

Complaint

IN THE MATTER OF

ENTERPRISE PRODUCTS PARTNERS L.P., 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-4123; File No. 0410039

Complaint, September 29, 2004--Decision, November 23, 2004

This consent order, among other things, requires Respondent Enterprise Products Partners L.P. – a publicly traded limited partnership that provides midstream energy services to customers throughout the Southeastern and Midwestern United States – and Respondent Dan L. Duncan, the ultimate parent entity of Enterprise to divest their interest in one of two competing pipelines (the Stingray/Triton pipeline system or the High Island Offshore System and its East Breaks lateral) that transport natural gas from the West Central Deepwater region of the Gulf of Mexico, in which water depths exceed 1,000 feet. The order also requires the respondents to divest their interest in one of two competing underground propane storage and terminaling facilities serving the Dixie Pipeline in Hattiesburg, Mississippi. An accompanying Order to Hold Separate and Maintain Assets requires the respondents to ensure the continuing viability, marketability, and competitiveness of the foregoing assets - and to ensure that they operate independently from Enterprise and GulfTerra - until the required divestitures are effected.

Participants

For the Commission: *Frank Lipson, Marc Schneider, Elizabeth D. Kaiser, Natasha Allen, John V. Lacci, Phillip L. Broyles, Daniel P. Ducore, Mark Williams, Peter Guly, Jeffrey H. Fischer and Mark Frankena.*

For the Respondents: *Neil Imus.*

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, having reason to believe that Respondent Enterprise Products Partners L.P., and Respondent Dan L. Duncan entered into a series of agreements

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with GulfTerra Energy Partners L.P. and others to merge Enterprise Products Partners L.P. and GulfTerra Energy Partners L.P., all such parties being subject to the jurisdiction of the Federal Trade Commission, in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and 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 its complaint, stating its charges as follows:

I. THE RESPONDENTS

1. Respondent Enterprise Products Partners L.P. ("Respondent Enterprise") is a publicly traded limited partnership organized and doing business under the laws of the State of Delaware with its executive offices at 2727 North Loop West in Houston, Texas 77008. Enterprise Products GP, LLC ("Enterprise GP") is the general partner of Enterprise and is responsible for its day-to-day management and operations.
2. Respondent Enterprise is engaged, among other things, in the pipeline transportation of natural gas, and the transportation, fractionation, and storage of natural gas liquids, such as ethane and propane.
3. Respondent Enterprise at all times relevant herein has been and is now engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a partnership whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.
4. Respondent Dan L. Duncan ("Respondent Duncan"), a natural person, is the ultimate parent entity of Respondent Enterprise. Mr. Duncan owns or controls 100 percent of Enterprise Products GP, LLC and 48.8 percent of the limited

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partnership units in Respondent Enterprise. His offices are located at 2727 North Loop West, in Houston, Texas 77008.

5. Respondent Duncan at all times relevant herein has been and is now engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is an individual whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. THE MERGER PARTNER

6. GulfTerra Energy Partners L.P. ("GulfTerra") is a limited partnership, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 4 Greenway Plaza, Houston, Texas 77046. El Paso Corporation owns 31.1 percent of the limited partnership units of GulfTerra LP. El Paso Corporation also owns 50 percent of the membership interest in, and manages the day-to-day operations of, GulfTerra's general partner.
7. GulfTerra is engaged, among other things, in the pipeline transportation of natural gas, and the transportation, fractionation, and storage of natural gas liquids, such as ethane and propane.

III. THE TRANSACTION

8. On December 15, 2003, Respondent Enterprise and GulfTerra agreed to merge to form the second largest publicly traded energy partnership, with an enterprise value of approximately \$13 billion.

IV. THE RELEVANT MARKETS

9. For purposes of this Complaint, the relevant lines of commerce in which to analyze the effects of the merger are:

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- a. the pipeline transportation of natural gas; and
 - b. propane storage and terminaling services.
10. For purposes of this Complaint, the relevant geographic areas in which to analyze the effects of the merger with respect to the pipeline transportation of natural gas are portions of the following United States Department of Interior Minerals Management Service areas in the Gulf of Mexico: East Breaks, Garden Banks, Keithley Canyon, and Alaminos Canyon (“West Central Deepwater”) of the Gulf of Mexico.
 11. For purposes of this Complaint, the relevant geographic areas in which to analyze the effects of the merger with respect to propane storage and terminaling services is Hattiesburg, Mississippi.

V. THE STRUCTURE OF THE MARKETS

12. The relevant markets are highly concentrated whether measured by Herfindahl-Hirschman Indices (“HHI”) or two-firm or four-firm concentration ratios.
13. Respondents and GulfTerra are actual competitors in the relevant markets.

VI. BARRIERS TO ENTRY

14. Entry into the relevant markets is costly, difficult and unlikely because of, among other things, the substantial sunk cost needed to construct the assets required for entry.

VII. EFFECTS OF THE MERGER

15. The effect of the merger may be to substantially lessen competition, or to tend to create a monopoly in the relevant markets set forth above, in violation of Section 7

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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, in the following ways, among others:

- a. By eliminating direct competition between Respondents and GulfTerra in the relevant markets;
- b. By enhancing the likelihood of collusion or coordinated action between or among the remaining firms in the pipeline transportation of natural gas from the West Central Deepwater of the Gulf of Mexico;
- c. By enhancing the likelihood that Respondents would unilaterally exercise market power in the pipeline transportation of natural gas from the West Central Deepwater of the Gulf of Mexico;
- d. By enhancing the likelihood of collusion or coordinated action between or among the remaining firms in the market for propane storage and terminaling services in Hattiesburg, Mississippi; and
- e. By increasing the likelihood that customers would be forced to pay higher prices for propane storage and terminaling services and pipeline transportation of natural gas in the relevant geographic areas.

VIII. VIOLATION CHARGED

16. The merger agreement described in Paragraph 8 constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.
17. The merger described in Paragraph 8, if consummated, would constitute a violation 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.

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WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-ninth day of September, 2004, issues its complaint against said respondents.

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The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed merger of Respondent Enterprise Products Partners, L.P., which is controlled by Respondent Dan L. Duncan, hereinafter collectively referred to as “Respondents,” with GulfTerra Energy Partners, L.P. (“GulfTerra”) and GulfTerra Energy Company, LLC (“GulfTerra GP”) 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 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 an Order to Hold Separate and Maintain Assets (“Hold Separate Order”), and having 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 comment received from an interested person pursuant to section 2.34 of its Rules, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the

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Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Enterprise Product Partners L.P. is a publicly traded limited partnership 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 2727 North Loop West, Houston, Texas 77008.

2. Respondent Dan L. Duncan is an individual with his office and principal place of business located at 2727 North Loop West, Houston Texas 77008.

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. “Duncan” means Dan L. Duncan, a natural person, all partnerships, joint ventures, subsidiaries, divisions, groups and affiliates controlled by Mr. Dan L. Duncan, including, but not limited to, Enterprise Products Company, Dan Duncan L.L.C., Enterprise Products GP, LLC, and Enterprise Product Partners L.P., and the respective partners, directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each.
- B. “Enterprise” means Enterprise Products Partners L.P., a publicly traded limited partnership, its partners, directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by

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Enterprise Products Partners L.P., and the respective partners, directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each.

- C. “El Paso” means El Paso Corporation, an international energy company organized and doing business under the laws of the State of Delaware with its executive offices at 1001 Louisiana Street, Houston, Texas 77002.
- D. “GulfTerra” means GulfTerra Energy Partners, L.P., a publicly traded limited partnership, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 4 Greenway Plaza, Houston, Texas 77046.
- E. “GulfTerra GP” means GulfTerra Energy Company, LLC, a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 4 Greenway Plaza, Houston, Texas 77046. El Paso controls GulfTerra GP.
- F. “Commission” means the Federal Trade Commission.
- G. “Divestiture Trustee” means any trustee appointed by the Commission pursuant to Paragraph IV. of this Order.
- H. “Duncan Group” means (i) Dan L. Duncan and all joint ventures, subsidiaries, divisions, groups, affiliates, agents and representatives controlled by him, and (ii) Enterprise Products Partners L.P. and all joint ventures, subsidiaries, divisions, groups, affiliates, agents and representatives controlled by it.
- I. “Effective Date of Pipeline Divestiture” means the date on which Respondents (or a Divestiture Trustee) divest to the Pipeline Acquirer the Starfish Pipeline Interest or

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HIOS/East Breaks Assets completely and as required by Paragraphs II. or IV. of this Order.

