

GULF OIL CORPORATION

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT

Docket 6689. Complaint, Dec. 13, 1956—Decision, Jan. 5, 1960

Consent order requiring one of the major integrated enterprises in the oil industry—the second largest in the United States in terms of sale and the fourth largest on the basis of total assets—to divest itself, as in the order below set forth, of numerous properties owned by Warren Petro-

leum Corp., a wholly owned subsidiary which Gulf acquired and merged into itself on March 2, 1956, and which had been before the merger the principal source of supply for independent refiners, dealers, and distributors and the largest independent producer of natural gasoline and of LP-Gas in the United States.

COMPLAINT

The Federal Trade Commission, having reason to believe that Gulf Oil Corporation has violated, and is now violating, the provisions of Section 7 of the Clayton Act (U.S.C. Title 15, Section 18) as amended and approved December 29, 1950, hereby issues its complaint pursuant to Section 11 of the aforesaid Act (U.S.C. Title 15, Section 21), charging as follows:

PARAGRAPH 1. Respondent Gulf Oil Corporation, hereinafter referred to as "respondent Gulf," is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal office and place of business located in the Gulf Building, Pittsburgh 30, Pennsylvania.

PAR. 2. Warren Petroleum Corporation, hereinafter referred to as "Warren," is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located in the National Bank of Tulsa Building, Tulsa, Oklahoma.

PAR. 3. Natural gas is any gas of natural origin as produced from or existing in oil or gas wells and consisting primarily of hydrocarbons.

Natural-gas liquids are those liquid hydrocarbon mixtures which are gaseous in the reservoir but are recoverable by condensation or absorption. Natural gasoline, condensate and liquefied petroleum gases fall in this category.

Natural gasoline is composed of liquid hydrocarbon mixtures containing substantial quantities of pentane and heavier hydrocarbons, which have been extracted from natural gas.

Liquefied petroleum gas or LP-Gas is any hydrocarbon mixture in either the liquid or gaseous state, the chief components of which consist of propane, butane, propylene, iso-butane, butylene or mixtures thereof in any ratio or with air.

LP-Gas is produced (1) at natural gasoline plants located in or near oil fields and/or gas fields where liquid hydrocarbons are removed from crude oil and/or natural gas, (2) at natural gas cycling plants located in or near natural gas fields where liquid hydrocarbons are removed from natural gas, and (3) at oil refineries where LP-Gas is removed from crude oil during the crude oil refining process. Natural gasoline is produced only at natural gasoline plants and

natural gas cycling plants. Natural gasoline and LP-Gas are components of what is termed in the petroleum industry as "natural-gas liquids."

Natural gasoline is used by refiners of crude oil as a blending agent in the production of finished motor and aviation fuels to provide the degree of volatility required for quick starting, to raise the octane rating of the finished product, and to augment the supply of such finished products. It is also used as a feedstock in the manufacture of various petrochemicals.

The principal purchasers and/or users of natural gasoline are refiners of crude oil engaged in the production of motor and aviation fuels and manufacturers engaged in the production of various petrochemicals.

LP-Gas is used by manufacturers of motor and aviation fuels, chemicals, synthetic rubber and plastics, for special heat and heat treating operations and for refrigeration in industrial and commercial plants and processes; for domestic household and farm uses; and for fuel in internal-combustion engines providing power for tractors, trucks, buses, road-building equipment, pumps and electrical generating sets. It also is used by utilities as a standby fuel and for gas enrichment to raise or maintain the BTU content of natural and manufactured gas.

The production and use of natural gasoline and LP-Gas have increased substantially during the last ten years. Natural-gas liquids production increased from 4,861,033,000 gallons in 1946 to 12,918,818,000 gallons in 1955. Natural gasoline production increased from 2,691,001,000 gallons in 1946 to 4,184,444,000 gallons in 1955. LP-Gas production increased from 1,409,345,000 gallons in 1946 to 7,368,911,000 gallons in 1955. The amount of natural gasoline blended into motor fuel increased from 2,640,162,000 gallons in 1946 to 5,308,044,000 gallons in 1955. The percentage of natural gasoline blended in motor fuel produced, increased from 8.4 percent in 1946 to 9.5 percent in 1955.

The sales of LP-Gases for domestic and commercial use increased from 758,466,000 gallons in 1946 to 2,801,379,000 gallons in 1955; sales for use by chemical plants increased from 311,499,000 gallons to 1,366,942,000 gallons; sales for use in the production of synthetic rubber increased from 293,892,000 gallons to 406,210,000 gallons, and sales for use in internal combustion engines increased from 94,592,000 gallons to 651,821,000 gallons during the ten-year period 1946 to 1955.

PAR. 4. Respondent Gulf and its subsidiaries constitute one of the major integrated enterprises in the oil industry. It is engaged in

producing, purchasing, transporting, refining and selling crude petroleum, hereinafter referred to as "crude," and products derived therefrom. Its total net sales and other revenues for the year 1955 were \$1,895,669,830; in terms of sales it was the second largest company in the petroleum industry in the United States. Its total assets as of that date were \$2,160,821,020 making it on that basis, the fourth largest company in the petroleum industry.

