

Complaint

IN THE MATTER OF

ARCLIGHT ENERGY PARTNERS FUND VI, L.P.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT

Docket No. C-4563; File No. 151 0149
Complaint, December 28, 2015 – Decision, February 4, 2016

This consent order addresses the acquisition by ArcLight Energy Partners Fund VI, L.P. of Gulf Oil Limited Partnership. The complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by substantially lessening competition for gasoline and distillate terminaling services in relevant geographic markets within Pennsylvania. The consent order requires ArcLight to divest Gulf's terminals in Altoona, Pittston Township, Mechanicsburg, and Williamsport.

Participants

For the *Commission*: Michael E. Blaisdell and Jennifer Milici.

For the *Respondent*: Kay Lynn Brumbaugh, Andrews Kurth LLP and Deborah Garza, Covington & Burling LLP.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act ("FTC Act"), and its authority thereunder, the Federal Trade Commission ("Commission"), having reason to believe that Respondent ArcLight Energy Partners Fund VI, L.P. ("Respondent" or "ArcLight") has agreed to acquire 100% of the interest in Gulf Oil Limited Partnership ("Gulf") from Cumberland Farms, Inc. in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and which, 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 it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

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I. THE RESPONDENT

1. Respondent is a 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 200 Clarendon Street, 55th Floor, Boston, Massachusetts 02116.

2. Respondent is engaged in, among other things, investing in energy infrastructure and, through its wholly-owned subsidiary, Pyramid LLC, operates light petroleum products terminals in Pennsylvania.

3. Respondent is, and at all times relevant herein has been, engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and is a company whose business is in or affects commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

II. THE PROPOSED ACQUISITION

4. Pursuant to two contingent agreements (“Agreements”) dated May 15, 2015, Respondent ArcLight, through its wholly-owned subsidiaries Chelsea Petroleum Products I, LLC and Blue Hills Fuels, Inc., proposes to acquire Gulf and certain other assets from Cumberland Farms, Inc. (the “Acquisition”).

III. THE RELEVANT PRODUCT MARKETS

5. For purposes of this complaint, the relevant lines of commerce in which to analyze the effects of the Acquisition are gasoline terminaling services and distillate terminaling services.

6. Terminals are critical to the efficient distribution of light petroleum products (“LPPs”). Transporting bulk quantities of LPPs by pipeline to terminals is significantly less expensive on a per gallon basis than trucking LPPs the same distance. Terminals are capable of receiving bulk shipments of LPPs via pipeline, holding LPPs in storage tanks, and loading smaller quantities onto tanker trucks. Tanker trucks transport LPPs from the terminals to retail locations and end-use customers. Terminaling services, or

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“throughputting,” include the off-loading, temporary storage, and dispensing of LPPs into trucks.

7. There is no cost-effective substitute for terminals and the services they provide. Trucking is not an economical alternative due to the high costs associated with trucking LPPs long distances from refineries to retail locations and end-use customers.

8. Gasoline terminaling service customers can only use terminals that meet gasoline-specific environmental regulations. A terminal must have specialized equipment, including vapor recovery units, tanks with internal floating roofs, and ethanol capability to offer gasoline terminaling services. While distillate terminaling customers may be able to use gasoline terminals, the reverse is not possible due to the more stringent regulatory requirements for the storage and handling of gasoline.

IV. THE RELEVANT GEOGRAPHIC MARKETS

9. There are three relevant geographic markets in Pennsylvania in which to analyze the Acquisition: (1) the Altoona market, which encompasses terminals in Altoona; (2) the Scranton market, which encompasses terminals in Pittston Township, and Edwardsville; and (3) the Harrisburg market, which encompasses terminals in Mechanicsburg, Highspire, Northumberland, and Williamsport.

V. MARKET STRUCTURE

Altoona Area Terminaling Services Markets

10. Three firms, including ArcLight and Gulf, operate terminals in the Altoona market. The terminals owned by ArcLight and Gulf offer both gasoline and distillate terminaling services. The third firm does not offer gasoline terminaling services in the relevant market.

11. The Acquisition, if consummated, would eliminate the only competition in the relevant gasoline terminaling services market and result in a monopoly.

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12. The Acquisition would also reduce the number of firms in the Altoona distillate terminaling services market from three to two. Post-acquisition, ArcLight would own the vast majority of the distillate storage capacity in the Altoona market.

Scranton Area Terminaling Services Markets

13. Three firms, including ArcLight and Gulf, operate terminals in the Scranton market. All three firms offer both gasoline and distillate terminaling services.

14. The Acquisition, if consummated, would reduce the number of firms in the relevant markets from three to two. Post-acquisition, ArcLight would own the vast majority of the gasoline and distillate storage capacity in the Scranton market.

Harrisburg Terminaling Services Markets

15. Three firms provide gasoline terminaling services in the Harrisburg market, including ArcLight and Gulf. One additional firm provides distillate terminaling services in the relevant market.

16. The proposed Acquisition would reduce the number of firms providing gasoline terminaling services in the relevant market from three to two. Post-acquisition, ArcLight would own the vast majority of the gasoline storage capacity in the relevant market.

17. The Acquisition, if consummated, would also reduce the number of firms in the market providing distillate terminaling services from four to three. Post-acquisition, ArcLight would own the vast majority of the distillate storage capacity in the Harrisburg market.

V. BARRIERS TO ENTRY

18. Entry into the relevant markets would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects arising from the Acquisition. Barriers to entry are significant and include high sunk costs associated with the

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construction of a new terminal and the time required to design, build, and permit a new facility. ArcLight has significant excess capacity in the relevant markets, and this capacity would discourage new entry.

VI. EFFECTS OF THE ACQUISITION

19. The effects of the Acquisition, if consummated, may be to substantially lessen competition and tend to create a monopoly in each relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. by increasing the likelihood that Respondent ArcLight would unilaterally exercise market power in each relevant market; and
- b. by increasing the likelihood of collusive or coordinated interaction between any remaining competitors in the relevant markets.

VII. VIOLATIONS CHARGED

20. The Agreement to acquire Gulf through Chelsea Petroleum Products described in Paragraph 4 constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

21. The Acquisition described in Paragraph 4, 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.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-eighth day of December, 2015, issues its Complaint against Respondent.

By the Commission.

Order to Maintain Assets

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission, having initiated an investigation of the proposed acquisition by ArcLight Energy Partners Fund VI, L.P. (“ArcLight” or “Respondent”) of 100% of the partnership interests of Gulf Oil Limited Partnership from Cumberland Farms, Inc., and Respondent having been furnished thereafter with a copy of 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 Respondent 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

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement (“Consent Agreement”) containing consent orders, an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondent 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 Respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the Consent Agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure described in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following Order to Maintain Assets:

1. Respondent ArcLight Energy Partners Fund VI, L.P. is a limited partnership organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its corporate office and principal place of

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business located at 200 Clarendon Street, 55th Floor,
Boston, Massachusetts 02116.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent and the proceeding is in the public interest.

ORDER**I.**

IT IS HEREBY ORDERED that, as used in this Order to Maintain Assets, the following definitions shall apply (to the extent any capitalized term appearing in this Order to Maintain Assets is not defined below, the term shall be defined as that term is defined in the Decision and Order contained in the Consent Agreement):

- A. “ArcLight” or “Respondent” means ArcLight Energy Partners Fund VI, L.P., its directors, officers, employees, agents, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates in each case controlled by ArcLight Energy Partners Fund VI, L.P. (including Gulf Oil Limited Partnership, after the Acquisition) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Commission” means the Federal Trade Commission.
- C. “Acquirer” means (i) Arc Logistics or (ii) any other Person that acquires the PA Terminals Assets pursuant to the Decision and Order.
- D. “Acquisition” means the proposed acquisitions described in the (i) Equity Interests Purchase and Sale Agreement by and among Cumberland Farms, Inc., Gulf Acquisition LLC, and Chelsea Petroleum Products I, LLC, dated May 15, 2015 and (ii) Asset Purchase and Sale Agreement by and between

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Cumberland Farms, Inc. and Blue Hills Fuels, LLC,
dated May 15, 2015.

- E. “Acquisition Date” means the date the Acquisition is consummated.
- F. “Confidential Information” means any and all of the following information:
 - 1. all information that is a trade secret under applicable trade secret or other law;
 - 2. all information concerning product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer hardware, software and computer software and database technologies, systems, structures, and architectures;
 - 3. all information concerning the relevant business (which includes historical and current financial statements, financial projections and budgets, tax returns and accountants’ materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel and personnel training techniques and materials); and
 - 4. all notes, analyses, compilations, studies, summaries and other material to the extent containing or based, in whole or in part, upon any of the information described above;

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Provided, however, that Confidential Information shall not include information that (i) was, is or becomes generally available to the public other than as a result of a breach of this Order; (ii) was or is developed independently of and without reference to any Confidential Information; or (iii) was available, or becomes available, on a non-confidential basis from a third party not bound by a confidentiality agreement or any legal, fiduciary, or other obligation restricting disclosure.

- G. “Decision and Order” means the:
1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance and service of a final Decision and Order by the Commission; and
 2. Final Decision and Order issued by the Commission in this matter following the issuance and service of a final Decision and Order by the Commission.
- H. “Divestiture Agreement” means (i) the PA Terminal Agreement or (ii) any other agreement between Respondent (or a Divestiture Trustee) and Acquirer that receives the prior approval of the Commission to divest the PA Terminals Assets, including all related ancillary agreements, schedules, exhibits, and attachments thereto.
- I. “Divestiture Date” means the date on which Respondent (or the Divestiture Trustee) closes on the transaction to divest the PA Terminals Assets to Acquirer.
- J. “PA Terminals Assets” means the assets identified in Paragraph I.T. of the Decision and Order.
- K. “PA Terminals Business” means the business of providing temporary storage for light petroleum

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products received via pipeline, marine vessel, tank trucks, rail, or transport trailers, and the re-delivery of such products from storage tanks into tank trucks, rail cars, transport trailers, or pipelines, conducted by Cumberland (through Gulf Oil Limited Partnership) at the Pennsylvania Locations, prior to the Acquisition.

- L. “PA Terminals Employee” means (i) any individual employed by Gulf on a full-time, part-time, or contract basis at each location of the PA Terminals Business at any time as of and after the date of the announcement of the Acquisition and (ii) up to ten individuals employed by Gulf at any other location whose job responsibilities relate or related to the PA Terminals Business; *provided, however*, that PA Terminals Employee shall not include any individuals of Gulf Oil Limited Partnership retained by Cumberland after the Acquisition.
- M. “Pennsylvania Locations” means the Pennsylvania cities of Altoona, Mechanicsburg, Pittston Township, and Williamsport.
- N. “Person” means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture, or other entity or a governmental body.

II.

IT IS FURTHER ORDERED that during the time period before the Divestiture Date, Respondent shall operate the PA Terminals Business and PA Terminals Assets in the ordinary course of business consistent with past practices as of the date that Respondent announced the Acquisition, including but not limited to, the following responsibilities:

- A. Respondent shall maintain (i) the PA Terminals Business and PA Terminals Assets in substantially the same condition (except for normal wear and tear)

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existing at the time Respondent signs the Consent Agreement, and (ii) relations and good will with suppliers, customers, landlords, creditors, agents, and other having business relationships with the PA Terminals Business and PA Terminals Assets;

- B. Respondent shall provide the PA Terminals Business with sufficient financial and other resources to (i) operate the PA Terminals Business and PA Terminals Assets at least at the current rate of operation and staffing and to carry out, at their scheduled pace, all business plans and promotional activities in place prior to the Acquisition; (ii) perform all maintenance to, and replacements or remodeling of, the assets of the PA Terminals Business in the ordinary course of business and in accordance with past practice and current plans; (iii) carry on such capital projects, physical plant improvements, and business plans as are already underway or planned for which all necessary regulatory and legal approvals have been obtained, including but not limited to, existing or planned renovation, remodeling, or expansion projects; and (iv) maintain the viability, competitiveness, and marketability of the PA Terminals Business and PA Terminals Assets.
- C. Respondent shall preserve the PA Terminals Business and PA Terminals Assets as an ongoing business and not take any affirmative action, or fail to take any action within Respondent's control, as a result of which the viability, competitiveness, and marketability of the PA Terminals Business and PA Terminals Assets would be diminished.

III.

IT IS FURTHER ORDERED that prior to the Divestiture Date, Respondent shall secure all consents, assignments, and waivers or other authorizations from all Persons that are necessary for the divestiture of the PA Terminals Assets; *provided, however*, that Respondent may satisfy this requirement by certifying that

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Acquirer has executed appropriate agreements or obtained necessary authorizations directly with each of the relevant Persons.

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

- A. Until the Divestiture Date, Respondent shall staff the PA Terminals Business and PA Terminals Assets with sufficient employees to maintain the viability and competitiveness of the PA Terminals Business and PA Terminals Assets, including but not limited to, providing each PA Terminals Employee with reasonable financial incentives, if necessary, including continuation of all employee benefits and regularly scheduled raises and bonuses, to continue in his or her position pending divestiture of the PA Terminals Assets.
- B. Respondent shall cooperate with and assist Acquirer to evaluate and retain any PA Terminals Employee necessary to operate the PA Terminals Business in substantially the same manner as Cumberland prior to the divestiture, including but not limited to:
 - 1. Not later than fifteen (15) days before the Divestiture Date, Respondent shall (i) identify all PA Terminals Employees, (ii) allow Acquirer to inspect the personnel files and other documentation of all PA Terminals Employees, to the extent permissible under applicable laws, and (iii) allow Acquirer an opportunity to interview any PA Terminals Employee;
 - 2. Respondent shall (i) not offer any incentive to any PA Terminals Employee to decline employment with Acquirer, (ii) remove any contractual impediments that may deter any PA Terminals Employee from accepting employment with Acquirer, including but not limited to, any non-

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compete or confidentiality provision of employment or other contracts with Respondent that would affect the ability of such employee to be employed by Acquirer, and (iii) not otherwise interfere the recruitment, hiring, or employment of any PA Terminals Employee by Acquirer;

3. Respondent shall (i) vest all current and accrued pension benefits as of the date of transition of employment with Acquirer for any PA Terminals Employee who accepts an offer of employment from Acquirer and (ii) provide each PA Terminals Employee with reasonable financial incentive as necessary to accept offers of employment with Acquirer; and
4. For a period of two (2) years after the PA Terminals Assets are divested, Respondent shall not solicit the employment of any PA Terminals Employee who becomes employed by Acquirer at the time the PA Terminals Assets are divested; *provided, however*, that a violation of this provision will not occur if: (i) the individual's employment has been terminated by Acquirer, (ii) Respondent advertises for employees in newspapers, trade publications, or other media not targeted specifically at the employees, or (iii) Respondent hires employees who apply for employment with Respondent, so long as such employees were not solicited by Respondent in violation of this paragraph.

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

- A. At any time after Respondent signs the Consent Agreement, the Commission may appoint a Person ("Monitor") to monitor Respondent's compliance with its obligations under this Order.

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- B. The Commission shall select the Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed in writing, including the reasons for opposing, the selection of any proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Monitor, Respondent shall be deemed to have consented to the selection of the proposed Monitor.
- C. Respondent shall enter into an agreement with the Monitor, subject to the prior approval of the Commission, that (i) shall become effective no later than one (1) day after the date the Commission appoints the Monitor, and (ii) confers upon the Monitor all rights, powers, and authority necessary to permit the Monitor to perform his duties and responsibilities on the terms set forth in this Order and in consultation with the Commission:
 - 1. The Monitor shall (i) monitor Respondent's compliance with the obligations set forth in this Order and (ii) act in a fiduciary capacity for the benefit of the Commission;
 - 2. Respondent shall (i) insure that the Monitor has full and complete access to all Respondent's personnel, books, records, documents, and facilities relating to compliance with this Order or to any other relevant information as the Monitor may reasonably request, and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his duties pursuant to this Order;
 - 3. The Monitor (i) shall serve at the expense of Respondent, without bond or other security, on such reasonable and customary terms and conditions as the Commission may set, and (ii) may employ, at the cost and expense of Respondent, such consultants, accountants,

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attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;

4. Respondent shall indemnify the Monitor and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of his 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 the Monitor's gross negligence or willful misconduct; and
 5. Respondent may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; provided, however, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- D. The Monitor shall report in writing to the Commission concerning Respondent's compliance with this Order on a schedule as determined by Commission staff, including a final report after Respondent has completed all obligations required by Paragraph II. of the Decision and Order (not including Paragraph II.D.4.).
- E. The Commission may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- F. The Monitor's power and duties shall terminate ten (10) business days after the Monitor has completed his

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final report pursuant to Paragraph V.D. of this Order, or at such other time as directed by the Commission.

- G. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld:
1. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of the substitute Monitor within five (5) days after notice by the staff of the Commission to Respondent of the identity of any substitute Monitor, then Respondent shall be deemed to have consented to the selection of the proposed substitute Monitor; and
 2. Respondent shall, no later than five (5) days after the Commission appoints a substitute Monitor, enter into an agreement with the substitute Monitor that, subject to the approval of the Commission, confers on the substitute Monitor all the rights, powers, and authority necessary to permit the substitute Monitor to perform his or her duties and responsibilities pursuant to this Order on the same terms and conditions as provided in this Paragraph V.
- H. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

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

- A. Respondent shall (i) keep confidential (including as to Respondent's employees) and (ii) not use for any

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reason or purpose, any Confidential Information received or maintained by Respondent relating to the PA Terminals Business or PA Terminals Assets; *provided, however*, that Respondent may disclose or use such Confidential Information in the course of:

1. Performing its obligations or as permitted under this Order to Maintain Assets, Decision and Order, or Divestiture Agreement; or
 2. Complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the PA Terminals Business or PA Terminals Assets, or as required by law.
- B. If disclosure or use of any Confidential Information is permitted to Respondent's employees or to any other Person under Paragraph VI.A. of this Order, Respondent shall limit such disclosure or use (i) only to the extent such information is required, (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph VI.A., and (iii) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.
- C. Respondent shall enforce the terms of this Paragraph VI. as to its employees or any other Person, and take such action as is necessary to cause each of its employees and any other Person to comply with the terms of this Paragraph VI., including implementation of access and data controls, training of its employees, and all other actions that Respondent would take to protect its own trade secrets and proprietary information.

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

- A. Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order to Maintain Assets and Decision and Order within thirty (30) days from the date Respondent signs the Consent Agreement (as set forth in the Consent Agreement) and every thirty (30) days thereafter until this Order to Maintain Assets terminates.
- B. With respect to any divestiture required by Paragraph II.A. of the Decision and Order, Respondent shall include in its compliance reports (i) the status of the divestiture and transfer of the PA Terminals Assets; (ii) a description of all substantive contacts with a proposed acquirer (in the event that the PA Terminals Assets are divested pursuant to Paragraph II.A.1. of the Decision and Order); and (iii) as applicable, a statement that the divestiture approved by the Commission has been accomplished, including a description of the manner in which Respondent completed such divestiture and the date the divestiture was accomplished.

VIII.

IT IS FURTHER ORDERED that the purpose of this Order to Maintain Assets is to (i) preserve the PA Terminals Business and PA Terminals Assets as a viable, competitive, and ongoing business until the divestiture required by the Decision and Order is achieved; (ii) prevent interim harm to competition pending the relevant divestiture and other relief; and (iii) help remedy any anticompetitive effects of the proposed Acquisition as alleged in the Commission's Complaint.

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IX.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Respondent;
- B. Any proposed acquisition, merger, or consolidation of Respondent; or
- C. Any other change in the Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

X.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Respondent related to compliance with this Order to Maintain Assets, which copying services shall be provided by Respondent at its expense; and
- B. To interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

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XI.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. Three (3) business days after the date that Respondent completes the divestiture required by Paragraph II.A. of the Decision and Order; *provided, however*, that if at the time such divestiture has been completed, the Decision and Order in this matter is not yet final, then this Order to Maintain Assets shall terminate three (3) business days after the Decision and Order becomes final.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by ArcLight Energy Partners Fund VI, L.P. (“ArcLight” or “Respondent”) of 100% of the partnership interests of Gulf Oil Limited Partnership from Cumberland Farms, Inc. (“Cumberland”) and Respondent having been furnished thereafter with a copy of 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 Respondent 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

Decision and Order

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement (“Consent Agreement”) containing consent orders, an admission by Respondent 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 Respondent 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 Respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and its Order to Maintain Assets 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, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and enters the following Decision and Order (“Order”):

1. Respondent ArcLight Energy Partners Fund VI, L.P. is a limited partnership organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its corporate office and principal place of business located at 200 Clarendon Street, 55th Floor, Boston, Massachusetts 02116.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent and the proceeding is in the public interest.

Decision and Order

ORDER**I.**

IT IS HEREBY ORDERED that, as used in this Order, the following definitions shall apply:

- A. “ArcLight” or “Respondent” means ArcLight Energy Partners Fund VI, L.P., its directors, officers, employees, agents, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates in each case controlled by ArcLight Energy Partners Fund VI, L.P. (including Gulf Oil Limited Partnership, after the Acquisition) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Commission” means the Federal Trade Commission.
- C. “Acquirer” means (i) Arc Logistics or (ii) any other Person that acquires the PA Terminals Assets pursuant to this Order.
- D. “Acquisition” means the proposed acquisitions described in the (i) Equity Interests Purchase and Sale Agreement by and among Cumberland Farms, Inc., Gulf Acquisition LLC, and Chelsea Petroleum Products I, LLC, dated May 15, 2015 and (ii) Asset Purchase and Sale Agreement by and between Cumberland Farms, Inc. and Blue Hills Fuels, LLC, dated May 15, 2015.
- E. “Acquisition Date” means the date the Acquisition is consummated.
- F. “ArcLight Terminal Assets” means an option to acquire the Williamsport terminal assets located at 1606 and 2080 Sylvan Road, Armstrong Township, Lycoming County, Pennsylvania; Tax parcel nos. 02-3500-0156B-000 and 02-3500-0158-000.

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- G. “Arc Logistics” means Arc Logistics Partners LP, a limited partnership organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its corporate office and principal place of business located at 725 Fifth Avenue, 19th Floor, New York, New York 10022.
- H. “Confidential Information” means any and all of the following information:
1. all information that is a trade secret under applicable trade secret or other law;
 2. all information concerning product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, software and computer software and database technologies, systems, structures, and architectures;
 3. all information concerning the relevant business (which includes historical and current financial statements, financial projections and budgets, tax returns and accountants’ materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel, and personnel training techniques and materials); and
 4. all notes, analyses, compilations, studies, summaries, and other material to the extent containing or based, in whole or in part, upon any of the information described above;

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Provided, however, that Confidential Information shall not include information that (i) was, is, or becomes generally available to the public other than as a result of a breach of this Order; (ii) was or is developed independently of and without reference to any Confidential Information; or (iii) was available, or becomes available, on a non-confidential basis from a third party not bound by a confidentiality agreement or any legal, fiduciary, or other obligation restricting disclosure.

- I. “Contract” means any agreement, contract, lease, license agreement, consensual obligation, promise, or undertaking (whether written or oral and whether express or implied), whether or not legally binding.
- J. “Corporate Trade Names” means all trademarks, trade names, service marks, trade dress, logos, corporate names, domain names, emblems, signs or insignia, and other source identifiers whether registered or common law, containing or comprising the brand and mark “Gulf.”
- K. “Cost” means the actual cost of direct labor, including employee benefits, materials, resources, and services, plus the actual cost of any third-party charges.
- L. “Divestiture Agreement” means (i) the PA Terminals Agreement or (ii) any other agreement between Respondent (or a Divestiture Trustee) and Acquirer that receives the prior approval of the Commission to divest the PA Terminals Assets, including all related ancillary agreements, schedules, exhibits, and attachments thereto.
- M. “Divestiture Date” means the date on which Respondent (or the Divestiture Trustee) closes on the transaction to divest the PA Terminals Assets to Acquirer.

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- N. “Divestiture Trustee” means the Person appointed by the Commission pursuant to Paragraph VI. of this Order.
- O. “Excluded Assets” means:
1. Real property and Tangible Personal Property at locations other than the Pennsylvania Locations; *provided, however*, Excluded Assets shall not include any assets at locations other than the Pennsylvania Locations if included as Tangible Personal Property under Paragraph I.T.2. of this Order;
 2. Corporate Trade Names and portions of website content, domain names, or e-mail addresses that contain Corporate Trade Names;
 3. Software that can readily be purchased or licensed from sources other than Respondent and which has not been materially modified (other than through user preference settings), or enterprise software also used by Respondent to manage and account for businesses acquired in the Acquisition, but not included in the PA Terminals Business; and
 4. Any other assets that are shared with, or also pertain to, other businesses acquired by Respondent in the Acquisition, unless such assets primarily relate to the operation of the PA Terminals Business.
- P. “Gulf” means Gulf Oil Limited Partnership, a limited partnership organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its corporate office and principal place of business located at 100 Crossing Boulevard, Framingham, Massachusetts 01702.
- Q. “Intellectual Property” means all intellectual property, including (i) commercial names, all assumed fictional

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business names, trade names, “doing business as” (d/b/a names), registered and unregistered trademarks, service marks and applications, and tradedress; (ii) all patents, patent applications and inventions and discoveries that may be patentable; (iii) all registered and unregistered copyrights in both published works and unpublished works; (iv) all rights in mask works; (v) all know-how, trade secrets, confidential or proprietary information, customer lists, software, technical information, data, process technology, plans, drawings, and blue prints; and (vi) and all rights in internet web sites and internet domain names presently used.

- R. “License” means a worldwide, royalty-free, fully paid-up, perpetual, irrevocable, transferable, and sublicensable license and such tangible embodiments of the licensed rights (including, but not limited to, physical and electronic copies) as may be necessary or appropriate to enable Acquirer to use the rights.
- S. “PA Terminals Agreement” means the Asset Purchase and Sale Agreement by and between Chelsea Petroleum Products I, LLC and Arc Terminals Pennsylvania Holdings, LLC, dated December 17, 2015, including all related ancillary agreements, schedules, exhibits, and attachments thereto.
- T. “PA Terminals Assets” means all of Respondent’s right, title, and interest (acquired by ArcLight as a result of the Acquisition) in and to all property and assets, real, personal, or mixed, tangible and intangible, of every kind and description, wherever located, relating to operation of the PA Terminals Business, including, but not limited to:
 - 1. all real property interests (including fee simple interests and real property leasehold interests), including all easements, and appurtenances, together with all buildings and other structures,

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facilities, and improvements located thereon, owned, leased, or otherwise held;

2. all Tangible Personal Property, including any Tangible Personal Property removed from any location of the PA Terminals Business since the date of the announcement of the Acquisition, and not replaced, unless such Tangible Personal Property was removed in the ordinary course of business and has a replacement cost of less than \$5,000;
3. all inventories other than inventories held by a customer;
4. all Contracts and all outstanding offers or solicitations to enter into any Contract, and all rights thereunder and related thereto;
5. all consents, licenses, registrations, or permits issued, granted, given, or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement, and all pending applications therefor or renewals thereof, to the extent assignable;
6. all data and Records, including client and customer lists and Records, referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, notices, orders, inquiries, correspondence, and other similar documents and Records, and copies of all personnel Records (to the extent permitted by law);
7. all intangible rights and property, including Intellectual Property owned or licensed (as licensor

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or licensee) by Respondent, going concern value, goodwill, and telephone and telecopy listings;

8. all insurance benefits, including rights and proceeds; and
9. all rights relating to deposits and prepaid expenses, claims for refunds and rights to offset in respect thereof;

Provided, however, that the PA Terminals Assets need not include Respondent's right, title, and interest in the Excluded Assets and, *provided further* that the PA Terminals Assets shall include the ArcLight Terminal Assets.

- U. "PA Terminals Business" means the business of providing temporary storage for light petroleum products received via pipeline, marine vessel, tank trucks, rail, or transport trailers, and the re-delivery of such products from storage tanks into tank trucks, rail cars, transport trailers, or pipelines, conducted by Cumberland (through Gulf Oil Limited Partnership) at the Pennsylvania Locations, prior to the Acquisition.
- V. "PA Terminals Employee" means (i) any individual employed by Gulf on a full-time, part-time, or contract basis at each location of the PA Terminals Business at any time as of and after the date of the announcement of the Acquisition and (ii) up to ten individuals employed by Gulf at any other location whose job responsibilities relate or related to the PA Terminals Business; *provided, however,* that PA Terminals Employee shall not include any individuals of Gulf retained by Cumberland after the Acquisition.
- W. "Pennsylvania Locations" means the Pennsylvania cities of Altoona, Mechanicsburg, Pittston Township, and Williamsport.

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- X. “Person” means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a governmental body.
- Y. “Public Record Date” means the date on which the Commission accepts the Consent Agreement and places it on the public record for comment.
- Z. “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- AA. “Tangible Personal Property” means all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, and other items of tangible personal property (other than inventories) of every kind owned or leased, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.
- BB. “Terminal Customer” means any Person who has a Contract with Respondent for terminaling services at any of the Pennsylvania Locations in effect as of the Public Record Date.
- CC. “Transitional Assistance” means any (i) administrative assistance (including, but not limited to, order processing, shipping, accounting, and information transitioning services) or (ii) technical assistance with respect to the provision of light petroleum products terminaling services.

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

- A. No later than twenty (20) days after the Acquisition Date, Respondent shall divest the PA Terminals Assets, absolutely and in good faith, to Arc Logistics pursuant to the PA Terminals Agreement, *provided, however,* that if, at the time the Commission determines to make this Order final, the Commission notifies Respondent that:
1. Arc Logistics is not an acceptable purchaser of the PA Terminals Assets, then Respondent shall immediately rescind the PA Terminals Agreement, and shall divest the PA Terminals Assets no later than 120 days from the date this Order is issued, absolutely and in good faith, at no minimum price, to a Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission; or
 2. The manner in which the divestiture to Arc Logistics was accomplished is not acceptable, the Commission may direct Respondent, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the PA Terminals Assets (that shall be incorporated into a revised PA Terminals Agreement) as the Commission may determine are necessary to satisfy the requirements of this Order.
- B. No later than the Divestiture Date, Respondent shall secure all consents, assignments, and waivers, or other authorizations from all Persons that are necessary for the divestiture of the PA Terminals Assets; *provided, however,* that Respondent may satisfy this requirement by certifying that Acquirer has executed appropriate agreements or obtained necessary authorizations directly with each of the relevant Persons.

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C. At the request of Acquirer, Respondent shall:

1. For a period of twelve (12) months, provide Transitional Assistance to Acquirer at a price not to exceed Cost and in quality and quantity sufficient to enable Acquirer to operate the PA Terminals Business in substantially the same manner (including the ability to increase sales) as Cumberland prior to the Acquisition;
2. For a period of two (2) years from the Divestiture Date, utilize the divested terminals at each of the Pennsylvania Locations as a customer in volumes sufficient to maintain the viability of the PA Terminals Assets and PA Terminals Business; and
3. For a period of five (5) years from the Divestiture Date, supply ethanol and biodiesels and terminaling services for ethanol and biodiesels to Acquirer at Respondent's terminals at the Pennsylvania Locations in quantities as needed by Acquirer;

Provided, however, that Respondent shall perform the obligations set forth in this Paragraph II.C. in a manner that receives the prior approval of the Commission;

Provided further that the terms of such obligations shall be extended at the request of Acquirer, subject to the prior approval of the Commission; and

Provided further that Respondent shall not (i) terminate any agreement relating to such obligations because of a material breach by Acquirer, in the absence of a final order of a court of competent jurisdiction or (ii) seek to limit the damages (such as indirect, special, and consequential damages) which Acquirer would be entitled to receive in the event of Respondent's breach of any such agreement.

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- D. Respondent shall cooperate with and assist Acquirer to evaluate and retain any PA Terminals Employee, including, but not limited to:
1. Not later than fifteen (15) days before the Divestiture Date, Respondent shall (i) identify all PA Terminals Employees, (ii) allow Acquirer to inspect the personnel files and other documentation of all PA Terminals Employees, to the extent permissible under applicable laws, and (iii) allow Acquirer an opportunity to interview any PA Terminals Employee;
 2. Respondent shall (i) not offer any incentive to any PA Terminals Employee to decline employment with Acquirer, (ii) remove any contractual impediments that may deter any PA Terminals Employee from accepting employment with Acquirer, including, but not limited to, any non-compete or confidentiality provision of employment or other contracts with Respondent that would affect the ability of such employee to be employed by Acquirer, and (iii) not otherwise interfere with the recruitment, hiring, or employment of any PA Terminals Employee by Acquirer;
 3. Respondent shall (i) vest all current and accrued pension benefits as of the date of transition of employment with Acquirer for any PA Terminals Employee who accepts an offer of employment from Acquirer and (ii) provide each PA Terminals Employee with reasonable financial incentive as necessary to accept offers of employment with Acquirer; and
 4. For a period of two (2) years after the PA Terminals Assets are divested, Respondent shall not solicit the employment of any PA Terminals Employee who becomes employed by Acquirer at the time the PA Terminals Assets are divested;

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provided, however, that a violation of this provision will not occur if: (i) the individual's employment has been terminated by Acquirer, (ii) Respondent advertises for employees in newspapers, trade publications, or other media not targeted specifically at the employees, or (iii) Respondent hires employees who apply for employment with Respondent, so long as such employees were not solicited by Respondent in violation of this paragraph.

- E. With respect to any Intellectual Property that is:
1. Retained by Respondent under Paragraph I.O.4. of this Order, Respondent shall grant a License to Acquirer under such Intellectual Property sufficient for Acquirer to operate the PA Terminals Business in substantially the same manner as Cumberland prior to the Acquisition with the freedom to extend existing services and develop new services; and
 2. Included in the PA Terminals Assets that also relates to operation of any other business that Respondent acquired in the Acquisition, Respondent may enter into an agreement with Acquirer for a License back under such Intellectual Property for use in such other business;

Provided, however, that any License required or permitted under this Paragraph II.E. shall be provided in a manner that receives the prior approval of the Commission.

- F. The purpose of the divestiture of the PA Terminals Assets is to ensure the continued use of the assets in the same businesses in which such assets were engaged at the time of the announcement of the Acquisition by Respondent and to remedy the lessening of competition resulting from the

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Acquisition as alleged in the Commission's Complaint.

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

- A. For a period of six (6) months after the Divestiture Date, Respondent shall allow any Terminal Customer to terminate its Contract without penalty or charge, upon request of the Terminal Customer.
- B. Respondent shall notify each Terminal Customer of its right to terminate its Contract (i) no later than twenty (20) days after the Public Record Date for Contracts in effect on the Public Record Date; (ii) no later than the execution of the Contract for Contracts that Respondent enters into or renews after the Public Record Date; and (iii) in substantially the same form as the notification attached to this Order as Appendix A.

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

- A. Respondent shall (i) keep confidential (including as to Respondent's employees) and (ii) not use for any reason or purpose, any Confidential Information received or maintained by Respondent relating to the PA Terminals Business or PA Terminals Assets; *provided, however*, that Respondent may disclose or use such Confidential Information in the course of:
 - 1. Performing its obligations or as permitted under this Order, the Order to Maintain Assets, or Divestiture Agreement; or
 - 2. Complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions

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threatened or brought against the PA Terminals Business or PA Terminals Assets, or as required by law.

- B. If disclosure or use of any Confidential Information is permitted to Respondent's employees or to any other Person under Paragraph IV.A. of this Order, Respondent shall limit such disclosure or use (i) only to the extent such information is required; (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph IV.A.; and (iii) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.
- C. Respondent shall enforce the terms of this Paragraph IV. as to its employees or any other Person, and take such action as is necessary to cause each of its employees and any other Person to comply with the terms of this Paragraph IV., including implementation of access and data controls, training of its employees, and all other actions that Respondent would take to protect its own trade secrets and proprietary information.

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

- A. At any time after Respondent signs the Consent Agreement, the Commission may appoint a Person ("Monitor") to monitor Respondent's compliance with its obligations under this Order.
- B. The Commission shall select the Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed in writing, including the reasons for opposing, the selection of any proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Monitor,

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Respondent shall be deemed to have consented to the selection of the proposed Monitor.

- C. Respondent shall enter into an agreement with the Monitor, subject to the prior approval of the Commission, that (i) shall become effective no later than one (1) day after the date the Commission appoints the Monitor, and (ii) confers upon the Monitor all rights, powers, and authority necessary to permit the Monitor to perform his duties and responsibilities on the terms set forth in this Order and in consultation with the Commission:
1. The Monitor shall (i) monitor Respondent's compliance with the obligations set forth in this Order and (ii) act in a fiduciary capacity for the benefit of the Commission;
 2. Respondent shall (i) insure that the Monitor has full and complete access to all Respondent's personnel, books, records, documents, and facilities relating to compliance with this Order or to any other relevant information as the Monitor may reasonably request, and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his duties pursuant to this Order;
 3. The Monitor (i) shall serve at the expense of Respondent, without bond or other security, on such reasonable and customary terms and conditions as the Commission may set, and (ii) may employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
 4. Respondent shall indemnify the Monitor and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in

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connection with, the performance of his 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 the Monitor's gross negligence or willful misconduct; and

5. Respondent may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* that such agreement shall not restrict the Monitor from providing any information to the Commission.
- D. The Monitor shall report in writing to the Commission concerning Respondent's compliance with this Order on a schedule as determined by Commission staff, including a final report after Respondent has completed all obligations required by Paragraph II. of this Order (not including Paragraph II.D.4.).
- E. The Commission may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- F. The Monitor's power and duties shall terminate ten (10) business days after the Monitor has completed his final report pursuant to Paragraph V.D. of this Order, or at such other time as directed by the Commission.
- G. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute Monitor, subject

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to the consent of Respondent, which consent shall not be unreasonably withheld:

1. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of the substitute Monitor within five (5) days after notice by the staff of the Commission to Respondent of the identity of any substitute Monitor, then Respondent shall be deemed to have consented to the selection of the proposed substitute Monitor; and
2. Respondent shall, no later than five (5) days after the Commission appoints a substitute Monitor, enter into an agreement with the substitute Monitor that, subject to the approval of the Commission, confers on the substitute Monitor all the rights, powers, and authority necessary to permit the substitute Monitor to perform his or her duties and responsibilities pursuant to this Order on the same terms and conditions as provided in this Paragraph V.

