

Complaint

IN THE MATTER OF

CONOCO INC. AND PHILLIPS PETROLEUM COMPANY

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT

Docket C-4058; File No. 0210040
Complaint, August 30, 2002--Decision, February 7, 2003

This consent order addresses the merger of Respondents Phillips Petroleum Company and Conoco Inc., both integrated oil companies – respectively headquartered in Bartlesville, Oklahoma and Houston, Texas – engaged in worldwide exploration for and production, and transportation of crude oil and natural gas; gathering of natural gas; fractionation of raw mix into specification products; and refining, marketing, and transporting petroleum products. The order, among other things, requires the respondents to divest (1) the Phillips refinery located at Woods Cross, Utah, and all of Phillips’ related marketing assets served by that refinery; (2) the Conoco refinery located at Commerce City, Colorado and serving Denver, Colorado, and all of Phillips’ marketing assets in Eastern Colorado, and (3) the Phillips light petroleum products terminal in Spokane, Washington. The order also requires the respondents to divest the Phillips propane terminal assets in Jefferson City, Missouri, and East St. Louis, Illinois; and to provide a long-term propane supply agreement. In addition, the order requires the respondents to divest certain Conoco natural gas gathering assets in New Mexico and Texas – including the Conoco Maljamar processing facility – and to enter into a long-term agreement to process natural gas gathered in Texas.

Participants

For the Commission: *Mark Menna, Arthur J. Nolan, Frank Lipson, Stephen Y. Wu, Brian S. Wheeler, John C. Weber, Christopher L. Marvine, Samuel I. Sheinberg, Evelyn J. Boynton, Jordan Coyle, Elizabeth Pelkofski, William R. Vigdor, Phillip L. Broyles, Naomi Licker, Eric D. Rohlck, Daniel P. Ducore, Mark Williams, Daniel Gaynor, Louis Silvia Jr. and Mary T. Coleman.*

For the Respondents: *Ilene Knable Gotts, George Conway, and Nelson O. Fitts, Wachtell, Lipton, Rosen & Katz, J. Bryan Whitworth, Phillips Petroleum Company, George S. Cary and*

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Brian Byrne, Cleary, Gottlieb, Steen & Hamilton, Richard Harrington, and Conoco.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that respondent Phillips Petroleum Company has entered into an agreement to merge with Conoco Inc., all subject to the jurisdiction of the Commission, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, that such merger, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint, stating its charges as follows.

I. RESPONDENTS**Phillips Petroleum Company**

1. Respondent Phillips Petroleum Company ("Phillips") 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 at Phillips Building, Bartlesville, Oklahoma 74004.
2. Respondent Phillips is, and at all times relevant herein has been, engaged in, among other things, the bulk supply, terminaling and marketing of light petroleum products, the bulk supply of propane, the gathering of natural gas and the fractionation of raw mix in the United States.
3. Respondent Phillips had total revenues of \$47.7 billion in 2001.

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Conoco, Inc.

4. Respondent Conoco Inc., (“Conoco”) 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 at 600 North Dairy Ashford Road, Houston, Texas 77079.
5. Respondent Conoco is, and at all times relevant herein has been, engaged in, among other things, the bulk supply, terminaling and marketing of light petroleum products, the bulk supply of propane, the gathering of natural gas, and the fractionation of raw mix in the United States.
6. Respondent Conoco had total revenues of \$39.5 billion in 2001.

II. THE MERGER

7. Respondents Phillips and Conoco plan a “merger of equals” in a transaction executed and announced on November 18, 2001. Under the terms of the agreement, Phillips shareholders will own about 56.6 percent and Conoco shareholders will own about 43.4 percent of the new company. Phillips shareholders will receive one share of new ConocoPhillips common stock for each share of Phillips they own and Conoco shareholders will receive 0.4677 shares of new ConocoPhillips common stock for each share of Conoco they own (the “Merger”). Phillips’ market capitalization is approximately \$18.5 billion and Conoco’s is approximately \$16.5 billion. The total dollar value of the Merger is approximately \$35 billion.

III. TRADE AND COMMERCE

Eastern Colorado

8. A line of commerce in which to analyze the effect of the Merger is the bulk supply of light petroleum products

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(“LPPs”). LPPs include motor gasoline, diesel fuel, kerosene and jet fuel. For each product, there is no economic substitute.

9. A section of the country in which to analyze the effect of the Merger is the portion of Colorado east of the Continental Divide, a natural barrier between the eastern and western parts of Colorado (“Eastern Colorado”). This area includes the metropolitan statistical areas (“MSAs”) of Denver, Colorado Springs, Fort Collins, and Boulder, Colorado.
10. The major buyers of LPPs in Eastern Colorado include wholesalers, known as jobbers or marketers. These entities buy large quantities of LPPs to resell to dealers (a person unaffiliated with a marketer or refiner that operates a gasoline outlet) or to sell directly to consumers.
11. Refineries produce LPPs and either deliver them into storage tanks or terminals on the premises or into large diameter refined products pipelines that, in turn, deliver LPPs into storage tanks or terminals located near the consuming public. Refineries and large diameter pipelines are direct horizontal competitors to provide bulk supplies of LPPs.
12. Jobbers delivering LPPs in Eastern Colorado have no effective alternative to using local refineries or pipeline transportation that deliver LPPs into Eastern Colorado. Jobbers cannot economically access refineries and pipelines located outside of Eastern Colorado. Transporting LPPs into Eastern Colorado by truck is costly and is not a commercially reasonable substitute.
13. Bulk suppliers can identify and price differently to buyers (“targeted buyers”) located in densely populated areas, like Denver and Colorado Springs, and raise price by a small but significant and nontransitory amount. Other jobbers in outlying areas are not capable of buying product and reselling to the targeted buyers. Bulk suppliers limit

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supplies that jobbers and marketers can buy and can identify where those supplies are delivered. Within Eastern Colorado, there are more narrow discrimination markets composed of densely populated areas, like Denver, Colorado.

14. Phillips owns a 70 percent undivided interest in the Borger-Denver pipeline that transports LPPs to Eastern Colorado from Phillips' Borger, Texas, refinery. Phillips is one of five interstate pipeline operators currently transporting LPPs to Eastern Colorado.
15. Conoco owns a refinery in Commerce City, Colorado, outside of Denver, which produces LPPs for Eastern Colorado. Conoco is one of two local refiners in Eastern Colorado.
16. Phillips and Conoco are direct horizontal competitors in Eastern Colorado. Phillips' owns a pipeline and Conoco owns a refinery that provide bulk supplies of LPPs into Eastern Colorado.
17. Together, respondents will own or control about 30 percent of the LPP bulk supply capacity in Eastern Colorado. The market, as measured by shipments or capacity, is highly concentrated with the HHI rising by over 500 points to above 2600.
18. After the Merger, the combined firm could effectively coordinate to raise prices in the market for LPP bulk supply in Eastern Colorado.
19. There are substantial barriers to entering the relevant market in Eastern Colorado. Building additional refineries locally or additional pipelines from refineries located outside of Eastern Colorado would be unlikely, take over two years, and therefore would not prevent respondents from raising prices above pre-Merger levels.

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Northern Utah

20. A line of commerce in which to analyze the effect of the Merger is the bulk supply of LPPs. For each LPP, there is no economic substitute.
21. A section of the country in which to analyze the effect of the Merger is the portion of Utah north of the 39th parallel (“Northern Utah”). This area includes the Salt Lake City-Ogden and Provo-Orem MSAs.
22. The major buyers of LPPs in Northern Utah include wholesalers, known as jobbers or marketers. These entities buy large quantities of LPPs to resell to dealers or to sell directly to consumers.
23. Refineries produce LPPs and either deliver them into storage tanks or terminals on the premises or into large diameter refined products pipelines that, in turn, deliver into storage tanks or terminals located near the consuming public. Refineries and large diameter pipelines are direct horizontal competitors to provide bulk supplies of LPPs.
24. Jobbers delivering LPPs in Northern Utah have no effective alternative to using local refineries or pipeline transportation that deliver LPPs into Northern Utah. Jobbers cannot economically access refineries and pipelines located outside of Northern Utah. Transporting LPPs into Northern Utah by truck is costly and is not a commercially reasonable substitute.
25. Bulk suppliers can identify and price differently to targeted buyers located in densely populated areas, like Salt Lake City, and raise price by a small but significant and nontransitory amount. Other jobbers in outlying areas are not capable of buying product and reselling to the targeted buyers. Bulk suppliers limit supplies that jobbers and

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marketers can buy and can identify where those supplies are delivered. Within Northern Utah, there are more narrow discrimination markets composed of densely populated areas, like Salt Lake City.

26. Phillips owns a refinery in Woods Cross, Utah, outside of Salt Lake City. The refinery produces LPPs for distribution in Northern Utah.
27. Conoco owns more than 50 percent of the Pioneer Pipeline. The Pioneer Pipeline carries LPPs to Northern Utah. Conoco owns more than 50 percent of the terminal connected to the Pioneer Pipeline. Conoco operates the Pioneer Pipeline and connected terminals. By virtue of its majority stake and operatorship, Conoco controls the pricing of LPPs on the Pioneer Pipeline.
28. Phillips and Conoco are direct horizontal competitors in Northern Utah. Phillips owns a refinery and Conoco owns a pipeline that provide bulk supplies of LPPs into Northern Utah.
29. Together, respondents will account for about 25 percent of the LPP bulk supply capacity in Northern Utah. The market, as measured by shipments or capacity, is highly concentrated with the HHI rising by about 300 points to above 2100.
30. After the Merger, the combined firm could effectively coordinate to reduce supply, slow growth of supply, and raise prices in the market for LPP bulk supply in Northern Utah.
31. There are substantial barriers to entering the relevant market in Northern Utah. Building additional refineries locally or additional pipelines from refineries located outside of Northern Utah would be unlikely, take over two years, and

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therefore would not prevent respondents from raising prices above pre-Merger levels.

Spokane MSA

32. A line of commerce in which to analyze the effect of the Merger is the terminaling services for LPPs. LPP terminals are specialized facilities with large storage tanks used for the receipt and local distribution of LPPs by tank truck. There are no substitutes for terminals for the storage and local distribution of gasoline and other light petroleum products.
33. A section of the country in which to analyze the effect of the Merger is the MSA of Spokane, Washington. LPP marketers in Spokane only can receive terminaling services from terminals located in Spokane, Washington. LPP marketers in Spokane have no effective alternative to terminals located within Spokane and cannot economically access more distant terminals or other LPP pipelines outside of Spokane.
34. Phillips owns a terminal in Spokane, Washington, which provides terminaling services for Spokane.
35. Conoco owns a terminal in Spokane, Washington, which provides terminaling services for Spokane.
36. The market for terminal services in Spokane is highly concentrated with the HHI rising by over 1600 points to 5000. Conoco and Phillips are two of three suppliers of terminal services.
37. After the Merger, the combined firm could effectively coordinate or unilaterally raise prices of terminal services in Spokane.

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38. There are substantial barriers to entering the relevant market in Spokane. Building additional terminals in Spokane would be unlikely, take over two years and therefore would not prevent respondents from raising prices above pre-Merger levels.

Wichita, Kansas

39. A line of commerce in which to analyze the effect of the Merger is the terminaling services for LPPs. LPP terminals are specialized facilities with large storage tanks used for the receipt and local distribution of LPPs by tank truck. There are no substitutes for terminals for the storage and local distribution of gasoline and other light petroleum products.
40. A section of the country in which to analyze the effect of the Merger is the MSA of Wichita, Kansas. LPP marketers in Wichita only can receive terminaling services from terminals located in Wichita. LPP marketers in Wichita have no effective alternative to terminals located within Wichita and cannot economically access more distant terminals or other LPP pipelines outside of Wichita .
41. Phillips owns a terminal in Wichita, which provides terminaling services for Wichita.
42. Conoco owns a terminal in Wichita, which provides terminaling services for Wichita.
43. The market for terminal services in Wichita is highly concentrated with the HHI rising by over 750 points to over 3600.
44. After the Merger, the combined firm could effectively coordinate or unilaterally raise prices of terminal services in Wichita.

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45. There are substantial barriers to entering the relevant market in Wichita. Building additional terminals in Wichita would be unlikely, take over two years and therefore would not prevent respondents from raising prices above pre-Merger levels.

Southern Missouri

46. A line of commerce in which to analyze the effect of the Merger is the bulk supply of propane. Consumers use propane for, among other things, space heating and industrial processes. There is no economic substitute for propane.
47. A section of the country in which to analyze the effect of the Merger is the area located in southern Missouri – south and west of St. Louis (“Southern Missouri”). Propane wholesalers in Southern Missouri can only receive bulk quantities of propane from propane terminals in Southern Missouri. Propane wholesalers cannot economically access refineries and pipelines located outside of Southern Missouri.
48. Phillips owns terminals located in Jefferson City, Missouri.
49. Conoco owns a propane terminal in Belle, Missouri.
50. Phillips and Conoco are two of four suppliers of bulk quantities of propane in Southern Missouri. The market is highly concentrated in Southern Missouri. The HHI increases by over 1200 points to 3700.
51. After the Merger, the combined firm could effectively coordinate or unilaterally raise prices of bulk supplies of propane in Southern Missouri.
52. There are substantial barriers to entering the relevant market in Southern Missouri. Building additional refineries or

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pipelines to transport propane to Southern Missouri would be unlikely, take over two years and therefore would not prevent respondents from raising prices above pre-Merger levels.

St. Louis, Missouri MSA

53. A line of commerce in which to analyze the effect of the Merger is the bulk supply of propane. Consumers use propane for, among other things, space heating and industrial processes. There is no economic substitute for propane.
54. A section of the country in which to analyze the effect of the Merger is the MSA of St. Louis, Missouri. Propane wholesalers and local gas distribution companies in St. Louis can only receive bulk quantities of propane from local refineries and propane terminals in Southern Missouri. Propane wholesalers cannot economically access refineries and pipelines located outside of St. Louis, Missouri.
55. Phillips owns a propane terminal located in East St. Louis, Illinois. It also owns a refinery in Wood River, Illinois.
56. Conoco owns a propane terminal in Wood River, Illinois.
57. Phillips and Conoco are two of three suppliers of bulk quantities of propane in St. Louis. The market is highly concentrated in St. Louis. The HHI increases by over 1000 points to over 7700.
58. After the Merger, the combined firm could effectively coordinate or unilaterally raise prices of bulk supplies of propane in St. Louis.
59. There are substantial barriers to entering the relevant market in St. Louis. Building additional refineries or pipelines to transport propane to St. Louis would be unlikely, take over

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two years and therefore would not prevent respondents from raising prices above pre-Merger levels.

Southern Illinois

60. A line of commerce in which to analyze the effect of the Merger is the bulk supply of propane. Consumers use propane for, among other things, space heating and industrial processes. There is no economic substitute for propane.
61. A section of the country in which to analyze the effect of the Merger is the area of Southern Illinois, approximately 100 miles to the east of the St. Louis MSA ("Southern Illinois"). Propane wholesalers in Southern Illinois can only receive bulk quantities of propane from local refineries and propane terminals in Southern Illinois. Propane wholesalers cannot economically access refineries and pipelines located outside of Southern Illinois.
62. Phillips owns a propane terminal located in East St. Louis, Illinois. It also owns a refinery in Wood River, Illinois.
63. Conoco owns a propane terminal in Wood River, Illinois.
64. Phillips and Conoco are two of three suppliers of bulk quantities of propane in Southern Illinois. The market is highly concentrated in Southern Illinois. The HHI increases by over 1000 points to over 7700.
65. After the Merger, the combined firm could effectively coordinate or unilaterally raise prices of bulk supplies of propane in Southern Illinois.
66. There are substantial barriers to entering the relevant market in Southern Illinois. Building additional refineries or pipelines to transport propane to Southern Illinois would be unlikely, take over two years and therefore would not

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prevent respondents from raising prices above pre-Merger levels.

The Permian Basin

67. A line of commerce in which to analyze the effect of the Merger is natural gas gathering. Permian Basin natural gas producers contract with natural gas gatherers to transport and/or process the natural gas from the wells to processing plants. Permian Basin producers have no economic alternative to using natural gas gatherers to transport the natural gas.
68. Sections of the country in which to analyze the effect of the Merger are local areas within Lea County, Eddy County and Chavez County, New Mexico, and Schleicher County, Texas ("Permian Basin Markets"). Consumption of natural gas in those areas of the Permian Basin is well below natural gas production levels. Most production is processed and transported to fractionators. Permian Basin producers cannot access gathering pipelines more than a few miles from their wells because of low production levels and the relatively high cost of building gathering pipelines. Small areas within the Permian Basin are relevant markets.
69. Phillips owns approximately 30 percent of Duke Energy Field Services ("DEFS"). DEFS owns significant natural gas gathering systems in the Permian Basin Markets.
70. Conoco owns significant gathering systems in the Permian Basin Markets.
71. DEFS and Conoco are the only two gatherers in the Permian Basin Markets. Those markets are highly concentrated.
72. After the Merger, the combined firm and DEFS would likely bid less aggressively to provide gathering services,

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resulting in higher gathering fees and less natural gas production.

73. There are substantial barriers to entering the relevant market in the Permian Basin Markets. Building additional pipelines in the Permian Basin Markets would be unlikely, take over two years, and therefore would not prevent respondents and DEFS from being able to maintain a price increase over pre-Merger levels.

Mont Belvieu, Texas

74. A line of commerce in which to analyze the effects of the Merger is fractionation. Fractionators are specialized facilities that separate raw mix natural gas liquids into specification products such as ethane or ethane-propane, propane, iso-butane, normal-butane, and natural gasoline by means of a series of distillation processes. These specification products are ultimately used in the manufacture of petrochemicals, in the refining of gasoline, and as bottled fuel, among other uses. There are no substitutes for fractionators for the conversion of raw mix into individual specification products.
75. A section of the country in which to analyze the effects of this transaction is Mont Belvieu, Texas. Mont Belvieu, Texas is an active fractionation center and natural gas liquids trading hub. Companies with pipeline access to Mont Belvieu have no economic alternative to using fractionation services in Mont Belvieu.
76. Phillips owns 30 percent of DEFS. Phillips may appoint two members of the DEFS board of directors. DEFS owns an interest in the Enterprise and Mont Belvieu I fractionators. By virtue of its ownership in DEFS, Phillips has access to competitively sensitive information of the Enterprise and Mont Belvieu I fractionators, and significant voting interests.

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- 77. Conoco partially owns and operates Gulf Coast Fractionators. Conoco has access to competitively sensitive information of Gulf Coast Fractionators.
- 78. The market for fractionation in Mont Belvieu is highly concentrated.
- 79. After the Merger, the combined firm would have access to competitively sensitive information of Mont Belvieu fractionators accounting for more than 70 percent of the market capacity. The combined firm will also have veto rights over significant expansion decisions.
- 80. The Merger likely would reduce competition by allowing fractionation competitors to share information and exercise veto rights over expansion decisions.
- 81. Entry is unlikely to be timely or sufficient to defeat a price increase. Fractionation expansion is costly and would take more than two years.

**COUNT I:
LOSS OF COMPETITION IN EASTERN COLORADO**

- 82. Paragraphs 1 - 81 are incorporated by reference as if fully set forth herein.
- 83. One relevant product market in which to assess the effect of the Merger is the bulk supply of light petroleum products.
- 84. One relevant geographic market in which to assess the effect of the Merger is Eastern Colorado.
- 85. The Eastern Colorado market is highly concentrated and the Merger, if consummated, will substantially increase that concentration.

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- 86. Entry into the Eastern Colorado market would not be timely, likely or sufficient to deter or counteract likely anticompetitive effects arising from the Merger.
- 87. The Merger will eliminate ongoing competition between respondents with the likely result of reducing the output of LPPs in Eastern Colorado.

**COUNT II:
LOSS OF COMPETITION IN NORTHERN UTAH**

- 88. Paragraphs 1 - 87 are incorporated by reference as if fully set forth herein.
- 89. One relevant product market in which to assess the effect of the Merger is bulk supply of light petroleum products.
- 90. One relevant geographic market in which to assess the effect of the Merger is Northern Utah.
- 91. The Northern Utah market is highly concentrated and the Merger, if consummated, will substantially increase that concentration.
- 92. Entry into any of the Northern Utah market would not be timely, likely or sufficient to deter or counteract likely anticompetitive effects arising from the Merger.
- 93. The Merger will eliminate ongoing competition in between the respondents in the Northern Utah market with the likely result of raising rates and reducing output of LPPs.

**COUNT III:
LOSS OF COMPETITION IN SPOKANE, WASHINGTON**

- 94. Paragraphs 1 - 93 are incorporated by reference as if fully set forth herein.

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95. One relevant product market in which to assess the effect of the Merger is the provision of terminaling services of LPPs.
96. One relevant geographic market in which to assess the effect of the Merger is Spokane, Washington.
97. The Spokane market is highly concentrated and the Merger, if consummated, will substantially increase that concentration.
98. Entry into the Spokane market would not be timely, likely or sufficient to deter or counteract likely anticompetitive effects arising from the Merger.
99. The Merger will threaten ongoing competition between the respondents in the Spokane market with the likely result of increasing terminaling services fees and reducing output of terminaling services in the relevant market, and thereby increasing the cost of LPPs.

**COUNT IV:
LOSS OF COMPETITION IN WICHITA, KANSAS**

100. Paragraphs 1 - 99 are incorporated by reference as if fully set forth herein.
101. One relevant product market in which to assess the effect of the Merger is the provision of terminaling services of LPPs.
102. One relevant geographic market in which to assess the effect of the Merger is Wichita, Kansas.
103. The Wichita, Kansas, market is highly concentrated and the Merger, if consummated, will substantially increase that concentration.

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104. Entry into the Wichita, Kansas, market would not be timely, likely or sufficient to deter or counteract likely anticompetitive effects arising from the Merger.
105. The Merger will threaten ongoing competition between the respondents in the Wichita, Kansas, market with the likely result of increasing terminaling services fees and reducing output of terminaling services in the relevant market, and thereby increasing the price of LPPs.

**COUNT V:
LOSS OF COMPETITION IN SOUTHERN MISSOURI**

106. Paragraphs 1 - 105 are incorporated by reference as if fully set forth herein.
107. One relevant product market in which to assess the effect of the Merger is the bulk supply of propane.
108. One relevant geographic market in which to assess the effect of the Merger is Southern Missouri.
109. The Southern Missouri market is highly concentrated and the Merger, if consummated, will substantially increase that concentration.
110. Entry into the Southern Missouri market would not be timely, likely, or sufficient to deter or counteract likely anticompetitive effects arising from the Merger.
111. The Merger will eliminate ongoing competition between respondents with the likely result of raising rates and reducing supplies of propane in the Southern Missouri market and thereby increasing the cost of propane for industrial and agricultural consumers.

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**COUNT VI:
LOSS OF COMPETITION IN THE ST. LOUIS, MSA**

112. Paragraphs 1 - 111 are incorporated by reference as if fully set forth herein.
113. One relevant product market in which to assess the effect of the Merger is the bulk supply of propane.
114. One relevant geographic market in which to assess the effect of the Merger is the MSA of St. Louis, Missouri.
115. The St. Louis MSA is highly concentrated and the Merger, if consummated, will substantially increase that concentration.
116. Entry into the St. Louis MSA would not be timely, likely, or sufficient to deter or counteract likely anticompetitive effects arising from the Merger.
117. The Merger will eliminate ongoing competition between respondents with the likely result of raising rates and reducing output of propane in the St. Louis MSA and thereby increasing the cost of propane and natural gas utility services.

**COUNT VII:
LOSS OF COMPETITION IN SOUTHERN ILLINOIS**

118. Paragraphs 1 - 117 are incorporated by reference as if fully set forth herein.
119. One relevant product market in which to assess the effect of the Merger is the bulk supply of propane.
120. One relevant geographic market in which to assess the effect of the Merger is Southern Illinois.

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121. The Southern Illinois market is highly concentrated and the Merger, if consummated, will substantially increase that concentration.
122. Entry into the Southern Illinois market would not be timely, likely, or sufficient to deter or counteract likely anticompetitive effects arising from the Merger.
123. The Merger will eliminate ongoing competition between respondents with the likely result of raising rates and reducing output of propane in the Southern Illinois market and thereby increasing the cost of propane for industrial and agricultural consumers.

**COUNT VIII:
LOSS OF COMPETITION IN THE PERMIAN BASIN**

124. Paragraphs 1 - 123 are incorporated by reference as if fully set forth herein.
125. One relevant product market in which to assess the effect of the Merger is gathering of natural gas.
126. Several geographic markets in which to assess the effect of the Merger are in the Permian Basin.
127. Each Permian Basin Market is highly concentrated and the Merger, if consummated, will substantially increase that concentration.
128. Entry into each Permian Basin Market would not be timely, likely, or sufficient to deter or counteract likely anticompetitive effects arising from the Merger.
129. The Merger will eliminate ongoing, actual potential and perceived potential competition between respondents with the likely result of raising rates and reducing output of

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processed natural gas from the Permian Basin, and
diminishing production of natural gas in the Permian Basin.

**COUNT IX:
LOSS OF COMPETITION IN MONT BELVIEU**

130. Paragraphs 1 - 129 are incorporated by reference as if fully set forth herein.
131. One relevant product market in which to assess the effect of the Merger is fractionation of natural gas.
132. The relevant geographic market in which to assess the effect of the Merger is Mont Belvieu, Texas.
133. The Mont Belvieu market is highly concentrated, and the merger, if consummated, will substantially increase that concentration.
134. Entry into Mont Belvieu would not be timely, likely, or sufficient to deter or counteract likely anticompetitive effects arising from the Merger.
135. The Merger will eliminate ongoing competition between respondents with the likely result of raising prices and reducing output of fractionated specification products in Mont Belvieu, Texas.

IV. VIOLATIONS CHARGED

136. The merger agreement entered into by respondents Phillips and Conoco constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.
137. The Merger, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

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IN WITNESS WHEREOF, the Federal Trade Commission, having caused this Complaint to be signed by the Secretary and its official seal affixed, at Washington, D.C., this thirtieth day of August, 2002, issues its complaint against respondents.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed merger involving Respondents, Conoco Inc. (“Conoco”) and Phillips Petroleum Company (“Phillips”), and Respondents having been furnished thereafter with a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, 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 the Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and its Order to Hold Separate and Maintain Assets and accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following order (“Order”):

1. Respondent Conoco Inc. 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 600 North Dairy Ashford, Houston, TX 77079.

Decision and Order

2. Respondent 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 411 South Keeler, Bartlesville, OK 74004.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, 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. “Conoco” means Conoco Inc., its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Conoco, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Conoco does not include Phillips.
- B. “Phillips” means Phillips Petroleum Company, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Phillips, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Phillips does not include: (1) Conoco or (2) DEFS as long as Phillips’ proportionate ownership and other interests and rights in DEFS do not increase relative to what they were at the time Respondents executed the Agreement Containing Consent Orders.
- C. “ConocoPhillips” means the entity resulting from the merger involving Conoco and Phillips, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by ConocoPhillips, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. ConocoPhillips does not include DEFS as long as

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ConocoPhillips' proportionate ownership and other interests and rights in DEFS do not increase relative to what Phillips' proportionate ownership and other interests and rights were at the time Respondents executed the Agreement Containing Consent Orders.

- D. "Respondents" means Conoco and Phillips, individually and collectively, and, after the Merger, ConocoPhillips.
- E. "Commission" means the Federal Trade Commission.
- F. "Agreement Containing Consent Orders" means the agreement executed by Respondents in this matter.
- G. "Ancillary Products" means any product that is commonly sold in Gasoline Outlets other than Motor Fuels or Aviation Fuels.
- H. "Aviation Fuels" means aviation gasoline and jet fuels.
- I. "Assets To Be Divested" means (1) Phillips Woods Cross Assets, (2) Colorado Assets, (3) Propane Assets, (4) Phillips Spokane Terminal, (5) New Mexico Assets, and (6) Texas Assets.
- J. "Blue Line" means the common carrier pipeline currently owned by the Phillips Pipe Line Company that extends from Borger, Texas, to East St. Louis, Illinois, and that serves the Propane Terminal Assets as delivery intermediate destinations.
- K. "Branded Ancillary Products" means any Ancillary Product that is sold under a brand name owned by or licensed to Respondents.
- L. "Branded Aviation Fuels" means Aviation Fuels that are sold under a brand name owned by or licensed to Respondents.
- M. "Branded Fuels" means Motor Fuels that are sold under a brand name owned by or licensed to Respondents.
- N. "Colorado Assets" means the (1) Conoco Denver Refinery Assets; and (2) Phillips Colorado Retail Assets.

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- O. “Conoco Branded Fuels” means Branded Fuels sold under a brand name owned by or licensed to Conoco.
- P. “Conoco Branded Seller” means any Person (other than Conoco) that has, by virtue of contract or agreement in effect at the time Respondents executed the Agreement Containing Consent Order, the right to sell Motor Fuels using any trademark, trade name, or logo owned or licensed by Conoco, or to resell Motor Fuels to any such Person. “Conoco Branded Seller” includes marketers, distributors, jobbers, contract dealers and open dealers.
- Q. “Conoco Denver Refinery Assets” means Conoco’s refinery located at Commerce City, Colorado, and includes:
1. all of Conoco’s interest in all tangible assets used in the operation of the refinery, including any leasehold, ownership, fee, or any other interest in real estate at the refinery grounds in Commerce City, Colorado, and in the production or distribution of the products produced at the refinery (excluding those used solely in the marketing, distribution, or sale of Conoco Branded Fuels as branded products), and includes, but is not limited to,
 - a. the main plant;
 - b. the asphalt plant;
 - c. Conoco’s Lance Creek Gathering System;
 - d. Conoco’s Rocky Mountain Crude System, which runs from Lance Creek to Denver;
 - e. all of Conoco’s interest in the Centennial Pipeline System;
 - f. any other crude oil pipelines connected to the refinery;
 - g. any refined products pipelines into or from the refinery, which includes the products pipeline to Union Pacific Railroad;
 - h. loading facilities;
 - i. lubricants distribution facilities adjacent to the refinery, subject to existing leases to Rex Oil and other third parties; and
 - j. at the acquirer’s option, Conoco’s interest in crude oil storage tanks located at Guernsey, Wyoming, constituting up to 70% of Conoco’s crude oil storage tankage capacity and crude oil tankage throughput capacity at Guernsey;
 2. all books, records, and documents (excluding those related solely to the marketing, distribution, or sale of

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- Conoco Branded Fuels as branded products) relating to the refinery and to the production, marketing, distribution, or sale of products produced at the refinery; provided, however, that if any such books, records, or documents also include matters not related to the refinery or products produced at the refinery, then only those portions of the books records and documents that relate to the refinery or the products produced at the refinery shall be included;
3. an exclusive right to all intellectual property used solely in the operation of the refinery or in the production, marketing, distribution, or sale of the products produced at the refinery (excluding that used solely in the marketing, distribution, or sale of Conoco Branded Fuels as branded products), and a non-exclusive right to use in the operation of the refinery and in the production, marketing, distribution, and sale of products produced at the refinery all other intellectual property used in the operation of the refinery and in the production, marketing, distribution, or sale of the products produced at the refinery (excluding that used solely in the marketing, distribution, or sale of Conoco Branded Fuels as branded products);
 4. all licenses and permits used in the operation of the refinery and in the production, marketing, distribution, or sale of the products produced at the refinery (excluding those used solely in the marketing, distribution, or sale of Conoco Branded Fuels as branded products);
 5. all contracts, agreements, and understandings relating to the transportation, storage, Terminaling, marketing, distribution, or sale of the products produced at the refinery (excluding those relating solely to the marketing, distribution, or sale of Conoco Branded Fuels as branded products), which includes but is not limited to all agreements under which Conoco receives crude oil or other inputs at or for the refinery; the resid processing agreement with Frontier Refining, Inc.; Phillips' contractual right to receive refined products from Conoco at Conoco's Grand Junction, Colorado, terminal pursuant to an exchange agreement, and, at the acquirer's option, all exchange agreements involving the refinery (but only to the extent the exchange agreement involve products produced at the refinery); provided, however, that if any such contract, agreement, or understanding includes matters, terms, or locations not related to the

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Conoco Denver Refinery Assets, then only those provisions relating to the Conoco Denver Refinery Assets shall be included;

6. all joint ventures relating to the operation of the refinery and in the production, marketing, distribution, or sale of the products produced at the refinery (excluding those relating solely to the marketing, distribution, or sale of Conoco Branded Fuels as branded products);
7. all plans (including proposed and tentative plans, whether or not adopted), specifications, drawings, and other assets (including the non-exclusive right to use patents, know-how, and other intellectual property relating to such plans) related to the operation of the Denver refinery.

“Conoco Denver Refinery Assets” does not include:

- a. the assets listed in Exhibit A;
- b. Conoco’s lease of a connecting line from Stapleton Airport to Chases’s Aurora, Colorado, terminal (which is connected by common carrier pipeline to Denver International Airport), provided that, Respondents instead establish and divest to the acquirer a pipeline connection to an existing Phillips line to provide access to Chase’s Aurora, Colorado, terminal (which is connected by common carrier pipeline to Denver International Airport) at a capacity equal to or greater than the capacity Conoco had to Chase’s Aurora, Colorado, terminal, and Respondents enter into a connection agreement with or assignable to acquirer at terms consistent with standard industry practices;
- c. Conoco’s interest in the KPAC Joint Venture, subject to the requirements of Paragraph III.I.;
- d. Conoco’s interests in the Jupiter Joint Venture, subject to the requirements of Paragraph III.J.; and
- e. any books and records that Respondents are required by law to retain, provided that Respondents deliver at least one copy of such books and records to the acquirer.

R. “Conoco Existing Supply Agreements” means all agreements, in effect as of the date Respondents executed the Agreement Containing Consent Orders, between Conoco and Conoco Branded Sellers relating to such Person’s right

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or obligation to sell or resell Branded Fuels using any trademark, trade name, or logo owned by or licensed to Conoco at a Gasoline Outlet, including but not limited to, each Branded Fuels supply contract, distributor agreement, dealer agreement, image agreement, amortization agreement, jobber outlet incentive program contract.

- S. “ConocoPhillips DEFS Board Members” means all board members appointed by ConocoPhillips, Conoco, or Phillips to the board of directors of DEFS.
- T. “ConocoPhillips Non-Public GCF Information” means Non-Public Information relating to GCF.
- U. “Cost” means all direct costs, including raw materials, labor, utilities, and third-party contract services actually used to provide services to the acquirer of the relevant business. “Cost” also includes the pro rata share of the cost of the capital employed in the relevant facility and those indirect costs related to operating the relevant facility, including taxes, depreciation, overhead, and third-party contracts. When calculating the pro rata shares of the costs of a facility, Respondents shall use the following formula: the amount of capacity used by the acquirer of the relevant business divided by the then-current total capacity utilization of the relevant facility.
- V. “DEFS” means Duke Energy Field Services, LLC, a limited liability company, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 370 17th Street, Suite 900, Denver, Colorado 80202, its directors, officers, employees, agents and representatives.
- W. “DEFS Non-Public Fractionation Information” means Non-Public Information relating to Enterprise or Mont Belvieu I.
- X. “Duke” means Duke Energy Corporation, a corporation, organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its offices and principal place of business located at 526 South Church Street, Charlotte, North Carolina 28202, its directors, officers, employees, agents and representatives.

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- Y. “Duke DEFS Board Members” means all board members appointed by Duke to the board of directors of DEFS.
- Z. “Effective Date of Divestiture” means the date on which the applicable divestiture is consummated. Each Asset To Be Divested may have its own Effective Date of Divestiture.
- AA. “Enterprise” means the fractionating facility located at 10207 Farm Road, FM 1942, Mont Belvieu, Chambers County, Texas.
- AB. “FERC” means the United States Federal Energy Regulatory Commission.
- AC. “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.
- AD. “Gasoline Outlet” means a business establishment from which Motor Fuels are sold to the general public.
- AE. “GCF” means the fractionating facility owned by Gulf Coast Fractionators and located 1.5 miles west of Highway 146 on Farm Road FM 1942, Mont Belvieu, Chambers County, Texas.
- AF. “KPAC Joint Venture” means the asphalt joint venture (known as the Koch Performance Asphalt Company (“KPAC”)) between Conoco and Koch.
- AG. “Maljamar Processing Plant” means Conoco’s gas processing facility located at 1001 Conoco Road, Maljamar, New Mexico, and includes:
1. all of Conoco’s interest in all tangible assets used in the operation of the facility, including, but not limited to, all facilities, physical assets and pipelines used in the operation of the facility;
 2. all books, records, and documents relating to the facility and to the products processed at the facility; provided, however, that if any such books, records, or documents also include matters not related to the facility or to products processed at the facility, then only those portions of the books records and documents that relate to the facility or to the products processed at the facility

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shall be included;

3. on an exclusive basis, all easements, rights of way, or other rights used solely in the operation of the facility, and on a non-exclusive basis, all other easements, rights of way, or other rights used in the operation of the facility;
4. all licenses and permits used in the operation of the facility;
5. an exclusive right to all intellectual property used solely at the facility, and a non-exclusive right to use at the facility all other intellectual property used at the facility; and
6. all contracts, agreements or understandings relating to the operation of the facility and relating to the operation of any physical assets or pipelines used in the operation of the facility; provided, however, that if any such contract, agreement or understanding includes matters or terms not relating to the operation of the facility or to the operation of the other physical assets or pipelines used in the operation of the facility, then only those provisions relating to the Maljamar Processing Plant shall be included.

“Maljamar Processing Plant” does not include the assets listed in Exhibit B.

- AH. “Merger” means the proposed merger of Conoco and Phillips.
- AI. “Merger Date” means the date on which the Merger is consummated.
- AJ. “Mertzson Facility” means Conoco’s gas processing facility located seven miles southwest of Mertzson, Texas, on Highway 67, Irion County, Texas 76941.
- AK. “Mont Belvieu I” means the fractionating facility located at 9900 Farm Road FM 1942, Mont Belvieu, Chambers County, Texas.
- AL. “Motor Fuels” means gasoline or diesel fuel (including any kerosene sold at Gasoline Outlets, such as kerosene typically used for blending with on-road diesel). “Motor Fuels” does not include Aviation Fuels.

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AM. “New Mexico Assets” means (1) all of Conoco’s tangible assets located in the New Mexico Specified Area used for the gathering, compression, processing, transportation, or sale of natural gas; (2) all contracts, agreements and understandings relating to the tangible assets defined in (1), above; provided, however, that if any such contract, agreement or understanding includes matters or terms not related to the tangible assets defined in (1), above, then only those provisions relating to the tangible assets defined in (1), above, shall be included; (3) the Maljamar Processing Plant; and (4) on an exclusive basis, all easements, rights of way, or other rights used solely in the operation of the New Mexico Assets, and on a non-exclusive basis, all other easements, rights of way, or other rights used in the operation of the New Mexico Assets. “New Mexico Assets” does not include: (1) the assets listed in Exhibit B; or (2) any of Conoco’s ownership interest in real estate related to the assets described in (1), above, provided that Respondents shall grant the acquirer of the New Mexico Assets all easements, rights of way, or other rights necessary to operate the New Mexico Assets.