Respondent Gulf, in addition to being a refiner and marketer of crude oil and the products derived therefrom, also is a producer, purchaser, processor and seller of natural gas and the liquid hydrocarbons derived therefrom, including butane, propane, iso-butane and natural gasoline.

Respondent Gulf, in the operation of its business as aforesaid, as of October 31, 1955, owned and operated in the United States approximately 11,000 net producing oil wells, 400 net producing gas wells and had 960,000 net acres of proven domestic oil and gas producing properties with estimated domestic reserves of approximately 1,120,000,000 barrels of crude oil and condensate.

Likewise, as of that date respondent Gulf ranked second in the United States in natural-gas liquid reserves, with 230,000,000 barrels.

During 1955 it produced 3,834,924 barrels of natural-gas liquids, thereby ranking fourteenth.

During the year 1954 respondent Gulf produced approximately 75,000,000 gallons of natural gasoline, purchased 9,337,000 gallons, including 5,526,000 purchased from Warren, and likewise sold substantial quantities of this product.

Also during the year 1954 respondent Gulf produced approximately 95,000,000 gallons of LP-Gas, purchased approximately 13,500,000 gallons, and sold substantial quantities thereof to other producers as well as to consumers, distributors and dealers.

Respondent Gulf sells LP-Gas to distributors and dealers thereof located in the several States of the United States. During the year 1954 it registered the trade name "Gulftane" for use in connection with advertising and marketing its LP-Gas.

As of October 31, 1955, respondent Gulf owned and operated nine natural gas processing plants, had an interest in twelve others and had a daily average production of 281,000 gallons of natural gasoline and 260,000 gallons of LP-Gas.

Respondent Gulf distributes its refined gasoline and other petroleum products at wholesale and retail in all States of the United States east of the Mississippi River as well as in the States of Texas, Louisiana, Arkansas, Missouri, New Mexico, Arizona, Oklahoma, Colorado, Utah, Wyoming, Idaho, Kansas and Nebraska. Its

wholesale distribution in these areas is effected through 1,548 bulk distributing stations. Its retail distribution is through 7,000 retail service stations and 29,000 other resale outlets.

Respondent Gulf is engaged in the manufacture of petrochemicals. Through a jointly owned subsidiary, Goodrich-Gulf Chemicals, Inc., it was the largest producer and seller in the United States of butadiene during the year 1955; during 1956 Goodrich-Gulf Chemicals, Inc., became one of the largest producers in the United States of synthetic rubber. Furthermore, respondent Gulf is one of the largest producers in the United States of ethylene, which is used in the manufacture of plastics, anti-freeze, and tetraethyl lead.

PAR. 5. Warren, at the time of the acquisition hereinafter described, was engaged in manufacturing, transporting and marketing at wholesale natural gasoline; in manufacturing, transporting and marketing at wholesale and retail LP-Gas; and in producing and selling crude oil and natural gas. It was also engaged in manufacturing and marketing petrochemicals, and in selling residue gas.

For the fiscal year ending June 30, 1955, Warren's net sales were in excess of \$100,000,000 and it had assets in excess of \$163,000,000. In addition to producing and marketing liquefied petroleum gas, natural gasoline, natural gas, crude oil and petroleum chemicals, it also purchased liquefied petroleum gas and natural gasoline, as well as natural gas from which it processed and extracted natural-gas liquid products, reselling the natural gas as residue gas.

Warren was the largest independent producer of natural gasoline in the United States. In 1954 it produced 127,061,382 gallons of natural gasoline. While during that year there were possibly seven or eight other companies which were larger producers of natural gasoline, all were major integrated oil companies.

Warren operated nine wholly owned and four partially-owned plants for the processing of natural gas; had a 50% interest in four plants, varying interests in five additional plants and a 50% stock interest in still another plant, all operated by others. It marketed all products from these plants except for one partially owned plant and the five plants in which Warren had a small interest, as to all of which it marketed only a portion of the products.

Gas supplies for processing in the various plants were obtained from oil and gas leases in or near the fields where the plants were located. These leases were either owned by Warren or covered by gas purchase contracts, generally on terms customary in the industry, and usually at a price based on the value of liquids extracted by processing and the value of the salable residue gas.

Warren processed gas from approximately 2,000 oil and gas leases,

including a proportionate percentage of leases connected to partially owned plants. It had been the general experience of Warren that after a plant was once installed in a field, it continued to receive its supply of gas from leases even though the primary terms of the contracts had expired.

As of October 31, 1955, Warren's reserves of natural-gas liquids were 86,937,639 barrels; its net reserves of natural gas were approximately 447,326,000,000 cubic feet and of residue gas available for sale after extraction of liquids of 772,409,000 cubic feet.

Warren owned and operated a petrochemical plant manufacturing each month in excess of 475,000 pounds of petrochemicals and 25,000 gallons of methanol and solvents.

Warren was also the largest independent producer of LP-Gas in the industry. Based on 1954 data, it was the fifth largest producer of LP-Gas in the United States but the four larger producers again were all major integrated oil companies. In 1954 Warren produced 179,730,564 gallons of LP-Gas.

In addition to the sale of the products of its wholly-owned or partially owned plants, Warren purchased for resale under both long and short-term contracts natural gasoline and LP-Gas from other manufacturers who had no regular market outlets for their products or did not have the necessary type of special storage or transportation facilities.

Warren was the largest independent purchaser of natural gasoline in the United States. In 1954 Warren purchased 514,988,000 gallons.

As of October 31, 1955, Warren had purchase contracts for all or part of the natural gasoline production from seventy-one operating plants of other manufacturers located in Arkansas, Illinois, Kansas, Kentucky, Louisiana, New Mexico, Oklahoma and Texas. It also purchased on a spot or short-term basis quantities of natural gasoline from manufacturers who, from time to time, had production in excess of their marketing requirements or storage capacity.

Warren was not only the largest independent purchaser of natural gasoline in the United States but also was the largest purchaser of LP-Gas. In 1954 it purchased 585,349,000 gallons of LP-Gas. As of October 31, 1955, it had purchase contracts for LP-Gas from 42 plants of other manufacturers located in Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Oklahoma and Texas, averaging purchases of 1,500,000 gallons daily.

Warren was the largest supplier, independent or otherwise, in the United States, of LP-Gas to dealers and distributors, having sold them 514,546,194 gallons in 1954. All the other large sellers of

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LP-Gas to dealers and distributors were the major integrated companies, and they sold their LP-Gas under their respective brand names. However, Warren sold LP-Gas to independent dealers and distributors who were free to resell under their own independent brand names.

Furthermore, Warren in 1954 was the fourth largest seller of LP-Gas to other producers, having sold them 147,448,967 gallons.

Warren, in addition, was by far the largest seller, independent or otherwise, of natural gasoline. In 1954 it sold 661,318,000 gallons of natural gasoline.

As of October 31, 1955, Warren had 76 customers with whom it had contracts to sell some or all of their requirements of natural gasoline.

Warren's consolidated sales of natural gasoline and LP-Gas for the fiscal year ending June 30, 1955, totaled approximately \$79,100,000.

Warren owned and operated gathering, residue and other gas lines aggregating approximately 1,537 miles located in the general vicinity of and serving its plants, and approximately 159 miles of main transmission pipelines in Texas. It owned a 50% interest (with the other 50% being owned by the Warren Employee Pension Trust) in the Okan Pipeline Company which owned and operated a common carrier pipeline system consisting of approximately 346 miles for the transportation of natural gasoline and LP-Gas.

Warren also, as of October 31, 1955, operated a fleet of 4,144 railroad tank cars, consisting of 159 natural gasoline cars owned and 1,092 leased under equipment trust arrangements; 1,393 LP-Gas cars owned and 1,451 leased under equipment trust arrangements; 49 LP-Gas cars leased from a tank car company. Warren also had on order for 1957 delivery 400 LP-Gas cars costing over \$4,000,000. It also owned the only ocean-going propane-butane tank ship, with a pressure tank capacity of 34,000 barrels of butane and 32,600 of propane. It likewise owned three propane barges and leased under equipment trust arrangements one butane barge and two propane barges having a combined capacity of 59,000 barrels. It also had under construction another propane barge with a capacity of 10,000 barrels.

It owned natural gasoline terminal storage facilities having a total capacity of 1,686,000 barrels, had leased natural gasoline terminal facilities aggregating 545,000 barrels and had natural gasoline storage at each of its plants. It owned tidewater facilities for cargo assembling and storing LP-Gas at various locations throughout the United States with a combined capacity of approximately 1,900,000 barrels.

All of these facilities for transportation and storage gave to Warren a dominant position in the natural gasoline and LP-Gas markets.

Warren on October 31, 1955, had 1,086 net producing oil wells and 162 net producing gas wells; and had 132,701 net acres in producing oil and gas properties having proved net reserves of 51,080,337 barrels of crude oil and condensate.

PAR. 6. On December 22, 1955, respondent Gulf entered into an agreement with the major stockholders of Warren to acquire the stock of the latter on an exchange of stock basis, provided 90% of the outstanding Warren stock was deposited for exchange on or before March 2, 1956; it was agreed that there would be exchanged for the outstanding common stock of Warren, Gulf common stock, which as of February 1, 1956, had an approximate market value of \$138,000,000. The provisions of the agreement having been met, the merger of Warren into respondent Gulf was completed on March 2, 1956, on which date respondent Gulf acquired complete or virtually complete ownership of Warren.

PAR. 7. Both respondent Gulf and Warren, in the regular course of their respective businesses, in acquiring, purchasing, offering for sale, selling and distributing their various petroleum, gas and natural-gas liquid products, have been, and are now, engaged in commerce, as "commerce" is defined in the Clayton Act.

PAR. 8. In 1955 Warren's sales of LP-Gas were greatest in the States of Alabama, Arizona, Arkansas, Florida, Georgia, Mississippi and Tennessee, in all of which, except Arizona, respondent Gulf marketed LP-Gas in competition with Warren or the independent distributors and dealers to whom Warren sold LP-Gas.

The effect of the acquisition of Warren by respondent Gulf may be, in the marketing of LP-Gas in those sections of the country, to substantially lessen competition between respondent Gulf or its dealers and distributors and Warren or the independent dealers and distributors to whom Warren sold LP-Gas; the acquisition removes Warren as an independent source of supply for those dealers competing with Gulf or its dealers and distributors.

PAR. 9. The merger of Warren with Gulf raises Gulf from approximately the twelfth position as a producer of natural gasoline in the United States to fourth.

With the acquisition of Warren, respondent Gulf now possesses natural-gas liquids reserves in the amount of 316,937,639 barrels, or an increase of approximately 38%. It is the second largest possessor of such reserves in the United States, the total being approximately 50% greater than the reserves held by its next largest competitor in the natural-gas liquids industry.

The acquisition of Warren by respondent Gulf raised Gulf from the seventh to the largest seller of LP-Gas to other producers.

Because the integrated petroleum companies use or require in their own operations large quantities of the natural gasoline and LP-Gas which they produce or purchase, these products become "captive," leaving as a free or "non-captive" supply, limited amounts for other users of these products. Warren was the largest independent source of non-captive natural gasoline and LP-Gas.

PAR. 10. The effect of the aforementioned acquisition of Warren by respondent Gulf may be substantially to lessen competition or to tend to create a monopoly in the lines of commerce in which Gulf or Warren has been engaged, in violation of Section 7 of the Clayton Act, in the following ways, among others:

(1) Actual or potential competition between respondent Gulf and Warren in the production, purchase or sale of crude oil, natural gas, natural gasoline, LP-Gas or derivatives of any of them has been eliminated;

(2) Warren has been eliminated as an independent competitive factor in the production, purchase, sale or distribution of natural gas, natural gasoline, LP-Gas or derivatives of any of them;

(3) Actual or potential competition generally in the production, purchase or sale of natural gas, natural gasoline, LP-Gas or derivatives of any of them may be substantially lessened;

(4) Warren has been eliminated as the principal supplier of "non-captive" natural gasoline and LP-Gas;

(5) The elimination of Warren as an independent source of supply for many refiners of petroleum products, petrochemical manufacturers, and distributors and dealers in LP-Gas may cause such enterprises to become largely dependent on respondent Gulf, which is or may be one of their principal competitors, or on other integrated oil companies with which they also may compete;

(6) Respondent Gulf, as a user or potential user of natural gasoline and LP-Gas in both its refinery and petrochemical operations, and as a marketer of such products and derivatives thereof and of other products of which they are or may be a part, may divert to its own uses or otherwise channel or manipulate for its own purposes, the supplies of natural-gas liquids which formerly were available from Warren to respondent Gulf's competitors;

(7) Refiners of petroleum products, petrochemical manufacturers and dealers in LP-Gas may be denied access to natural-gas liquids formerly produced or sold by Warren;

(8) Actual or potential competition may be substantially lessened in the production, purchase, sale or distribution of refined petroleum

products (including aviation and motor gasoline), petrochemicals, and other products of which natural-gas liquids are or may be a part;

(9) There may be elimination from the market, or a substantial lessening of the number, of private brands of LP-Gas, which have been or might be sold or offered for sale by independent producers, distributors or dealers thereof, in competition with LP-Gas sold or offered for sale under the trade names of petroleum refiners, including respondent Gulf;

(10) Producers or other sellers of natural gasoline and LP-Gas may be foreclosed from a substantial segment of the market for these products through the elimination of respondent Gulf and Warren as actual or potential purchasers;

(11) Respondent Gulf's competitive advantage over other producers and marketers of refined petroleum products, petrochemicals and other products of which natural-gas liquids are or may be a part may be enhanced to the detriment of actual or potential competition;

(12) The result may be to substantially lessen or tend to eliminate opportunities which refiners of petroleum products, petrochemical manufacturers, and distributors and dealers in LP-Gas have or may have to influence the supply or price of natural-gas liquids and related products or to engage in independent market behavior contrary to the interests of respondent Gulf;

(13) The combination of the second largest domestic petroleum company (in terms of sales) with the largest independent producer, purchaser and marketer of natural-gas liquids may give the resulting combination a decisive competitive advantage over its non-integrated or less diversified competitors and may result in a substantial lessening of competition or a tendency to monopoly, or both, in the production, purchase, sale or distribution of refined petroleum products, natural gas, natural-gas liquids, petrochemicals or other products of which they are or may be a part;

(14) There may be foreclosure of the entry of new producers, developers, marketers or sellers of petroleum products, natural gas, natural gasoline, or LP-Gas or other products of which they are or may be a part;

(15) The acquisition from Warren by respondent Gulf of control over the largest fleet of pressurized railroad tank cars and other equipment for moving and storing natural gasoline and LP-Gas, has increased respondent Gulf's power over the transportation and storage of natural-gas liquids, with the result, actual or potential, of substantially lessening competition in the production, purchase, sale

or distribution of such products, the derivatives thereof, or other products of which they are or may be a part;

(16) Further concentration in a single integrated enterprise of control over crude oil, natural gas and natural-gas liquids may substantially lessen competition in the production or sale of these products, the derivatives thereof, or of other products of which they are or may be a part;

(17) There has been or may be an increase in the concentration in, or control by, the integrated petroleum companies in the United States of the production, manufacture, marketing, distribution or sale of various petroleum products, natural gas and natural-gas liquids, together with the derivatives thereof and of other products of which petroleum or natural-gas liquids are or may be a part.

PAR. 11. The foregoing acquisition, acts and practices of respondent, as hereinbefore alleged and set out, constitute a violation of Section 7 of the Clayton Act (U.S.C. Title 15, Sec. 18), as amended and approved December 29, 1950.

Mr. Fletcher G. Cohn, Mr. Donald R. Moore and Mr. Charles J. Steele for the Commission.

Howrey & Simon, by *Mr. Edward F. Howrey, Mr. Harold F. Baker and Mr. Richard L. Perry*, of Washington, D.C., and *Mr. W. B. Edwards*, of Pittsburgh, Pa.; and *Mr. David T. Searls*, General Counsel, Gulf Oil Corporation, Pittsburgh, Pa., for respondent.

INITIAL DECISION BY J. EARL COX, HEARING EXAMINER

The complaint charges respondent with violation of §7 of the Clayton Act (U.S.C. Title 15, §18) as amended and approved December 29, 1950, by acquiring, on December 22, 1955, 90% of the outstanding stock of Warren Petroleum Corporation, and by the merger, on March 2, 1956, of that corporation into respondent.

After the issuance of the complaint, respondent, its counsel, and counsel supporting the complaint entered into an agreement containing consent order, which was approved by the Director and an Assistant Director of the Commission's Bureau of Litigation, and thereafter transmitted to the hearing examiner for consideration.

The agreement states that respondent Gulf Oil Corporation, hereinafter sometimes referred to as Gulf, is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located in the Gulf Building, Pittsburgh 30, Pennsylvania, and that Warren Petroleum Corporation, a wholly-owned subsidiary of Gulf and hereinafter referred to as Warren, is a corporation organized and

existing under the laws of the State of Delaware, with its principal office and place of business located in the Warren Building, Tulsa, Oklahoma.

The agreement provides, among other things, that respondent admits all the jurisdictional facts alleged in the complaint, and agrees that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations; that the record on which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and this agreement; that the agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission; that the complaint may be used in construing the terms of the order agreed upon, which may be altered, modified or set aside in the manner provided for other orders; that the agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint; and that the order set forth in the agreement and hereinafter included in this decision shall have the same force and effect as if entered after a full hearing.

Respondent waives any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law, and all of the rights it may have to challenge or contest the validity of the order entered in accordance with the agreement.

The hearing examiner, having considered the complaint, the agreement and the proposed order, is of the opinion that said agreement and order provide an appropriate basis for settlement and disposition of this proceeding. Accordingly, the hearing examiner finds this proceeding to be in the public interest, and accepts the agreement containing consent order as part of the record upon which this decision is based; and therefore issues the following order, which has been agreed upon by the parties:

ORDER

Respondent, Gulf Oil Corporation, its officers and directors, are hereby ordered and directed as follows:

A. Respondent shall, within three years, cause Warren to divest itself absolutely and in good faith of ownership in the following properties:

1. All ownership which Warren has as of the date of this order in the following companies:

- (a) Butane Gas, Inc.,
Little Rock, Arkansas;

- (b) Butane Wholesale Gas Company,
Little Rock, Arkansas;
and
- (c) Harris Distributors, Inc.,
Little Rock, Arkansas;

and although Gulf and Warren shall have the right to sell LP-Gas and natural gasoline to such companies or the purchaser or purchasers thereof, the seller in the contract or contracts of sale of Warren's interest in such companies shall not require as a condition of the sale or sales that such companies or the purchasers thereof shall obtain any of their supply of LP-Gas and/or natural gasoline products from either Gulf or Warren or the subsidiaries or affiliates of either.

Divestiture of ownership in the foregoing companies shall be effectuated in such manner as to completely and absolutely divest Warren of any ownership in any other companies resulting from any ownership in any of the foregoing companies.

2. All properties of the Dri-Gas Division of Warren Petroleum Corporation as shown by the books of the Dri-Gas Division as of the date of this order, together with its list of customers and irrevocably any right of Warren to use the brand name "Dri-Gas"; and although Gulf and Warren shall have the right to sell LP-Gas and natural gasoline to the purchaser or purchasers of such properties, the seller in the contract or contracts of sale of the properties shall not require as a condition of such sale or sales that the purchaser or purchasers shall obtain any of their supply of LP-Gas and/or natural gasoline products from either Gulf or Warren or the subsidiaries or affiliates of either.

3. All railroad tank cars used or suitable for use in the transportation of either LP-Gas or natural gasoline in the United States which, as of March 2, 1956, were owned by Warren, or which Warren had the right of use under any equipment trust arrangement as of March 2, 1956; and although Gulf and Warren shall have the right to lease any of such tank cars from the purchaser or purchasers thereof, the seller in the contract or contracts of sale shall not require as a condition of such sale or sales that the purchaser or purchasers shall lease any of such tank cars to either Gulf or Warren or the subsidiaries or affiliates of either.

