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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Robert Pitofsky, Chairman**
Mary L. Azcuenaga
Janet D. Steiger
Roscoe B. Starek, III
Christine A. Varney

In the Matter of

PHILLIPS PETROLEUM COMPANY,
a corporation.

Docket No. C-3728
DECISION AND ORDER

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Phillips Petroleum Company ("Phillips"), through its subsidiary GPM Gas Corporation ("GPM"), of certain gas-gathering assets of ANR Pipeline Company, a subsidiary of the Coastal Corporation ("Coastal"), and it now appearing that Phillips, hereinafter sometimes referred to as "Respondent," having been furnished with a copy of a draft complaint that the Bureau of Competition proposed to present to the Commission for its consideration, and which, if issued by the Commission, would charge respondents with violations of the Clayton Act and Federal Trade Commission Act; and

Respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Phillips Petroleum Company 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 Phillips Building, Bartlesville, Oklahoma 74004.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, 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. “Phillips” or "Respondent" means Phillips Petroleum Company, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns, its subsidiaries, divisions, groups and affiliates controlled by Phillips, and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

B. “Coastal” means The Coastal Corporation, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns, its subsidiaries, divisions, groups and affiliates controlled by Coastal, and the respective directors, officers, employees, agents and representatives, successors, and assigns of each.

C. The “Acquisition” means the proposed acquisition by GPM Gas Corporation, a subsidiary of Phillips, of certain gas-gathering assets of ANR Pipeline Co., a subsidiary of Coastal, pursuant to the purchase agreement executed on January 12, 1996, by and between Phillips and Coastal as subsequently modified and amended.

D. “Gas Gathering” means pipeline transportation, for oneself or other persons, of natural gas over any part or all of the distance between a well and a gas transmission pipeline or gas processing plant.

E. “Person” means any natural person, partnership, corporation, company, association, trust, joint venture or other business or legal entity, including any governmental agency.

F. “Related Person” means a person controlled by, controlling, or under the common control with, another person.

G. “Relevant Geographic Area” means all portions of Harper County, Oklahoma, within fifteen miles of the Kansas border; all portions of Beaver County, Oklahoma, within twenty miles of the Harper County border; all portions of Ellis County, Oklahoma, within eighteen miles of the northwest corner of Ellis County; and Townships T23N/R14W, T23N/R15W, T23N/ R16W, T23N/R17W, T23N/R18W, T22 N/R16W, T22N/R17W, T22N/R18W, T21N/R17W, and T21N/R18W of Woodward, Major and Woods Counties, Oklahoma.

H. “Schedule A assets” means the whole and any part of the assets listed in Schedule A of this Order.

I. “Commission” means the Federal Trade Commission.

II

IT IS FURTHER ORDERED that:

A. Following completion of the Acquisition, Phillips shall divest the Schedule A assets, absolutely and in good faith, at no minimum price, consistent with the provisions of this Order.

B. The divestiture shall be made only to an acquirer or acquirers that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

C. Pending divestiture of the Schedule A assets, Philips shall take such actions as are necessary to maintain the viability and marketability of the Schedule A assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Schedule A assets except for ordinary wear and tear.

D. Phillips shall comply with the Asset Maintenance Agreement, attached hereto and made a part hereof as Appendix I.

E. The purpose of the divestiture is to ensure the continued use of the Schedule A assets in the same type of business in which the Schedule A assets are used at the time of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

III

IT IS FURTHER ORDERED that:

A. If Phillips has not divested the Schedule A assets consistent with Paragraph II of this Order by the later of April 30, 1997, or thirty days after Phillips consummates the Acquisition, the Commission may appoint a trustee to divest the Schedule A assets.

B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Phillips shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph III shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Phillips to comply with this Order.

C. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A., Phillips shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Phillips, which consent shall not be unreasonably withheld. The trustee shall preferably be a person with experience and expertise in acquisitions and divestitures of gas gathering assets. If Phillips has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Phillips of the identity of any proposed trustee, Phillips shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Schedule A assets. The trustee may, in his or her discretion, or at the direction of the Commission, effect such arrangements and divest (a) any additional gas gathering assets (including, but not limited to, gas gathering lines, compressors, surface equipment, and gas purchase and gathering contracts) of the Respondent located in the Relevant Geographic Area and (b)

any additional assets necessary to connect the divested assets to the buyer’s existing systems or to a third-party transmission line. The trustee may select such assets pursuant to clauses (a) and (b) of this paragraph to assure the marketability, viability, and competitiveness of the Schedule A assets so as to accomplish expeditiously the remedial purposes of this order.