AN. “New Mexico Specified Area” means, in the State of New Mexico, all sections within the township and ranges of 16S/30E-33E; all sections within 17S/31E-33E; all sections within 18S/32E-33E; sections 3-10, 15-22 and 27-34 of 16S-17S/34E; sections 3-10, 15-22 and 27-32 of 18S/34E; sections 3-7 and 17-20 of 19S/34E; section 6 of 20S/34E; section 1 of 20S/33E; sections 1-12, 14-23, 26-32 and 35-36 of 19S/33E; sections 1-6, 8-17, 22-26, 30-31 and 36 of 19S/32E; sections 1-3, 12-13, 15-17, 19-25 and 27-28 of 19S/31E; sections 1-18, 20-27 and 34-36 of 18S/31E; sections 1-17, 20-26 and 34-36 of 17S/30E; sections 1-4, 9-16 and 21-23 of 18S/30E; sections 1, 12, 13, 24, 25, and 36 of 16S/29E; sections 1 and 12 of 17S/29E; section 35 of 15S/33E; sections 9, 16, 21, 28, 29, 32 and 33 of 15S/32E; sections, 4-9, 15-22 and 27-34 of 15S/30E; sections 1-5, 8-17, 20-29 and 32-36 of 15S/29E; sections 20-29 and 32-36 of 14S/29E; and sections 19-21 and 28-33 of 14S/30E. “New Mexico Specified Area” is depicted on the map that is attached as Confidential Exhibit B-1.

AO. “Non-Public Information” means any information not in

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the public domain. “Non-Public Information” shall not include information that was publicly available prior to the date Respondents executed the Agreement Containing Consent Orders or that thereafter becomes publicly available or is disclosed to Respondents without any violation of this Order by Respondents and without violation of law or regulation by or known to Respondents.

AP. “Non-Public Propane Information” means any Non-Public Information relating to the Propane Business.

AQ. “OPIS” means the Oil Price Information Service, or such replacement publication as ConocoPhillips and the acquirer may agree to if OPIS ceases to be published or ceases to provide the information to be obtained therefrom pursuant to this Order.

AR. “Order to Hold Separate and Maintain Assets” means the Order to Hold Separate and Maintain Assets issued by the Commission in this matter.

AS. “Person” means any individual, partnership, association, company or corporation.

AT. “Phillips Branded Fuels” means Branded Fuels sold under a brand name owned by or licensed to Phillips.

AU. “Phillips Branded Seller” means any Person (other than Phillips) that has, by virtue of contract or agreement in effect at the time Respondents executed the Agreement Containing Consent Orders, the right to sell Motor Fuels using any trademark, trade name, or logo owned or licensed by Phillips, or to resell Motor Fuels to any such Person. “Phillips Branded Seller” includes marketers, distributors, jobbers, contract dealers and open dealers.

AV. “Phillips Colorado Retail Assets” means all of Phillips Retail Assets in Colorado as of the date Respondents executed the Agreement Containing Consent Orders, except those Gasoline Outlets subject to an agreement dated June 13, 2002, between Phillips and Phillips Investment Company, LLC.

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AW. “Phillips Colorado Supply Agreements” means

1. all agreements in effect as of the date Respondents executed the Agreement Containing Consent Orders between Phillips and Phillips Branded Sellers; and
2. all agreements in effect as of the Effective Date of Divestiture of the Colorado Assets between Phillips and Phillips Investment Company, LLC, relating to such Person’s right or obligation to sell or resell Phillips Branded Fuels at Gasoline Outlets in Colorado, including but not limited to, each Branded Fuels supply contract, distributor agreement, dealer agreement, image agreement, amortization agreement, jobber outlet incentive program contract, and the Phillips 66 Branded Marketer Agreement.

AX. “Phillips Spokane Terminal” means Phillips’ petroleum storage and distribution terminal in Spokane, Washington, and includes:

1. all of Phillips’ interest in all tangible assets that are used in Terminaling in Spokane, including but not limited to:
 - a. real estate;
 - b. storage tanks;
 - c. local connector pipelines;
 - d. loading and unloading facilities;
 - e. equipment, machinery, fixtures, tools, and spare parts;
 - f. and, to the extent used in Terminaling, offices, buildings, and warehouses;
2. an exclusive right to all intellectual property used solely in the operation of the terminal, and a non-exclusive right to use in the operation of the terminal all other intellectual property used in the operation of the terminal;
3. all licenses and permits used in the operation of the terminal; and
4. all contracts, agreements or understandings relating to the operation of the terminal.

“Phillips Spokane Terminal” does not include the assets listed in Exhibit C.

AY. “Phillips Wichita Terminal Assets” means an undivided 50% interest in Phillips’ assets relating to Terminaling in Wichita, Kansas. “Phillips Wichita Terminal Assets” does not include Phillips proprietary trade names, trademarks

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and identification signs, any real estate, any refined petroleum products inventory, any refined petroleum products storage tanks that support or are used for or by Phillips in the operation of its Blue Line, Gold Line, or Standish Line, or any intellectual property.

AZ. “Phillips Woods Cross Assets” means the (1) Phillips Woods Cross Refinery Assets; and (2) Phillips Woods Cross Retail Assets.

BA. “Phillips Woods Cross Refinery Assets” means Phillips refinery located at Woods Cross, Utah, and includes:

1. all of Phillips’ interest in all tangible assets used in the operation of the refinery, including any leasehold, ownership, fee, or any other interest in real estate at the refinery grounds in Woods Cross, Utah, and in the production, marketing, distribution, or sale of the products produced at the refinery, including, but not limited to:
 - a. the plant;
 - b. all of Phillips’ interest in the Phillips Woods Cross refinery tanks;
 - c. the 4-mile crude oil pipeline between Chevron Salt Lake Station and the refinery;
 - d. any other crude oil pipelines connected to the refinery;
 - e. the refined products pipeline from the refinery to the Chevron manifold;
 - f. the truck loading rack;
 - g. all other refined products pipelines into or from the refinery;
 - h. Phillips’ interests in the Boise terminal and the Burley terminal (subject to Paragraph II.K.);
 - i. loading facilities; and
 - j. at the acquirer’s option, Phillips’ allocation on the Chevron pipeline;
2. all books, records, and documents relating to the refinery and to the production, marketing, distribution, or sale of products produced at the refinery; provided, however, that if any such books, records, or documents also include matters not related to the refinery or products produced at the refinery, then only those portions of the books records and documents that relate to the refinery or the products produced at the refinery shall be

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included;

3. an exclusive right to all intellectual property used solely in the operation of the refinery or in the production, marketing, distribution, or sale of the products produced at the refinery, and a non-exclusive right to use in the operation of the refinery and in the production, marketing, distribution, or sale of the products produced at the refinery all other intellectual property used in the operation of the refinery and in the production, marketing, distribution, or sale of the products produced at the refinery;
4. all licenses, agreements, contracts, and permits used in the operation of the refinery and in the production, marketing, distribution, or sale of the products produced at the refinery;
5. all contracts, agreements, and understandings relating to the transportation, storage, Terminaling, marketing, distribution, or sale of the products produced at the refinery, including, but not limited to, all agreements under which Phillips receives crude oil or other inputs at or for the refinery; and at the acquirer's option, all exchange agreements involving the refinery (but only to the extent the exchange agreements involve products produced at the refinery);
6. all joint ventures relating to the operation of the refinery and in the production, marketing, distribution, or sale of the products produced at the refinery; and
7. all plans (including proposed and tentative plans, whether or not adopted), specifications, drawings, and other assets (including the non-exclusive right to use patents, know-how, and other intellectual property relating to such plans) related to the operation of the refinery.

“Phillips Woods Cross Refinery Assets” does not include:

- a. any books and records located at the Phillips Woods Cross refinery that Respondents are required by law to retain, provided that Respondents deliver at least one copy thereof to the acquirer; or
- b. the assets listed in Exhibit D.

BB. “Phillips Woods Cross Retail Assets” means all of Phillips’ Retail Assets in Utah, Wyoming, Idaho, and Montana as of the date Respondents executed the Agreement Containing Consent Orders.

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- BC. “Phillips Woods Cross Supply Agreements” means all agreements, in effect as of the date Respondents executed the Agreement Containing Consent Orders, between Phillips and Phillips’ Branded Sellers relating to such Person’s right or obligation to sell or resell Phillips Branded Fuels at Gasoline Outlets in Utah, Wyoming, Montana, or Idaho, including but not limited to, each Branded Fuels supply contract, distributor agreement, dealer agreement, image agreement, amortization agreement, jobber outlet incentive program contract, and the Phillips 66 Branded Marketer Agreement.
- BD. “Propane Alternate Assets” means (1) Respondents’ interests in that portion of the Blue Line extending from the Blue Line’s connection with the Shocker Line to East St. Louis, Illinois; (2) Respondents’ interests in the Shocker Line; (3) Respondents’ interests in the Shocker Station; (4) an undivided 50% ownership interest in that portion of the Blue Line extending from Borger, Texas, to the Shocker Line (at or near Wichita, Kansas), with Respondents retaining the right to operate that portion; (5) the entirety of the Ringer, Kansas, terminal; and (6) an undivided 50% ownership interest in the Jefferson City, Missouri, and East St. Louis, Illinois, terminals, including the right to operate these terminals or, at the option of the acquirer, that portion of the terminal(s) used in Propane Terminating.
- BE. “Propane Business” means (1) the Propane Terminal Assets and (2) all propane supply agreements between Phillips and its customers at, and to the extent they relate to the supply of propane from, Phillips’ terminals in Jefferson City, Missouri, and East St. Louis, Illinois, effective as of the date Respondents executed the Agreement Containing Consent Orders, including, but not limited to, all present and historical reports, data and information relating to those supply agreements.
- BF. “Propane Support Personnel” means persons, employees, agents, contractors or affiliates of Respondents who are involved, directly or indirectly, in satisfying Respondents’ obligations under propane supply agreements or otherwise in the transport of propane or the operation of the Propane Terminal Assets. “Propane Support Personnel” also

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includes persons, employees, agents, contractors or affiliates who have access to Non-Public Propane Information of the acquirer of the Propane Business.

BG. “Propane Terminal Assets” means all of Phillips’ interest in Phillips’ propane terminal operations from the Jefferson City, Missouri, and East St. Louis, Illinois, terminals, and includes:

1. all of Phillips’ interest in all tangible assets used exclusively in Propane Terminaling, including the transportation of propane from the Blue Line, including, but not limited to
 - a. offices, buildings, warehouses;
 - b. equipment, machinery, fixtures, tools, spare parts; and
 - c. all other property used exclusively in Propane Terminaling at the Jefferson City, Missouri, and East St. Louis, Illinois, terminals;
2. odorizing facilities;
3. existing easements and rights of way held by Phillips for operation of the Propane Terminal Assets;
4. propane storage tanks;
5. local connector pipelines from the Blue Line to any propane storage tank, between propane storage tanks, and from any propane storage tank to any propane truck rack;
6. propane truck racks;
7. all licenses and permits necessary for the acquirer’s ownership of the Propane Terminal Assets;
8. the contracts, agreements, and understandings relating to and necessary for the acquirer’s ownership of the Propane Terminal Assets;
9. a general right to use common assets owned by Respondents at each propane terminal location that exist in support of the propane terminal operations and are required on a normal and routine basis to own the Propane Terminal Assets; and
10. an exclusive right to all intellectual property used solely in the operation of the Propane Terminal Assets or in the production, marketing, distribution, or sale of propane at the Propane Terminal Assets, and a non-exclusive right to use at the Propane Terminal Assets all other intellectual property used in the operation of the Propane Terminal Assets and in the production, marketing, distribution, or sale of propane.

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“Propane Terminal Assets” does not include

- a. Phillips’ proprietary trade names, trademarks and identification signs;
- b. Phillips’ proprietary equipment, computer hardware and software used to monitor and verify product specifications, unless otherwise required in this Order; or
- c. any interest in real estate, other than the rights to (a) existing easements and rights of way described above at Item 3; and (b) all easements and rights of way to provide the acquirer, now and in the future, an unqualified right to use and expand the Propane Terminal Assets consistent with the requirements of this Order.

BH. “Propane Terminaling” means the services performed by a facility that provides temporary storage of propane products received from a pipeline, and the redelivery of propane products from storage tanks into tank trucks or transport trailers.

BI. “Retail Assets” means, for each Gasoline Outlet, all of Respondents’ interests in the Gasoline Outlet, and includes:

- 1. all of Respondents’ interest in all tangible assets that are used at that Gasoline Outlet, including, but not limited to, any leasehold, ownership, fee, or any other interest in real estate;
- 2. all permits, licenses, consents, contracts, understandings, and agreements used in the operation of the Gasoline Outlet;
- 3. the exclusive right to all intellectual property used solely in the operation of the Gasoline Outlet, and the non-exclusive right to use in the operation of the Gasoline Outlet all other intellectual property used in the operation of the Gasoline Outlet;
- 4. all of Respondents’ interest in all assets relating to all ancillary businesses (including, but not limited to, automobile mechanical service, convenience store, restaurant or car wash) operated in connection with each Gasoline Outlet, including
 - a. all permits, licenses, consents, contracts, understandings, and agreements used in the operation

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- of the ancillary businesses;
- b. the exclusive right to all intellectual property used solely in the operation of the ancillary business, and the non-exclusive right to use in the operation of the ancillary businesses all other intellectual property in the operation of the ancillary businesses.

For purposes of this definition only, “Retail Assets” does not include:

- a. Respondents’ proprietary trademarks, trade names, logos, trade dress, or identification signs;
 - b. additized product inventory;
 - c. credit card agreements; or
 - d. satellite-based or centralized credit card processing equipment not located at the Gasoline Outlet.
- BJ. “Shocker Line” means the common carrier pipeline owned by Phillips Pipe Line Company that originates at Conway, Kansas, and that connects to the Blue Line at a point at or near Wichita, Kansas.
- BK. “Shocker Station” means the pipeline station owned and operated by the Phillips Pipe Line Company and located at or near Conway, Kansas.
- BL. “Terminaling” means the services performed by a facility that provides temporary storage of refined petroleum products received via pipeline, tank trucks, rail, or transport trailers, and the redelivery of refined products from storage tanks into pipeline, tank trucks, rail, or transport trailers.
- BM. “Texas Assets” means (1) all of Conoco’s tangible assets located in the Texas Specified Area used for the gathering, compression, processing, transportation, or sale of natural gas; (2) all contracts, agreements and understandings relating to the tangible assets defined in (1), above; provided, however, that if any such contract, agreement or understanding includes matters or terms not related to the tangible assets defined in (1), above, then only those provisions relating to the tangible assets defined in (1), above, are included; and (3) on an exclusive basis, all easements, rights of way, or other rights used solely in the operation of the Texas Assets,

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and on a non-exclusive basis, all other easements, rights of way, or other rights used in the operation of the Texas Assets. "Texas Assets" does not include (1) the assets listed in Exhibit E; or (2) any of Conoco's ownership interest in real estate related to the assets described in (1), above, provided that Respondents shall grant the acquirer of the Texas Assets all easements, rights of way, or other rights necessary to operate the Texas Assets.

BN. "Texas Specified Area" means

1. in Sutton County, Texas, T.W.N.G.R.R. Co. Block A-9, sections 7, 8 and 10; T.W.N.G.R.R. Co. Block 9, sections 26-29, 31-39, 43-46, 72 and 100; H.E.&W.T.R.R. Block A, sections 1, 31-35 and 63; G.C.&S.F.R.R. Co., sections 10-15; H.E.&T.R.R. Co. Block B, sections 14, 15, 23, 24, 48, 59, 69-72 and 134-138; E.L.&R.R.R.R. Co., sections 13-20; and G.C.&S.F.R.R. Co. Block D, sections 68-74;
2. in Schleicher County, Texas, G.C.&S.F.R.R. Co. Block 2, sections 18, 23, 24 and 27; G.C.&S.F.R.R. Co. Block 5, sections 4-8; G.C.&S.F.R.R. Co. Block A, sections 4, 13-28, 31-37, 40-44 and 56½; G.C.&S.F.R.R. Co. Block D, sections 5, 57, 59-61 and 64-68; E.L.&R.R.R.R. Co., sections 2 and 194½; H.E.&W.T.R.R. Block A, sections 1, 2, 5-7, 25-29, 41-51, 75-82, 104-112, 136-141, 161, 165-172, 176, 191 and 195-202; G.H.&S.A.R.R. Co., section 23; G.H.&S.A.R.R. Co. Block L, sections 34, 36 and 37; G.H.&S.A.R.R. Co. Block EEE, section 6; G.H.&S.A.R.R. Co. Block I, sections 4, 5, 8, 21, 24, 36, 37, 39-41, 53-55, 70 and 71; G.H.&S.A.R.R. Co. Block M, sections 3, 10, 11, 14-16, 19-23, 25-35, 37-42, 48, 67 and 78-80; G.H.&S.A.R.R. Co. Block H, sections 65, 67-70, 72-74 and 79; T.W.N.G.R.R. Block 8, section 39; Block TT, sections 3-27, 32-51, 53, 54 and 58-84; Block LL, sections 1-56, 59, 61, 63, 75, 76, 83 and 84; University Land Block 54, sections 20-22; TC R.R. Co., section 1213; Tom Green Co. School Land, sections 3, 3½ and 5; G. Roeder, section 1891; F. Kloepper, section 1892; M.E. Ratcliff, section 16; and Concho School Land, sections 2, 7, and 8;
3. in Schleicher County, Texas, the following sections, for which survey references are not available: sections 79½

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and 1, located south of G.H.&S.A.R.R. Co. Block M, section 80; sections 3 ¼, 99, 100, 7, 7¼, 20¾, 1031 and two adjoining sections labelled 7¾, all of which are located to the west of Block LL and to the east of Block AA; section 41, located to the north of H.E.&W.T.R.R. Block A, sections 199, 198, 169, 168, 139, 138, 109, 108, 79, 78, 49 and 48; and

4. in Tom Green County, Texas, G. Roeder, sections 1890 and 1891; M.E. Ratcliff, section 16; and Tom Green Co. School Land, section 3.

“Texas Specified Area” is depicted on the map that is attached as Confidential Exhibit E-1.

BO. “Wichita Refined Products Throughput Agreement” means the agreement between Respondents and a single throughput customer subject to the prior approval of the Commission, for the receipt, storage, handling, and redelivery of refined products from storage tanks into tank trucks or transport trailers for the throughput customer at Phillips’ refined products terminal in Wichita, Kansas.

II.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest the Phillips Woods Cross Assets to a single acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission, absolutely and in good faith and at no minimum price, within twelve (12) months from the date Respondents executed the Agreement Containing Consent Orders.
- B. Respondents shall, upon the Effective Date of Divestiture of the Phillips Woods Cross Assets, assign to the acquirer of the Phillips Woods Cross Assets all Phillips Woods Cross Supply Agreements.
- C. Respondents shall provide the acquirer of the Phillips Woods Cross Assets (and shall enter into an agreement with the acquirer of the Phillips Woods Cross Assets, to be effective upon the Effective Date of Divestiture of the Phillips Woods Cross Assets, which shall be subject to the

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prior approval of the Commission, that includes terms that provide for) the following:

1. for a period of ten (10) years from the Effective Date of Divestiture of the Phillips Woods Cross Assets, at no payment by the acquirer to the Respondents:
 - a. in connection with the sale of Motor Fuels, the exclusive right to use in Utah, Idaho, Wyoming or Montana all brand names that are (i) owned by or licensed to Phillips, and (ii) used by Phillips or Phillips Branded Sellers in Utah, Idaho, Wyoming, and Montana as of the date Respondents executed the Agreement Containing Consent Orders, including the exclusive rights to use Phillips' identification signs, trademarks, and other trade indicia, and the non-exclusive right to accept and process Phillips credit cards in connection with such sales of Phillips Branded Fuels;
 - b. in connection with the sale of Ancillary Products, the exclusive right to use all brand names that are (i) owned by or licensed to Phillips, and (ii) used by Phillips or Phillips Branded Sellers in Utah, Idaho, Wyoming, and Montana as of the date Respondents executed the Agreement Containing Consent Orders, at all Gasoline Outlets owned or operated by the acquirer in Utah, Idaho, Wyoming, and Montana; and the non-exclusive right to use all brand names that are (i) owned by or licensed to Phillips, and (ii) used by Phillips or Phillips Branded Sellers in Utah, Idaho, Wyoming, and Montana as of the date Respondents executed the Agreement Containing Consent Orders, in connection with the sale of Ancillary Products elsewhere in Utah, Idaho, Wyoming, and Montana;

Provided, however, that Respondents shall not otherwise interfere with the acquirer's right to sell Aviation Fuels under any brand name owned by or licensed to a Person other than Respondents or under no brand; and provided further that the rights granted under this Paragraph II.C.1. shall include any modifications, upgrades, improvements, or changes to a brand name, identification sign, trademark, or other trade indicia made by Respondents after the Merger for use in other states, except in circumstances in which a brand name, identification sign, trademark, or other trade indicia, includes the name "Conoco" or uses

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any brand name, identification sign, trademark, or other trade indicia used by Conoco or Conoco Branded Sellers as of the date Respondents executed the Agreement Containing Consent Orders.

