order....⁷

In addition, the Petitioners have the burden of establishing in detail why an order should be set aside. The Commission "may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order."⁸ After determining that a petitioner has made the necessary showing, the Commission must reopen the order to consider whether modification is required. A petitioner's burden is not a light one in view of the public interest in repose and the finality of Commission orders.⁹

The Petitioners believe that both changed facts and the public interest justify reopening and setting aside the Order. According to the Petition, EKLP sold Gulf South to TGT Pipeline, LLC ("TGT"), a subsidiary of Loews Corporation, on December 29, 2004. That sale eliminated Entergy's indirect 50% ownership interest in Gulf South. The Petitioners believe that with this ownership change, the obligations imposed on Entergy and EKLP are no longer justified and serve no useful purpose. The Petitioners also believe that because Entergy no longer has an ownership interest in Gulf South, Entergy no longer has any incentive to pay inflated natural gas transportation prices to Gulf South and other pipelines. As a result, the Petitioners believe that there is no longer

⁷ 65 Fed. Reg. 50637 (August 21, 2000).

⁸ S. Rep. No. 96-500, 96th Cong., 1st Sess. 9-10 (1979); *see also* Rule 2.51(b) (requiring affidavits in support of petitions to reopen and modify).

⁹ *See Federated Department Stores, Inc. v. Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

any justification for continuing to require Entergy and EKLP to bear the costs and administrative burdens of complying with the Order.

In addition, the Petitioners believe that the Order's transparency-enhancing procedures could enable participants in the marketplace to use the information about Entergy's procurement intentions to engage in anticompetitive behavior that could disadvantage Entergy and consequently harm Entergy's customers. The Petitioners argue that the competitive risks associated with greater transparency can no longer be justified by its presumed benefits now that Entergy no longer indirectly owns an interest in Gulf South and therefore no longer has any incentive to pay inflated prices to Gulf South and other pipelines.

Upon consideration of the Petition and other information, the Commission finds, pursuant to Section 2.51 of the Commission's Rules of Practice and Procedure, that changed conditions of fact warrant reopening and setting aside the Order. The Commission finds that the Petitioners have shown that the fundamental factual premise of the Order – *i.e.*, Entergy's indirect 50% ownership interest in Gulf South – is no longer present. The Commission finds that the Petitioners have presented sufficient evidence of the sale of Gulf South by EKLP to TGT and, consequently, that Entergy no longer has any ownership interest in or control over Gulf South. Given that the Order was meant to address competitive concerns arising from Entergy's indirect 50% ownership in Gulf South, the Commission finds that as a result of the sale of Gulf South, Entergy no longer has an incentive to pay inflated natural gas transportation prices to Gulf South and other natural gas pipelines. Thus, the Commission finds that because of this substantial change in the basis of the Order, the Order should be set aside.

In addition, the Commission finds that reopening and setting aside the Order is in the public interest. The Order was intended to protect competition in the natural gas transportation market, and it sought to achieve that objective by requiring Entergy and Gulf South to change certain of their business practices to make Entergy's procurement of natural gas and transportation more transparent to participants in the marketplace and to regulators. The Commission finds that the anticompetitive risks associated with such transparency are no longer justified in the absence of an Entergy incentive to pay inflated prices for natural gas transportation to Gulf South and other pipelines.

Moreover, the Commission finds that the elimination of unnecessary regulatory costs and burdens is an important public interest. Given that the fundamental factual premise of the Order is no longer present, the Commission finds that it is in the public interest to relieve the Petitioners from the ongoing costs and administrative burdens of complying with the Order.

Accordingly, IT IS ORDERED that this matter be, and it hereby is, reopened and that the Commission's Order issued on January 31, 2001, be and it hereby is, set aside as of the effective date of this Order.

By the Commission

Donald S. Clark
Secretary

ISSUED: