

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States of America v. Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, George H. Howard, Philip G. Gossler, Charles A. Munroe, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr., Burt R. Bay and John H. Hillman, Jr., U.S. District Court, D. Delaware, 1932-1939 Trade Cases ¶55,099, (Jan. 29, 1936)

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United States of America v. Columbia Gas & Electric Corporation, Columbia Oil & Gasoline Corporation, George H. Howard, Philip G. Gossler, Charles A. Munroe, Thomas R. Weymouth, Thomas B. Gregory, Edward Reynolds, Jr., Burt R. Bay and John H. Hillman, Jr.

1932-1939 Trade Cases ¶55,099. U.S. District Court, D. Delaware. January 29, 1936

A consent decree enjoins defendants from interfering with the production, transportation, sale or delivery of gas, and from holding stock in a certain gas corporation in contravention to the Anti-Trust laws, and one corporation is ordered to divest itself of stock in another.

Decree

This cause coming on to be heard this 29th day of January, 1936, and the several defendants having accepted service of process and having appeared and filed their answers to the Amended and Supplemental Petition herein, which latter has superseded the original Petition and is hereinafter referred to as the Petition;

And the petitioner and the defendants having filed a stipulation with the Clerk of the Court wherein and whereby they consent to the making and entering of this decree;

And it appearing that the petitioner alleges that the defendant Columbia Gas & Electric Corporation, through ownership by its affiliate Columbia Oil & Gasoline Corporation of various securities of Panhandle Eastern Pipe Line Company and otherwise, has interfered with, dominated and controlled the management and operation of said Panhandle Eastern Pipe Line Company with the purpose and effect of preventing competition, actual and potential, between said Panhandle Eastern Pipe Line Company and said Columbia Gas & Electric Corporation, and of monopolizing and attempting to monopolize interstate trade and commerce in natural gas in certain sections of the United States;

And it further appearing from said stipulation that the petitioner and the defendants have agreed that provision against domination or control, direct or indirect, in the affairs of Panhandle Eastern Pipe Line Company by the defendant Columbia Gas & Electric Corporation and the maintenance of said Panhandle. Eastern Pipe Line Company in a position of free and independent action in the production, transmission, sale and distribution of natural gas in competition with others constitutes the proper basis for the entry of this decree;

Now, Therefore, without taking any testimony or evidence and in accordance with such stipulation, it is hereby ordered, adjudged and decreed as follows:

I. That the Court has jurisdiction of the subject matter hereof and of all the parties hereto, with full power and authority to enter this decree; and that the petition states a cause of action under the Act of Congress approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and the Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful resertains and monopolies, and for other purposes."

That the restrictions and injunctions herein shall apply not only with respect to the parties hereto and corporations mentioned herein but also to all persons, corporations, partnerships, associations or organizations acting, claiming or assuming to act for or on behalf of them or any of them; to their successors or assigns and any and all partnerships, corporations or individuals who may directly or indirectly acquire the ownership or

control of the property, business, or assets (except securities of Panhandle Eastern) of said parties whether by merger, consolidation, reorganization or otherwise; and to the taking of action prohibited herein by indirection or by or through subsidiaries; affiliates, officers, directors, shareholders, agents, receivers, trustees, attorneys, employees, or otherwise, individually or collectively.

That the defendant Columbia Gas & Electric Corporation, a Delaware corporation hereinafter referred to as "Columbia Gas," is a holding company owning more than 50 subsidiary companies; that a substantial part of the business of said enterprise is the production, transmission, distribution and sale of natural and artificial gas;

That the defendant Columbia Oil & Gasoline Corporation, hereinafter referred to as "Columbia Oil," is a corporation of the State of Delaware organized to hold and operate oil and gasoline properties formerly owned by Columbia Gas and has not been and is not now engaged in the business of producing, transmitting, distributing and selling natural gas except that it owns certain securities of said Panhandle Eastern Pipe Line Company and all of the outstanding capital stock and certain indebtedness of Indiana Gas Transmission Corporation;

That Panhandle Eastern Pipe Line Company, hereinafter referred to as "Panhandle Eastern," is a corporation of the State of Delaware, owns and controls large gas producing areas in the Texas Panhandle and in Kansas and has constructed a natural gas pipe line from said producing areas through the States of Oklahoma, Kansas, Missouri, Illinois, and touching upon Indiana, for the purpose of transmitting, distributing and selling such natural gas;

That Panhandle Corporation is a corporation of the State of Maryland, and now owns stock and notes of Panhandle Eastern;

That the individual defendants named in the petition herein are citizens of the United States and have been either voting trustees of the common stock of Panhandle Eastern or officers or directors of said corporation, and with the exception of the defendants Burt R. Bay and John H. Hillman, Jr., have been officers or directors of Columbia Gas and Columbia Oil.

II. That the defendants be and they are hereby perpetually enjoined from exercising, or attempting, individually or collectively, directly or indirectly, to exercise any dominion or control over Panhandle Eastern and from restraining, or interfering in any manner with, the free and independent action of said Panhandle Eastern in the production, transportation, sale or delivery of natural gas to any person, corporation, community or section of the United States; from holding, acquiring, voting or in any manner acting as the owners, directly or indirectly, of the whole or any part of the stock, or other share capital, or bonds, property or assets of Panhandle Eastern or any other company, corporation, association or organization owning any substantial amount of its securities; and from participating in any way, directly or indirectly, or from exercising any control, direction, supervision, or influence, in the management or control of Panhandle Eastern; except

(a) That defendants may own stock in and obligations of Columbia Gas and Columbia Oil and be and exercise the lawful rights of directors or officers thereof;

(b) That defendants may own stock and obligations in Panhandle Corporation for, and pending, the dissolution of the latter corporation and the disposition of its interests in Panhandle Eastern as speedily as possible, in a manner not inconsistent with the provisions of this Section. II and the purposes and further provisions of this decree; and defendant Hillman may continue to own 60,000 shares of stock he now holds in Missouri-Kansas Pipe Line Company so long as the voting rights appurtenant thereto are exercised independently of the other defendants herein and not in a manner inconsistent with the purposes and provisions of this decree;

(c) That Columbia Gas and defendant Hillman may own or acquire obligations, without present or potential voting rights, of said Panhandle Eastern, except that Columbia Gas is hereby enjoined and restrained in connection with enforcing any rights under said obligations with respect to principal, interest or sinking fund, from acquiring any of the pipe line or other physical assets of Panhandle Eastern;

(d) That Columbia Oil may own or acquire stock or obligations in Panhandle Eastern and exercise voting rights appurtenant thereto (and defendant Bay may be and exercise the lawful rights of an officer of Panhandle

Eastern), subject to the further terms and provisions of this decree, but Columbia Gas is hereby perpetually enjoined and restrained from acquiring any interest in such stock, by operation of law, or in connection with enforcing any lien created through the present or future existence of any debt, whether funded or un-funded, of Columbia Oil to Columbia Gas, or otherwise;

(e) That, when Columbia Gas has effectively divested itself of all control, direct or indirect, legal or practical, of Panhandle Eastern by no longer owning stock of any class having present or potential voting rights in Columbia Oil, upon the approval of this Court Columbia Oil shall no longer be subject to the restrictive clauses of this Section II;

III. That Gano Dunn is hereby nominated, constituted and appointed trustee for the purposes and with the powers and duties set forth in this Section III;

That within 10 days after the entry of this decree Columbia Oil shall execute, and deposit with said trustee the agreements and offers executed by it in accordance with, its agreements set forth in Section V of the stipulation pursuant to which this decree is entered;

That within 10 days after the entry of this decree Columbia Oil shall transfer all of its stock now owned and thereafter all stock subsequently acquired in Panhandle Eastern, having present or potential voting rights, to said trustee to hold the legal title to said stock and to exercise all the rights and privileges incidental to the absolute ownership thereof upon the following terms and conditions:

(a) To vote said stock for the election of as many directors of Panhandle Eastern as the number of shares thereof may be entitled to elect: *Provided*, that one of the directors so elected shall be the trustee; and that the remainder shall be selected from among persons recommended by the beneficial owner of said stock, in conference and with the advice of the trustee, but not including any of the individual defendants herein or any one (except with the approval of the trustee and this Court) who after January 1, 1931, has been or hereafter becomes an officer, director, agent or employee of Columbia Gas; and that, as to the directors so selected, the trustee is empowered to remove and replace such directors with others of his own choosing upon his own motion, if in his judgment such action is necessary in the interest of Panhandle Eastern or for the effectuation of the purposes of this decree; subject however in this as well as in the exercise of all other powers to the authority of this Court upon the motion and showing of any party hereto, or upon its own motion, to restrain said trustee from abuses of sound discretion, in view of the purposes of this decree and the law under which it is entered, or in case said trustee does not act in good faith hereunder;

(b) To vote said stock upon all other questions and matters in which the stock is entitled to vote, as directed by the beneficial owners thereof, except when such directions are inconsistent with the purposes of this decree; (c) To deposit for safe keeping the certificate for such stock with such bank or trust company as he may select and to issue, or arrange for the issuance, by such bank or trust company to the defendant Columbia Oil, of receipts for the stock so deposited in such form as the trustee may approve;

(d) To receive reasonable compensation, the amount thereof to be approved by this Court at not less than \$15,000.00 per annum, for all services rendered by him as trustee, and to be reimbursed for any expenses incurred by him in the performance of his duties hereunder, upon quarterly accounts to this Court, which, when approved by the Court, shall be paid in equal shares by the defendants Columbia Gas and Columbia Oil;

(e) To pay over to Columbia Oil all dividends received upon said stock, except that dividends in the form of stock having present or potential voting rights shall be retained by the trustee subject to the same terms and conditions as the other shares held hereunder;

(f) To exercise all rights to subscribe to additional stock or other securities of Panhandle Eastern as Columbia Oil may direct;

(g) To report to this Court semi-annually; and to account for any action hereunder only in proceedings in this Court, any further order of this Court entered upon notice to such trustee and to the parties hereto shall be full protection to him for any action taken pursuant thereto, and the trustee shall not be personally responsible for

mistakes in judgment or mistakes of law or fact in the execution of his duties hereunder but only for lack of good faith;

That during the existence of the trust hereby created the trustee herein appointed shall be subject to removal by this Court in its discretion; and in the event of such removal or in the event of the death, resignation or inability to act of such trustee, his successor shall be appointed by this Court upon recommendation of the parties hereto;

That the trust hereby created shall be and remain in full force and effect until terminated with the approval of this Court when (1) Columbia Gas has effectively divested itself of all control, direct or indirect, legal or practical, of Panhandle Eastern by (a) no longer owning stock of any class having present or potential voting rights in Columbia Oil or (b) by Columbia Oil divesting itself of ownership of all stock of Panhandle Eastern; or when (2) under the circumstances then existing, the continuation of said trust is no longer essential or necessary in carrying out the purposes of this decree; *Provided*, that no such stock of Panhandle Eastern shall be divested by transfer to any competitor of Panhandle Eastern or without prior notice and full disclosure of the facts to petitioner.

IV. That the defendants be and they are hereby perpetually enjoined from restraining or interfering in any manner in the freedom of Panhandle Eastern to contract or to finance or arrange the financing of all contracts, extensions (including the proposed new line to Detroit, whether or not built and owned by it), repairs, maintenance, service, or improvements necessary in its business through or with any firm, person, or corporation with whom it may choose to deal (and to that end any such financial or contractual arrangements made by Panhandle Eastern to consummate its contract dated August 31, 1935, with the Detroit City Gas Company shall be subject to the approval of the trustee who shall receive, and consider the advisability of, alternative methods of financing from any responsible underwriter);

That if such contracts be made with or financial assistance be secured from Columbia Gas, such contracts may be made or financial assistance furnished only upon terms or conditions which do not in any way, directly or indirectly, presently or potentially, confer upon Columbia Gas any voting rights, control or participation in the management of Panhandle Eastern or confer any rights of ownership in the works or properties of Panhandle Eastern except as security for the investment; and in the event that Columbia Gas shall, with respect to any contract or any contractual rights of any kind whatsoever or any property held as security or used in connection with any contract, in any way prevent the free transportation, sale, and distribution of gas by Panhandle Eastern, then upon application to this Court or any court of competent jurisdiction Panhandle Eastern shall have the right (1) to the immediate appointment of a trustee to hold such contract rights or property subject to the purposes and provisions of this decree; (2) to immediate specific performance of any and all contracts with Columbia Gas; and (3) to immediate injunction, both temporary and final, as well as any other appropriate remedy at law or in equity, including any remedy hereunder.

V. That jurisdiction of this cause and of the parties hereto is retained for the purpose of giving full effect to this decree and for the enforcement of strict compliance herewith and the punishment of evasions hereof, and for the further purpose of making such other and further orders and decrees or taking such other action as may from time to time be necessary to the carrying out hereof; and that Panhandle Eastern, upon proper application, may become a party hereto for the limited purpose of enforcing the rights conferred by Section IV hereof.

Dated, Wilmington, Delaware, January 29, 1936.

John P. Nields,

United States District Judge.