- J. “Effective Date of Propane Divestiture” means the date on which Respondents (or a Divestiture Trustee) divest to the Propane Acquirer the Enterprise Propane Storage Interest or the Enterprise Petal LPG Storage Facility completely and as required by Paragraphs III. or IV. of this Order.
- K. “Enterprise Propane Monitor” means the person appointed pursuant to Paragraph IV. of the Hold Separate Order.
- L. “Enterprise Propane Storage Interest” means all of Enterprise’s and Duncan’s interests in the propane storage and terminaling facility located 18 Chappell Hill Road, Petal, Mississippi 39465, in Forrest County, Mississippi, that are jointly owned with Dynegy Midstream Services, L.P. (“Dynegy”) including, but not limited to, all of Enterprise’s and Duncan’s interests in:
 - 1. five propane salt dome storage wells with a combined usable capacity of approximately 5.6 million barrels;
 - 2. existing easements and rights of way;
 - 3. odorizing facilities;
 - 4. related facilities required for the operation of the propane storage facilities including, but not limited to: product pumps, a brine pond and brine pumping facilities, pipelines, pipeline pumps, pipeline injection facilities and related equipment, buildings, equipment, machinery, fixtures and other appurtenances;
 - 5. truck, rail, and pipeline facilities, including truck and rail racks, for the receipt and delivery of propane stored in the wells;
 - 6. approximately 115 acres of land located in Forrest County, Mississippi;

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7. all licenses, permits, contracts, agreements, and understandings relating to the ownership and operation of the facility.

M. "Enterprise Petal LPG Storage Facility" means all of Respondent's 100 percent interest in the Petal LPG Storage Facility located at 1364 Highway 11 North, Petal, Mississippi 39464, in Forrest County, Mississippi, including, but not limited to:

1. nine LPG salt dome storage wells, seven of which are active with a combined usable capacity of approximately seven million barrels and two of which are not currently in service;
2. two brine production wells and one brine disposal well;
3. truck, rail and pipeline facilities, including truck and rail racks, for the receipt and delivery of product stored in the wells;
4. odorizing facilities;
5. existing easements and rights of way held by Respondent for operation of the Enterprise Petal LPG Storage Facility;
6. related facilities required for the operation of the LPG storage facilities including, but not limited to, product pumps, a brine pond and brine pumping facilities, dehydrators, pipelines, pipeline injection pumps and related facilities and equipment, tanks, buildings, equipment, machinery, fixtures and other appurtenances;
7. approximately 115 acres of land located in Forrest County, Mississippi; and

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8. all licenses, permits, contracts, agreements, and understandings relating to the ownership and operation of the facility.
- N. “Governmental Entity” means any Federal, state, local or non-U.S. government or any court, legislature, governmental agency or governmental commission or any judicial or regulatory authority of any government.
- O. “Held Separate Businesses” means the Starfish Pipeline Interest and the Enterprise Propane Storage Interest.
- P. “HIOS/East Breaks Assets” means all of GulfTerra’s assets, properties, information or technology, businesses and goodwill (tangible and intangible), contracts, licenses, permits, options, agreements and understandings, records, rights, titles, and interests in or relating to the ownership or physical or commercial operation of:
1. HIOS Pipeline, a 204-mile natural gas pipeline system located in the western Gulf of Mexico, extending from within the West Cameron Area into the High Island South Addition Area. HIOS Pipeline provides transportation services subject to regulation of the Federal Energy Regulatory Commission; and
 2. East Breaks Gathering System, an 86-mile natural gas gathering system located in the western Gulf of Mexico, extending from within the High Island South Addition Area into the Alaminos Canyon Area.
- Q. “Hold Separate Monitors” means the Starfish Monitor and the Enterprise Propane Monitor.
- R. “Hold Separate Period” means the time period during which the Hold Separate Order is in effect, which shall begin no later than five (5) days after the date the Hold Separate Order becomes final and terminate as provided in the Hold Separate Order in this matter.

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- S. “Merger” means the proposed merger of Enterprise with GulfTerra and GulfTerra GP pursuant to and as described in (i) the Merger Agreement dated December 15, 2003, as amended, by and among Enterprise Products Partners L.P., Enterprise Products GP, LLC, Enterprise Products Management LLC, GulfTerra Energy Partners L.P., and GulfTerra Energy Company, LLC; and (ii) the Parent Company Agreement dated December 15, 2003, as amended, by and among (a) El Paso Corporation, Sabine River Investors I, L.L.C., Sabine River Investors II, L.L.C., El Paso EPN Investments, L.L.C., and GulfTerra GP Holding Company, and (b) Respondent, Enterprise Products GP, LLC, and Enterprise Products GTM, LLC.
- T. “Merger Date” means the date the Merger is consummated.
- U. “Material Confidential Information” means competitively sensitive or proprietary information not independently known to a Person from sources other than the Person to which the information pertains, and includes, but is not limited to, all customer lists, price lists, cost information, marketing methods, patents, technologies, processes, or other trade secrets. The individual Held Separate Businesses shall be considered Persons separate from Respondents (as defined in the Hold Separate Order in this matter and the Order) for this purpose.
- V. “Person” means any individual, partnership, association, company or corporation.
- W. “Pipeline Acquirer” means any entity that receives the prior approval of the Commission to acquire the Starfish Pipeline Interest or the HIOS/East Breaks Assets pursuant to Paragraphs II. or IV. of this Order.
- X. “Pipeline Divestiture Agreement” means any agreement that receives the prior approval of the Commission between Respondents and a Pipeline Acquirer (or between a

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Divestiture Trustee and a Pipeline Acquirer) related to the Starfish Pipeline Interest or the HIOS/East Breaks Assets required to be divested pursuant to Paragraphs II. or IV. of this Order.

- Y. “Propane Acquirer” means any entity that receives the prior approval of the Commission to acquire the Enterprise Propane Storage Interest or Enterprise Petal LPG Storage Facility pursuant to Paragraphs III. or IV. of this Order.
- Z. “Propane Divestiture Agreement” means any agreement that receives the prior approval of the Commission between Respondents and a Propane Acquirer (or between a Divestiture Trustee and a Propane Acquirer) related to the Enterprise Propane Storage Interest or the Enterprise Petal LPG Storage Facility required to be divested pursuant to Paragraphs III. or IV. of this Order.
- AA. “Starfish” means Starfish Pipeline Company, LLC, a limited liability company owned equally by Shell Gas Transmission, LLC (“Shell”) and Respondents. Starfish includes the Stingray Pipeline System, a 325-mile pipeline comprised of four segments serving the West Central Deepwater, the Triton (Gunnison) lateral pipeline, a 41-mile extension from the Stingray Pipeline in the Garden Banks section of the West Central Deepwater, and the West Cameron Dehydration Company located at Holly Beach, Cameron Parish, Louisiana. Shell is the 50 percent owner of Starfish and operates the Stingray and Triton pipelines and the West Cameron Dehydration Company.
- BB. “Starfish Monitor” means the person appointed pursuant to Paragraph III. of the Hold Separate Order.
- CC. “Starfish Pipeline Interest” means all of Respondent Enterprise’s and Respondent Duncan’s interests in the Starfish Pipeline Company, LLC.

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DD. "West Central Deepwater" means a quadrilateral shaped area of the Gulf of Mexico cornered by and including the following blocks (as those areas and blocks are defined by the Mineral Management Service of the United States Department of Interior): East Breaks Area Block 111, Garden Banks Area Block 60, Keithley Canyon Area Block 984, and Alaminos Canyon Area Block 947.

II.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest either:
 - 1. the Starfish Pipeline Interest absolutely and in good faith, at no minimum price, by March 31, 2005; or
 - 2. the HIOS/East Breaks Assets absolutely and in good faith, at no minimum price, by March 31, 2005.
- B. Respondents shall divest the Starfish Pipeline Interest or the HIOS/East Breaks 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 Pipeline Divestiture, Respondents shall take such actions as are necessary to maintain the viability and marketability of the Starfish Pipeline Interest and the HIOS/East Breaks Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of the Starfish Pipeline Interest and the HIOS/East Breaks Assets, except for ordinary wear and tear.
- D. Prior to the Effective Date of Pipeline Divestiture, Respondents shall secure all consents and waivers, including rights of approval and rights of first refusal, from all private and Governmental Entities that are necessary for the divestiture of the Starfish Pipeline Interest or the

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HIOS/East Breaks Assets to the Pipeline Acquirer, including, but not limited to, any consents or waivers required from Shell or its successor with respect to Starfish.

- E. The purposes of this Order with respect to the divestiture of the Starfish Pipeline Interest or the HIOS/East Breaks Assets are: (1) to ensure the continuation of Starfish or the HIOS/East Breaks Assets as going concerns in the same manner in which each conducted business as of the date the Consent Agreement is signed until the Effective Date of Pipeline Divestiture, and (2) to remedy the lessening of competition resulting from the Merger as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest either:
1. the Enterprise Propane Storage Interest absolutely and in good faith, at no minimum price, on or before December 31, 2004; or
 2. the Enterprise Petal LPG Storage Facility absolutely and in good faith, at no minimum price, on or before December 31, 2004.
- B. Respondents shall divest the Enterprise Propane Storage Interest or the Enterprise Petal LPG Storage Facility to a Propane 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 Propane Divestiture, Respondents shall take such actions as are necessary to maintain the viability and marketability of the Enterprise Propane Storage Interest and the Enterprise Petal LPG Storage Facility and to prevent the destruction, removal,

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wasting, deterioration, or impairment of the Enterprise Propane Storage Interest and the Enterprise Petal LPG Storage Facility, except for ordinary wear and tear.