2. at the end of the ninth year after the Effective Date of Divestiture of the Phillips Woods Cross Assets, Respondents shall offer to meet with the acquirer to discuss a renewal of the agreement;
 3. Phillips' proprietary branded and other non-proprietary credit card services, additive, and such brand support as the acquirer may choose to purchase at Phillips' costs in connection with the provision of credit card services, additive, and brand support; and
 4. Ancillary Products acquired from Respondents for resale in Utah, Idaho, Wyoming, and Montana at commercial, arms'-length terms no less favorable than those given by Respondents to other wholesale purchasers who buy Ancillary Products of like quantity, grade, and quality from Respondents, but permitting differences in price that arise from Respondents' differences in manufacturing, purchasing, shipping or storage costs, if any.
- D. Respondent may include in the agreement with the acquirer of the Phillips Woods Cross Assets a requirement that the acquirer:
1. take commercially reasonable steps to protect the integrity of any trademark, tradename or logo licensed to the acquirer of the Phillips Woods Cross Assets pursuant to this Paragraph; and
 2. comply with all standards and requirements relating to the display and presentation of trademarks, tradenames, or logos licensed to the acquirer of the Phillips Woods Cross Assets pursuant to this Paragraph if such standards or requirements are also imposed on Respondents' sellers of Phillips Branded Fuels in other geographies.
- E. Respondents shall divest the Phillips Woods Cross Assets, assign all Phillips Woods Cross Supply Agreements, and enter into the agreements as required by Paragraphs II.A., II.B., II.C., and II.D. only to a single acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

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- F. Respondents shall offer the acquirer of the Phillips Woods Cross Assets an indemnity, subject to the prior approval of the Commission and to be effective upon the Effective Date of Divestiture of the Phillips Woods Cross Assets, which indemnity shall allocate among Respondents and the acquirer, on such terms as the Respondents and the acquirer agree, responsibility with respect to potential claims and liabilities arising out of failure to comply with local, state, and federal environmental obligations in connection with the Phillips Woods Cross Assets that are divested or assigned pursuant to this Paragraph.
- G. Notwithstanding the provisions of Paragraph II.C., in the event that the acquirer of the Phillips Woods Cross Assets ceases using any Phillips brand in Utah, Idaho, Wyoming and Montana pursuant to the agreement conveying the right to use that Phillips brand described in Paragraph II.C., Respondents shall have the right to use that Phillips brand in Utah, Idaho, Wyoming and Montana beginning two (2) years after the acquirer of the Phillips Woods Cross Assets ceases to use that Phillips brand in Utah, Idaho, Wyoming and Montana.
- H. If, at any time from the date Respondents executed the Agreement Containing Consent Orders until the Effective Date of Divestiture of the Phillips Woods Cross Assets, Respondents terminate or enter into discussions with any Person relating to construction of or plans to construct a pipeline that will deliver light petroleum products into Utah or Western Colorado, Respondents shall, at the same time they terminate or enter into such discussions: (1) provide a copy of this Order to such Person; and (2) notify all Persons who have expressed to Respondents an interest in acquiring the Phillips Woods Cross Assets that they have terminated or entered into such discussions.
- I. Until the Effective Date of Divestiture of the Phillips Woods Cross Assets, Respondents shall take such actions as are necessary to maintain the viability and marketability of the Phillips Woods Cross Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of the Phillips Woods Cross Assets, except for ordinary wear and tear, including, but not limited to, continuing in effect and maintaining all proprietary trademarks, trade names, logos,

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trade dress, identification signs, and renewing or extending any base leases or ground leases that expire or terminate prior to the Effective Date of Divestiture of the Phillips Woods Cross Assets. Until the assignments of the Phillips Woods Cross Supply Agreements provided by Paragraph II.B. occur, Respondents shall not attempt in any way to encourage any Phillips Branded Seller to terminate, and shall not terminate (except for reasons set out in § 2802(c) of the Petroleum Marketing Practices Act, 15 U.S.C. § 2802(c)) or intentionally interfere with compliance with any Phillips Woods Cross Supply Agreement, and Respondents shall continue in effect all programs and other business practices aimed at maintaining existing relationships with parties to any Phillips Woods Cross Supply Agreement and shall otherwise seek to preserve such relationships as diligently as was done prior to the time Respondents executed the Agreement Containing Consent Orders.

- J. In the event that Respondents are unable to satisfy all conditions necessary to divest any intangible asset, Respondents shall: (1) with respect to permits, licenses, or other rights granted by governmental authorities (other than patents), provide such assistance as the acquirer may reasonably request in the acquirer's efforts to obtain comparable permits, licenses or rights, and (2) with respect to other intangible assets (including patents and contractual rights), substitute equivalent assets or arrangements, subject to the prior approval of the Commission. A substituted asset or arrangement will not be deemed equivalent unless it enables the Woods Cross refinery to perform the same function at the same or less cost.
- K. In the event that Respondents are unable to divest the Phillips interest in the Boise or Burley terminals solely due to the failure of any co-owner to waive its preferential rights should those rights exist (and only after Respondents have used best efforts to obtain such waiver), Respondents shall enter into a substitute equivalent arrangement or agreement, subject to the prior approval of the Commission, such as a throughput arrangement, a lease agreement, or any other arrangement to enable the acquirer of the Phillips Woods Cross Assets to obtain the same commercial benefit it would have obtained if it had purchased Phillips' interest in the Boise or Burley terminals. A substituted arrangement or agreement will not be deemed equivalent unless it enables

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the Woods Cross refinery to perform the same function at the same or less cost and unless it provides supply of refined petroleum products and Terminaling at the same or less cost than Phillips' cost.

- L. For any obligation of Respondents pursuant to this Paragraph that is at the option of the acquirer, Respondents need not fulfill such obligation only if the following two conditions are satisfied: (1) the acquirer exercises its option not to have Respondents fulfill the obligation; and (2) the Commission approves the divestiture without the fulfillment of that obligation.
- M. The purpose of this Paragraph is to ensure that the Phillips Woods Cross Assets remain in the market and to remedy the lessening of competition in the refining, terminaling and bulk supply of Motor Fuels and other petroleum products resulting from the proposed Merger as alleged in the Commission's Complaint. A further purpose of this Paragraph is to ensure that the acquirer of the Phillips Woods Cross Assets has the same capabilities and incentives as did Phillips prior to the Merger to expand and develop alternative sources of Motor Fuels and other light petroleum products for the Northern Utah market as alleged in the Commission's Complaint and is able to take control of the assets and, with minimal additional investment, compete as aggressively as did Phillips prior to the Merger.

III.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest the Colorado Assets to a single acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission, absolutely and in good faith and at no minimum price, within twelve (12) months from the date Respondents executed the Agreement Containing Consent Orders.
- B. Respondents shall, upon the Effective Date of Divestiture of the Colorado Assets, assign to the acquirer of the Colorado Assets all Phillips Colorado Supply Agreements.

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- C. Respondents shall provide the acquirer of the Colorado Assets (and shall enter into an agreement with the acquirer of the Colorado Assets, to be effective upon the Effective Date of Divestiture of the Colorado Assets, which shall be subject to the prior approval of the Commission, that includes terms that provide for) the following:
1. for a period of ten (10) years from the Effective Date of Divestiture of the Colorado Assets, at no payment by the acquirer to the Respondents:
 - a. in connection with the sale of Motor Fuels, the exclusive right to use in Colorado all brand names that are (i) owned by or licensed to Phillips, and (ii) used by Phillips or Phillips Branded Sellers in Colorado as of the date Respondents executed the Agreement Containing Consent Orders, including the exclusive rights to use Phillips' identification signs, trademarks, and other trade indicia, and the non-exclusive right to accept and process Phillips credit cards in connection with such sales of Phillips Branded Fuels;
 - b. in connection with the sale of Ancillary Products, the exclusive right to use all brand names that are (i) owned by or licensed to Phillips, and (ii) used by Phillips or Phillips Branded Sellers in Colorado as of the date Respondents executed the Agreement Containing Consent Orders, at all Gasoline Outlets owned or operated by the acquirer in Colorado; and the non-exclusive right to use all brand names that are (1) owned by or licensed to Phillips, and (2) used by Phillips or Phillips Branded Sellers in Colorado as of the date Respondents executed the Agreement Containing Consent Orders, in connection with the sale of Ancillary Products elsewhere in Colorado;

Provided, however, that Respondents shall not otherwise interfere with the acquirer's right to sell Aviation Fuels under any brand name owned by or licensed to a Person other than Respondents or under no brand; and provided further that the rights granted under this Paragraph III.C.1. shall include any modifications, upgrades, improvements, or changes to a brand name, identification sign, trademark, or other trade indicia made by Respondents after the Merger for use in other states, except in circumstances in which a brand name, identification sign, trademark, or

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other trade indicia, includes the name “Conoco” or uses any brand name, identification sign, trademark, or other trade indicia used by Conoco or Conoco Branded Sellers as of the date Respondents executed the Agreement Containing Consent Orders.

2. at the end of the ninth year after the Effective Date of Divestiture of the Colorado Assets, Respondents shall offer to meet with the acquirer to discuss a renewal of the agreement;
 3. Phillips’ proprietary branded and other non-proprietary credit card services, additive, and such brand support as the acquirer may choose to purchase at Phillips’ costs in connection with the provision of credit card services, additive, and brand support; and
 4. Ancillary Products acquired from Respondents for resale in Colorado at commercial, arms’-length terms no less favorable than those given by Respondents to other wholesale purchasers who buy Ancillary Products of like quantity, grade, and quality from Respondents, but permitting differences in price that arise from Respondents’ differences in manufacturing, purchasing, shipping or storage costs, if any.
- D. Respondent may include in the agreement with the acquirer of the Colorado Assets a requirement that the acquirer:
1. take commercially reasonable steps to protect the integrity of any trademark, tradename or logo licensed to the acquirer of the Colorado Assets pursuant to this Paragraph; and
 2. comply with all standards and requirements relating to the display and presentation of trademarks, tradenames, or logos licensed to the acquirer of the Colorado Assets pursuant to this Paragraph if such standards or requirements are also imposed on Respondents’ sellers of Phillips Branded Fuels in other geographies.
- E. Respondents shall divest the Colorado Assets, assign all Phillips Colorado Supply Agreements, and enter into the agreements as required by Paragraphs III.A., III.B., III.C., and III.D. only to a single acquirer that receives the prior approval of the Commission and only in a manner that

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receives the prior approval of the Commission; provided, however, that, with respect to assets that are to be divested or agreements entered into pursuant to this Paragraph at the acquirer's option, Respondents need not divest such assets or enter into such agreements if the acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such assets or agreements.

- F. Respondents shall offer the acquirer of the Colorado Assets an indemnity, subject to the prior approval of the Commission and to be effective upon the Effective Date of Divestiture of the Colorado Assets, which indemnity shall allocate among Respondents and the acquirer, on such terms as the Respondents and the acquirer agree, responsibility with respect to potential claims and liabilities arising out of failure to comply with local, state, and federal environmental obligations in connection with the Colorado Assets that are divested or assigned pursuant to this Paragraph.
- G. Notwithstanding the provisions of Paragraph III.C., in the event that the acquirer of the Phillips Colorado Retail Assets ceases using any Phillips brand in Colorado pursuant to the agreement conveying the right to use that Phillips brand described in Paragraph III.C., Respondents shall have the right to use that Phillips brand in Colorado beginning two (2) years after the acquirer of the Colorado Assets ceases to use that Phillips brand in Colorado.
- H. Respondents shall, at the acquirer's option and subject to the prior approval of the Commission, establish and divest to the acquirer a pipeline connection to an existing Phillips line to provide access to Denver International Airport at a capacity equal to or greater than the capacity Conoco had to Denver International Airport, and Respondents shall enter into a connection agreement relating to the Phillips line with or assignable to the acquirer at terms consistent with standard industry practices.
- I. Respondents shall, at the acquirer's option and subject to the prior approval of the Commission, assign the asphalt supply agreement for the Conoco Denver Refinery Assets between Conoco and K.C. Asphalt, LLC, to the acquirer.

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- J. Respondents shall, at the acquirer's option and subject to the prior approval of the Commission, enter into a substitute agreement or arrangement with the acquirer that provides at least an equivalent commercial benefit to that which Conoco receives from the portion of the Jupiter Joint Venture relating to the Conoco Denver Refinery Assets.
- K. Until the Effective Date of Divestiture of the Colorado Assets, Respondents shall take such actions as are necessary to maintain the viability and marketability of the Colorado Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of the Colorado Assets, except for ordinary wear and tear, including, but not limited to, continuing in effect and maintaining all proprietary trademarks, trade names, logos, trade dress, identification signs, and renewing or extending any base leases or ground leases that expire or terminate prior to the Effective Date of Divestiture of the Colorado Assets. Until the assignments of Phillips Colorado Supply Agreements provided by Paragraph III.B. occur, Respondents shall not attempt in any way to encourage any Phillips Branded Seller to terminate, and Respondents shall not terminate (except for reasons set out in § 2802(c) of the Petroleum Marketing Practices Act, 15 U.S.C. § 2802(c)) or intentionally interfere with the compliance with a Phillips Existing Supply Agreement with respect to a Gasoline Outlet in Colorado, and Respondents shall continue in effect all programs and other business practices aimed at maintaining existing relationships with parties to any Phillips Colorado Supply Agreement and shall otherwise seek to preserve such relationships as diligently as was done prior to the time Respondents executed the Agreement Containing Consent Orders.
- L. In the event that Respondents are unable to satisfy all conditions necessary to divest any intangible asset, Respondents shall: (1) with respect to permits, licenses, or other rights granted by governmental authorities (other than patents), provide such assistance as the acquirer may reasonably request in the acquirer's efforts to obtain comparable permits, licenses or rights, and (2) with respect to other intangible assets (including patents and contractual rights), substitute equivalent assets or arrangements, subject to the prior approval of the Commission. A substituted asset or arrangement will not be deemed equivalent unless it

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enables the Colorado Assets to perform the same function at the same or less cost.

- M. For any obligation of Respondents pursuant to this Paragraph that is at the option of the acquirer, Respondents need not fulfill such obligation only if the following two conditions are satisfied: (1) the acquirer exercises its option not to have Respondents fulfill the obligation; and (2) the Commission approves the divestiture without the fulfillment of that obligation.
- N. The purpose of this Paragraph is to ensure the continued use of the Conoco Denver Refinery Assets in the same business in which the Conoco Denver Refinery Assets were engaged at the time of the announcement of the Merger and to remedy the lessening of competition in the refining and bulk supply of Motor Fuels and other petroleum products resulting from the proposed Merger as alleged in the Commission's draft Complaint.

IV.**IT IS FURTHER ORDERED** that:

- A. Respondents shall divest the Propane Business absolutely and in good faith and at no minimum price by January 15, 2003.
- B. Respondents shall divest the Propane Business to and enter into the agreements required by Paragraph IV.D. with a single acquirer who receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.
- C. Respondents shall:
1. ensure that the acquirer of the Propane Business has access to the Blue Line, the Shocker Line, and the Shocker Station to ship propane to the Jefferson City, Missouri, or East St. Louis, Illinois, terminals on the same terms as any similarly situated Blue Line and Shocker Line shipper, including but not limited to any affiliate of Respondents;
 2. not impede, deter, delay, prevent, or otherwise inhibit, directly or indirectly, (including discriminating against or

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- disfavoring relative to any other similarly situated Blue Line and Shocker Line shipper) the acquirer of the Propane Business from shipping, under its own name, on the Blue Line and Shocker Line to the Jefferson City, Missouri, or East St. Louis, Illinois, terminals;
3. submit to the Commission, at the same time Respondents submit to the FERC, a copy of any rate filing that may result in an increase in the tariff rate for the transportation of propane on the Blue Line and the Shocker Line from any point of origin to the Jefferson City, Missouri, and East St. Louis, Illinois, terminals;
 4. not seek authority from the FERC to charge or set market-based rates on the Blue Line or Shocker Line without the prior approval of the Commission;
 5. file for and make reasonable efforts to obtain FERC approval for a published tariff rate to transport propane on the Blue Line from East St. Louis, Illinois, to Jefferson City, Missouri. Such published tariff rate shall apply only to westward transportation of propane during the period in which other westward published tariff rates on the Blue Line apply. Such filing shall not seek market-based rates; and
 6. provide the acquirer of the Propane Business an unqualified right to expand the propane storage and throughput capacity of the Propane Terminal Assets within a defined area agreed to by Respondents and the acquirer, subject to the prior approval of the Commission. The acquirer shall bear only direct costs related to expanding the Propane Terminal Assets, including the costs of obtaining all necessary permits and licenses. Respondents shall bear any and all other costs associated with the expansion, including but not limited to costs to remove and/or relocate any facilities or assets from the designated and agreed expansion areas that would interfere with such expansion.
- D. Respondents shall, by the Effective Date of Divestiture of the Propane Business, subject to the prior approval of the Commission, enter into:
1. A propane supply contract with the acquirer of the Propane Business containing, among other things, the following provisions:
 - a. an option to purchase propane or acquire propane

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through exchanges in an amount of up to no less than the capacity of the Blue Line and the Shocker Line, to be delivered to each of the Jefferson City, Missouri, and East St. Louis, Illinois, terminals consistent with usual and customary practices;

- b. a restriction on Respondents' scheduling and undertaking regular maintenance on the Blue Line, the Shocker Line or Shocker Station during the time period from November 1 through March 1, except for maintenance required by law to be undertaken at specific times, maintenance that does not cause any shut-down or slow-down of these facilities or maintenance that does not impede the acquirer's access to these facilities;
 - c. a propane purchase price no greater than the weekly average Conway OPIS spot price plus the Blue Line and Shocker Line published tariff rates to transport propane from Conway, Kansas, to the Jefferson City, Missouri, and East St. Louis, Illinois, terminals
 - d. procedures and protections preventing Respondents from receiving and using Non-Public Propane Information except as specified in this Paragraph IV.E.; and
 - e. a dispute resolution mechanism, to be invoked at the acquirer's option (that includes protections against disclosure of Non-Public Propane Information).
2. A Propane Terminal Assets operating agreement that describes the rights of the acquirer and the obligations of Respondent, as operator of the Jefferson City, Missouri, and East St. Louis, Illinois, terminals, including, among other things, the following provisions:
- a. to provide for the maintenance, upkeep, repair, security, and operation of the Jefferson City, Missouri, and East St. Louis, Illinois, terminals consistent with standard industry practice, but no less than the standard Respondents apply to the remainder of the Jefferson City, Missouri, and East St. Louis, Illinois, terminals;
 - b. a dispute resolution mechanism, to be invoked at the acquirer's option (that includes protections against disclosure of Non-Public Propane Information); and
 - c. a fee for maintenance, upkeep, repair, security, and operation that is at or less than the actual costs of maintenance, upkeep, repair, security, and operation of the Propane Terminal Assets; provided, however,

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that the fee shall not be calculated using any Non-Public Propane Information.

- E. Respondents shall not provide, disclose, or otherwise make available Non-Public Propane Information to persons who are not Propane Support Personnel, except for the purpose of complying with Respondents' financial, tax reporting, legal, health, safety, and environmental obligations. Respondents' personnel receiving such information pursuant to this Paragraph IV.E. shall not otherwise disclose the Non-Public Propane Information.
- F. Before the Effective Date of Divestiture, Respondents shall provide fully independent and secure computer systems at the Jefferson City, Missouri, and East St. Louis, Illinois, terminals for exclusive use by the acquirer, to monitor all aspects of the Propane Business including, but not limited to, customer accounts and information, propane deliveries and sales. Respondents shall not retain or use any customer information relating to the supply of propane from the Jefferson City, Missouri, and East St. Louis, Illinois, terminals.
- G. At any time after the Commission issues the Order to Hold Separate and Maintain Assets, the Commission may appoint a Monitor to assure that Respondents comply with their obligations under this Paragraph, and Respondents shall consent to the terms and conditions regarding the powers, duties, authorities and responsibilities of the Monitor appointed pursuant to the Order to Hold Separate and Maintain Assets.
- H. The purpose of this Paragraph is to ensure the continued use of the Propane Business assets in the same business in which they were engaged at the time of the announcement of the proposed Merger, to establish a propane competitor with competitive costs, to allow the acquirer of the Propane Business access to sources of propane from the market in Conway, Kansas, by shipping propane from Conway, Kansas, through the Blue Line and Shocker Line to the Jefferson City, Missouri, and East St. Louis, Illinois, terminals on a competitive and non-discriminatory basis or to have Respondents provide propane at Jefferson City, Missouri, or East St. Louis, Illinois, terminals at a price equal to or less than the price of accessing propane at

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Conway, Kansas, and to remedy the lessening of competition in the bulk supply and marketing of propane resulting from the proposed Merger, as alleged in the Commission's Complaint.

V.**IT IS FURTHER ORDERED** that:

- A. Respondents shall divest the Phillips Spokane Terminal absolutely and in good faith and at no minimum price, within nine (9) months from the date Respondents executed the Agreement Containing Consent Orders.
- B. Respondents shall divest the Phillips Spokane Terminal to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.
- C. Until the Effective Date of Divestiture of the Phillips Spokane Terminal, Respondents shall take such actions as are necessary to maintain the viability and marketability of the Phillips Spokane Terminal and to prevent the destruction, removal, wasting, deterioration, or impairment of the Phillips Spokane Terminal, except for ordinary wear and tear.
- D. Respondents shall offer the acquirer of the Phillips Spokane Terminal an indemnity, subject to the prior approval of the Commission and to be effective upon the Effective Date of Divestiture of the Phillips Spokane Terminal, which indemnity shall allocate among Respondents and the acquirer, on such terms as the Respondents and the acquirer agree, responsibility with respect to potential claims and liabilities arising out of failure to comply with local, state, and federal environmental obligations in connection with the Phillips Spokane Terminal that are divested or assigned pursuant to this Paragraph.
- E. In the event that Respondents are unable to satisfy all conditions necessary to divest any intangible asset, Respondents shall: (1) with respect to permits, licenses or other rights granted by governmental authorities (other than patents), provide such assistance as the acquirer may reasonably request in the acquirer's efforts to obtain

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comparable permits, licenses or rights, and (2) with respect to other intangible assets (including patents and contractual rights), substitute equivalent assets or arrangements, subject to the prior approval of the Commission. A substituted asset or arrangement will not be deemed to be equivalent unless it enables the terminal to perform the same function at the same or less cost.

- F. The purpose of this Paragraph is to ensure the continued use of the Phillips Spokane Terminal in the same business in which it was engaged at the time of the announcement of the proposed Merger, and to remedy the lessening of competition in the Terminaling of gasoline and other petroleum products resulting from the proposed Merger, as alleged in the Commission's Complaint.

VI.

IT IS FURTHER ORDERED that:

- A. Respondents shall, within six (6) months from the date Respondents executed the Agreement Containing Consent Orders, enter into a Wichita Refined Products Throughput Agreement that receives the prior approval of the Commission with Williams Pipe Line Company, LLC (or another designated subsidiary of The Williams Companies Inc.) or with a single throughput customer that receives the prior approval of the Commission.
- B. The Wichita Refined Products Throughput Agreement shall include, subject to the prior approval of the Commission, without limitation, the following terms:
1. no minimum volume requirement;
 2. a maximum throughput volume of 8,500 barrels per day;
 3. a term of no less than ten (10) years;
 4. for the acquisition of additive and information technology services; and
 5. an option to purchase the Phillips Wichita Terminal Assets, including if the acquirer exercises such option, a right to expand the capacity of such loading racks and storage tanks on the terminal property at the acquirer's own risk, cost, and expense; provided, however, that Phillips may remain the operator of the Phillips Wichita Terminal Assets.

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- C. The purpose of this Paragraph is to ensure the continued use of the Phillips Wichita Terminal Assets in the same business in which they were engaged at the time of the announcement of the proposed Merger, and to remedy the lessening of competition in the Terminaling of gasoline and other petroleum products in Wichita, Kansas, resulting from the proposed Merger, as alleged in the Commission's Complaint.

VII.**IT IS FURTHER ORDERED** that:

- A. Respondents shall divest the New Mexico Assets absolutely and in good faith and at no minimum price within nine (9) months from the date Respondents executed the Agreement Containing Consent Orders.
- B. Respondents shall divest the New Mexico Assets to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.
- C. Until the Effective Date of Divestiture of the New Mexico Assets, Respondents shall take such actions as are necessary to maintain the viability and marketability of such assets and to prevent the destruction, removal, wasting, deterioration or impairment of such assets, except for ordinary wear and tear.
- D. The purpose of this Paragraph is to ensure the continued use of the New Mexico Assets in the same business in which they were engaged at the time of the announcement of the proposed Merger, and to remedy the lessening of competition in Gas Gathering resulting from the Merger, as alleged in the Commission's Complaint.

VIII.**IT IS FURTHER ORDERED** that:

- A. Respondents shall divest the Texas Assets absolutely and in good faith and at no minimum price within nine (9) months from the date Respondents executed the Agreement Containing Consent Orders.

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- B. Respondents shall divest the Texas Assets to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.
- C. Respondents shall, at the acquirer's option and subject to the prior approval of the Commission, enter into an agreement with the acquirer of the Texas Assets to process natural gas gathered by the Texas Assets, such agreement to include, without limitation, the following terms:
 - 1. the natural gas shall be processed at the Mertzon Facility;
 - 2. the processing fee shall not exceed Cost of processing;
 - 3. the amount to be processed on a daily basis shall be up to the amount gathered on the Texas Assets as of the date Respondents executed the Agreement Containing Consent Orders;
 - 4. the term shall be no less than seven (7) years;
 - 5. the agreement shall be subject to cancellation by the acquirer with no more than twelve (12) months' notice; and
 - 6. at the acquirer's option and subject to the prior approval of the Commission, the agreement shall provide for the transportation at Cost to the Mertzon Facility of natural gas gathered on the Texas Assets.
- D. Until the Effective Date of Divestiture of the Texas Assets, Respondents shall take such actions as are necessary to maintain the viability and marketability of such assets and to prevent the destruction, removal, wasting, deterioration or impairment of such assets, except for ordinary wear and tear.
- E. The purpose of this Paragraph is to ensure the continued use of the Texas Assets in the same business in which they were engaged at the time of the announcement of the proposed Merger, and to remedy the lessening of competition in Gas Gathering resulting from the Merger, as alleged in the Commission's Complaint.

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IX.**IT IS FURTHER ORDERED** that:

- A. Beginning at the date of execution of the Agreement Containing Consent Orders, Respondents shall not provide, disclose or otherwise make available to Duke, DEFS, or any member of the DEFS board of directors any ConocoPhillips Non-Public GCF Information.
- B. Beginning at the date of execution of the Agreement Containing Consent Orders, Respondents and ConocoPhillips DEFS Board Members shall not receive from Duke, DEFS, or any individual member of the DEFS board of directors any DEFS Non-Public Fractionation Information.
- C. ConocoPhillips DEFS Board Members shall not participate in any discussions with DEFS or Duke relating to GCF, Enterprise, or Mont Belvieu I.
- D. ConocoPhillips DEFS Board Members shall not participate, directly or indirectly, in any vote of the DEFS board of directors pertaining to Enterprise or Mont Belvieu I; provided, however, with respect to any matter to be voted on by the DEFS Board Members pertaining to Enterprise or Mont Belvieu I that requires the approval of one or more of the ConocoPhillips DEFS Board Members, the ConocoPhillips DEFS Board Members may participate in such vote and shall cast their votes in the same way as the majority of the Duke DEFS Board Members.
- E. No later than twenty (20) days after Respondents executed the Agreement Containing Consent Orders, Respondents shall institute procedures and guidelines to comply with this Paragraph.
- F. No later than ten (10) days after Respondents executed the Agreement Containing Consent Orders, Respondents shall submit to the Commission a copy of written procedures and guidelines that will be instituted by Respondents pursuant to Paragraph IX.E. above.

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X.

IT IS FURTHER ORDERED that:

- A. If Respondents fail to complete one or more of the divestitures required by Paragraphs II through VIII of this Order within the time period specified therein, the Commission may appoint one or more Divestiture Trustees to divest the Assets To Be Divested that have not been divested to an acquirer or acquirers approved by the Commission in a manner approved by the Commission. The Divestiture Trustee will have the authority and responsibility to divest the Assets To Be Divested absolutely and in good faith and at no minimum price, and with the Commission's prior approval; provided, however, that if Respondents fail to comply with its obligations under Paragraph IV.A. within the time period specified therein, the Divestiture Trustee appointed by the Commission pursuant to this Paragraph X. shall divest the Propane Alternate Assets subject to Respondents' right to lease back from the acquirer of the Propane Alternate Assets the Ringer, Kansas, terminal and all other tangible and non-tangible assets included in the Propane Alternate Assets other than the Propane Business, on commercially reasonable terms agreed to by the acquirer and subject to the prior approval of the Commission. Neither the decision of the Commission to appoint a Divestiture Trustee, nor the decision of the Commission not to appoint a Divestiture Trustee, to divest any of the assets under this Paragraph X 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 Section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45 (*l*), or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.
- B. If a Divestiture Trustee is appointed by the Commission or a court pursuant to Paragraph X of this Order to divest the Assets To Be Divested, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. The Commission shall select the trustee or trustees, subject to the consent of Respondents, which consent

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shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have 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 Respondents of the identity of any proposed trustee, Respondents 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 Assets To Be Divested.
3. Within ten (10) days after appointment of the trustee, Respondents 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 divestitures required by this Order.
4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph X.B.3. to accomplish the divestiture, 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. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Assets To Be Divested or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.
6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in Paragraphs II through VIII of this Order, as applicable; provided, however, if

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the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Respondents from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Respondents, 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 Respondents, such consultants, accountants, attorneys, investment bankers, 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 the Respondents, 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 Assets To Be Divested.
8. Respondents 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 X.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 divestitures required by this Order.
11. The trustee shall have no obligation or authority to

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- operate or maintain the Assets To Be Divested.
12. The trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestitures.
 13. Respondents may require the trustee to sign a customary confidentiality agreement; provided, however, such agreement shall not restrict the trustee from providing any information to the Commission.

XI.**IT IS FURTHER ORDERED** that:

- A. Within sixty (60) days from the date this Order becomes final and every sixty (60) days thereafter until Respondents have fully complied with the provisions of Paragraphs II, III, IV.A., V through VIII, and X of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II, III, IV.A, V through VIII, and X of this Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with these Paragraphs, including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Respondents shall include in their 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 becomes final, and at other times as the Commission may require, Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they have complied and are complying with each provision of this Order.

XII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents, such as dissolution,

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assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Order.

XIII.

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

- A. Access, during office hours of Respondent and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of each Respondent relating to any matters contained in this Order; and
- B. Upon five (5) days' notice to each Respondent and without restraint or interference from it, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding any such matters.

XIV.

IT IS FURTHER ORDERED that, if (1) within the time period required for divestiture or other relief pursuant to Paragraphs II, III, IV.A., and V through VIII of this Order, Respondents have submitted a complete application in support of the divestiture or other relief (including the acquirer, manner of divestiture and all other matters subject to Commission approval) as required by Paragraphs II, III, IV.A., and V through VIII; and (2) the Commission has approved the divestiture or other relief and has not withdrawn its acceptance; but (3) Respondents have certified to the Commission prior to the expiration of the applicable time period that (a) notwithstanding timely and complete application for approval by Respondents to the State or District under an applicable consent decree to which the State (or District) and Respondents are parties, the State or District has failed to approve the divestiture or other relief that is also required under this Order, or (b) a State or District has filed a timely motion in court seeking to enjoin the proposed divestiture or other relief under an applicable consent decree to which the State (or

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District) and Respondents are parties, then, (4) with respect to the particular divestiture or other relief that remains unconsummated, the time in which the divestiture or other relief is required under this Order to be complete shall be extended (a) for ninety (90) days or (b) until the disposition of the motion filed by the State or District pertaining to the proposed divestiture or other relief, whichever is later. During such period of extension, Respondents shall exercise utmost good faith and commercially reasonable best efforts to resolve the concerns of the particular State.

XV.

IT IS FURTHER ORDERED that this Order shall terminate on February 7, 2013.

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EXHIBIT A

The following assets are not included in the definition of “Conoco Denver Refinery Assets.”

1. cash and cash equivalents;
2. any insurance policies or insurance coverage, except as otherwise agreed between Respondents and the Commission-approved acquirer;
3. all refunds, rebates or similar payments of taxes to the extent such taxes were paid by or on behalf of Conoco prior to the Effective Date of Divestiture of the Colorado Assets;
4. Conoco’s interests in the following crude oil pipelines: Glacier Pipeline, Big Horn Pipeline Beartooth Pipeline and Little Missouri Pipeline;
5. Conoco’s interests in crude oil storage tanks located at Guernsey, WY, which, subject to the prior approval of the Commission, the acquirer approved by the Commission chooses not to acquire, consistent with the requirements on Paragraph I.Q.1.j.;
6. Conoco’s interests in the following refined products pipelines (and product terminals along these systems): Seminoe Pipeline, Pioneer Pipeline, Yellowstone Pipeline and Cheyenne/North Platte Pipeline;
7. Conoco’s terminal located in Grand Junction, CO and all facilities and assets related to its operation;
8. any rail cars owned or used by Respondents;
9. Conoco’s Retail Assets in Colorado and all associated proprietary trademarks, trade names, logos, trade dress, identification signs, additized product inventory and petroleum supply, and any tangible or intangible assets relating solely to the marketing, distribution, or sale of Conoco Branded Fuels;
10. Conoco Existing Supply Agreements;
11. all rights of Conoco to receive product pursuant to any

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existing exchange agreement (even if the acquirer of the Colorado Assets assumes Conoco's obligations to supply product from the Denver refinery to a third party under any such agreement);

12. Conoco's interests in Sentinel Transportation, a joint venture between Conoco and DuPont that provides truck transportation for crude oil and delivery of refined products to Conoco direct-served outlets;
13. any system-wide software, databases, operations centers, know-how, patents, or, intellectual property rights that are not unique to the Conoco Denver Refinery (except to the extent that patents, know-how, or intellectual property are required by this Order to be licensed on a non-exclusive basis);
14. Conoco/Flying J ("CFJ"), a Conoco joint venture with Flying J Inc., including CFJ's Gasoline Outlets and/or truck stops, and the right to supply refined product to CFJ;
15. Conoco's proprietary trade names and trademarks;
16. Conoco's interest in Onvance LP;
17. accounts receivable or exchange balances owed to or by Respondents by reason of deliveries made by or to Respondents or on account of the Conoco Denver Refinery Assets prior to the Effective Date of Divestiture of the Conoco Denver Refinery Assets;
18. personnel, employment and other records of Respondents as to their former employees, other than those records necessary for continuing operations;
19. any claims or other rights to receive monies arising prior to or after the Effective Date of Divestiture of the Conoco Denver Refinery Assets that Respondents have or may have that are attributable to its ownership of the Conoco Denver Refinery Assets prior to the Effective Date of Divestiture of the Conoco Denver Refinery Assets;
20. company-wide contracts for goods and services received (except to the extent that any portion of any contract relating to the Conoco Denver Refinery Assets can be

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assigned to the Commission-approved acquirer);

21. any litigation or rights to make claims against third parties arising prior to or after the Effective Date of Divestiture of the Conoco Denver Refinery Assets that Respondents have or may have which are attributable to its ownership of the Conoco Denver Refinery Assets prior to the Effective Date of Divestiture of the Conoco Denver Refinery Assets;
22. any property owned by third parties located at or used by the Conoco Denver Refinery Assets;
23. Conoco's 6" crude transfer pipeline from the Guernsey crude tank farm to the Platte crude tank farm, from which crude is originated onto the segment of the Platte crude oil pipeline that runs from Guernsey, Wyoming to Wood River, Illinois; and
24. Conoco's 4" crude transfer pipeline from the Guernsey crude tank farm to third party crude oil storage in Ft. Laramie, Wyoming.

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CONFIDENTIAL EXHIBIT B

[Redacted From Public Record Version]

Decision and Order

EXHIBIT C

The following assets are not included in the definition of “Phillips Spokane Terminal.”

1. cash, cash equivalents, deposits and bank accounts;
2. Phillips’ proprietary trade names, trademarks and identification signs;
3. accounts receivable or exchange balances owed to or by Respondents by reason of deliveries made by or to Respondents prior to the Effective Date of Divestiture of Phillips Spokane Terminal;
4. personnel, employment and other records of Respondents as to their former employees, other than those records necessary for continuing operations;
5. any claims or other rights to receive monies arising prior to or after the Effective Date of Divestiture of Phillips Spokane Terminal that Respondents have or may have that are attributable to their ownership of the Phillips Spokane Terminal prior to the Effective Date of Divestiture of Phillips Spokane Terminal;
6. all insurance policies or insurance coverage, except as otherwise agreed between Respondents and the Commission-approved acquirer;
7. any books and records located at the Phillips Spokane Terminal that Respondents are required by law to retain, provided that Respondents deliver to the acquirer at least one copy thereof;
8. all refunds, rebates or similar payments of taxes to the extent such taxes were paid by or on behalf of Respondents prior to the Effective Date of Divestiture of the Phillips Spokane Terminal;
9. any rail cars owned, leased or used by Respondents;
10. any system-wide software, databases, operations centers, know-how, patents, or intellectual property rights that are not unique to the Phillips Spokane Terminal (except to the

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extent that patents, know-how, or intellectual property are required by this Order to be licensed on a non-exclusive basis);

11. company-wide contracts for goods and services received (except to the extent that any portion of any contract relating to the Phillips Spokane Terminal can be assigned to the Commission-approved acquirer);
12. any litigation or rights to make claims against third parties arising prior to or after the Effective Date of Divestiture of Phillips Spokane Terminal that Respondents have or may have which are attributable to their ownership of the Phillips Spokane Terminal prior to the Effective Date of Divestiture of Phillips Spokane Terminal; and
13. any property owned by third parties located at or used by the Phillips Spokane Terminal.

Decision and Order

EXHIBIT D

The following assets are not included in the definition of “Phillips Woods Cross Refinery Assets.”

1. cash, cash equivalents, deposits and bank accounts;
2. Phillips’ proprietary trade names and trademarks, except as required to be licensed pursuant to this Order;
3. accounts receivable or exchange balances owed to or by Respondents by reason of deliveries made by or to Respondents or on account of the Phillips Woods Cross Refinery Assets prior to the Effective Date of Divestiture of the Phillips Woods Cross Refinery Assets;
4. personnel, employment and other records of Respondents as to their former employees, other than those records necessary for continuing operations;
5. any claims or other rights to receive monies arising prior to or after the Effective Date of Divestiture of the Phillips Woods Cross Refinery Assets that Respondents have or may have that are attributable to its ownership of the Phillips Woods Cross Refinery Assets prior to the Effective Date of Divestiture of the Phillips Woods Cross Refinery Assets;
6. any insurance policies or insurance coverage except as otherwise agreed between Respondents and the Commission-approved acquirer;
7. all refunds, rebates or similar payments of taxes to the extent such taxes were paid by or on behalf of Respondents prior to the Effective Date of Divestiture of the Phillips Woods Cross Refinery Assets;
8. any rail cars owned, leased or used by Respondents;
9. any system-wide software, databases, operations centers, know-how, patents, or intellectual property rights that are not unique to the Phillips Woods Cross Refinery Assets (except to the extent that patents, know-how, or intellectual property are required by this Order to be licensed on a non-exclusive basis);

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10. company-wide contracts for goods and services received (except to the extent that any portion of any contract relating to the Phillips Woods Cross Refinery Assets can be assigned to the Commission-approved acquirer);
11. any litigation or rights to make claims against third parties arising prior to or after the Effective Date of Divestiture of the Phillips Woods Cross Refinery Assets that Respondents have or may have which are attributable to its ownership of the Phillips Woods Cross Refinery Assets prior to the Effective Date of Divestiture of the Phillips Woods Cross Refinery Assets; and
12. any property owned by third parties located at or used by the Phillips Woods Cross Refinery Assets.

Exhibits

**Exhibits to Decision and Order
[Public Record Version]**

EXHIBIT A

The following assets are not included in the definition of “Conoco Denver Refinery Assets.”

1. cash and cash equivalents;
2. any insurance policies or insurance coverage, except as otherwise agreed between Respondents and the Commission-approved acquirer;
3. all refunds, rebates or similar payments of taxes to the extent such taxes were paid by or on behalf of Conoco prior to the Effective Date of Divestiture of the Colorado Assets;
4. Conoco’s interests in the following crude oil pipelines: Glacier Pipeline, Big Horn Pipeline Beartooth Pipeline and Little Missouri Pipeline;
5. Conoco’s interests in crude oil storage tanks located at Guernsey, WY, which, subject to the prior approval of the Commission, the acquirer approved by the Commission chooses not to acquire, consistent with the requirements on Paragraph I.Q.1.j.;
6. Conoco’s interests in the following refined products pipelines (and product terminals along these systems): Seminole Pipeline, Pioneer Pipeline, Yellowstone Pipeline and Cheyenne/North Platte Pipeline;
7. Conoco’s terminal located in Grand Junction, CO and all facilities and assets related to its operation;
8. any rail cars owned or used by Respondents;
9. Conoco’s Retail Assets in Colorado and all associated proprietary trademarks, trade names, logos, trade dress, identification signs, additized product inventory and petroleum supply, and any tangible or intangible assets relating solely to the marketing, distribution, or sale of Conoco Branded Fuels;

Exhibits

10. Conoco Existing Supply Agreements;
11. all rights of Conoco to receive product pursuant to any existing exchange agreement (even if the acquirer of the Colorado Assets assumes Conoco's obligations to supply product from the Denver refinery to a third party under any such agreement);
12. Conoco's interests in Sentinel Transportation, a joint venture between Conoco and DuPont that provides truck transportation for crude oil and delivery of refined products to Conoco direct-served outlets;
13. any system-wide software, databases, operations centers, know-how, patents, or, intellectual property rights that are not unique to the Conoco Denver Refinery (except to the extent that patents, know-how, or intellectual property are required by this Order to be licensed on a non-exclusive basis);
14. Conoco/Flying J ("CFJ"), a Conoco joint venture with Flying J Inc., including CFJ's Gasoline Outlets and/or truck stops, and the right to supply refined product to CFJ;
15. Conoco's proprietary trade names and trademarks;
16. Conoco's interest in Onvance LP;
17. accounts receivable or exchange balances owed to or by Respondents by reason of deliveries made by or to Respondents or on account of the Conoco Denver Refinery Assets prior to the Effective Date of Divestiture of the Conoco Denver Refinery Assets;
18. personnel, employment and other records of Respondents as to their former employees, other than those records necessary for continuing operations;
19. any claims or other rights to receive monies arising prior to or after the Effective Date of Divestiture of the Conoco Denver Refinery Assets that Respondents have or may have that are attributable to its ownership of the Conoco Denver Refinery Assets prior to the Effective Date of Divestiture of the Conoco Denver Refinery Assets;

Exhibits

20. company-wide contracts for goods and services received (except to the extent that any portion of any contract relating to the Conoco Denver Refinery Assets can be assigned to the Commission-approved acquirer);
21. any litigation or rights to make claims against third parties arising prior to or after the Effective Date of Divestiture of the Conoco Denver Refinery Assets that Respondents have or may have which are attributable to its ownership of the Conoco Denver Refinery Assets prior to the Effective Date of Divestiture of the Conoco Denver Refinery Assets;
22. any property owned by third parties located at or used by the Conoco Denver Refinery Assets;
23. Conoco's 6" crude transfer pipeline from the Guernsey crude tank farm to the Platte crude tank farm, from which crude is originated onto the segment of the Platte crude oil pipeline that runs from Guernsey, Wyoming to Wood River, Illinois; and
24. Conoco's 4" crude transfer pipeline from the Guernsey crude tank farm to third party crude oil storage in Ft. Laramie, Wyoming.

Exhibits

CONFIDENTIAL EXHIBIT B**[Redacted From Public Record Version]****EXHIBIT C**

The following assets are not included in the definition of “Phillips Spokane Terminal.”

1. cash, cash equivalents, deposits and bank accounts;
2. Phillips’ proprietary trade names, trademarks and identification signs;
3. accounts receivable or exchange balances owed to or by Respondents by reason of deliveries made by or to Respondents prior to the Effective Date of Divestiture of Phillips Spokane Terminal;
4. personnel, employment and other records of Respondents as to their former employees, other than those records necessary for continuing operations;
5. any claims or other rights to receive monies arising prior to or after the Effective Date of Divestiture of Phillips Spokane Terminal that Respondents have or may have that are attributable to their ownership of the Phillips Spokane Terminal prior to the Effective Date of Divestiture of Phillips Spokane Terminal;
6. all insurance policies or insurance coverage, except as otherwise agreed between Respondents and the Commission-approved acquirer;
7. any books and records located at the Phillips Spokane Terminal that Respondents are required by law to retain, provided that Respondents deliver to the acquirer at least one copy thereof;
8. all refunds, rebates or similar payments of taxes to the extent such taxes were paid by or on behalf of Respondents prior to the Effective Date of Divestiture of the Phillips Spokane Terminal;

Exhibits

9. any rail cars owned, leased or used by Respondents;
10. any system-wide software, databases, operations centers, know-how, patents, or intellectual property rights that are not unique to the Phillips Spokane Terminal (except to the extent that patents, know-how, or intellectual property are required by this Order to be licensed on a non-exclusive basis);
11. company-wide contracts for goods and services received (except to the extent that any portion of any contract relating to the Phillips Spokane Terminal can be assigned to the Commission-approved acquirer);
12. any litigation or rights to make claims against third parties arising prior to or after the Effective Date of Divestiture of Phillips Spokane Terminal that Respondents have or may have which are attributable to their ownership of the Phillips Spokane Terminal prior to the Effective Date of Divestiture of Phillips Spokane Terminal; and
13. any property owned by third parties located at or used by the Phillips Spokane Terminal.

Exhibits

EXHIBIT D

The following assets are not included in the definition of “Phillips Woods Cross Refinery Assets.”

1. cash, cash equivalents, deposits and bank accounts;
2. Phillips’ proprietary trade names and trademarks, except as required to be licensed pursuant to this Order;
3. accounts receivable or exchange balances owed to or by Respondents by reason of deliveries made by or to Respondents or on account of the Phillips Woods Cross Refinery Assets prior to the Effective Date of Divestiture of the Phillips Woods Cross Refinery Assets;
4. personnel, employment and other records of Respondents as to their former employees, other than those records necessary for continuing operations;
5. any claims or other rights to receive monies arising prior to or after the Effective Date of Divestiture of the Phillips Woods Cross Refinery Assets that Respondents have or may have that are attributable to its ownership of the Phillips Woods Cross Refinery Assets prior to the Effective Date of Divestiture of the Phillips Woods Cross Refinery Assets;
6. any insurance policies or insurance coverage except as otherwise agreed between Respondents and the Commission-approved acquirer;
7. all refunds, rebates or similar payments of taxes to the extent such taxes were paid by or on behalf of Respondents prior to the Effective Date of Divestiture of the Phillips Woods Cross Refinery Assets;
8. any rail cars owned, leased or used by Respondents;
9. any system-wide software, databases, operations centers, know-how, patents, or intellectual property rights that are not unique to the Phillips Woods Cross Refinery Assets (except to the extent that patents, know-how, or intellectual property are required by this Order to be licensed on a non-exclusive basis);

Exhibits

10. company-wide contracts for goods and services received (except to the extent that any portion of any contract relating to the Phillips Woods Cross Refinery Assets can be assigned to the Commission-approved acquirer);
11. any litigation or rights to make claims against third parties arising prior to or after the Effective Date of Divestiture of the Phillips Woods Cross Refinery Assets that Respondents have or may have which are attributable to its ownership of the Phillips Woods Cross Refinery Assets prior to the Effective Date of Divestiture of the Phillips Woods Cross Refinery Assets; and
12. any property owned by third parties located at or used by the Phillips Woods Cross Refinery Assets.

Order

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed merger involving Respondents, Conoco Inc. (“Conoco”) and Phillips Petroleum Company (“Phillips”), and Respondents having been furnished thereafter with a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondents with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. §18; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, 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 Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Hold Separate and Maintain Assets (“Hold Separate Order”):

1. Respondent Conoco Inc. 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 600 North Dairy Ashford, Houston, TX 77079.

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2. Respondent 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 411 South Keeler, Bartlesville, OK 74004.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Hold Separate Order, the following definitions and provisions shall apply:

- A. Unless otherwise defined herein, any capitalized term in this Hold Separate Order shall have the same meaning as in the Decision and Order.
- B. “Decision and Order” means the Decision and Order contained in the Agreement Containing Consent Orders executed by Respondents in this matter.
- C. “Held Separate Business” means
 1. Phillips Woods Cross Assets, as defined in the Decision and Order;
 2. Colorado Assets, as defined in the Decision and Order;
 3. Phillips Spokane Terminal, as defined in the Decision and Order;
 4. Propane Marketing Operations; and
 5. All personnel of Respondents listed on Confidential Attachment D.

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- D. “Hold Separate Period” means the time period during which the Hold Separate Order is in effect, which shall begin no later than ten (10) days after the date the Hold Separate Order becomes final and terminates pursuant to Paragraph VI. hereof.
- E. “Material Confidential Information” means competitively sensitive or proprietary information not independently known to an entity from sources other than the entity to which the information pertains, and includes, but is not limited to, all customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets. The Held Separate Business shall be considered an entity separate from ConocoPhillips (as defined in the Decision and Order) for this purpose.
- F. “Propane Marketing Operations” means the management and oversight responsibilities for marketing, pricing, and the supply of propane to customers from the Propane Terminal Assets, effective as of the date Respondents executed the Consent Agreement.

II.**IT IS FURTHER ORDERED that:**

- A. During the Hold Separate Period, Respondents shall hold the Held Separate Business separate, apart, and independent as required by this Hold Separate Order and shall vest the Held Separate Business with all rights, powers, and authority necessary to conduct its business; Respondents shall not exercise direction or control over, or influence directly or indirectly, the Held Separate Business or any of its operations, or the Hold Separate Trustee, except to the extent that Respondents must exercise direction and control over the Held Separate Business as is necessary to assure compliance with this Hold Separate Order, the Consent Agreement, and with all applicable laws, including, in consultation with the Hold Separate Trustee, continued oversight of the Held Separate Business’ compliance with policies and standards concerning the safety, health, and

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environmental aspects of their operations and the integrity of their financial controls; and Respondents shall have the right to defend any legal claims, investigations or enforcement actions threatened or brought against any Held Separate Business.

- B. Until the Effective Date of Divestiture, Respondents shall take such actions as are necessary to maintain the viability and marketability of the (1) Held Separate Business (2) New Mexico Assets, (3) Texas Assets, and (4) Propane Business to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear, including, but not limited to, continuing in effect and maintaining proprietary trademarks, trade names, logos, trade dress, identification signs, franchise agreements, and renewing or extending any base leases or ground leases that expire or terminate prior to the Effective Date of Divestiture.
- C. The purpose of this Hold Separate Order is to: (1) preserve the Held Separate Business as a viable, competitive, and ongoing business independent of Respondents until the divestitures required by the Decision and Order are achieved; (2) assure that the purpose of the Decision and Order is achieved; (3) assure that no Material Confidential Information is exchanged between Respondents and the Held Separate Business, except in accordance with the provisions of this Hold Separate Order; (4) prevent interim harm to competition pending the relevant divestitures and other relief; and (5) help remedy any anticompetitive effects of the proposed Merger.
- D. Respondents shall hold the Held Separate Business separate, apart, and independent on the following terms and conditions:
 - 1. A person, having received the prior approval of the Commission, shall serve as Hold Separate Trustee, pursuant to the Hold Separate Trustee Agreement executed by the Hold Separate Trustee and Respondents and

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attached as Confidential Attachment C (“HS Trustee Agreement”).

- a. The HS Trustee Agreement shall require that, no later than ten (10) days after this Hold Separate Order becomes final, Respondents transfer to the Hold Separate Trustee all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his/her duties and responsibilities, pursuant to this Hold Separate Order and consistent with the purposes of the Decision and Order.
- b. No later than ten (10) days after this Hold Separate Order becomes final, Respondents shall, pursuant to the HS Trustee Agreement, transfer to the Hold Separate Trustee all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his/her duties and responsibilities, pursuant to this Hold Separate Order and consistent with the purposes of the Decision and Order.
- c. The Hold Separate Trustee shall have the responsibility, consistent with the terms of this Hold Separate Order and the Decision and Order, for monitoring the organization of the Held Separate Business; for managing the Held Separate Business through the Manager; for maintaining the independence of the Held Separate Business; and for monitoring Respondents’ compliance with their obligations pursuant to this Hold Separate Order and the Decision and Order.
- d. The Hold Separate Trustee shall have full and complete access, subject to any legally recognized privilege of Respondents, to all personnel, books, records, documents and facilities of the Held Separate Business or to any other relevant information as the Hold Separate Trustee may reasonably request including, but not limited to, all documents and records kept by Respondents in the ordinary course of business that relate to the Held Separate Business. Respondents shall develop such financial or other information as the Hold

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Separate Trustee may request and shall cooperate with the Hold Separate Trustee. Respondents shall take no action to interfere with or impede the Hold Separate Trustee's ability to monitor Respondents' compliance with this Hold Separate Order and the Consent Agreement or otherwise to perform his/her duties and responsibilities consistent with the terms of this Hold Separate Order.

- e. The Hold Separate Trustee shall have the authority to employ, at the reasonable cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Trustee's duties and responsibilities.
- f. The Commission may require the Hold Separate Trustee to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with performance of the Hold Separate Trustee's duties.
- g. Respondents may require the Hold Separate Trustee to sign a confidentiality agreement prohibiting the disclosure of any Material Confidential Information gained as a result of his or her role as Hold Separate Trustee to anyone other than the Commission.
- h. Thirty (30) days after the Hold Separate Order becomes final, and every thirty (30) days thereafter until the Hold Separate Order terminates, the Hold Separate Trustee shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate Order. Included within that report shall be the Hold Separate Trustee's assessment of the extent to which the businesses comprising the Held Separate Business are meeting (or exceeding) their projected goals as are reflected in operating plans, budgets, projections or any other regularly prepared financial statements.

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- i. If the Hold Separate Trustee ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Commission may appoint a substitute Hold Separate Trustee consistent with the terms of this Paragraph, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of the substitute Hold Separate Trustee within five (5) days after notice by the staff of the Commission to Respondents of the identity of any substitute Hold Separate Trustee, Respondents shall be deemed to have consented to the selection of the proposed substitute trustee. Respondents and the substitute Hold Separate Trustee shall execute a HS Trustee Agreement, subject to the approval of the Commission, consistent with this Paragraph.
2. No later than ten (10) days after this Hold Separate Order becomes final, Respondents shall enter into a management agreement with, and transfer all rights, powers, and authorities necessary to manage and maintain the Held Separate Business to an individual approved by the Commission (the "Manager").
 - a. In the event that the individual appointed as Manager ceases to act as Manager, then Respondents shall select a substitute Manager, subject to the approval of the Commission, and transfer to the substitute Manager all rights, powers and authorities necessary to permit the substitute Manager to perform his/her duties and responsibilities, pursuant to this Hold Separate Order.
 - b. The Manager shall report directly and exclusively to the Hold Separate Trustee and shall manage the Held Separate Business independently of the management of Respondents. The Manager shall not be involved, in any way, in the operations of the other businesses of Respondents during the term of this Hold Separate Order.

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- c. The Manager shall have no financial interests affected by Respondents' revenues, profits or profit margins, except that the Manager's compensation for managing the Held Separate Business may include economic incentives dependent on the financial performance of the Held Separate Business if there are also sufficient incentives for the Manager to operate the Held Separate Business at no less than current rates of operation (including, but not limited to, current rates of production and sales) and to achieve the objectives of this Hold Separate Order.
- d. The Manager shall make no material changes in the present operation of the Held Separate Business except with the approval of the Hold Separate Trustee, in consultation with the Commission staff.
- e. The Manager shall have the authority, with the approval of the Hold Separate Trustee, to remove employees and replace them with others of similar experience or skills. If any person ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Manager, in consultation with the Hold Separate Trustee, may request Respondents to, and Respondents shall, appoint a substitute person, which person the Manager shall have the right to approve.
- f. In addition to those employees within the Held Separate Business, the Manager may employ such employees as are reasonably necessary to assist the Manager in managing the Held Separate Business, including, without limitation, pricing services personnel, employee relations personnel, legal services personnel, public relations personnel, supply personnel, earnings consolidation and analysis personnel, business performance personnel (balanced scorecard, expense, volume, shared services reporting), customer relations personnel, and marketing administration personnel.