4. The petrochemical manufacturing plant known as the Conroe Plant, located near the town of Conroe, Montgomery County, Texas, owned and operated by Warren as of March 2, 1956, including all subsequent additions and improvements thereto, as well as all interests of Warren in the tract of land on which such plant is located.

5. All of the natural gasoline storage facilities, loading and unloading equipment, pumps, tanks, pipe and other plant facilities used in connection therewith, owned and operated by Warren as of March 2, 1956, located at San Pedro, near Los Angeles, California, including all subsequent additions and improvements thereto, as well as all interests of Warren in the tract of land on which such facilities are located.

6. All ownership of Warren as of March 2, 1956, in the following plants, including all ownership of Warren in all subsequent improvements and additions thereto, as well as all interests of Warren in the tracts of land on which such plants are located:

Madill Plant, Madill, Oklahoma

Ringwood Plant, Ringwood, Oklahoma

Midland Gasoline Plant, Conroe, Texas

and although Gulf and Warren shall have the right to purchase products from such plants or the purchaser or purchasers thereof, the seller in the contract or contracts of sale of Warren's interest in the plants shall not require as a condition of such sale or sales that the plants or the purchaser or purchasers thereof shall sell any of their production to either Gulf or Warren or the subsidiaries or affiliates of either.

Pending divestiture, Gulf shall not permit Warren to make any changes in any of said plants which shall impair the present rated capacity of said plants for the production of natural gas liquids unless said capacity is restored prior to divestiture.

Respondent shall not cause or permit Warren to sell or dispose of any of the aforesaid properties listed in subparagraphs 1, 2, 3 and 6 of this paragraph A to any of the following named companies, any subsidiaries or affiliates thereof, any combinations thereof, or knowingly sell to any of the officers, directors, or employees of said companies:

Atlantic Refining Company

Cities Service Oil Company

Continental Oil Company

El Paso Natural Gas Company

Ohio Oil Company

Phillips Petroleum Company

Pure Oil Company

Richfield Oil Corporation

Shell Oil Company

Signal Oil & Gas Company

Sinclair Oil Corporation

Skelly Oil Company

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Socony Mobil Oil Company, Inc.
Standard Oil Company of California
Standard Oil Company (Indiana)
Standard Oil Company (New Jersey)
Standard Oil Company (Ohio)
Sun Oil Company
Sunray Mid-Continent Oil Company
Superior Oil Company
Texaco, Inc.
Tidewater Oil Company
Union Oil Company of California

The specific naming of the above companies shall not be construed or interpreted that the Commission in any manner approves or disapproves of the sale of any of such properties to any purchaser not so named.

If any of the properties described in subparagraphs 1 through 6 of this paragraph A are not sold or disposed of entirely for cash, nothing in this order shall be deemed to prohibit Warren from retaining, accepting and enforcing any security interests in any of the aforesaid properties for the purpose of securing to Warren full payment of the prices, with interest, at which any of said properties are sold or disposed of; but, if in disposing of any of the aforesaid properties, in accordance with the provisions of this order, Warren retains any interest in any of such properties for the purpose of securing to Warren full payment of the prices with interest at which any of such properties are sold or disposed of, then, if Warren by enforcement or settlement or any other means of enforcing such security, regains ownership or control of any property, said property regained shall be disposed of in the same manner and under the same provisions as are applicable in the original disposition of such property.

In the event Warren, after three years from the entry of this order, has been unable to find a qualified purchaser for all or any of the properties described in subparagraphs 1 through 6 of this paragraph A at a price or other consideration deemed by Warren to be a fair market value, then, and in that event:

(a) Warren and a designated representative of the Commission shall agree upon and appoint a qualified appraiser who shall, at no expense to the Commission, inspect and appraise all or any of such properties and set a fair market value therefor;

(b) If, after the expiration of one year from the date of said appraisal, Warren has been unable to find a qualified purchaser for a consideration equal to that set by said appraiser, then, and in

that event, a trustee for the purpose of sale shall be appointed in the same manner as provided for the apponitment of the appraiser, which trustee shall proceed to sell, at no expense to the Commission, such remaining property upon the best terms, conditions, and price then available not inconsistent with the terms of this order, subject, however, to respondent's right to be heard by the Commission as to the propriety, reasonableness and acceptability of any offer the trustee proposes to accept. If, upon conclusion of such hearing, the Commission determines the questioned offer to be proper, reasonable and acceptable for the particular property involved, it shall have the right to authorize the trustee to proceed with such sale. If the Commission does not so authorize the sale, then the trustee shall refuse such offer and solicit others.

(c) Until such time as there has been complete divestiture under this order, or until the procedure contemplated in subparagraph (a) above has been invoked, Gulf shall cause Warren to file with the Secretary of the Commission, once each six months following the date of this order, a written report listing the properties which have been sold, the identity of the purchaser or purchasers, and containing a statement of the progress being made toward the disposition of the remaining properties. These reports are solely for the information of the Commission in determining the status and progress of compliance and shall not be made a part of the record in this matter nor disclosed to any unauthorized personnel.

7. None of the properties described in subparagraphs 1 through 6 of this paragraph A shall be sold or transferred, either directly or indirectly, to Gulf or any officer, director or employee of (a) Gulf, (b) Warren, or (c) any of the subsidiaries or affiliates of either.

B. *It is further ordered* That:

1. For a period of ten years following the date of this order, Gulf and Warren shall in each calendar year sell or make available and affirmatively offer to independent wholesalers, distributors and jobbers, and retailers of LP-Gas in the United States, to be treated collectively as one class, 48.64% of their total available supply of LP-Gas for each such year, which percentage is not less than the percentage sold by Gulf and Warren to all customers in such class during the calendar year 1955; but those sales made during this ten year period by Gulf and Warren to any purchaser of any of the properties described in subparagraphs 1 and 2 of paragraph A of this order, for distribution through such properties, shall not be considered as having been sold under the provisions of this paragraph.

Provided, however, That if the total "domestic and commercial,"

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"internal combustion" and "all other" consumption of LP-Gas as reported by the Bureau of Mines Annual Mineral Market Report "Sales of Liquefied Petroleum Gases" decreases or increases in any one year as a percentage of total United States LP-Gas consumption, then for the next calendar year the percentage which Gulf and Warren are obligated hereunder to sell, or make available and affirmatively offer to the aforesaid class of customer shall be proportionately reduced or increased. Example: If the United States Bureau of Mines report shows "domestic and commercial," "internal combustion" and "all other" consumption dropped from 40% of total consumption in 1959 to 36% in 1960, or a 10% change, then Respondent may reduce its obligation to the aforesaid class by 10% of 48.64%.

Provided, further, If by July 1 of each calendar year, independent wholesalers, distributors and jobbers, and retailers of LP-Gas have not as one class collectively contracted to buy from Gulf and Warren for that calendar year a number of gallons equal to the percentage as herein provided in this subparagraph 1, then Gulf and Warren may dispose of such uncommitted balance to any class of customer.

2. For a period of ten years following the date of this order, Gulf and Warren shall in each calendar year sell or make available and affirmatively offer to independent non-major refiners in the United States 2.58 percent of their total available supply of LP-Gas for each such year, which percentage is not less than the percentage of LP-Gas sold by Gulf and Warren to such independent non-major refiners during the calendar year 1955.

Provided, however, If by September 1 of each calendar year, independent non-major refiners have not contracted to buy from Gulf and Warren for that calendar year the number of gallons of LP-Gas equal to the percentage herein provided in this subparagraph 2, then Gulf and Warren may dispose of such balance to any class of customer.

3. For a period of ten years following the date of this order, Gulf and Warren shall in each calendar year sell or make available and affirmatively offer to independent non-major refiners in the United States 44.8 percent of their total available supply of natural gasoline for each such year, which percentage is not less than the percentage of natural gasoline sold by them to such independent non-major refiners during the calendar year 1955.

Provided, however, If by September 1 of each calendar year, independent non-major refiners have not contracted to buy from Gulf and Warren for that calendar year a number of gallons equal to the percentage herein provided in this subparagraph 3, then

Gulf and Warren may dispose of such balance to any class of customer.

In the event any independent non-major refiner customer of Gulf and Warren is acquired by any company so that such customer is lost by Gulf and Warren, the percentage of Gulf and Warren's total available supply of natural gasoline which is required by this order to be sold or made available and affirmatively offered each year to independent non-major refiners shall be reduced by the same percentage such customer's purchases bore to Gulf and Warren's total sales of natural gasoline in the calendar year preceding such acquisition. Warren will inform the Commission of such acquisition within 30 days of the loss of the customer and will show the effect of this loss upon the percentage to be offered as set out in this subparagraph.

4. For a period of ten years following the date of this order, Gulf and Warren shall in each calendar year sell or make available and affirmatively offer to independent non-integrated petrochemical manufacturers in the United States 3.52 percent of their total available supply of LP-Gas for each such year, which percentage is not less than the percentage of LP-Gas sold by them to such independent non-integrated petrochemical manufacturers during the calendar year 1955.

Provided, however, If by April 1 of each calendar year, independent non-integrated petrochemical manufacturers have not contracted to buy from Gulf and Warren for that calendar year a number of gallons equal to the percentage herein provided in this subparagraph 4, then Gulf and Warren may dispose of such balance to any class of customer.

5. All LP-Gas and natural gasoline sold or made available and affirmatively offered pursuant to subparagraphs 1 through 4 of paragraph B of this order shall be in good faith and in accordance with the seller's (Gulf or Warren) standard credit requirements, terms and conditions, and when so sold or made available and affirmatively offered, such products shall be deemed to have been sold or made available and affirmatively offered on behalf of both Gulf and Warren.

6. For the purpose of enabling the Commission to determine compliance with paragraph B of this order, Gulf and Warren shall file during such ten (10) year period with the Secretary of the Commission, within 90 days after the close of each calendar year, commencing with the first full calendar year's operation following the entry of this order, an "Annual Compliance Report," which shall state:

(a) "Gulf and Warren's total available supply of LP-Gas" for the preceding year;

(b) The total amount of such supply actually sold and also, set forth separately, the total amount made available and affirmatively offered to each separate class of customer described in subparagraphs 1, 2 and 4 of this paragraph B;

(c) The percentages of such total available supply so sold and the percentages made available and affirmatively offered;

(d) "Gulf and Warren's total available supply of natural gasoline" for the preceding year;

(e) The total amount of such supply actually sold and also, set forth separately, the total amount made available and affirmatively offered to the class of customer described in subparagraph 3 of this paragraph B; and

(f) The percentage of such total available supply so sold and the percentage made available and affirmatively offered.

Should the Commission question the adequacy or sufficiency of any such report or any part thereof, Gulf and Warren shall be required to substantiate the report or part so questioned. Such reports shall be under oath if requested by the Commission. These reports are solely for the information of the Commission in determining compliance with the provisions of this paragraph B of this order and shall not be made a part of the record in this matter nor disclosed to any unauthorized personnel; and such reports together with the reports required under paragraph A of this order, shall constitute the reports required under the present Federal Trade Commission Rules for Adjudicative Proceedings, in the absence of any demand by the Commission for other reports.

C. It is further ordered That:

1. For a period of ten (10) years following the date of this order, Gulf and Warren shall not acquire, directly or indirectly, through subsidiaries or otherwise, all of the stock or such part thereof as would give control or all of the fixed assets (land and depreciable investments) or such part thereof as would amount to more than 20% of the then book value of the fixed assets used in the natural gas liquids business of any person, partnership, firm or corporation in the United States, defined herein as a "marketer" of LP-Gas and/or natural gasoline, whose current annual sales of LP-Gas and natural gasoline, combined, in the United States are in excess of 125,000,000 gallons. The fixing of the specific 20% and the 125,000,000 gallons is not to be construed or interpreted as meaning that the Commission approves any acquisition.

2. For a period of ten (10) years following the date of this

order, neither Gulf nor Warren, nor the subsidiaries or controlled affiliates of either, shall require, as a condition of sale, independent wholesalers, distributors and jobbers and retailers in the United States to use the brand name "Gulftane" or "Warrengas," or any other brand or trade name in connection with the sale of natural gas liquids.

D. This order, anything to the contrary notwithstanding, shall be construed in accordance with the following definitions:

1. The term "independent wholesalers, distributors and jobbers of LP-Gas" means persons, firms, partnerships and corporations primarily engaged in the purchase of LP-Gas from marketers and/or in some instances from LP-Gas producers and the resale of said LP-Gas at retail to consumers, as well as to other wholesalers, distributors, jobbers and retailers.

2. The term "marketer" of LP-Gas and/or natural gasoline means any person, firm, partnership or corporation which produces and/or purchases LP-Gas and/or natural gasoline, whose principal natural gas liquids business is the sale or resale of LP-Gas to independent wholesalers, distributors and jobbers and to refiners and other marketers but not to consumers at retail, and/or sale or resale of natural gasoline to refiners.

3. "Retailers of LP-Gas" means persons, firms, partnerships and corporations engaged in the purchase of LP-Gas from wholesalers, distributors and jobbers, and the resale thereof to consumers only.

4. "Independent non-major refiners" means all refiners of finished motor fuels other than the companies named in subparagraph 6 or paragraph A hereof, their subsidiaries and affiliates.

5. "Independent non-integrated petrochemical manufacturers" means:

(a) Petrochemical companies which are not directly or indirectly affiliated with one or more of the companies referred to in subparagraph 6 of paragraph A hereof, and

(b) Petrochemical companies which do not have any interest in the production of liquefied petroleum gas or natural gasoline, and

(c) Petrochemical companies which do not operate a petroleum refinery.

6. "Gulf and Warren's total available supply of LP-Gas" and "Gulf and Warren's total available supply of natural gasoline" for each year mean, for such year, their combined production in the United States determined on the same basis as reported to the Bureau of Mines and Gulf and Warren's combined purchases in the United States for resale plus or minus inventory variations and losses. The terms include all of Gulf and Warren's produc-

tion which they have the right to take from natural gasoline plants in the United States which are wholly or partially owned by them. The terms also include production in the United States which Gulf and Warren have the right to take from natural gasoline plants owned by others.

7. Whenever the words "year" and "annual" are used herein, the reference is to the calendar year.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to the provisions of §3.21 of the Commission's Rules of Practice, the hearing examiner's initial decision, filed November 20, 1959, shall, on the 5th day of January, 1960, become the decision of the Commission; and accordingly:

It is ordered, That on or before the 5th day of July, 1960, and on or before the expiration of each six-month period thereafter until there has been complete divestiture under the terms of the order contained in the initial decision, or until the procedure contemplated by subparagraph (a) of paragraph A of said order has been invoked, the respondent, Gulf Oil Corporation, shall file with the Commission a report, in writing, setting forth the information prescribed in subparagraph (c) of paragraph A of the order contained in said initial decision.

It is further ordered. That on or before the 1st day of April of each year beginning in 1961 and ending in 1970, the respondent shall file with the Commission an additional report, in writing, setting forth the information prescribed in subparagraph 6 of paragraph B of the aforesaid order.

IN THE MATTER OF

MIDLAND AFFILIATED BUSINESS SALES AND