- H. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

VI.

IT IS FURTHER ORDERED that:

- A. If Respondent has not fully complied with the divestiture and other obligations as required by Paragraph II. of this Order, the Commission may appoint a Divestiture Trustee to divest the PA Terminals Assets and perform Respondent's other obligations in a manner that satisfies the requirements of this Order.

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- B. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(*I*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*I*), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph 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 Section 5(*I*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondent to comply with this Order.
- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has 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 Respondent of the identity of any proposed Divestiture Trustee, Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- D. Within ten (10) days after appointment of a Divestiture Trustee, Respondent 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 relevant divestiture or other action required by the Order.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondent shall consent to the following terms and

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conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and to take such other action as may be required to divest the Divestiture Assets.
2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed Divestiture Trustee, by the court.
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 assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture

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under this Paragraph VI. in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

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 Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture 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 Respondent from among those approved by the Commission; *provided further* that Respondent shall select such entity within five (5) days of receiving notification of the Commission's approval.
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent, 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 Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and 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 and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the

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Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondent, 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. Respondent 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 gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph VI.E.6., the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph VI.E.5. of this Order.
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 report in writing to Respondent and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
9. Respondent 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

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shall not restrict the Divestiture Trustee from providing any information to the Commission.

- F. The Commission may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- G. 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 VI.
- H. 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 divestitures and other obligations or action required by this Order.

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

- A. The Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof, and Respondent shall comply with all terms of such agreement. The Divestiture Agreement shall not limit or contradict, or be construed to limit or contradict, the terms of this Order and nothing in this Order shall be construed to reduce any rights or benefits of Acquirer or to reduce any obligations of Respondent under such agreement.
- B. If any term of the Divestiture Agreement varies from Paragraphs I.-X. of this Order ("Order Term"), then to the extent that Respondent cannot fully comply with

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both terms, the Order Term shall determine Respondent's obligations under this Order. Respondent shall not modify, replace, or extend the terms of the Divestiture Agreement without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5).

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

- A. Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order:
 - 1.
 - a. Thirty (30) days from the date this Order is issued;
 - b. Every thirty (30) days thereafter until Respondent has fully complied with Paragraphs II.A. and D. of this Order; and
 - c. Every 180 days thereafter until Respondent has fully complied with Paragraph II.C. of this Order; and
 - 2. No later than one (1) year after the date this Order is issued and annually thereafter until this Order terminates, and at such other times as the Commission staff may request.
- B. With respect to any divestiture required by Paragraph II.A.1. of this Order, Respondent shall include in its compliance reports (i) the status of the divestiture and transfer of the PA Terminals Assets; (ii) a description of all substantive contacts with a proposed acquirer; and (iii) as applicable, a statement that the divestiture approved by the Commission has been accomplished, including a description of the manner in which

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Respondent completed such divestiture and the date the divestiture was accomplished.

IX.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Respondent;
- B. Any proposed acquisition, merger, or consolidation of Respondent; or
- C. Any other change in the Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

X.

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 and upon five (5) days' notice to Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession, or under the control, of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at its expense; and
- B. To interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

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XI.

IT IS FURTHER ORDERED that this Order shall terminate on February 4, 2026.

By the Commission.

Appendix A**NOTICE**

To settle concerns arising from ArcLight's acquisition of certain assets of Cumberland Farms, Inc., on [insert date of consent agreement], ArcLight agreed with the staff of the Federal Trade Commission ("FTC") to allow customers that purchase terminaling services for light petroleum products in certain Pennsylvania locations to terminate their contracts with respect to any or all of the services, at the option of the customer, without penalty or charge, immediately upon request of the customer at any time from the [insert Public Record Date] until six (6) months after [insert Divestiture Date].

You are being sent this notice because you are or will be a customer that purchases terminaling services from ArcLight in [insert city and state]. You may read and download a copy of the Order from the FTC at its web site at [web link to Order] as well as other documents relating to the settlement. ArcLight's obligations with respect to contract termination are set out in Paragraph __ of the Order. Capitalized terms used in the Order are defined in Paragraph I. of the Order.

If you wish to terminate your contract with respect to any or all of the terminaling services you purchase from ArcLight, please contact xxxxxxxxxxxx, Tel: xxxxxxxxxxxx, Email: xxxxxxxxxxxx. If you have any questions or concerns about these obligations, you may contact the staff of the Compliance Division, Bureau of

Analysis to Aid Public Comment

Competition, Federal Trade Commission, Washington, D.C., Tel:
202-326-xxxx.

Non-Public Appendix B**PA Terminals Agreement**

**[Redacted From the Public Record Version, But Incorporated
By Reference]**

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT****INTRODUCTION**

The Federal Trade Commission (“Commission”) has accepted from ArcLight Energy Partners Fund VI, L.P. (“ArcLight”), subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) designed to remedy the anticompetitive effects resulting from ArcLight’s proposed acquisition of Gulf Oil Limited Partnership (“Gulf”) and related assets from Cumberland Farms, Inc. (“Cumberland”). Under the terms of the proposed Decision and Order (“Order”) contained in the Consent Agreement, ArcLight must divest four of Gulf’s terminals located in Pennsylvania – in Mechanicsburg, Altoona, Pittston Township, and Williamsport – to Arc Logistics Partners, LP (“Arc Logistics”).

The Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the

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public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or make the Order final.

THE PARTIES

ArcLight invests in energy infrastructure. Through its wholly-owned subsidiary, Pyramid LLC, ArcLight owns and operates twelve light petroleum product (“LPP”) terminals in Pennsylvania. ArcLight uses its terminals to meet its own marketing needs and offers terminaling services to third parties for a fee.