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- g. The Hold Separate Trustee shall be permitted, in consultation with the Commission staff, to remove the Manager for cause. Within fifteen (15) days after such removal of the Manager, Respondents shall appoint a replacement Manager, subject to the approval of the Commission, on the same terms and conditions as provided in Paragraph II.D.2 of this Hold Separate Order.
3. The Held Separate Business shall be staffed with sufficient employees to maintain the viability and competitiveness of the Held Separate Business. Employees of the Held Separate Business shall include, but not be limited to: (i) all personnel listed on Confidential Attachment D, and (ii) any persons transferred to the Held Separate Business by Respondents or hired from other sources. To the extent that any employees of the Held Separate Business leave or have left the Held Separate Business prior to the Effective Date of Divestiture, the Manager, with the approval of the Hold Separate Trustee, may replace departing or departed employees with persons who have similar experience and expertise or determine not to replace such departing or departed employees.
4. In connection with support services or products not included within the Held Separate Business, Respondents shall continue to provide, or offer to provide, the same support services to the Held Separate Business as are being provided to such business by Respondents as of the date the Consent Agreement is signed by Respondent. For services that Conoco or Phillips previously provided to the Held Separate Business, Respondents may charge the same fees, if any, charged by Respondents for such support services as of the date this Consent Agreement is signed by Respondents. For any other services or products that Respondents may provide the Held Separate Business, Respondents may charge no more than the same price they charge others for the same services or products. Respondents' personnel providing such services or products must retain and maintain all Material Confidential Information of the Held Separate Business on

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a confidential basis, and, except as is permitted by this Hold Separate Order, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of Respondents' businesses, other than the Held Separate Business. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of the Held Separate Business.

a. Respondents shall offer and the Held Separate Business shall obtain the following services and products only from Respondents:

- (1) National brand advertising and promotion programs;
- (2) Federal and state regulatory policy development and compliance;
- (3) Human resources administrative services, including but not limited to labor relations support, pension administration, and health benefits;
- (4) Environmental health and safety services, which develops corporate policies and insures compliance with federal and state regulations and corporate policies;
- (5) Preparation of tax returns; and
- (6) Audit services.

b. Respondents shall offer to the Held Separate Business any services and products that Respondents provide to their other businesses directly or through third party contracts, or that they have provided directly or through third party contracts to the businesses constituting the Held Separate Business at any time since January 1, 2002. The Held Separate Business may, at the option of the Manager with the approval of the Hold Separate

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Trustee, obtain such services and products from Respondents. The services and products that Respondents shall offer the Held Separate Business shall include, but shall not be limited to, the following:

- (1) Refined fuels scheduling, trading, acquisition, supply, transportation, pipeline operations, and distribution;
- (2) Crude oil scheduling, trading, acquisition, supply, transportation, pipeline operations, and distribution;
- (3) Engineering services, including engineering, design, and maintenance;
- (4) Convenience store category management;
- (5) Credit card processing;
- (6) Information systems services, including construction, maintenance, and support of all computer systems;
- (7) Public affairs, including media and community relations services;
- (8) Processing of accounts payable;
- (9) Security services;
- (10) Technical support;
- (11) Finance and financial accounting services;
- (12) Procurement of supplies (*e.g.* catalysts, chemicals, repair services, maintenance);
- (13) Procurement of goods and services utilized in the ordinary course of business by the Held Separate Business;

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- (14) Legal services;
 - (15) Service station design, maintenance, and construction;
 - (16) Real estate services, including the identification and development of new sites; and
 - (17) Communication services, including electronic data gathering and transmission systems.
- c. In connection with services and products other than those listed in a. above, and including but not limited to those listed in b. above, the Held Separate Business shall have, at the option of the Manager with the approval of the Hold Separate Trustee, the ability to acquire services and products from third parties unaffiliated with Respondents.
5. Respondents shall cause the Hold Separate Trustee, the Manager, and each employee of the Held Separate Business having access to Material Confidential Information to submit to the Commission a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Hold Separate Order. These individuals must retain and maintain all Material Confidential Information relating to the Held Separate Business on a confidential basis and, except as is permitted by this Hold Separate Order, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any of Respondents' businesses other than the Held Separate Business. These persons shall not be involved in any way in the management, production, distribution, sale, marketing, or financial operations of the competing products of Respondents.
6. No later than ten (10) days after the date this Hold Separate Order becomes final, Respondents shall establish written procedures, subject to the approval of the Hold

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Separate Trustee, covering the management, maintenance, and independence of the Held Separate Business consistent with the provisions of this Hold Separate Order.

7. No later than ten (10) days after the date this Hold Separate Order becomes final, Respondents shall circulate to employees of the Held Separate Business and to Respondents' employees who are responsible for the sale or distribution of Motor Fuels in the Colorado, Utah, Idaho, Montana, or Wyoming, a notice of this Hold Separate Order and the Consent Agreement, in the form attached as Attachments A and B.
8. The Hold Separate Trustee and the Manager shall serve, without bond or other security, at the cost and expense of Respondents, on reasonable and customary terms commensurate with the person's experience and responsibilities.
9. Respondents shall indemnify the Hold Separate Trustee and Manager and hold each harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate Trustee's or the Manager'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 Hold Separate Trustee or the Manager.
10. Respondents shall provide the Held Separate Business with sufficient financial resources:
 - a. as are appropriate in the judgment of the Hold Separate Trustee to operate the Held Separate Business at no less than current rates of operation (including, but not limited to, current (or, for seasons other than summer, recent seasonal) rates of refinery production and product sales) and at no less than the rates of operation projected

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in the Denver Refinery 2002 0+12 Ops Plan of September 2001 and the 2002-2007 Five Year Refinery Statistics Plan for the Woods Cross Business Unit, as amended (including, but not limited to, the rates of refinery production and product sales projected in such plans), subject to any additional documentation as requested by the Hold Separate Trustee; provided that failure to achieve production or sales goals projected in such plans shall not be deemed to be a violation of this Hold Separate Order;

- b. to perform all maintenance to, and replacements of, the assets of the Held Separate Business;
 - c. to carry on capital projects and business plans as reflected in Conoco's Denver Refinery Capex 2002 5+7 document and the 2002-2007 Five Year Capital Plan for the Woods Cross Business Unit, as amended, subject to any additional documentation as requested by the Hold Separate Trustee, and
 - d. to maintain the viability, competitive vigor, and marketability of the Held Separate Business.
 - e. Such financial resources to be provided to the Held Separate Business shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; provided, however, that, consistent with the purposes of the Decision and Order, the Manager may reduce in scale or pace any capital or research and development project, or substitute any capital or research and development project for another of the same cost.
11. Respondents shall not, during the Hold Separate Period, offer the employees listed on Confidential Attachment D positions with Respondents. The acquirer approved by the Commission pursuant to the Decision and Order shall have the option of offering employment to any employees of the Held Separate Business. Respondents

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shall not interfere with the employment, by the Commission-approved acquirer, of such employees; shall not offer any incentive to such employees to decline employment with the Commission-approved acquirer or to accept other employment with the Respondents; and shall remove any impediments that may deter such employees from accepting employment with the Commission-approved acquirer including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts that would affect the ability of such employees to be employed by the Commission-approved acquirer, and the payment, or the transfer for the account of the employee, of all current and accrued bonuses, pensions and other current and accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of the Respondents.

12. For a period of one (1) year commencing on the Effective Date of Divestiture, Respondents shall not employ or make offers of employment to employees of the Held Separate Business who have accepted offers of employment with the Commission-approved acquirer unless the individual has been terminated by the acquirer.
13. Notwithstanding the requirements of Paragraph II.D.11, Respondents shall offer a bonus or severance to employees included in the Held Separate Business who continue their employment with the Held Separate Business until termination of the Hold Separate Period, (in addition to any other bonus or severance to which the employees would otherwise be entitled).
14. Except for the Manager, employees of the Held Separate Business, and support services employees involved in providing services to the Held Separate Business pursuant to Paragraph II.D.4., and except to the extent provided in Paragraph II.A., Respondents shall not permit any other of its employees, officers, or directors to be involved in the operations of the Held Separate Business.

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15. Respondents shall assure that employees of the Held Separate Business receive, during the Hold Separate Period, their salaries, all current and accrued bonuses, pensions and other current and accrued benefits to which those employees would otherwise have been entitled.
16. Except as required by law, and except to the extent that necessary information is exchanged in the course of consummating the Merger; negotiating agreements to divest assets pursuant to the Consent Agreement and engaging in related due diligence; complying with this Hold Separate Order or the Consent Agreement; overseeing compliance with policies and standards concerning the safety, health and environmental aspects of the operations of the Held Separate Business and the integrity of the Held Separate Business' financial controls; defending legal claims, investigations or enforcement actions threatened or brought against or related to the Held Separate Business; or obtaining legal advice, Respondents' employees (excluding support services employees involved in providing support to the Held Separate Business pursuant to Paragraph II.D.4.) shall not receive, or have access to, or use or continue to use any Material Confidential Information of the Held Separate Business not in the public domain. Nor shall the Manager or employees of the Held Separate Business receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about Respondents and relating to Respondents' businesses, except such information as is necessary to maintain and operate the Held Separate Business. Respondents may receive aggregate financial and operational information relating to the Held Separate Business only to the extent necessary to allow Respondents to prepare United States consolidated financial reports, tax returns, reports required by securities laws, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

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17. Respondents and the Held Separate Business shall jointly implement, and at all times during the Hold Separate Period maintain in operation, a system, as approved by the Hold Separate Trustee, of access and data controls to prevent unauthorized access to or dissemination of Material Confidential Information of the Held Separate Business, including, but not limited to, the opportunity by the Hold Separate Trustee, on terms and conditions agreed to with Respondents, to audit Respondents' networks and systems to verify compliance with this Hold Separate Order.

III.**IT IS FURTHER ORDERED** that:

- A. At any time after the Commission issues this Hold Separate Order, the Commission may appoint a Monitor to assure that Respondents comply with their obligations under Paragraph IV. of the Decision and Order.
- B. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities and responsibilities of the Monitor appointed pursuant to this Paragraph:
 - 1. The Monitor shall have the power and authority to monitor Respondents' compliance with the terms of Paragraph IV. of the Decision and Order and all referenced agreements required by that Paragraph.
 - 2. Within ten (10) days after appointment of the Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondents' compliance with Paragraph IV. of the Decision and Order and all referenced agreements required by that Paragraph.
 - 3. The Monitor shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of

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Paragraph IV. of the Decision and Order and all referenced agreements required by that Paragraph.

4. The Monitor shall have full and complete access, subject to any legally recognized privilege of Respondents, to Respondents' personnel, books, records, documents, facilities and technical information relating to any relevant information, as the Monitor may reasonably request, including, but not limited to, all documents and records kept in the normal course of business that relate to the Propane Business. Respondents shall cooperate with any reasonable request of the Monitor. Respondents shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with Paragraph IV. of the Decision and Order and all referenced agreements required by that Paragraph.
5. The Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the reasonable expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are necessary to carry out the Monitor's duties and responsibilities.
6. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations for, or defense of, any claim whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor.
7. If the Commission determines that the Monitor has ceased to act or failed to act diligently, or if the individual appointed pursuant to Paragraph III.A. is unable to serve as Monitor, the Commission may appoint a substitute

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Monitor. The Commission shall select the substitute Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed substitute Monitor within ten (10) days after receipt of written notice by the staff of the Commission to Respondents of the identity of any proposed substitute Monitor, Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor.

8. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of Paragraph IV. of the Decision and Order and any agreements required by that Paragraph.
9. The Monitor shall report in writing to the Commission, concerning compliance by Respondents with the provisions of the Decision and Order and any agreements required by that Paragraph, within twenty (20) days from the date of appointment and every sixty days thereafter for the first six (6) months, and then every six (6) months thereafter throughout the Monitor's term. Such report shall include at least the following:
 - a. whether Respondents have given the Monitor reports and access to all information and records pursuant to this Order;
 - b. what Respondents have done to maintain non-public information; and
 - c. any other information that is requested by the Commission in determining whether Respondents are complying with the terms of the Decision and Order.

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10. Respondents may require the Monitor to sign a customary confidentiality agreement; provided, however, such agreement shall not restrict the Monitor from providing any information to the Commission.

IV.

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

V.

IT IS FURTHER ORDERED that for the purposes of determining or securing compliance with this Hold Separate Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, Respondents shall permit any duly authorized representatives of the Commission:

- A. Access, during office hours of Respondents and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of the Respondents relating to compliance with this Hold Separate Order; and
- B. Upon five (5) days' notice to each Respondent and without restraint or interference from it, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding any such matters.

VI.

IT IS FURTHER ORDERED that this Hold Separate Order shall terminate at the earlier of:

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- A. three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. the day after the last of the divestitures required by the Consent Agreement is completed; provided, however, that when an Asset to be Divested (as defined in the Decision and Order) that is included within the Held Separate Business is divested pursuant to the Consent Agreement, that asset shall cease to be held by the Held Separate Business.

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Attachments to Order to Hold Separate and Maintain Assets

ATTACHMENT A

**NOTICE OF DIVESTITURE AND REQUIREMENT FOR
CONFIDENTIALITY**

COLORADO ASSETS

Conoco Inc. (“Conoco”) and Phillips Petroleum Company (“Phillips”), hereinafter referred to as “Respondents,” have entered into an Agreement Containing Consent Orders (“Consent Agreement”) with the Federal Trade Commission relating to the divestiture of certain assets, including the “Colorado Assets.”

The term “Colorado Assets” as defined in the Federal Trade Commission’s Decision and Order (“Decision and Order”), means the (1) Conoco Denver Refinery Assets and (2) Phillips Colorado Retail Assets. The term “Conoco Denver Refinery Assets” as defined in the Decision and Order, means, Conoco’s refinery located at Commerce City, Colorado and other related assets specified in the Decision and Order. The term “Phillips Colorado Retail Assets” as defined in the Decision and Order, means all of Phillips’ Retail Assets in Colorado as of the date Conoco and Phillips executed the Consent Agreement.

Under the terms of the Consent Agreement, if the Respondents fail to divest the Colorado Assets within twelve (12) months from the date upon which Conoco and Phillips execute the Consent Agreement, a trustee will be appointed to divest the Colorado Assets.

The Colorado Assets must be managed and maintained as a separate, ongoing business, independent of all other businesses of the Respondents or ConocoPhillips, until the Colorado Assets are divested. All competitive information relating to the Colorado Assets must be retained and maintained by the persons involved in the operation of the Colorado Assets on a confidential basis, and

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such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other business of the Respondents or ConocoPhillips, except as is necessary to fulfill the purposes of the Decision and Order. Persons involved in similar activities at Conoco, Phillips or ConocoPhillips shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any similar information to or with any other person whose employment involves the Colorado Assets. Any violation of the Consent Agreement may subject Respondents or ConocoPhillips to civil penalties and other relief as provided by law.

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ATTACHMENT B

**NOTICE OF DIVESTITURE AND REQUIREMENT FOR
CONFIDENTIALITY**

PHILLIPS WOODS CROSS ASSETS

Conoco Inc. (“Conoco”) and Phillips Petroleum Company (“Phillips”), hereinafter referred to as “Respondents,” have entered into an Agreement Containing Consent Orders (“Consent Agreement”) with the Federal Trade Commission relating to the divestiture of certain assets, including the “Phillips Woods Cross Assets.”

The term “Phillips Woods Cross Assets” as defined in the Federal Trade Commission’s Decision and Order (“Decision and Order”), means the (1) Phillips Woods Cross Refinery Assets and (2) Phillips Woods Cross Retail Assets. The term “Phillips Woods Cross Refinery Assets” as defined in the Decision and Order, means, Phillips’ refinery located at Woods Cross, Utah and other related assets specified in the Decision and Order. The term “Phillips Woods Cross Retail Assets” as defined in the Decision and Order, means all of Phillips’ Retail Assets in Wyoming, Utah, Idaho, and Montana as of the date Conoco and Phillips executed the Consent Agreement.

Under the terms of the Consent Agreement, if the Respondents fail to divest the Phillips Woods Cross Assets within twelve (12) months from the date upon which Conoco and Phillips execute the Consent Agreement, a trustee will be appointed to divest the Phillips Woods Cross Assets.

The Phillips Woods Cross Assets must be managed and maintained as a separate, ongoing business, independent of all other businesses of the Respondents or ConocoPhillips, until the Phillips Woods Cross Assets are divested. All competitive information relating to the Phillips Woods Cross Assets must be retained and maintained by the persons involved in the operation

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of the Phillips Woods Cross Assets on a confidential basis, and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other business of the Respondents or ConocoPhillips, except as is necessary to fulfill the purposes of the Decision and Order. Persons involved in similar activities at Conoco, Phillips or ConocoPhillips shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any similar information to or with any other person whose employment involves the Phillips Woods Cross Assets. Any violation of the Consent Agreement may subject Respondents or ConocoPhillips to civil penalties and other relief as provided by law.

Order

CONFIDENTIAL ATTACHMENT C

TRUSTEE AGREEMENT

[Redacted From Public Record Version]

CONFIDENTIAL ATTACHMENT D

EMPLOYEES

[Redacted From Public Record Version]

Analysis

Analysis of Proposed Consent Order to Aid Public Comment**I. Introduction**

The Federal Trade Commission (“Commission” or “FTC”) has issued a complaint (“Complaint”) alleging that the proposed merger of Phillips Petroleum Company (“Phillips”) and Conoco Inc. (“Conoco”) (collectively “Respondents”) would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. The Commission and Respondents have entered into an agreement containing consent orders (“Agreement Containing Consent Orders”) pursuant to which Respondents agree to be bound by a proposed consent order that requires divestiture of certain assets and certain other relief (“Proposed Order”) and a hold separate order that requires Respondents to hold separate and maintain certain assets pending divestiture (“Hold Separate Order”). The Proposed Order remedies the likely anti-competitive effects arising from Respondents’ proposed merger, as alleged in the Complaint. The Order to Hold Separate and Maintain Assets preserves competition pending divestiture.

II. Description of the Parties and the Transaction

Phillips, headquartered in Bartlesville, Oklahoma, is an integrated oil company engaged in the worldwide exploration, production, and transportation of crude oil and natural gas; gathering of natural gas; fractionation of raw mix into specification products; refining, marketing, and transportation of petroleum products; and production and marketing of chemicals. Phillips is the nation’s third largest refiner and fourth largest gasoline marketer, with approximately 10 percent of the United States refining capacity and 9 percent of gasoline marketing. In 2001, Phillips had revenues of \$47.7 billion. Phillips has significant terminal facilities that it uses to distribute gasoline and other petroleum products to its customers. Phillips owns or licenses several gasoline brands under which gasoline is sold at approximately 11,700 stations throughout the United States. Phillips owns approximately 1,700 outlets in the Mid-Atlantic and

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Northeastern areas of the United States. These outlets currently sell gasoline under the Exxon and Mobil brands. Of the approximate 10,000 other outlets, primarily located outside the Mid-Atlantic and Northeastern United States, the great majority are owned and operated by independent marketers and dealers. Phillips also owns slightly more than 30 percent of Duke Energy Field Services, LLC (“DEFS”). DEFS is a significant gatherer of natural gas throughout the United States and has interests in many fractionation facilities throughout the United States.

Conoco, headquartered in Houston, Texas, is a fully integrated petroleum company engaged in the worldwide exploration, production, and transportation of crude oil and natural gas; gathering of natural gas; fractionation of raw mix into specification products; and refining, marketing, and transportation of petroleum products. In 2001, Conoco had revenues and net income of \$39.5 billion and \$1.6 billion, respectively. Conoco has approximately 3 percent of refining capacity and 3 percent of gasoline sales in the United States, making it approximately the nation’s eleventh largest refiner and ninth largest gasoline seller. Conoco owns petroleum product terminals throughout the United States. Conoco brand gasoline is sold through approximately 5,000 stations primarily located in the Southeast, Southwest, Mid-continent, and Rocky Mountain areas of the United States. The great majority of these stations are owned and operated by independent distributors and dealers.

On November 18, 2001, Phillips and Conoco entered into an agreement to merge the two firms into a corporation to be known as ConocoPhillips, the estimated capital value of which, as of the date of the agreement, was approximately \$35 billion. ConocoPhillips would be the third-largest integrated U.S. energy company based on market capitalization, and oil and gas reserves and production. Worldwide, it will be the sixth-largest energy company based on hydrocarbon reserves and the fifth-largest global refiner.

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II. The Complaint

The Complaint alleges that the proposed merger and its consummation would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. The Complaint alleges that the merger will lessen competition in each of the following markets: (1) the bulk supply of light petroleum products (a) in Eastern Colorado and (b) in Northern Utah; (2) light petroleum product terminaling services in the metropolitan statistical areas (“MSAs”) of Spokane, Washington and Wichita, Kansas; (3) the bulk supply of propane in (a) Southern Missouri, (b) the St. Louis MSA, and (c) Southern Illinois; (4) natural gas gathering in more than 50 sections of the Permian Basin; (5) and fractionation in Mont Belvieu, Texas.