3. Within ten (10) days after appointment of the trustee, Phillips shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III.C.3. to accomplish the divestiture(s), which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. Phillips shall provide the trustee full and complete access to the personnel, books, records and facilities related to the Schedule A assets, or to any other relevant information, as the trustee may request. Phillips shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Phillips shall take no action to interfere with or impede the trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by Phillips shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall make reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Phillips' absolute and unconditional obligation to divest at no minimum price. The divestiture(s) shall be made to an acquirer or acquirers that receive the prior approval of the Commission, provided, however, if the trustee receives bona fide offers for any of the assets to be divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest that particular assets to the acquiring entity or entities selected by Phillips from among those approved by the Commission.

7. The trustee shall serve at the cost and expense of Phillips, without bond or other security unless paid for by Phillips, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Phillips, such consultants, accountants, attorneys, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Phillips, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Schedule A assets.

8. Phillips shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this Order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional Orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall have no obligation to operate or maintain the Schedule A assets.

12. The trustee shall report in writing to Phillips and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV

IT IS FURTHER ORDERED that, for a period of ten (10) years from the date this Order becomes final, Phillips shall not, without prior notification to the Commission, directly or indirectly:

A. Acquire the Schedule A assets after their divestiture, or any assets the trustee may divest pursuant to paragraph III.C.2 of this order.

B. Acquire any stock, share capital, equity, or other interest in any person engaged in gas gathering within the Relevant Geographic Area at any time within the two years preceding such acquisition, provided, however, that an acquisition of securities will be exempt from the requirements of this paragraph (IV.B) if after the acquisition Phillips will hold cumulatively no more than two (2) percent of the outstanding shares of any class of security of such person; and provided further, that this Paragraph (IV.B) shall not apply to the acquisition of any interest in a person that is not at the time of the acquisition engaged in gas gathering within the Relevant Geographic Area due to the sale within the preceding two years of all assets used for gas gathering within the Relevant Geographic Area to another party who intended to operate said assets for gas gathering within the Relevant Geographic Area; or

C. Enter into any agreements or other arrangements with any person or with two or more related persons to obtain, within any 18 month period, direct or indirect ownership, management, or control of more than five (5) miles of pipeline previously used for gas gathering and suitable for use for gas gathering within the Relevant Geographic Area.

V

IT IS FURTHER ORDERED that the prior notifications required by Paragraph IV of this Order shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as “the Notification”), and shall be prepared and transmitted in accordance with the requirements of Part 803, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Phillips. In lieu of furnishing (1) documents filed with the Securities and Exchange Commission, (2) annual reports, (3) annual audit reports, (4) regularly prepared balance sheets, or (5) Standard Industrial Code (SIC) information in response to certain items in the Appendix to Part 803 of Title 16 of the Code of Federal

Regulations, Phillips shall provide a map showing the location of the pipeline whose acquisition is proposed and other pipelines used for gas gathering in the Relevant Geographic Area and a statement showing, for the most recent 12 month period for which volume information is available, the quantity of gas that flowed through pipeline whose acquisition is proposed. Respondent shall provide the Notification to the Commission at least thirty days prior to consummating any such transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information, Respondent shall not consummate the transaction until twenty days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

Provided, however, that prior notification shall not be required by Paragraph IV of this Order for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

VI

IT IS FURTHER ORDERED that:

A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until Phillips has fully complied with the provisions of Paragraphs II or III of this Order, Phillips shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II and III of this Order. Phillips shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of the Order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. Phillips shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order is entered, and at such other times as the Commission may require, Phillips shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order.

VII

IT IS FURTHER ORDERED that Phillips shall notify the Commission at least thirty (30) days prior to any proposed change in Phillips, such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of the Order.

VIII

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Respondent, Respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent relating to any matters contained in this Order; and

B. Without restraint or interference from it, to interview officers, directors, or employees of Respondent, who may have counsel present, relating to any matters contained in this Order.

IX

IT IS FURTHER ORDERED that this Order shall terminate on March 28, 2007.

By the Commission.

Donald S. Clark
Secretary

SEAL:

ISSUED: March 28, 1997
[Schedule A attached to paper copies of Decision and Order, but not available in electronic form.]

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of **PHILLIPS PETROLEUM COMPANY,** a corporation,	Asset Maintenance Agreement

This Asset Maintenance Agreement ("Agreement") is by and between Phillips Petroleum Company ("Phillips"), 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 at Phillips Building, Bartlesville, Oklahoma 74004; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, et seq. (collectively "the Parties").

PREMISES

WHEREAS, Phillips through its subsidiary GPM Gas Corporation ("GPM"), agreed to acquire certain gas-gathering assets of ANR Pipeline Company ("ANR"), a subsidiary of the Coastal Corporation ("Coastal"), pursuant to an agreement dated January 12, 1996, hereinafter "Acquisition"; and

WHEREAS, the Commission is investigating the Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

WHEREAS, if the Commission accepts the Agreement Containing Consent Order attached hereto, the Commission is required to place it on the public record for a period of sixty (60) days for public comment and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules;

WHEREAS, Phillips and Coastal may consummate the acquisition upon provisional acceptance by the Commission of the attached Agreement Containing Consent Order; and

WHEREAS, the Commission is concerned that if an agreement is not reached preserving the status quo ante of the assets to be divested pursuant to the attached Agreement Containing Consent Order ("the Schedule A assets") during the period prior to their divestitures, that any divestiture resulting from any administrative proceeding challenging the legality of the Acquisition might not be possible, or might produce a less than effective remedy; and

WHEREAS, the Commission is concerned that prior to divestiture to the acquirer, it may be necessary to preserve the continued viability and competitiveness of the Schedule A assets; and

WHEREAS, the purpose of this Agreement and of the Consent Order is to preserve the Schedule A assets pending the divestiture to the acquirer approved by the Federal Trade Commission under the terms of the Order, in order to remedy any anticompetitive effects of the Acquisition; and

WHEREAS, Phillips entering into this Agreement shall in no way be construed as an admission by Phillips that the Acquisition is illegal; and

WHEREAS, Phillips understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws, or the Federal Trade Commission Act by reason of anything contained in this Agreement;

NOW, THEREFORE, in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from the parties with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order annexed hereto and made a part thereof, and, in the event the required divestiture is not accomplished, to appoint a trustee to seek divestiture of the Schedule A assets, the Parties agree as follows:

TERMS OF AGREEMENT

10. Phillips agrees to execute the attached Agreement Containing Consent Order and, upon its issuance, to be bound by the Consent Order. The Parties further agree that each term defined in the Consent Order shall have the same meaning in this Agreement.

11. Unless the Commission brings an action to seek to enjoin the proposed Acquisition pursuant to Section 13(b) of the Federal Trade Commission Act, 15. U.S.C. s 53(b), and obtains a temporary restraining order or preliminary injunction blocking the proposed Acquisition, Phillips and Coastal will be free to close the Acquisition any time after the Commission has provisionally accepted the Agreement Containing Consent Order.

12. Phillips agrees that from the date this Agreement is accepted until the earlier of the dates listed in subparagraphs 3.a. - 3.b., it will comply with the provisions of this Agreement:

a. three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or

b. on the day the divestiture set out in the Consent Order has been completed.

13. From the later of the date of this Agreement or from the date of their acquisition, until the divestiture set out in the Consent Order has been completed, Phillips shall maintain the viability, competitiveness and marketability of the Schedule A assets and shall not cause the wasting or deterioration of the Schedule A assets, nor shall Phillips encumber or otherwise impair their viability.

14.a. From the time that Phillips acquires the Schedule A assets that are currently owned by ANR until their divestiture has been completed in pertinent part, Phillips will offer to gather gas on those Schedule A assets on the same terms and conditions offered by ANR on the date of their transfer.

b. From the time that this Agreement is accepted by the Commission until Phillips divests in pertinent part the Schedule A assets that it owns as of the date of the Agreement, Phillips will continue to purchase or gather gas from wells connected to those assets on the same terms and conditions in effect as of the date of this Agreement.

c. If a producer, operator, or shipper executes a waiver of its rights under this paragraph, Phillips may contract on such other terms and conditions as it may deem appropriate.

6. Should the Commission seek in any proceeding to compel Phillips to divest itself of the assets to be acquired from Coastal or to seek any other injunctive or equitable relief, Phillips shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has not sought to enjoin the Acquisition. Phillips also waives all rights to contest the validity of this Agreement.

7. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to Phillips and to their principal offices, Phillips shall permit any duly authorized representative or representatives of the Commission:

a. access during the office hours of Phillips, in the presence of counsel, to inspect and copy all books; ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Phillips relating to compliance with this Agreement; and

b. upon five (5) days' notice to Phillips and without restraint or interference from them, to interview officers or employees of Phillips, who may have counsel present, regarding any such matters.

8. This Agreement shall not be binding until approved by the Commission.

Dated: December 27, 1996

PHILLIPS PETROLEUM COMPANY, a corporation	FEDERAL TRADE COMMISSION
_______________________________	_______________________________
James L. Gallogly Vice President, North America Production Division, Phillips Petroleum Company	Stephen G. Calkins General Counsel FEDERAL TRADE COMMISSION