- D. Prior to the Effective Date of Propane Divestiture, Respondents shall secure all consents and waivers, including rights of approval and rights of first refusal, from all private and Governmental Entities that are necessary for the divestiture of the Enterprise Propane Storage Interest or the Enterprise Petal LPG Storage Facility to a Propane Acquirer, including, but not limited to, any consents or waivers required from Dynegy with respect to the Enterprise Propane Storage Interest.
- E. The purpose of this Order with respect to the divestiture of the Enterprise Propane Interest or the Enterprise Petal LPG Storage Facility is (1) to ensure the continuation of Enterprise Propane Interest or the Enterprise Petal LPG Storage Facility as going concerns in the same manner in which each conducted business as of the date the Consent Agreement is signed until the Effective Date of Propane Divestiture, and (2) to remedy the lessening of competition resulting from the Merger as alleged in the Commission's Complaint.

IV.

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligations to divest:
 - 1. the Starfish Pipeline Interest or the HIOS/East Breaks Assets as required by Paragraph II. of this Order, the Commission may appoint a Divestiture Trustee to divest the Starfish Pipeline Interest or the HIOS/East Breaks Assets in a manner that satisfies the requirements of Paragraph II.

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2. the Enterprise Propane Storage Interest or the Enterprise Petal LPG Storage Facility as required by Paragraph III. of this Order, the Commission may appoint a Divestiture Trustee to divest the Enterprise Propane Storage Interest or the Enterprise Petal LPG Storage Facility in a manner that satisfies the requirements of Paragraph III.

In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the Starfish Pipeline Interest or the HIOS/East Breaks Assets, or the Enterprise Propane Storage Interest or the Enterprise Petal LPG Storage Facility. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph IV. shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order. The Commission may appoint different Divestiture Trustees to accomplish the divestitures required by Paragraphs II. and III. of this Order.

- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture 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 Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

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- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestitures required by this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph IV., Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Divestiture Trustee shall, as required, have the exclusive power and authority to divest (i) the Starfish Pipeline Interest or the HIOS/East Breaks Assets, such option to be in his sole discretion (subject to Paragraph IV.D.4., below) and (ii) the Enterprise Propane Storage Interest or the Enterprise Propane Facility, such option to be in his sole discretion (subject to Paragraph IV.D.4., below).
 2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture or divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture or divestitures can be achieved within a reasonable time, the divestiture period or periods may be extended by the Commission; *PROVIDED, HOWEVER*, the Commission may extend the divestiture period only two (2) times.
 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be divested by this Order and to any other relevant

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information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph IV. in an amount equal to the delay, as determined by the Commission.

4. The Divestiture Trustee shall use commercially reasonable 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 and at no minimum price. The divestiture or divestitures shall be made in the manner and to an acquirer as required by this Order;

PROVIDED, HOWEVER, if the Divestiture 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 Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission;

PROVIDED FURTHER, HOWEVER, that Respondents shall select such entity within five (5) days after receiving notification of the Commission's approval.

5. The Divestiture 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 Divestiture 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

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assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture 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 losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
8. The Divestiture Trustee shall act in a fiduciary capacity for the benefit of the Commission.
9. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.

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10. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph IV.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.
- G. The Divestiture Trustee(s) appointed pursuant to Paragraph IV. of this Order may be the same Person appointed as Starfish Monitor or the Enterprise Propane Monitor pursuant to the relevant provisions of the Hold Separate Order in this matter.

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

- A. For a period of two (2) years following the Effective Date of Pipeline Divestiture and the Effective Date of Propane Divestiture, respectively, Respondents shall not employ or make offers of employment to:
 1. the Starfish Monitor, unless the Starfish Pipeline Interest is not divested; and,
 2. the Enterprise Propane Monitor, unless the Enterprise Propane Storage Interest is not divested.

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- B. For a period of two (2) years following the Effective Date of Pipeline Divestiture and the Effective Date of Propane Divestiture, respectively, Respondents shall not employ or make offers of employment to the employees of the Starfish Pipeline Interest, its HIOS/East Breaks Assets, the Enterprise Petal LPG Storage Facility, and the Enterprise Propane Storage Interest, if
1. those entities are divested pursuant to this Order;
 2. the employees had access to Material Confidential Information; and
 3. the employment or offer of employment involved managing, operating, or planing for a business that competes with those entities divested pursuant to this Order.
- C. Respondents shall not, prior to the Effective Date of Pipeline Divestiture or the Effective Date of Propane Divestiture, directly or indirectly, offer, promise, guarantee, or enter into any agreement or understanding with the Starfish Monitor or the Enterprise Propane Monitor that any one of them will be employed by Respondents after divestiture of the interest or assets monitored by that person.

VI.

IT IS FURTHER ORDERED that for a period of ten (10) years from the date this Order becomes final, the Duncan Group shall not, without providing advance written notification to the Commission in the manner described in this Paragraph VI., directly or indirectly:

- A. Acquire any stock, share capital, equity or other interest in any concern, corporate or non-corporate, other than acquisitions in Duncan or Enterprise, (i) that owns a salt dome storage cavern within Forrest County, Mississippi

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used, either at the time of such acquisition or within the two years preceding such acquisition (and still suitable for use), to store propane; or (ii) that owns a pipeline within West Central Deepwater used for the transportation of natural gas.

- B. Acquire (i) any salt dome storage cavern within Forrest County, Mississippi, used, either at the time of such acquisition or within the two years preceding such acquisition (and still suitable for use), to store propane or (ii) any pipeline within the West Central Deepwater used for the transportation of natural gas; or
- C. Manage or operate (i) any salt dome storage cavern within Forrest County, Mississippi, used, either at the time of such acquisition or within the two years preceding such acquisition (and still suitable for use), to store propane or (ii) any pipeline within the West Central Deepwater used for the transportation of natural gas, unless such storage cavern or pipeline is owned by Duncan or Enterprise.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (herein referred to as “the Notification”), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until thirty days after submitting such additional information or documentary material. Early

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termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

PROVIDED, HOWEVER, that prior notification shall not be required by this paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

PROVIDED, FURTHER, HOWEVER, that prior notification shall not be required by this paragraph for an acquisition, if the Respondents acquire no more than one percent of the outstanding securities or other equity interest in an entity described in subparagraphs VI.A. or VI.B.

VII.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order becomes final, and every sixty (60) days thereafter until Respondents have fully complied with Paragraphs II., III., and IV. 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 this Order. Respondents shall submit at the same time a copy of their reports concerning compliance with this Order to the Divestiture Trustee or the Monitor, if any Divestiture Trustee has been appointed pursuant to this Order or if any Monitor has been appointed pursuant to the Hold Separate Order in this matter. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant Paragraphs of the Order, including a description of all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all parties contacted. Respondents shall include in their reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations.

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VIII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of the Respondents, (2) acquisition, merger or consolidation of Respondents, or (3) any other change in the Respondents that may affect compliance obligations arising out of the Order, including but not limited to, assignment and the creation or dissolution of subsidiaries.

IX.

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, Respondents shall permit any duly authorized representative 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 Respondents related to compliance with this Order; and
- B. upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

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ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed merger of Respondent Enterprise Products Partners, L.P., which is controlled by Respondent Dan L. Duncan, hereinafter collectively referred to as “Respondents”, with GulfTerra Energy Partners, L.P. (“GulfTerra”) and GulfTerra Energy Company, LLC (“GulfTerra GP”) 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, which, 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 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 Agreement Containing Consent Orders and having placed 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”):

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1. Respondent Enterprise Products Partners L.P. is a publicly traded, limited partnership 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 2727 North Loop West, Houston, Texas 77008.
2. Respondent Dan L. Duncan is an individual with his office and principal place of business located at 2727 North Loop West, Houston, Texas 77008.
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 shall apply:

- A. “Duncan” means Dan L. Duncan, a natural person, all partnerships, joint ventures, subsidiaries, divisions, groups and affiliates controlled by Dan L. Duncan, including, but not limited to, Enterprise Products Company, Dan Duncan L.L.C., Enterprise Products GP, LLC, and Enterprise Product Partners L.P., and the respective partners, directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each.
- B. “Enterprise” means Enterprise Products Partners L.P., a publicly traded limited partnership, its partners, directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns; all joint ventures, subsidiaries, divisions, groups and affiliates controlled by Enterprise Products Partners L.P., and the respective partners, directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each.

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- C. “El Paso” means El Paso Corporation, an international energy company organized and doing business under the laws of the State of Delaware with its executive offices at 1001 Louisiana Street, Houston, Texas 77002.
- D. “GulfTerra” means GulfTerra Energy Partners, L.P., a publicly traded limited partnership, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 4 Greenway Plaza, Houston, Texas 77046.
- E. “GulfTerra GP” means GulfTerra Energy Company, LLC, a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 4 Greenway Plaza, Houston, Texas 77046. El Paso controls GulfTerra GP.
- F. “Commission” means the Federal Trade Commission.
- G. “Divestiture Trustee” means any trustee appointed by the Commission pursuant to Paragraph IV of the Decision and Order in this matter.
- H. “Effective Date of Pipeline Divestiture” means the date on which Respondents (or a Divestiture Trustee) divest to the Pipeline Acquirer the Starfish Pipeline Interest or HIOS/East Breaks Assets completely and as required by Paragraphs II or IV of the Decision and Order in this matter.
- I. “Effective Date of Propane Divestiture” means the date on which Respondents (or a Divestiture Trustee) divest to the Propane Acquirer the Enterprise Propane Storage Interest or the Enterprise Petal LPG Storage Facility completely and as required by Paragraphs III or IV of the Decision and Order in this matter.

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- J. “Enterprise Propane Storage Interest” means all of Enterprise’s and Duncan’s interests in the propane storage and terminaling facility located at 18 Chappell Hill Road, Petal, Mississippi 39465, in Forrest County, Mississippi, that are jointly owned with Dynegy Midstream Services, L.P. (“Dynegy”) including, but not limited to, all of Enterprise’s and Duncan’s interests in:
1. five propane salt dome storage wells with a combined usable capacity of approximately 5.6 million barrels;
 2. existing easements and rights of way;
 3. odorizing facilities;
 4. related facilities required for the operation of the propane storage facilities including, but not limited to: product pumps, a brine pond and brine pumping facilities, pipelines, pipeline pumps, pipeline injection facilities and related equipment, buildings, equipment, machinery, fixtures and other appurtenances;
 5. truck, rail, and pipeline facilities, including truck and rail racks, for the receipt and delivery of propane stored in the wells;
 6. approximately 115 acres of land located in Forrest County, Mississippi;
 7. all licenses, permits, contracts, agreements, and understandings relating to the ownership and operation of the facility.
- K. “Enterprise Petal LPG Storage Facility” means all of Respondent’s 100 percent interest in the Petal LPG Storage Facility located at 1364 Highway 11 North, Petal, Mississippi 39464, in Forrest County, Mississippi, including, but not limited to:

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1. nine LPG salt dome storage wells, seven of which are active with a combined usable capacity of approximately seven million barrels and two of which are not currently in service;
 2. two brine production wells and one brine disposal well;
 3. truck, rail and pipeline facilities, including truck and rail racks, for the receipt and delivery of product stored in the wells;
 4. odorizing facilities;
 5. existing easements and rights of way held by Respondents for operation of the Enterprise Petal LPG Storage Facility;
 6. related facilities required for the operation of the LPG storage facilities including, but not limited to, product pumps, a brine pond and brine pumping facilities, dehydrators, pipelines, pipeline injection pumps and related facilities and equipment, tanks, buildings, equipment, machinery, fixtures and other appurtenances;
 7. approximately 115 acres of land located in Forrest County, Mississippi; and
 8. all licenses, permits, contracts, agreements, and understandings relating to the ownership and operation of the facility.
- L. "Governmental Entity" means any Federal, state, local or non-U.S. government or any court, legislature, governmental agency or governmental commission or any judicial or regulatory authority of any government.
- M. "Held Separate Businesses" means the Starfish Pipeline Interest and the Enterprise Propane Storage Interest.

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- N. “HIOS/East Breaks Assets” means all of GulfTerra’s assets, properties, information or technology, businesses and goodwill (tangible and intangible), contracts, licenses, permits, options, agreements and understandings, records, rights, titles, and interests in or relating to the ownership or physical or commercial operation of:
1. HIOS Pipeline, a 204-mile natural gas pipeline system located in the western Gulf of Mexico, extending from within the West Cameron Area into the High Island South Addition Area. HIOS Pipeline provides transportation services subject to regulation of the Federal Energy Regulatory Commission; and
 2. East Breaks Gathering System, an 86-mile natural gas gathering system located in the western Gulf of Mexico, extending from within the High Island South Addition Area into the Alaminos Canyon Area.
- O. “Enterprise Propane Monitor” means the person appointed pursuant to Paragraph IV of this Hold Separate Order.
- P. “Hold Separate Period” means the time period during which the Hold Separate Order is in effect, which shall begin no later than five (5) days after the date the Hold Separate Order becomes final and terminate pursuant to Paragraph VII hereof.
- Q. “Material Confidential Information” means competitively sensitive or proprietary information not independently known to a Person from sources other than the Person to which the information pertains, and includes, but is not limited to, all customer lists, price lists, cost information, marketing methods, patents, technologies, processes, or other trade secrets. The individual Held Separate Businesses shall be considered Persons separate from Respondents (as defined in this Hold Separate Order and the Decision and Order in this matter) for this purpose.

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- R. “Merger” means the proposed merger of Enterprise with GulfTerra and GulfTerra GP pursuant to and as described in (i) the Merger Agreement dated December 15, 2003, as amended, by and among Enterprise Products Partners L.P., Enterprise Products GP, LLC, Enterprise Products Management LLC, GulfTerra Energy Partners L.P., and GulfTerra Energy Company, LLC; and (ii) the Parent Company Agreement dated December 15, 2003, as amended, by and among (a) El Paso Corporation, Sabine River Investors I, L.L.C., Sabine River Investors II, L.L.C., El Paso EPN Investments, L.L.C., and GulfTerra GP Holding Company, and (b) Respondents, Enterprise Products GP, LLC, and Enterprise Products GTM, LLC.
- S. “Merger Date” means the date the Merger is consummated.
- T. “Person” means any individual, partnership, association, company or corporation.
- U. “Pipeline Acquirer” means any entity that receives the prior approval of the Commission to acquire the Starfish Pipeline Interest or the HIOS/East Breaks Assets pursuant to Paragraphs II or IV of the Decision and Order in this matter.
- V. “Pipeline Divestiture Agreement” means any agreement that receives the prior approval of the Commission between Respondents and a Pipeline Acquirer (or a Divestiture Trustee and a Pipeline Acquirer) related to the Starfish Pipeline Interest or the HIOS/East Breaks Assets required to be divested pursuant to Paragraphs II or IV of the Decision and Order in this matter.
- W. “Propane Acquirer” means any entity that receives the prior approval of the Commission to acquire the Enterprise Propane Storage Interest or Enterprise Petal LPG Storage Facility pursuant to Paragraphs II or IV of the Decision and Order in this matter.

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- X. "Propane Divestiture Agreement" means any agreement that receives the prior approval of the Commission between Respondents and a Propane Acquirer (or a Divestiture Trustee and a Propane Acquirer) related to the Enterprise Propane Storage Interest or the Enterprise Petal LPG Storage Facility required to be divested pursuant to Paragraphs III or IV of the Decision and Order in this matter.
- Y. "Starfish" means Starfish Pipeline Company, LLC, a limited liability company owned by Shell Gas Transmission, LLC ("Shell") and Respondents. Starfish includes the Stingray Pipeline System, a 325-mile pipeline comprised of four segments serving the West Central Deepwater, the Triton (Gunnison) lateral pipeline, a 41 mile extension from the Stingray Pipeline in the Garden Banks section of the West Central Deepwater, and the West Cameron Dehydration Company located at Holly Beach, Cameron Parish, Louisiana. Shell is a 50 percent owner of Starfish and operates the Stingray and Triton pipelines and the West Cameron Dehydration Company.
- Z. "Starfish Pipeline Interest" means all of Respondent Enterprise's and Respondent Duncan's interests in the Starfish Pipeline Company, LLC.
- AA. "Starfish Monitor" means the person appointed pursuant to Paragraph III of this Hold Separate Order.
- BB. "West Central Deepwater" means a quadrilateral shaped area of the Gulf of Mexico cornered by and including the following blocks (as those areas and blocks are defined by the Mineral Management Service of the United States Department of Interior): East Breaks Area Block 111, Garden Banks Area Block 60, Keithley Canyon Area Block 984, and Alaminos Canyon Area Block 947.

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II.

IT IS FURTHER ORDERED that:

A. During the Hold Separate Period, Respondents:

1. shall hold the Starfish Pipeline Interest separate, apart, and independent of Respondents and GulfTerra as required by this Hold Separate Order and shall vest the Starfish Pipeline Interest with all rights, powers, and authority necessary to conduct its business;
2. shall not exercise direction or control over, or influence directly or indirectly, the Starfish Pipeline Interest or any of its operations, or the Starfish Monitor except to the extent that Respondents and GulfTerra must exercise such direction and control over the Starfish Pipeline Interest as is necessary to assure compliance with this Hold Separate Order, the Consent Agreement, and with all applicable laws, including, in consultation with the Starfish Monitor, continued oversight of the Starfish Pipeline Interest's compliance with policies and standards concerning the safety, health, and environmental aspects of its operations and the integrity of its financial controls; and Respondents shall have the right to defend any legal claims, investigations or enforcement actions threatened or brought against the Starfish Pipeline Interest.
3. shall hold the Enterprise Propane Storage Interest separate, apart, and independent of Respondents and GulfTerra as required by this Hold Separate Order and shall vest the Enterprise Propane Storage Interest with all rights, powers, and authority necessary to conduct its business;
4. shall not exercise direction or control over, or influence directly or indirectly, the Enterprise Propane Storage Interest or any of its operations, or the Enterprise

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Propane Monitor except to the extent that Respondents must exercise direction and control over the Enterprise Propane Storage Interest as is necessary to assure compliance with this Hold Separate Order, the Consent Agreement, and with all applicable laws, including, in consultation with the Enterprise Propane Monitor, continued oversight of the Enterprise Propane Storage Interest's compliance with policies and standards concerning the safety, health, and environmental aspects of its operations and the integrity of its financial controls; and Respondents shall have the right to defend any legal claims, investigations or enforcement actions threatened or brought against the Enterprise Propane Storage Interest.

