UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of)
ARCH COAL, INC.,)
NEW VULCAN COAL HOLDINGS, LLC, and) Docket No. 9316
TRITON COAL COMPANY, LLC)
Respondents.)
) [.]

ORDER DENYING MOTION TO STAY PROCEEDING OR TO STAY DISCOVERY

I.

On May 12, 2004, Complaint Counsel filed a motion to stay this proceeding or, in the alternative, to stay discovery. Respondents filed their opposition on May 24, 2004. On May 25, 2004, Complaint Counsel filed a motion for leave to file a reply in support of the motion to stay and its reply. Complaint Counsel's motion for leave to file a reply is GRANTED. For the reasons set forth below, Complaint Counsel's motion to stay this proceeding, or in the alternative, to stay discovery is DENIED.

II.

The Federal Trade Commission's complaint for preliminary injunctive relief to enjoin Arch Coal, Inc. from acquiring through a merger New Vulcan Coal Holdings or Triton Coal Company, LLC was filed with the United States District Court for the District of Columbia on April 1, 2004. The administrative complaint in this Part III proceeding was issued on April 7, 2004.

Pursuant to Rule 3.21(b), which requires that a initial prehearing conference be held within fourteen days of the last answer filed, the initial prehearing conference in this matter was held on May 11, 2004. Pursuant to Rule 3.21(c), which requires that a scheduling order be issued within two days of the initial prehearing conference, the Scheduling Order was entered in this matter on May 13, 2004.

Complaint Counsel, through its motion to stay this proceeding, or in the alternative to stay discovery, now seeks to stay this administrative proceeding for approximately eight weeks at which time, it asserts, the hearing on the complaint for preliminary injunctive relief will have concluded. Complaint Counsel argues that the parties will be in a better position to determine an appropriate pretrial schedule at the conclusion of the federal court hearing. Complaint Counsel further argues that the discovery needs of the parties in this proceeding cannot be fully determined until the conclusion of the federal court hearing.

Respondents oppose Complaint Counsel's requests. Respondents assert that Complaint Counsel should not be allowed to proceed on a relaxed schedule and that the public interest is best served by a process that moves swiftly.

III.

In a case challenging a proposed merger, such as the instant case, a joint motion to stay the proceeding would be favorably considered. However, Complaint Counsel has failed to demonstrate that this proceeding or discovery should be stayed based solely upon the request of the same party that initiated the complaint. Accordingly, Complaint Counsel's motion to stay this proceeding or, in the alternative, to stay discovery is DENIED.

ORDERED:

D. Michael Chappell Administrative Law Judge

June 2, 2004