Cumberland, one of the largest convenience store operators in the country, operates a petroleum marketing, terminaling, and distribution business through its Gulf subsidiary. Gulf owns and operates twelve LPP terminals in the Northeast, including seven in Pennsylvania. Gulf also uses its terminals to meet its own marketing needs and provides terminaling services to third parties for a fee.

THE PROPOSED ACQUISITION

Pursuant to two contingent Purchase and Sale Agreements dated May 15, 2015, ArcLight proposes to acquire Gulf, and certain other assets, from Cumberland (the “Acquisition”). The Commission’s Complaint alleges that the Acquisition, 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, by substantially lessening competition for gasoline and distillate terminaling services in relevant geographic markets within Pennsylvania.

THE RELEVANT MARKET

Terminals are critical to the efficient distribution of LPPs. Transporting bulk quantities of LPPs via pipeline or marine vessel is significantly less expensive on a per gallon basis than trucking LPPs the same distance. Terminals serve as the delivery points on pipeline and marine routes and are capable of receiving bulk

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quantities of LPPs, holding LPPs in storage tanks, and loading smaller quantities of LPPs onto tanker trucks for local delivery. Tanker trucks pick up product from the terminals through specialized loading systems and transport LPPs to retail locations and end-use customers. Terminating services include the off-loading, temporary storage, and dispensing of LPPs into trucks.

The Commission's Complaint alleges that the relevant product markets within which to analyze the Acquisition are gasoline terminating services and distillates terminating services. Gasoline terminating service customers can only use terminals that meet gasoline-specific environmental regulations. A terminal must have specialized equipment, including vapor recovery units and tanks with internal floating roofs, to offer gasoline terminating services. While distillate terminating customers may be able to use gasoline terminals, the reverse is not possible due to the more stringent regulatory requirements for the storage and handling of gasoline.

The Commission's Complaint alleges three relevant geographic markets in Pennsylvania in which to assess the competitive effects of the Acquisition: (1) Altoona, which includes terminals in Altoona; (2) Scranton, which includes terminals in Pittston Township and Edwardsville; and (3) Harrisburg, which includes terminals in Northumberland, Williamsport, Mechanicsburg, and Highspire.

The Acquisition would substantially increase concentration in relevant markets that are already highly concentrated. In the Altoona market, ArcLight and Gulf are the only firms that offer gasoline terminating services, and two of three firms that offer distillate terminating services. ArcLight and Gulf are two of only three firms that offer gasoline or distillate terminating services in the Scranton market. In the Harrisburg market, ArcLight and Gulf are two of three firms that offer gasoline terminating services, and two of four firms that offer distillate terminating services.

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EFFECTS OF THE ACQUISITION

The Acquisition would substantially lessen competition for terminaling services in the relevant markets by enabling ArcLight to exercise market power unilaterally, and enhancing the likelihood of collusion or coordinated interaction among the few remaining terminaling services providers. Post-acquisition, ArcLight would be the sole firm offering gasoline terminaling services in Altoona. It would own most of the LPP storage capacity in each of the other relevant markets and would be able to raise terminaling service fees or reduce access to terminaling services unilaterally. The remaining firms have limited ability to accommodate additional throughput customers and would likely be unable to constrain ArcLight from exercising market power. To the extent the remaining firms could offer some limited constraint on ArcLight's ability to exercise market power unilaterally, they are unlikely to do so because the transaction would increase their incentives to coordinate tacitly with ArcLight.

ENTRY CONDITIONS

Entry into the relevant markets would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects arising from the Acquisition. Barriers to entry are significant and include high sunk costs associated with the construction of a new terminal, and the substantial amount of time required to design, build, and permit a new facility. ArcLight has significant excess capacity in the relevant markets, and this capacity would also discourage new entry.

THE DECISION AND ORDER

The Order resolves the competitive concerns raised by the Acquisition by requiring that ArcLight divest Gulf's terminals in Altoona, Pittston Township, Mechanicsburg, and Williamsport. The Order requires ArcLight to divest to Arc Logistics, or another acquirer approved by the Commission, the four terminals and all associated assets, as well as enter into certain transitional arrangements necessary for the acquirer to become established and compete successfully in the relevant markets. ArcLight is

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required to divest the terminals within 20 days of closing the Acquisition.

Arc Logistics is a publicly-traded logistics service provider principally engaged in the terminaling, storage, throughput, and transloading of crude oil and LPPs. The company owns twelve LPP terminals in several states, not including Pennsylvania. To ensure that the acquirer has sufficient throughput at the divested terminals while it negotiates contracts with new terminal customers, the Order requires ArcLight to enter a transitional throughput agreement with Arc Logistics, whereby ArcLight commits to throughput certain volumes at Arc Logistics' terminals for two years. The Order also requires ArcLight to supply Arc Logistics with renewable fuels, at Arc Logistics' request, for a period of five years, an option that will help Arc Logistics attract throughput customers. Finally, the Order requires ArcLight to let any customer in the relevant markets out of its terminaling service contract without penalty for a period of six months after the divestiture, allowing Arc Logistics to compete for those customers.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the Order or to modify its terms in any way.

Complaint

IN THE MATTER OF

MYLAN N.V.CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND
SECTION 7 OF THE CLAYTON ACT*Docket No. C-4557; File No. 151 0129**Complaint, November 2, 2015 – Decision, February 19, 2016*

This consent order addresses the acquisition by Mylan N.V. of certain assets of Perrigo Company plc. The complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by lessening current and future competition in seven generic pharmaceutical markets in the United States. The consent order requires Mylan to divest all of its rights and assets to (1) acyclovir ointment; (2) bromocriptine mesylate tablets; (3) clindamycin phosphate/benzoyl peroxide gel; (4) hydromorphone hydrochloride extended release tablets; (5) liothyronine sodium tablets; (6) polyethylene glycol 3350 over-the-counter oral solution packets; and (7) scopolamine extended release transdermal patches to Alvogen, Inc.

Participants

For the *Commission*: Marc S. Lanoue, Eric Olson, Jasmine Y. Rosner, and David Von Nirschl.

For the *Respondent*: Yonatan Even and Christine Varney, Cravath, Swaine & Moore LLP.

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act (“FTC Act”), and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Mylan N.V. (“Mylan”), a company subject to the jurisdiction of the Commission, has made an offer to acquire the voting securities of Perrigo Company plc (“Perrigo”), a company subject to the jurisdiction of the Commission, in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, that such acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C.