Count I of the Proposed Complaint concerns the bulk supply of light petroleum products for sale in Eastern Colorado. Both Phillips and Conoco compete within this market. The Complaint alleges that the merged firm would have more than 30 percent of the market, which will be highly concentrated post-merger. The Complaint further alleges that the proposed merger would lead to higher prices for light petroleum products because the merged firm, in combination with other similarly situated firms, could profitably coordinate to raise prices and reduce output in Eastern Colorado. Successful coordination is likely because: (1) prices for bulk supplies are transparent; (2) the merged firm and its similarly situated competitors have the ability to inexpensively divert bulk supplies away from Eastern Colorado to other markets; (3) other sources of bulk supply to Eastern Colorado are already largely at capacity (products pipelines and local refineries) or suppliers have no economic incentive to divert light petroleum products from more lucrative areas in the Rockies to Eastern Colorado; and (4) cheating on the coordination could be detected and punished by coordinating firms. Furthermore, there is some evidence that some degree of coordination has been lifting prices in areas of the Rockies outside of Eastern Colorado.

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Count II of the Proposed Complaint concerns the bulk supply of light petroleum products for sale in Northern Utah. Phillips competes in this market through its ownership of a refinery in Salt Lake City, and Conoco competes in this market through its 50 percent undivided ownership interest in Pioneer Pipeline, the only pipeline bringing bulk supplies of light petroleum products into Northern Utah. The Complaint alleges that the merged firm would own or control about 24 percent of the refining and pipeline capacity serving Northern Utah, and that Northern Utah will be highly concentrated after the merger. The Complaint asserts that in highly concentrated markets, increasing concentration is likely to facilitate and more completely give effect to tacit coordination. With respect to entry into the bulk supply market, the Complaint alleges that in either Eastern Colorado or Northern Utah, entry is difficult and would not be timely, likely, or sufficient to deter or counteract anticompetitive effects that may result from the merger.

Count III of the Proposed Complaint concerns terminaling services in the Spokane, Washington MSA. Petroleum terminals are facilities that provide temporary storage of gasoline and other petroleum products received from a pipeline, and then redeliver these products from the terminal's storage tanks into trucks or transport trailers for ultimate delivery to retail gasoline stations or other buyers. There are no economic substitutes for petroleum terminals. The Complaint alleges that Conoco and Phillips are two of the only three providers of terminal services in Spokane. The Complaint further alleges that the merged firm would be able to unilaterally, or in concert with others, raise prices of terminaling services in Spokane. Entry into the terminaling of light petroleum products is difficult and would not be timely, likely, or sufficient to deter or counteract anticompetitive effects that may result from the merger.

Count IV of the Proposed Complaint concerns terminaling services in the Wichita, Kansas MSA. There are five firms currently providing terminaling services in the Wichita market. Some of these competitors are unlikely to restrain a price increase in the future. The Complaint charges that the terminaling of light petroleum products in Wichita is highly concentrated, and would

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become significantly more concentrated as a result of the merger. The Complaint alleges that the merged firm would be able coordinate or raise prices unilaterally in Wichita. Entry into the terminaling of light petroleum products is difficult and would not be timely, likely, or sufficient to deter or counteract anticompetitive effects that may result from the merger.

Count V of the Proposed Complaint concerns the bulk supply of propane in Southern Missouri. Propane is a versatile fuel used by residential, industrial and agricultural consumers. It is produced as part of the crude refining process or extracted from natural gas. Bulk supply of propane is the provision of large quantities of propane to an area for distribution by wholesale distributors. In most of its applications, propane is used where natural gas is not available. The Complaint charges that Phillips and Conoco are two of four bulk suppliers of propane in Southern Missouri. There is reason to believe that other competitors are unlikely to effectively constrain the merged firm's pricing. In Southern Missouri, the merged firm would control the vast majority of the propane market. The Complaint alleges that the merger likely would enable ConocoPhillips to unilaterally raise prices (or reduce output) or to coordinate with other suppliers in the bulk supply of propane in Southern Missouri. Entry into the bulk supply of propane is difficult and would not be timely, likely, or sufficient to deter or counteract anticompetitive effects that may result from the merger.

Counts VI and VII of the Proposed Complaint concern the bulk supply of propane in the St. Louis MSA and Southern Illinois areas, respectively. There are four bulk suppliers in St. Louis and Southern Illinois. There is reason to believe that other competitors are unlikely to effectively constrain the merged firm's pricing. The Complaint alleges that ConocoPhillips could raise prices unilaterally or in concert with others. The Complaint further alleges that entry into the bulk supply of propane is difficult and would not be timely, likely, or sufficient to deter or counteract anticompetitive effects that may result from the merger.

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Count VIII of the Proposed Complaint concerns natural gas gathering in several areas of the Permian Basin. The Permian Basin is an oil and gas rich area of western Texas and southeastern New Mexico. The relevant markets are limited to many small areas within Eddy, Chavez and Lea counties in New Mexico and Schleicher County, Texas. The likely production rates of the natural gas fields in the overlap areas and cost of building gathering lines in the Permian Basin limit the markets to areas with a radius of no more than three miles. Phillips owns about 30 percent of DEFS. Conoco is a substantial competitor in providing gathering services in the Permian Basin. The Complaint alleges that DEFS and Conoco are the only competitors in the areas identified by the Commission. The Complaint alleges that after the merger, ConocoPhillips' complete or partial ownership of the only two gathering systems would likely reduce competition. The Complaint alleges that there are substantial costs to entering the gathering business such that entry would not be timely, likely, or sufficient to deter or counteract anticompetitive effects that may result from the merger.

Count IX of the Proposed Complaint concerns fractionation of raw mix into specification products, such as butane and ethane. The Complaint alleges that there is no alternative to fractionation services. Many pipelines deliver raw mix and transport fractionated specification products from Mont Belvieu, Texas. There are four fractionators in Mont Belvieu. Mont Belvieu is an active trading hub for each specification product. DEFS owns an interest in two fractionators and Conoco has an interest in a third fractionator. The Complaint alleges that the combined firm would have access to competitively sensitive information of Mont Belvieu fractionators accounting for more than 70 percent of the market capacity and would have veto rights over significant expansion decisions. The Complaint further alleges the merger would reduce competition by allowing fractionation competitors to share information and exercise veto rights over expansion decisions. The Complaint charges that there are substantial entry barriers in fractionation in Mont Belvieu such that entry would not be timely, likely, or sufficient to deter or counteract anticompetitive effects that may result from the merger.

IV. The Proposed Consent Order

The Proposed Order is designed to remedy the alleged anti-competitive effects of the proposed merger. Under the terms of the Proposed Order, the merged firm must: (1) divest the Phillips refinery located at Woods Cross, Utah, and all of Phillips' related marketing assets served by that refinery; (2) divest Conoco's Denver refinery located at Commerce City, Colorado, and all of Phillips' marketing assets in Eastern Colorado; (3) divest Phillips light petroleum products terminal in Spokane, Washington; (4) enter into a petroleum products throughput agreement that includes an option to buy a 50 percent undivided interest in Phillips' Wichita, Kansas, light petroleum products terminal; (5) (a) divest Phillips' propane terminal assets in Jefferson City, Missouri, and East St. Louis, Illinois; and (b) provide a long-term propane supply agreement; (6) divest certain Conoco natural gas gathering assets in New Mexico and Texas, including Conoco's Maljamar processing facility and enter into a long-term agreement to process natural gas gathered in Texas; and (7) create firewalls that prevent the transfer of competitively sensitive information among Mont Belvieu fractionators.

A. Phillips Woods Cross Assets

Paragraph II of the Proposed Order requires the divestiture of the Phillips Woods Cross assets to restore competition in the bulk supply of light petroleum products in Northern Utah. The assets to be divested include Phillips' refinery located in Woods Cross, Utah, and substantially all of the related distribution, marketing and retail operations. This includes the refinery, crude oil supply pipelines, truck loading racks, light petroleum product pipelines and storage terminals used in the operation of the refinery. The assets to be divested also include all gasoline retail stations currently owned by Phillips and served by the Woods Cross refinery and, by assignment, all Phillips' agreements with marketers served by the Woods Cross refinery. Respondents will

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also be required to provide to the buyer of the assets Phillips proprietary (branded) and non-proprietary credit card services, Phillips additive, and brand support at Phillips' costs.

The Proposed Order will require Respondents to grant to the acquirer an exclusive 10-year royalty free license to use brands currently used by Phillips in Utah, Wyoming, Montana and Idaho to sell gasoline, kerosene, diesel fuel and any other product typically sold at a gasoline station through the gasoline outlet channel of distribution and a nonexclusive 10-year royalty free license to use brands currently used by Phillips in Utah, Wyoming, Montana and Idaho to sell those products typically sold in gasoline stations (e.g, motor oil) outside of the gasoline outlet channel of distribution.

The assets must be divested to a buyer receiving prior approval from the Commission within 12 months of the date Respondents executed the Agreement Containing Consent Orders, and Respondents must maintain the viability and the marketability of the assets until they are divested.

B. Colorado Assets

Paragraph III of the Proposed Order requires the divestiture of refinery and marketing assets to restore competition in the bulk supply of light petroleum products in Eastern Colorado. The assets to be divested include Conoco's refinery located in Commerce City, Colorado, and all of the related distribution assets, including crude oil supply pipelines, truck loading racks, light petroleum product pipelines and storage terminals used in the operation of the refinery, and pipeline assets ensuring the distribution of jet fuel.

The assets to be divested also include: (1) all gasoline retail stations that are currently owned by Phillips located in Colorado and, by assignment, all Phillips' agreements with marketers served by Phillips' Eastern Colorado bulk supply assets; (2) an exclusive 10-year royalty free license to use brands currently used by Phillips in Colorado to sell gasoline, kerosene, diesel fuel and any

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other product typically sold at a gasoline station through the gasoline outlet channel of distribution; (3) a nonexclusive 10-year royalty free license to use brands currently used by Phillips in Colorado to sell products typically sold at gasoline stations (e.g, motor oil) through channels outside of gasoline outlets; and (4) provision of Phillips proprietary (branded) and non-proprietary credit card services, Phillips additive, and brand support at Phillips' costs.

These refinery and marketing assets must be divested to a buyer receiving prior approval from the Commission within 12 months of the date Respondents executed the Agreement Containing Consent Orders, and Respondents must maintain the viability and the marketability of the assets until they are divested.

C. Phillips' Propane Assets

Paragraph IV of the Proposed Order restores competition in bulk supplies of propane by requiring Respondents to divest the Phillips propane business and associated assets to a buyer receiving prior approval of the Commission by January 15, 2003. Respondents must divest all the physical assets (storage, truck racks, pipelines connecting the storage tanks to common carrier pipelines and truck racks) related to Phillips' propane terminal operations in Jefferson City, Missouri, and East St. Louis, Illinois. Phillips must also assign all propane supply agreements between Phillips and its customers from those terminals. The acquirer will have the unqualified ability to expand the propane terminal assets. The Proposed Order also imposes restrictions on Respondents to ensure that the buyer of the propane business obtains nondiscriminatory access to the Blue and Shocker Lines. With access to the Blue Line and Shocker Line common carrier pipelines, the acquirer will be able to ship propane to the Jefferson City or East St. Louis terminals from the propane market in Conway, Kansas. Until the propane assets are divested, Respondents must maintain the viability and the marketability of those assets.

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Paragraph IV.D. requires Respondents to, by the date of divesting the Propane Business, enter into a propane supply contract with the acquirer of the divested propane business. The contract must give the acquirer the ability to purchase propane at a price equal to the price at Conway, Kansas, plus the Blue Line and Shocker Line tariffs from Conway to the applicable terminal.

Respondents must also enter into a terminal operating agreement with the buyer of the propane business. The agreement must provide for the maintenance, upkeep, repair, security, and operation of the Jefferson City, Missouri, and East St. Louis, Illinois, terminals at Respondents' actual costs.

In the event that Respondents are unable to divest the propane business by January 15, 2003, to a buyer receiving prior approval of the Commission and in a manner approved by the Commission, Respondents must divest: (1) a 50 percent undivided interest in the Blue Line between Borger, Texas, and the connection to the Shocker Line (near Wichita, Kansas); (2) the Shocker Line; (3) Respondents' entire interest in the Blue Line from the connection with the Shocker Line to the East St. Louis, Illinois terminal; (4) the East St. Louis terminal; (5) the Jefferson City, Missouri terminal, and (5) the Ringer, Kansas terminal.

D. Phillips' Spokane Terminal

Paragraph V of the Proposed Order requires the Respondents to divest the Phillips terminal in Spokane, Washington, no later than six months after the date Respondents execute the Agreement Containing Consent Orders. The acquirer of the Phillips Spokane Terminal must have the prior approval of the Commission. Until Phillips Spokane Terminal is effectively divested, Respondents will be required to maintain the viability and the marketability of the terminal. The purpose for the sale of Phillips Spokane Terminal is to maintain the existing level of competition.

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E. Phillips' Wichita Terminal

Paragraph VI of the Proposed Order requires the parties to enter into a 10-year products throughput agreement with Williams Pipe Line Company, LLC ("Williams"), or another firm, receiving the prior approval of the Commission, within nine months of Respondents' execution of the Agreement Containing Consent Orders. Williams owns and operates common carrier refined products pipelines and terminals serving, among others, the Mid-continent areas of the United States. The throughput agreement must provide for at least 8,500 barrels per day and cannot specify a minimum volume. The agreement must also provide for the acquisition of additive and information technology services, and provide an option to purchase a 50 percent undivided interest in Phillips terminal assets in Wichita, Kansas.

F. Natural Gas Gathering

Paragraph VII of the Proposed Order requires the Respondents to divest all of Conoco's natural gas gathering, compression, processing and transportation assets within specified areas of Chavez, Lea and Eddy Counties in New Mexico, within nine months from the date Respondents execute the Agreement Containing Consent Orders. These assets include Conoco's Maljamar Processing Plant, and all necessary agreements or contracts related to the operation of that plant. The Commission must give its prior approval before any acquirer may purchase these assets. Until these assets are sold, they will be placed into an Order to Hold Separate and Maintain Assets.

Paragraph VIII of the Proposed Order requires the Respondents to divest all of Conoco's assets related to the gathering, compression, transportation or sale of natural gas within Schleicher County, Texas, within nine months from the date Respondents execute the Agreement Containing Consent Orders. This includes all gathering pipelines and any related contracts or agreements. The Commission must give its prior approval before any acquirer may purchase these assets. Until these assets are sold, they will be placed into an Order to Hold Separate and

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Maintain Assets. In addition, Respondents must enter into a processing agreement with the buyer of the divested assets. The processing agreement must allow the buyer to process at least the same volume of natural gas that is currently gathered on the system at Conoco's cost. This cost includes all direct costs, including raw materials, labor, utilities and third-party contract services actually used to provide services to the acquirer of the gathering assets. In addition, cost may include the pro rata share of the cost of the capital employed in the processing plant and indirect costs related to operating the processing plant, including taxes, depreciation, overhead and third-party contracts.

G. Fractionation

Paragraph IX of the Proposed Order contains four provisions ensuring that Respondents cannot transfer competitively sensitive information among fractionators or exercise voting rights to thwart expansion. First, beginning at the date of execution of the Agreement Containing Consent Orders, the Proposed Order prohibits Respondents from sharing competitively sensitive fractionation information with DEFS, Duke (owner of approximately 70 percent of DEFS), or any DEFS Board Member. Second, Respondents may not receive from Duke, DEFS, or any DEFS board member any competitively sensitive fractionation information of DEFS. Third, ConocoPhillips DEFS board members may not participate in any discussions with DEFS or Duke relating to the three fractionators in which Respondents and DEFS own an interest. Fourth, ConocoPhillips DEFS Board Members may not participate in any vote of the DEFS board, unless such a vote is necessary and, if such a vote is necessary, then the ConocoPhillips DEFS Board Members must vote in the same way as the majority of the Duke DEFS Board Members.

H. Other Terms

Paragraph X sets the guidelines for the appointment and powers of a Divestiture Trustee should the Respondents fail to complete one or more of the divestitures discussed above. Paragraph XI requires the Respondents to provide the Commission with a report

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of compliance with the Proposed Order every sixty days until the divestitures are completed. Paragraph XII provides for notification to the Commission in the event of any changes in the Respondents. Paragraph XIII requires the Respondents to provide the Commission with access to their facilities and employees for the purposes of determining or securing compliance with the Proposed Order. Paragraph XIV provides, among other things, that if a State fails to approve any of the divestitures contemplated in the Proposed Order, then the period of time required under the Proposed Order for such divestiture will be extended for ninety days. Finally, Paragraph XV provides that the Proposed Order will terminate ten years after the date the Order becomes final.

V. Gasoline Retail and Marketing Assets

In this instance, the Commission is not seeking gasoline marketing relief outside the bulk supply areas discussed above (Eastern Colorado and Northern Utah). After a thorough investigation, the Commission concluded that the proposed merger of Phillips and Conoco is not likely to have any anticompetitive effect on gasoline marketing in the Mid-continent, Southeastern, or Southwestern United States. The Commission considered several factors in reaching its decision not to seek retail relief in those areas. First, Phillips and Conoco own and/or operate few retail outlets. With the exception of a small number of cities, Phillips and Conoco gasoline distribution relies significantly on independent gasoline marketers. Further, Conoco and Phillips, unlike the other major refiners, have not imposed significant costs of switching brands or de-branding on the predominant share of their marketers. Neither Phillips nor Conoco engage in redlining or zone pricing in areas investigated in this merger. Thus, the degree of vertical control over jobbers by Conoco and Phillips in these regions is significantly less than that exercised by other refiners in other parts of the country. Further, the Commission has found significant growth of low-priced gasoline retailing by supermarkets, club stores and mass merchandisers. The entry of these gasoline distribution competitors likely will prevent the merging firm from raising

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prices in the Mid-continent, Southeast and Southwest. In addition, entry by these low-priced competitors has induced jobbers to switch brands and de-brand. Entry and growth by low-priced formats are likely to continue in these areas, in part, because of a plentiful supply of gasoline and diesel fuel. Areas under investigation in this merger have common carrier pipelines and terminals delivering and storing gasoline to both branded and unbranded jobbers. For these and other reasons, the Commission does not have reason to believe that the merger of Conoco and Phillips would lessen competition substantially in the Mid-continent, Southeast and Southwest.

VI. Opportunity for Public Comment

The Proposed Order has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the Proposed Order and the comments received and will decide whether it should withdraw from the Proposed Order or make it final. By accepting the Proposed Order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the Proposed Order, including the proposed divestitures, to aid the Commission in its determination of whether to make the Proposed Order final. This analysis is not intended to constitute an official interpretation of the Proposed Order, nor is it intended to modify the terms of the Proposed Order in any way.

Complaint

IN THE MATTER OF

WAL-MART STORES, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE
COMMISSION ACT*Docket C-4066; File No. 0210090**Complaint, November 20, 2002--Decision, February 27, 2003*

This consent order addresses the acquisition by Respondent Wal-Mart Stores, Inc. – a global food and general merchandise retailer headquartered in Arkansas – of Respondent Supermercados Amigo Inc., headquartered in San Juan, Puerto Rico, and the largest supermarket chain in Puerto Rico in terms of dollar sales. The order, among other things, requires the respondents to divest four Supermercados Amigo supermarkets – in Cidra, Ponce, Manati, and Vega Baja, Puerto Rico – to Supermercados Maximo, Inc. (headquartered in Hato Rey, Puerto Rico) or to another acquirer approved by the Commission. The order also requires the respondents to maintain the viability of the four supermarkets pending their divestiture. In addition, the order prohibits the respondents for ten years from acquiring – without providing the Commission with prior notice – any supermarket, supercenter, or club store, or any interest in any supermarket, supercenter, or club store located in the municipalities that include Cayey, Cidra, Ponce, Juana Diaz, Barceloneta, Manati, and Vega Baja, Puerto Rico.

Participants

For the Commission: *Michael J. Bloom, Susan E. Raitt, Barbara Anthony, D. Bruce Hoffman, Joseph Eckhaus, Roberta S. Baruch, Alan A. Fisher, Charrisa P. Wellford and Mary T. Coleman.*

For the Respondents: *Peter Standish, Theodore Bolema, and Fiona Schaeffer, Weil Gotshal & Manges, Anthony George, Wal-Mart Stores, Inc., and William Berkowitz and Stephen Brook, Bingham McCutchen LLP.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by