- B. Until the Effective Date of Pipeline Divestiture and the Effective Date of Propane Divestiture, respectively, Respondents shall take such actions as are necessary to maintain the viability and marketability of the Held Separate Businesses, HIOS/East Breaks Assets, and the Enterprise Petal LPG Storage Facility, to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear.
- C. The purposes of this Hold Separate Order are: (1) to preserve the Held Separate Businesses as viable, competitive, and ongoing businesses, independent of the Respondents and GulfTerra until the divestitures required by the Decision and Order are achieved; (2) to preserve HIOS/East Breaks Assets and the Enterprise Petal LPG Storage Facility as viable, competitive, and ongoing businesses independent of the Held Separate Businesses until the divestitures required by the Decision and Order are achieved; (3) to assure that no Material Confidential Information is exchanged between Respondents, GulfTerra, and the Held Separate Businesses, except in accordance with the provisions of this Hold Separate Order; (4) to prevent interim harm to competition pending the required divestitures and other relief; and (5) to help remedy the

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lessening of competition resulting from the Merger as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that Respondents shall hold the Starfish Pipeline Interest separate, apart, and independent from the Respondents and GulfTerra on the following terms and conditions.

A. Mr. Richard J. Black, 7600 West Tidwell, Suite 705, Houston, Texas, shall serve as Starfish Monitor, pursuant to the agreement executed by the Starfish Monitor and Respondents and attached as Confidential Appendix A ("Starfish Monitor Agreement").

1. The Starfish Monitor Agreement shall require that, no later than either ten (10) days after the Hold Separate Order is final or one (1) day after the Merger Date, whichever is earlier, Respondents shall transfer to the Starfish Monitor all rights, powers, and authorities necessary to permit the Starfish Monitor to perform his/her duties and responsibilities, pursuant to this Hold Separate Order and consistent with the purposes of the Decision and Order.
2. No later than either ten (10) days after the date the Hold Separate Order becomes final or one (1) day after the Merger Date, whichever is earlier, Respondents shall, pursuant to the Starfish Monitor Agreement, transfer to the Starfish Monitor all rights, powers, and authorities necessary to permit the Starfish Monitor to perform his/her duties and responsibilities, pursuant to this Hold Separate Order and consistent with the purposes of the Decision and Order.
3. The Starfish Monitor shall have the responsibility, consistent with the terms of this Hold Separate Order and the Decision and Order, for monitoring the organization

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of the Starfish Pipeline Interest; for managing the Starfish Pipeline Interest; for maintaining the independence of the Starfish Pipeline Interest; and for monitoring Respondents' compliance with its obligations pursuant to this Hold Separate Order and the Decision and Order.

4. The Starfish Monitor shall have full and complete access to all personnel, books, records, documents and facilities of the Starfish Pipeline Interest or to any other relevant information as the Starfish Monitor may reasonably request including, but not limited to, all documents and records kept by Respondents and GulfTerra in the ordinary course of business that relate to the Starfish Pipeline Interest. Respondents and GulfTerra shall develop such financial or other information as the Starfish Monitor may request and shall cooperate with the Starfish Monitor. Respondents shall take no action to interfere with or impede the Starfish Monitors' ability to monitor Respondents' compliance with this Hold Separate Order and the Consent Agreement or otherwise to perform their duties and responsibilities consistent with the terms of this Hold Separate Order.
5. The Starfish Monitor shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Starfish Monitor's duties and responsibilities.
6. The Starfish Monitor shall act in a fiduciary capacity for the benefit of the Commission.
7. The Commission may require the Starfish Monitor to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with performance of the Starfish Monitor's duties.

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8. Respondents and GulfTerra may require the Starfish Monitor to sign a confidentiality agreement prohibiting the disclosure of any Material Confidential Information gained as a result of his/her role as Starfish Monitor to anyone other than the Commission.
9. Thirty (30) days after the Starfish Monitor receives the rights, powers, and authorities pursuant to this Paragraph III, and every thirty (30) days thereafter until the Hold Separate Order terminates, the Starfish Monitor shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate Order. Included within each report shall be the Starfish Monitor's assessment of the extent to which the business comprising the Starfish Pipeline Interest is meeting (or exceeding) its projected goals as are reflected in operating plans, budgets, projections or any other regularly prepared financial statements.
10. If the Starfish Monitor ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Commission may appoint a substitute Starfish Monitor 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 Starfish Monitor within five (5) days after notice by the staff of the Commission to Respondents of the identity of any substitute Starfish Monitor Respondents shall be deemed to have consented to the selection of the proposed substitute monitor. Respondents and the substitute Starfish Monitor shall execute a new monitor agreement, subject to the approval of the Commission, consistent with this paragraph.

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- B. The Starfish Pipeline Interest shall be staffed with sufficient employees to maintain the viability and competitiveness of the Starfish Pipeline Interest. To the extent that any employees leave or have left the Starfish Pipeline Interest prior to the Effective Date of Pipeline Divestiture, the Starfish Monitor may replace departing or departed employees with persons who have similar experience and expertise or determine not to replace such departing or departed employees.
- C. In connection with support services or products not included within the Starfish Pipeline Interest, Respondents shall continue to provide, or offer to provide, the same support services to the Starfish Pipeline Interest as are being provided to each such business interest by Respondents as of the date the Consent Agreement is signed by Respondents. For any services or products that Respondents may provide to the Starfish Pipeline Interest, Respondents may charge no more than the lowest price they charge any of their other internal subsidiaries or divisions for the same services or products. Respondents' personnel providing such services or products must retain and maintain all Material Confidential Information of the Starfish Pipeline Interest 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 person whose employment involves any of Respondents' or GulfTerra's businesses, other than the Starfish Pipeline Interest. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of the Starfish Pipeline Interest.
1. Respondents shall offer to the Starfish Pipeline Interest any services and products that Respondents provided 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

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Starfish Pipeline Interest at any time since January 1, 2003. The Starfish Pipeline Interest may, at the option of the individual Starfish Monitor, obtain such services and products from Respondents. The services and products that Respondents shall offer the Starfish Pipeline Interest shall include, but shall not be limited to, the following:

- a. Human resources administrative services, including but not limited to payroll processing, labor relations support, pension administration, and health benefits;
 - b. Environmental health and safety services, which develops corporate policies and insures compliance with federal and state regulations and corporate policies;
 - c. Preparation of tax returns;
 - d. Audit services;
 - e. Information systems, which constructs, maintains, and supports all computer systems;
 - f. Processing of accounts payable;
 - g. Technical support;
 - h. Finance and financial accounting services;
 - i. Procurement of supplies;
 - j. Procurement of goods and services utilized in the ordinary course of business by the Held Separate Businesses; and
 - k. Legal services.
2. the Starfish Pipeline Interest shall have, at the option of the Starfish Monitor, the ability to acquire services and

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products from third parties unaffiliated with Respondents.

- D. Respondents shall cause the Starfish Monitor and each employee 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 Starfish Pipeline Interest 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 who is employed by, or is involved in the management of, any of Respondents' businesses other than the Starfish Pipeline Interest. These persons shall not be involved in any way in the management, production, distribution, sale, marketing, or financial operations of the competing businesses of Respondents.
- E. No later than either twelve (12) days after the date this Hold Separate Order becomes final or three (3) days after the Merger Date, whichever is earlier, Respondents shall establish written procedures, subject to the approval of the Starfish Monitor, covering the management, maintenance, and independence of Starfish Pipeline Interest consistent with the provisions of this Hold Separate Order.
- F. No later than either twelve (12) days after the date this Hold Separate Order becomes final or three (3) days after the Merger Date, whichever is earlier, Respondents shall circulate to employees of the Starfish Pipeline Interest and to Respondents' and GulfTerra's employees, a notice of this Hold Separate Order and the Consent Agreement.
- G. The Starfish Monitor shall serve, without bond or other security, at the cost and expense of Respondents, on

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reasonable and customary terms commensurate with the person's experience and responsibilities. The Starfish Monitor shall act in a fiduciary capacity for the benefit of the Commission.

- H. Respondents shall indemnify the Starfish Monitor and hold him/her harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of Starfish Monitor'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 Starfish Monitor.
- I. Respondents shall provide the Starfish Pipeline Interest with sufficient financial resources:
 - 1. as are appropriate in the judgment of the Starfish Monitor to operate the Starfish Pipeline Interest as it is currently operated;
 - 2. to perform all maintenance to, and replacements of, the assets of the Starfish Pipeline Interest;
 - 3. to carry on existing and planned capital projects and business plans; and
 - 4. to maintain the viability, competitive vigor, and marketability of the Starfish Pipeline Interest;

Such financial resources to be provided to the Starfish Pipeline Interest shall include, but shall not be limited to, (a) general funds, (b) capital, (c) working capital, and (d) reimbursement for any operating losses, capital losses, or other losses; provided, however, that, consistent with the purposes of the Decision and Order, the Starfish Monitor may reduce in scale or pace any capital or research and

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development project, or substitute any capital or research and development project for another of the same cost.

- J. Respondents and GulfTerra shall not, during the Hold Separate Period up until the Pipeline Divestiture Agreement is signed, enter into any agreements, offer, promise, or otherwise guarantee the Starfish Monitor and employees of Respondents or GulfTerra who are responsible for the management or operation of the Starfish Pipeline Interest or the HIOS/East Breaks Assets positions with Respondents or GulfTerra. The Pipeline Acquirer shall have the option of offering employment to any Starfish Pipeline Interest's employees. Respondents and GulfTerra shall not interfere with the employment, by the Pipeline Acquirer, of such employees; shall not offer any incentive to such employees to decline employment with the Pipeline Acquirer or to accept other employment with the Respondents or GulfTerra; and shall remove any impediments that may deter such employees from accepting employment with the Pipeline 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 Pipeline 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 or GulfTerra.
- K. Except for the Starfish Monitor, the Starfish Pipeline Interest's employees, and support services employees involved in providing services to the Held Separate Starfish Pipeline Interest pursuant to this Paragraph III, 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 Starfish Pipeline Interest.

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- L. Respondents and GulfTerra shall assure that Starfish Pipeline Interest employees 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.
- M. Respondents, GulfTerra, and GulfTerra's and Respondents' employees (excluding support services employees involved in providing support to the Starfish Pipeline Interest pursuant to this Paragraph III) shall not receive, or have access to, or use or continue to use any Material Confidential Information of the Starfish Pipeline Interest not in the public domain except:
1. as required by law;
 2. to the extent that necessary information is exchanged in the course of consummating the Merger;
 3. in negotiating agreements to divest assets pursuant to the Consent Agreement and engaging in related due diligence;
 4. in complying with this Hold Separate Order or the Consent Agreement;
 5. in overseeing compliance with policies and standards concerning the safety, health and environmental aspects of the operations of the Starfish Pipeline Interest and the integrity of the Starfish Pipeline Interest's financial controls;
 6. in defending legal claims, investigations or enforcement actions threatened or brought against or related to the Starfish Pipeline Interest; or
 7. in obtaining legal advice.

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Nor shall the Starfish Monitor or the Starfish Pipeline Interest's employees receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about Respondents, except such information as is necessary to maintain and operate the Starfish Pipeline Interest. Respondents may receive aggregate financial and operational information relating to the Starfish Pipeline Interest only to the extent necessary to allow Respondents to comply with the requirements and obligations of the laws of the United States and other countries, and to prepare 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.

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

IV.

IT IS FURTHER ORDERED that Respondents shall hold the Enterprise Propane Storage Interest separate, apart, and independent from the Respondents and GulfTerra on the following terms and conditions:

- A. Mr. Richard J. Black, 7600 West Tidwell, Suite 705, Houston, Texas, shall serve as Enterprise Propane Monitor, pursuant to the agreement executed by the Enterprise Propane Monitor and Respondents and attached as

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Confidential Appendix C (“Enterprise Propane Monitor Agreement”).

1. The Enterprise Propane Monitor Agreement shall require that, no later than either ten (10) days after the Hold Separate Order is final or one (1) day after the Merger Date, whichever is earlier, Respondents shall transfer to the Enterprise Propane Monitor all rights, powers, and authorities necessary to permit the Enterprise Propane Monitor to perform his/her duties and responsibilities, pursuant to this Hold Separate Order and consistent with the purposes of the Decision and Order.
2. No later than either ten (10) days after the date the Hold Separate Order becomes final or one (1) day after the Merger Date, whichever is earlier, Respondents shall, pursuant to the Enterprise Propane Monitor Agreement, transfer to the Enterprise Propane Monitor all rights, powers, and authorities necessary to permit the Enterprise Propane Monitor to perform his/her duties and responsibilities, pursuant to this Hold Separate Order and consistent with the purposes of the Decision and Order.
3. The Enterprise Propane Monitor shall have the responsibility, consistent with the terms of this Hold Separate Order and the Decision and Order, for monitoring the organization of the Enterprise Propane Storage Interest; for managing the Enterprise Propane Storage Interest; for maintaining the independence of the Enterprise Propane Storage Interest; and for monitoring Respondents’ compliance with its obligations pursuant to this Hold Separate Order and the Decision and Order.
4. The Enterprise Propane Monitor shall have full and complete access to all personnel, books, records, documents and facilities of the Enterprise Propane Storage Interest or to any other relevant information as the Enterprise Propane Monitor may reasonably request including, but not limited to, all documents and records

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kept by Respondents and GulfTerra in the ordinary course of business that relate to the Enterprise Propane Storage Interest. Respondents and GulfTerra shall develop such financial or other information as the Enterprise Propane Monitor may request and shall cooperate with the Enterprise Propane Monitor. Respondents shall take no action to interfere with or impede the Enterprise Propane Monitors' ability to monitor Respondents' compliance with this Hold Separate Order and the Consent Agreement or otherwise to perform their duties and responsibilities consistent with the terms of this Hold Separate Order.

5. The Enterprise Propane Monitor shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Enterprise Propane Monitor's duties and responsibilities.
6. The Enterprise Propane Monitor shall act in a fiduciary capacity for the benefit of the Commission.
7. The Commission may require the Enterprise Propane Monitor to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with performance of the Enterprise Propane Monitor's duties.
8. Respondents and GulfTerra may require the Enterprise Propane Monitor to sign a confidentiality agreement prohibiting the disclosure of any Material Confidential Information gained as a result of his/her role as Enterprise Propane Monitor to anyone other than the Commission.
9. Thirty (30) days after the Enterprise Propane Monitor receives the rights, powers, and authorities pursuant to this Paragraph IV, and every thirty (30) days thereafter

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until the Hold Separate Order terminates, the Enterprise Propane Monitor shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate Order. Included within each report shall be the Enterprise Propane Monitor's assessment of the extent to which the business comprising the Enterprise Propane Storage Interest is meeting (or exceeding) its projected goals as are reflected in operating plans, budgets, projections or any other regularly prepared financial statements.

10. If the Enterprise Propane Monitor ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Commission may appoint a substitute Enterprise Propane Monitor 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 Enterprise Propane Monitor within five (5) days after notice by the staff of the Commission to Respondents of the identity of any substitute Enterprise Propane Monitor Respondents shall be deemed to have consented to the selection of the proposed substitute monitor. Respondents and the substitute Enterprise Propane Monitor shall execute a new monitor agreement, subject to the approval of the Commission, consistent with this paragraph.
- B. The Enterprise Propane Storage Interest shall be staffed with sufficient employees to maintain the viability and competitiveness of the Enterprise Propane Storage Interest. To the extent that any employees leave or have left the Enterprise Propane Storage Interest prior to the Effective Date of Pipeline Divestiture, the Enterprise Propane Monitor may replace departing or departed employees with persons who have similar experience and expertise or

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determine not to replace such departing or departed employees.

- C. In connection with support services or products not included within the Enterprise Propane Storage Interest, Respondents shall continue to provide, or offer to provide, the same support services to the Enterprise Propane Storage Interest as are being provided to each such business interest by Respondents as of the date the Consent Agreement is signed by Respondents. For any services or products that Respondents may provide to the Enterprise Propane Storage Interest, Respondents may charge no more than the lowest price they charge any of their other internal subsidiaries or divisions for the same services or products. Respondents' personnel providing such services or products must retain and maintain all Material Confidential Information of the Enterprise Propane Storage Interest 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 person whose employment involves any of Respondents' or GulfTerra's businesses, other than the Enterprise Propane Storage Interest. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of the Enterprise Propane Storage Interest.
1. Respondents shall offer to the Enterprise Propane Storage Interest any services and products that Respondents provided 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 Enterprise Propane Storage Interest at any time since January 1, 2003. The Enterprise Propane Storage Interest may, at the option of the individual Enterprise Propane Monitor, obtain such services and products from Respondents. The services and products that Respondents shall offer the Enterprise

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Propane Storage Interest shall include, but shall not be limited to, the following:

- a. Human resources administrative services, including but not limited to payroll processing, labor relations support, pension administration, and health benefits;
 - b. Environmental health and safety services, which develops corporate policies and insures compliance with federal and state regulations and corporate policies;
 - c. Preparation of tax returns;
 - d. Audit services;
 - e. Information systems, which constructs, maintains, and supports all computer systems;
 - f. Processing of accounts payable;
 - g. Technical support;
 - h. Finance and financial accounting services;
 - i. Procurement of supplies;
 - j. Procurement of goods and services utilized in the ordinary course of business by the Held Separate Businesses; and
 - k. Legal services.
2. the Enterprise Propane Storage Interest shall have, at the option of the Enterprise Propane Monitor, the ability to acquire services and products from third parties unaffiliated with Respondents.

D. Respondents shall cause the Enterprise Propane Monitor and each employee having access to Material Confidential

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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 Enterprise Propane Storage Interest 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 who is employed by, or is involved in the management of, any of Respondents' businesses other than the Enterprise Propane Storage Interest. These persons shall not be involved in any way in the management, production, distribution, sale, marketing, or financial operations of the competing businesses of Respondents.

- E. No later than either twelve (12) days after the date this Hold Separate Order becomes final or three (3) days after the Merger Date, whichever is earlier, Respondents shall establish written procedures, subject to the approval of the Enterprise Propane Monitor, covering the management, maintenance, and independence of Enterprise Propane Storage Interest consistent with the provisions of this Hold Separate Order.
- F. No later than either twelve (12) days after the date this Hold Separate Order becomes final or three (3) days after the Merger Date, whichever is earlier, Respondents shall circulate to employees of the Enterprise Propane Storage Interest and to Respondents' and GulfTerra's employees, a notice of this Hold Separate Order and the Consent Agreement.
- G. The Enterprise Propane Monitor 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. The Enterprise

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Propane Monitor shall act in a fiduciary capacity for the benefit of the Commission.

- H. Respondents shall indemnify the Enterprise Propane Monitor and hold him/her harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of Enterprise Propane Monitor'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 Enterprise Propane Monitor.
- I. Respondents shall provide the Enterprise Propane Storage Interest with sufficient financial resources:
1. as are appropriate in the judgment of the Enterprise Propane Monitor to operate the Enterprise Propane Storage Interest as it is currently operated;
 2. to perform all maintenance to, and replacements of, the assets of the Enterprise Propane Storage Interest;
 3. to carry on existing and planned capital projects and business plans; and
 4. to maintain the viability, competitive vigor, and marketability of the Enterprise Propane Storage Interest;

Such financial resources to be provided to the Enterprise Propane Storage Interest shall include, but shall not be limited to, (a) general funds, (b) capital, (c) working capital, and (d) reimbursement for any operating losses, capital losses, or other losses; provided, however, that, consistent with the purposes of the Decision and Order, the Enterprise Propane Monitor may reduce in scale or pace any capital or research and development project, or

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substitute any capital or research and development project for another of the same cost.

- J. Respondents and GulfTerra shall not, during the Hold Separate Period up until the Propane Divestiture Agreement is signed, enter into any agreements, offer, promise, or otherwise guarantee the Enterprise Propane Monitor and employees of Respondents or GulfTerra who are responsible for the management or operation of the Enterprise Propane Storage Interest or the Enterprise Petal LPG Storage Facility positions with Respondents or GulfTerra. The Propane Acquirer shall have the option of offering employment to any Enterprise Propane Storage Interest's employees. Respondents and GulfTerra shall not interfere with the employment, by the Propane Acquirer, of such employees; shall not offer any incentive to such employees to decline employment with the Propane Acquirer or to accept other employment with the Respondents or GulfTerra; and shall remove any impediments that may deter such employees from accepting employment with the Propane 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 Propane 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 or GulfTerra.
- K. Except for the Enterprise Propane Monitor, the Enterprise Propane Storage Interest's employees, and support services employees involved in providing services to the Held Separate Enterprise Propane Storage Interest pursuant to this Paragraph IV., 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 Enterprise Propane Storage Interest.

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- L. Respondents and GulfTerra shall assure that Enterprise Propane Storage Interest employees 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.
- M. Respondents, GulfTerra, and GulfTerra's and Respondents' employees (excluding support services employees involved in providing support to the Enterprise Propane Storage Interest pursuant to this Paragraph IV.) shall not receive, or have access to, or use or continue to use any Material Confidential Information of the Enterprise Propane Storage Interest not in the public domain except:
1. as required by law;
 2. to the extent that necessary information is exchanged in the course of consummating the Merger;
 3. in negotiating agreements to divest assets pursuant to the Consent Agreement and engaging in related due diligence;
 4. in complying with this Hold Separate Order or the Consent Agreement;
 5. in overseeing compliance with policies and standards concerning the safety, health and environmental aspects of the operations of the Enterprise Propane Storage Interest and the integrity of the Enterprise Propane Storage Interest's financial controls;
 6. in defending legal claims, investigations or enforcement actions threatened or brought against or related to the Enterprise Propane Storage Interest; or
 7. in obtaining legal advice.

Nor shall the Enterprise Propane Monitor or the Enterprise Propane Storage Interest's employees receive or have

Order

access to, or use or continue to use, any Material Confidential Information not in the public domain about Respondents, except such information as is necessary to maintain and operate the Enterprise Propane Storage Interest. Respondents may receive aggregate financial and operational information relating to the Enterprise Propane Storage Interest only to the extent necessary to allow Respondents to comply with the requirements and obligations of the laws of the United States and other countries, and to prepare 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.

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

V.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of the Respondents, (2) acquisition, merger or consolidation of Respondents, or (3) any other change in the Respondents that may affect compliance obligations arising out of the order, including but not limited to assignment and the creation or dissolution of subsidiaries.

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VI.

IT IS FURTHER ORDERED that for the purpose 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 made to their principal United States offices, Respondents shall permit any duly authorized representative 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 Respondents relating to any matters contained in this Hold Separate Order; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview partners, officers, directors, or employees of Respondents, who may have counsel present, regarding any such matters.

VII.

IT IS FURTHER ORDERED that this Hold Separate Order shall terminate:

- A. With regard to the Starfish Pipeline Interest at the earlier of:
 - 1. 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
 - 2. the day after the Effective Date of Pipeline Divestiture required by the Decision and Order in this matter; or
 - 3. at such other time as the Commission otherwise directs that this Hold Separate Order is terminated.

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B. With regard to the Enterprise Propane Storage Interest, at the earlier of:

1. 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
2. the day after the Effective Date of Propane Divestiture required by the Decision and Order in this matter; or
3. at such other time as the Commission otherwise directs that this Hold Separate Order is terminated.

Order

**Confidential Appendix A: Starfish Monitor Agreement
[Redacted From Public Record Version But Incorporated By
Reference]**

**Confidential Appendix C: Enterprise Propane Monitor
Agreement
[Redacted From Public Record Version But Incorporated By
Reference]**

Analysis

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Enterprise Products Partners L.P. (“Enterprise”) and Dan L. Duncan (“Duncan”), the ultimate parent entity of Enterprise. (Enterprise and Duncan are hereinafter referred to collectively as “Respondents.”) The Consent Agreement contains a Decision and Order (“Consent Order”) that is designed to remedy the anticompetitive effects of the proposed merger between Enterprise and GulfTerra Energy Partners L.P. (“GulfTerra”). Under the terms of the Consent Agreement, Respondents must divest (1) their interest in one of two competing pipelines that transport natural gas from the deepwater regions of the Gulf of Mexico and (2) their interest in one of two competing underground propane storage and terminaling facilities serving the Dixie Pipeline in Hattiesburg, Mississippi. The Consent Agreement also contains an Order to Hold Separate and to Maintain Assets (“Hold Separate Order”) which, among other things, is designed to preserve the viability, marketability and competitiveness of the assets to be divested under the proposed Consent Order.

The proposed Consent Agreement 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 Consent Agreement and any comments received and will decide whether it should withdraw from the agreement or make final the agreement’s proposed Consent Order.

I. THE COMPLAINT

Pursuant to certain agreements dated December 15, 2003 (as amended,) Enterprise, a publicly traded limited partnership that provides midstream energy services to customers throughout the Southeastern and Midwestern United States, proposes to merge with GulfTerra in a transaction that will create a midstream

Analysis

energy partnership with an estimated enterprise value of approximately \$13 billion. The Commission's complaint ("Complaint") alleges that the proposed merger 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, in the markets for (1) pipeline transportation of natural gas from the West Central Deepwater region of the Gulf of Mexico ("West Central Deepwater" market) and (2) propane storage and terminaling services in Hattiesburg, Mississippi. The West Central Deepwater region of the Gulf of Mexico encompasses the East Breaks, Garden Banks, Keithley Canyon and Alaminos Canyon areas in the Gulf of Mexico, areas defined by the United States Department of Interior Minerals Management Service. These areas are in the "deepwater" part of the Gulf of Mexico farther from shore, in which water depths exceed 1000 feet. The proposed Consent Agreement would remedy the alleged violations by restoring the lost competition that would result from the merger in each of these markets.

II. THE CONSENT AGREEMENT

A. Pipeline Transportation of Natural Gas

The Gulf of Mexico accounts for nearly one quarter of the natural gas supplies in the United States. Natural gas producers ship their production out of the Gulf of Mexico to the Gulf Coast via pipelines. Enterprise and GulfTerra are direct and substantial competitors in the market for pipeline transportation of natural gas from the West Central Deepwater.

Enterprise owns a 50 percent ownership interest in the Starfish Pipeline Company, LLC ("Starfish"), which owns the Stingray/Triton pipeline system in the West Central Deepwater market. Shell Gas Transmission ("Shell") owns the remaining 50 percent interest in Starfish and exercises operational and management control over the Starfish assets. However, because the operating agreement provides that Enterprise must approve any commercial gas transportation agreements proposed by Shell

Analysis

with respect to Starfish, Enterprise effectively controls the competitive decisions of Starfish and the Stingray/Triton pipeline system. GulfTerra owns the High Island Offshore System (“HIOS”) and its accompanying East Breaks lateral, which compete directly for pipeline transportation business in the West Central Deepwater market with Starfish’s Stingray/Triton pipeline system.

The West Central Deepwater market is highly concentrated. The assets controlled wholly or in part by GulfTerra and Enterprise account for two of the three pipelines providing natural gas pipeline transportation services to the market. Combined, these two pipeline systems would control 60 percent of the natural gas pipeline capacity in the West Central Deepwater market. The proposed merger would substantially increase industry concentration in this already highly concentrated market. Moreover, new entry into the pipeline transportation of natural gas from the West Central Deepwater market entails substantial sunk costs and is highly unlikely to constrain any post-merger exercise of market power by Respondents in the relevant market. By eliminating the actual, direct, and substantial competition that exists between Enterprise and GulfTerra in this market, the proposed merger would be substantially likely to cause significant competitive harm to producers of natural gas who must purchase pipeline transportation services in the West Central Deepwater market.

The proposed Consent Order remedies the merger’s alleged anticompetitive effects in the West Central Deepwater market by requiring that Respondents divest either (1) their 50 percent interest in Starfish, (the “Starfish Interest”) or (2) the HIOS/East Breaks pipeline system, (the “HIOS/East Breaks Assets.”) If Respondents fail to divest either of these competing pipeline assets on or before March 31, 2005, the Commission may appoint a Divestiture Trustee to divest either of the above referenced pipeline assets.

Analysis

B. Propane Storage and Terminaling Services

Propane is used as a heating fuel during the winter months in much of the Southeastern United States. Propane marketers generally purchase propane from the major supply sources in Texas and Louisiana and ship that propane eastward over the Dixie Pipeline System (“Dixie”), the only common carrier propane pipeline in the Southeast. Because of certain physical and capacity constraints on Dixie west of Baton Rouge, Louisiana, the segments of Dixie west of Baton Rouge are often full (capacity constrained) during the winter months. Therefore, propane shippers along Dixie often must purchase propane during the spring and summer (non-peak) seasons, ship it eastward on Dixie and store the propane at locations east of Baton Rouge, such as Hattiesburg, Mississippi (“Hattiesburg”). This enables these propane marketers to access Dixie’s unconstrained capacity during the winter months to meet the peak demand of their customers for heating fuel.

Hattiesburg is the site of massive, naturally occurring underground salt domes, which when leached out, provide economic storage capacity for propane. The salt domes and associated terminaling facilities located at Hattiesburg receive propane from Dixie during the non-peak months and then re-inject propane into Dixie during the winter heating season. Dixie shippers and other propane marketers pay significant fees to the owners of propane storage facilities for the right to store propane at Hattiesburg and inject it into Dixie. Enterprise and GulfTerra are direct and substantial competitors in providing propane storage and terminaling services in Hattiesburg. Enterprise currently owns a 50 percent undivided interest in a propane storage and terminaling facility located in Hattiesburg (with Dynegy Midstream Services, L.P. owning the other 50 percent interest.) Enterprise also owns a 100 percent interest in a second propane storage facility located in nearby Petal, Mississippi. GulfTerra currently owns and operates a wholly owned propane storage and terminaling facility in Hattiesburg.

Analysis

The market for propane storage and terminaling services in Hattiesburg is highly concentrated, with Enterprise and GulfTerra currently controlling approximately 53 percent of propane storage capacity in that market. The proposed merger would leave Respondents with an ownership interest in three of the four propane storage and terminaling facilities located in Hattiesburg and substantially increase concentration in an already highly concentrated market. Entry into the market for propane storage and terminaling services requires substantial sunk costs and such entry is highly unlikely in response to a post-merger increase in propane storage and terminaling fees at Hattiesburg. By eliminating the actual, direct, and substantial competition that exists between Enterprise and GulfTerra in the relevant market, the proposed merger would be substantially likely to cause significant competitive harm to propane marketers who would likely incur increased prices and fees for propane storage and terminaling services in Hattiesburg. These increased costs would likely be passed on to propane customers supplied from Hattiesburg.

The proposed Consent Order remedies the alleged anticompetitive effect of this merger in the propane storage and terminaling services market in Hattiesburg by requiring that Respondents divest either (1) their undivided 50 percent interest in the facility Enterprise co-owns with Dynegy, (the “Enterprise Propane Storage Interest,”) or (2) their wholly owned Hattiesburg propane storage facility, (the “Enterprise Petal LPG Storage Facility.”) If Respondents fail to divest either of these competing propane storage and terminaling assets on or before December 31, 2004, the Commission may appoint a Divestiture Trustee to divest either of the above referenced assets. The December 31, 2004 deadline for the divestiture of the specified propane storage and terminaling assets of Respondents at Hattiesburg is designed to assure that a new owner of the divested assets will be in place prior to the 2005-06 propane storage contract season, which begins in April 2005.

Analysis

The Commission believes that divestiture by Respondents of their partially owned assets in each market to a Commission-approved purchaser would restore competition in each of the two markets potentially affected by the merger. However, as certain third parties have contractual rights that may impact on Respondents' ability to transfer such partially owned assets, or that may affect or delay the timing of any such transfer, the proposed Consent Order gives Respondents the option of divesting either their partially owned assets or their wholly owned assets in each relevant market by the dates specified in the proposed Consent Order.

III. THE HOLD SEPARATE ORDER

Because the Consent Agreement would allow the merger to proceed prior to the completion of each of the required divestitures, the Consent Agreement contains a Hold Separate Order covering the Starfish Interest and the Enterprise Propane Storage Interest. The purpose of the Hold Separate Order is to ensure that the Starfish Interest and the Enterprise Storage Propane Interest operate independently from Enterprise and GulfTerra pending the divestitures required under the proposed Consent Order. The Hold Separate Order is also intended to ensure the continuing viability, marketability, and competitiveness of these partially owned assets until they are divested.

The Commission has appointed Richard J. Black as a monitor to oversee the management and operations of the Starfish Interest and the Enterprise Propane Storage Interest until the divestitures required by the Consent Order are complete. Mr. Black has more than 15 years of relevant experience in the midstream energy services business, including experience in pipeline transportation of natural gas in the deepwater regions of the Gulf of Mexico and in the marketing and sale of natural gas liquids.

To assure that the Commission remains informed about the status of the required divestitures, the proposed Consent Order

Analysis

requires Respondents to file reports with the Commission periodically until the divestitures required under the Consent Order are accomplished. The Hold Separate Order will remain in effect until the Respondents or the Divestiture Trustee successfully divests the assets required to be divested under the Consent Order.

The purpose of this analysis is to facilitate public comment on the Consent Agreement. This analysis is not intended to constitute an official interpretation of the Consent Agreement, nor is it intended to modify its terms in any way.

Complaint

IN THE MATTER OF

MAGELLAN MIDSTREAM PARTNERS, L.P., 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-4122; File No. 0410164

Complaint, September 28, 2004--Decision, November 23, 2004

This consent order, among other things, requires Respondent Magellan Midstream Partners, L.P. -- a partnership primarily engaged in the storage, transportation, and distribution of refined petroleum products and ammonia -- to divest an Oklahoma City refined petroleum products terminal it acquired from Respondent Shell Oil Company to a Commission-approved buyer, at no minimum price and within six months. The order also requires Respondent Shell Oil Company -- a diversified energy company engaged in manufacturing, refining, distributing, transporting, terminaling, and marketing numerous petroleum products -- to ensure the interim viability of the subject terminal by, among other things, using the terminal for all its branded and unbranded refined petroleum product requirements in the Oklahoma City Metropolitan Area until three months after the terminal is divested. An accompanying Order to Hold Separate and Maintain Assets requires the respondents to take steps designed to ensure that the terminal will be maintained separately and apart from Magellan pending divestiture.

Participants

For the Commission: *Dennis F. Johnson, Mary N. Lehner, Phillip L. Broyles, Elizabeth A. Piotrowski, John D. Simpson, Louis Silvia, Jr., and Mark Frankena.*

For the Respondents: *Tom D. Smith, Jones Day and Charles W. Corddry III.*

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 ("FTC" or "Commission"), having reason to believe that Respondents Magellan Midstream Partners, L.P. ("Magellan") and Shell Oil