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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Timothy J. Muris, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

In the Matter of

SOUTHERN UNION COMPANY,
a corporation,

and

CMS ENERGY CORPORATION,
a corporation.

Docket No. C-4087

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("FTC" or "Commission"), having reason to believe that Respondent Southern Union Company ("Southern Union" or "SU") and Respondent CMS Energy Corporation ("CMS") have entered into an agreement whereby Southern Union proposes to acquire all of the issued and outstanding shares of Panhandle Eastern Pipeline Company ("Panhandle") from CMS Gas Transmission Company, a wholly-owned subsidiary of CMS, that such an agreement violates 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 it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENTS

Southern Union Company

1. Respondent Southern Union is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at One PEI Center, Wilkes-Barre, Pennsylvania 18711.

2. Respondent Southern Union is, and at all times relevant herein has been, engaged either directly or through affiliates in the distribution and sale of natural gas to residential, commercial and industrial customers located in certain states, including Missouri, Pennsylvania, Rhode Island and Massachusetts.

3. Pursuant to an agreement executed November 20, 2002, which continued until it was terminated on May 12, 2003 in order to resolve competitive issues arising from this transaction, respondent Southern Union's subsidiary, Energy Worx, Inc. ("Energy Worx"), served as the operator and manager of the Central pipeline. The Central pipeline, which transports natural gas to customers in certain Midwestern states, including Kansas and Missouri, is owned by American International Group, Inc. ("AIG") through its affiliate Southern Star Central Corp. ("Southern Star").

4. Respondent Southern Union 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 affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

CMS Energy Corporation

5. Respondent CMS is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located at Fairlane Plaza South, 330 Town Center Drive, Suite 1100, Dearborn, Michigan 48126.

6. Respondent CMS is, and at all times relevant herein has been, engaged either directly or through affiliates in the business of oil and gas exploration, natural gas transportation, liquefied natural gas services, independent power production, gas and electricity distribution, and marketing and management services.

7. Panhandle Eastern Pipeline Company ("Panhandle"), a subsidiary of CMS, owns and operates the Panhandle pipeline, which transports natural gas to customers in certain Midwestern states, including Kansas and Missouri.

8. Respondent CMS 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 affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED TRANSACTION

9. Pursuant to an agreement dated December 21, 2002, and a letter of understanding dated December 20, 2002, Southern Union and affiliates of AIG agreed to acquire all of the capital stock of Panhandle from CMS. The agreement provided that Southern Union would own approximately 77.9%, and affiliates of AIG would own approximately 22.1%, of the equity interest in Panhandle. On May 12, 2003, in order to resolve competitive issues arising from this transaction, Southern Union, Southern Union Panhandle Corp., and CMS Gas Transmission Company entered into an amended and restated stock purchase agreement pursuant to which Southern Union Panhandle Corp., a wholly-owned subsidiary of Southern Union, intends to purchase all of the capital stock of Panhandle from CMS Gas Transmission Company, a wholly-owned subsidiary of CMS. AIG is not a party to the revised transaction and will have no ownership interest in Panhandle. The total value of the transaction is approximately $1.8 billion.

III. TRADE AND COMMERCE

A. Relevant Product Market

10. A relevant line of commerce, or product market, in which to analyze the effects of the proposed acquisition is the transportation of natural gas by pipeline. The only way to economically transport commercial quantities of natural gas over significant distances is through large diameter, high pressure pipelines. Buyers of natural gas transportation services could not and would not switch to other means of transportation, or to alternative fuels, if the cost of pipeline transportation of natural gas were to increase by 5% to 10%.

B. Relevant Geographic Market

11. A relevant section of the country, or geographic market, in which to analyze the proposed acquisition is the Kansas City area, consisting of Cass, Henry, Jackson, Johnson, Lafayette, Pettis and Saline Counties in Missouri, and Anderson, Butler, Chase, Coffey, Franklin, Johnson, Lyon, Marion, Miami and Osage Counties in Kansas. Buyers of natural gas in this geographic market can receive natural gas only from pipelines that travel through or terminate in that geographic market, and cannot economically access natural gas pipelines outside that area.

C. Market Structure

12. Pursuant to a Management Services Agreement with an affiliate of AIG, Southern Union's subsidiary, Energy Worx, served as the operator and manager of the Central pipeline until the parties to that Management Services Agreement terminated it on May 12, 2003, in order to resolve competitive issues arising from this transaction. The Central pipeline transports a

significant portion of the natural gas delivered to the relevant geographic market. Pursuant to the Management Services Agreement, Southern Union had managerial and operational control over the business of the Central pipeline, access to confidential competitive information about the Central pipeline, and a financial interest in the Central pipeline. The Management Services Agreement also contemplated that Southern Union would have an equity position in the Central pipeline.

13. The only pipelines that transport natural gas to the relevant geographic market are the Panhandle pipeline, the Central pipeline, and two smaller pipelines that service only part of the western portion of the relevant geographic market. These other two pipelines could not act as a competitive constraint on Central or Panhandle because of operational limitations, capacity constraints, distance factors, and related issues. For many buyers of natural gas transportation services in the relevant geographic market, Central and Panhandle are the only viable alternatives.

14. The market for the pipeline transportation of natural gas into the relevant geographic market is highly concentrated and would become significantly more concentrated as a result of the proposed acquisition. As originally proposed, common ownership interest and/or common management and control would exist between the only two alternatives for the transportation of natural gas for many buyers in the relevant geographic market.

D. Entry Conditions

15. Entry into the relevant line of commerce in the relevant section of the country is difficult and would not be timely, likely or sufficient to prevent anticompetitive effects that are likely to result from the proposed acquisition. Building a new pipeline is capital intensive, is subject to significant regulatory constraints, and would require more than two years to accomplish. As a result, new entry would not be able to prevent a 5-10% increase in the price of pipeline transportation of natural gas.

IV. EFFECTS OF THE TRANSACTION

16. The effect of the proposed acquisition, if consummated, may be substantially to lessen competition in the transportation of natural gas by pipeline into the relevant geographic market, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

    a. by eliminating direct competition between the Panhandle pipeline and the Central pipeline;

b. by placing the Panhandle pipeline and the Central pipeline under common ownership and/or common management and control;

c. by increasing the likelihood that unilateral market power would be exercised in the relevant geographic market; and

d. by increasing the likelihood of, or facilitating, collusion or coordinated interaction in the relevant geographic market,

each of which increases the likelihood that the price of transporting natural gas by pipeline will increase in the relevant geographic market.

V. VIOLATIONS CHARGED

17. The proposed acquisition violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and would, if consummated, 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this sixteenth day of July, 2003, issues its complaint against said Respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL: