

IN THE UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

_____)	
In the Matter of)	
)	
ARCH COAL, INC.,)	
a corporation,)	
)	Docket No. 9316
NEW VULCAN COAL HOLDINGS, LLC,)	
a limited liability company,)	
)	
and)	
)	
TRITON COAL COMPANY, LLC,)	
a limited liability company.)	
_____)	

**ANSWER OF DEFENDANTS NEW VULCAN COAL HOLDINGS, LLC AND TRITON
COAL COMPANY, LLC. TO THE FEDERAL TRADE COMMISSION’S
ADMINISTRATIVE COMPLAINT**

Defendants New Vulcan Coal Holdings, LLC and Triton Coal Company, LLC (collectively, “Triton”), by counsel, answer the Administrative Complaint (“Complaint”) filed by the Federal Trade Commission (“FTC”).

RESPONDENT ARCH

1. The allegations contained in Paragraph 1 relate to a defendant other than Triton, and Triton is without knowledge or information sufficient to form a belief as to the truth of these allegations. The allegations are therefore denied.

2. The allegations contained in Paragraph 2 relate to a defendant other than Triton, and Triton is without knowledge or information sufficient to form a belief as to the truth of these allegations. The allegations are therefore denied.

RESPONDENTS NEW VULCAN AND TRITON

3. Triton denies the allegations contained in the first sentence, and admits the allegations contained in the second sentence of Paragraph 3.

4. Triton admits that Triton Coal Company, LLC is a limited liability company and that its principal place of business of is 113 South Gillette Ave., Suite 203, Gillette, Wyoming 82716. In all other respects, the allegations contained in Paragraph 4 are denied.

5. Triton admits that Triton Coal Company, LLC mines coal in the SPRB. In all other respects, the allegations contained in Paragraph 5 are denied.

JURISDICTION

6. The allegations contained in Paragraph 6 are legal conclusions to which no response is required.

7. The allegations contained in Paragraph 7 are legal conclusions to which no response is required.

THE ACQUISITION AND THE PROPOSED SALE OF BUCKSKIN

8. Triton admits the allegations contained in Paragraph 8. Triton further states that, pursuant to an Asset Purchase Agreement, dated as of January 30, 2004 between Peter Kiewit Sons', Inc. ("Kiewit") and Arch, Arch agreed to divest Triton's Buckskin mine and related assets to Kiewit concurrent with Arch's acquisition of the assets of Triton Coal Company, LLC.

9. Triton admits that, pursuant to an Asset Purchase Agreement, dated as of January 30, 2004 between Kiewit and Arch, Arch agreed to divest Triton's Buckskin mine and related assets to Kiewit concurrent with Arch's acquisition of the assets of Triton. In all other respects, the allegations contained in Paragraph 9 are denied.

10. The allegations contained in Paragraph 10 are legal conclusions to which no response is required.

11. Triton admits that, on March 30, 2004, it was informed by the FTC that, over the dissent of Commissioner Leary, the FTC Commissioners had voted to commence a preliminary injunction action in federal district court.

RELEVANT MARKET

12. Triton denies the allegations contained in Paragraph 12.

13. Triton denies the allegations contained in Paragraph 13.

GEOGRAPHIC MARKET

14. Triton denies the allegations contained in Paragraph 14.

COAL FROM THE SPRB

15. Triton admits that coal is a leading energy source in the United States, and further admits that coal-fired generating plants account for a significant percentage of coal consumption and electric-power generation in the United States, but otherwise denies the allegations contained in the first and second sentences of Paragraph 15. The allegations contained in the third sentence of Paragraph 15 are admitted. Triton further admits that coal produced in the Powder River Basin ("PRB"), including the SPRB, like coal produced in other regions

throughout the United States, is burned by electric generators. The approximations contained in the last sentence of Paragraph 15 are just that, approximations, and require neither an admission nor a denial.

16. Triton admits that the PRB, including SPRB, is a region in the United States that serves as a source of low sulfur coal for consumers in the United States, and states that such coal typically has an energy content along a spectrum that includes approximately 8100 and 8900 BTU per pound, which complies with current sulfur emission limits imposed on coal-fired generators by the 1990 Clean Air Act. Triton further admits that coal mined in the SPRB is low in ash and sodium content. In all other respects, the allegations contained in Paragraph 16 are denied.

THE THREE TIERS IN THE SPRB

17. Triton denies the allegations contained in the first sentence of Paragraph 17. Triton admits that the allegations contained in the second sentence are generally correct.

18. Triton denies the allegations contained in Paragraph 18.

19. Triton admits that mines north, south, and east of Gillette, Wyoming, produce 8400 BTU coal, and that some of these mines to the south of Gillette, Wyoming, also produce 8800 BTU coal. In all other respects, the allegations in Paragraph 19 are denied.

20. Triton denies the allegations contained in Paragraph 20.

21. Triton admits that Arch, Peabody, Kennecott, and Triton are four of the largest coal producers in the SPRB. All operate mines in the southern portion of the PRB, as well as elsewhere in the PRB. Arch's Black Thunder mine and Triton's North Rochelle mine are both located in the southern portion of the PRB. Arch's Coal Creek mine and Triton's Buckskin mine are located near Gillette, Wyoming. Triton further admits that R.A.G. is another significant producer of coal that has mines located in the PRB, including SPRB. In all other respects, the allegations in Paragraph 21 are denied.

USE OF SPRB COAL

22. Triton denies the allegations contained in Paragraph 22.

23. Triton denies the allegations contained in Paragraph 23.

24. Triton denies the allegations contained in Paragraph 24.

25. Triton admits that coal mined in the PRB, including SPRB, is available to customers in states nationwide, but otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 25, and therefore denies them.

26. Triton admits the allegations contained in the second sentence of Paragraph 26. In all other respects, the allegations contained in Paragraph 26 are denied.

27. Triton denies the allegations contained in Paragraph 27.

MARKET STRUCTURE

28. Triton denies the allegations contained in Paragraph 28.

29. The allegations contained in Paragraph 29 relate to a defendant other than Triton, and Triton is without knowledge or information sufficient to form a belief as to the truth of these allegations. The allegations are therefore denied.

30. Triton admits that Triton Coal Company, LLC mines coal in the SPRB. In all other respects, the allegations contained in Paragraph 30 are denied.

31. Triton lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 31, and therefore denies them.

32. Triton lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 32, and therefore denies them.

33. Triton denies the allegations contained in Paragraph 33.

34. Triton denies the allegations contained in Paragraph 34.

THE SPRB COAL MARKET IS SUSCEPTIBLE TO COORDINATION

35. Triton denies the allegations contained in Paragraph 35.

36. Triton denies the allegations contained in Paragraph 36 insofar as they have reference to Triton. In all other respects, Triton lacks knowledge or information sufficient to form a belief as to said allegations, and therefore denies them.

37. Triton denies the allegations contained in Paragraph 37.

38. Triton denies the allegations contained in Paragraph 38.

39. Triton denies the general allegations contained in Paragraph 39 and each of its subparts insofar as they have reference to Triton. In all other respects, Triton lacks knowledge or information sufficient to form a belief as to said allegations, and therefore denies them.

40. Triton denies the general allegations contained in Paragraph 40 and each of its subparts insofar as they have reference to Triton. In all other respects, Triton lacks knowledge or information sufficient to form a belief as to said allegations, and therefore denies them.

**PRIOR TO THE PROPOSED ACQUISITION, TRITON'S NORTH
ROCHELLE MINE HAS BEEN THE PRINCIPAL SOURCE OF OUTPUT
EXPANSION IN THE SPRB DURING THE PRECEDING FIVE YEARS**

41. Triton admits there has been consistent and substantial expansion of output by coal producers with mines in the PRB, including SPRB, since 1998, but otherwise lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 41, and therefore denies them.

42. Triton admits that EBITDA for Triton Coal Company, LLC in 2002 was in excess of \$50 million. In all other respects, the allegations contained in Paragraph 42 are denied.

43. Triton lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 43, and therefore denies them.

ANTICOMPETITIVE EFFECTS OF THE ACQUISITION

44. Triton denies the allegations contained in Paragraph 44.

45. Triton denies the allegations contained in Paragraph 45.

46. Triton denies the allegations contained in Paragraph 46.

47. Triton denies the allegations contained in Paragraph 47 in their entirety, including the allegations contained in the subparts thereof.

ENTRY CONDITIONS

48. Triton denies the allegations contained in Paragraph 48.

VIOLATIONS CHARGED

COUNT I – ILLEGAL ACQUISITION

49. Except as where specifically admitted above, the allegations contained in the Complaint are denied.

50. Triton denies the allegations contained in Paragraph 50.

COUNT II – ILLEGAL ACQUISITION AGREEMENT

51. Except as where specifically admitted above, the allegations contained in the Complaint are denied.

52. Triton denies the allegations contained in Paragraph 52.

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The contemplated relief would not be in the public interest.

THIRD DEFENSE

The Transactions will result in substantial merger-specific efficiencies.

OTHER DEFENSES

Triton reserves the right to assert other defenses as discovery proceeds.

WHEREFORE, Triton respectfully requests that the Court (i) deny the FTC's contemplated relief, (ii) dismiss the Complaint in its entirety with prejudice, (iii) award Triton its costs of suit, including attorneys' fees, and (iv) award such other and further relief as the Court may deem proper.

Respectfully submitted,

Dated: April 28, 2004

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CERTIFICATE OF SERVICE

I HEREBY certify that copies of the foregoing Answer of Defendants New Vulcan Coal Holdings, LLC and Triton Coal Company, LLC were served on the following persons this 28th day of April, 2004:

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