

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: Timothy J. Muris, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary

In the Matter of

Conoco Inc.,
a corporation,

and

Phillips Petroleum Company,
a corporation.

Docket No.

DECISION AND ORDER

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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the Respondents have violated the said Acts, and that a Complaint should issue

controlled by ConocoPhillips, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. ConocoPhillips does not include DEFS as long as ConocoPhillips' proportionate ownership and other interests and rights in DEFS do not increase relative to what Phillips' proportionate ownership and other interests and rights were at the time Respondents executed the Agreement Containing Consent Orders.

D. "Respondents" means Conoco and Phillips, individually and collectively, and, after the Merger, ConocoPhillips.

E. "Commission" means the Federal Trade Commission.

F. "Agreement Containing Consent Orders" means the agreement executed by Respondents in this matter.

G. "Ancillary Products" means any product that is commonly sold in Gasoline Outlets other than Motor Fuels or Aviation Fuels.

H. "Aviation Fuels" means aviation gasoline and jet fuels.

I. "Assets To Be Divested" means (1) Phillips Woods Cross Assets, (2) Colorado Assets, (3) Propane Assets, (4) Phillips Spokane Terminal, (5) New Mexico Assets, and (6) Texas Assets.

J. "Blue Line" means the common carrier pipeline currently owned by the Phillips Pipe Line Company that extends from Borger, Texas, to East St. Louis, Illinois, and that serves the Propane Terminal Assets as delivery intermediate destinations.

K. "Branded Ancillary Products" means any Ancillary Product that is sold under a brand name owned by or licensed to Respondents.

L. "Branded Aviation Fuels" means Aviation Fuels that are sold under a brand name owned by or licensed to Respondents.

M. "Branded Fuels" means Motor Fuels that are sold

P.

distribution, or sale of Conoco Branded Fuels as branded products), and a non-exclusive right to use in the operation of the refinery and in the production, marketing, distribution, and sale of products produced at the refinery all other intellectual property used in the operation of the refinery and in the production, marketing, distribution, or sale of the products produced at the refinery (excluding that used solely in the marketing, distribution, or sale of Conoco Branded Fuels as branded products);

4. all licenses and permits used in the operation of the refinery and in the production, marketing, distribution, or sale of the products produced at the refinery (excluding those used solely in the marketing, distribution, or sale of Conoco Branded Fuels as branded products);
5. all contracts, agreements, and understandings relating to the transportation, storage, Terminaling, marketing, distribution, or sale of the products produced at the refinery (excluding those relating solely to the marketing, distribution, or sale of Conoco Branded Fuels as branded products), which includes but is not limited to all agreements under which Conoco receives crude oil or other inputs at or for the refinery; the resid processing agreement with Frontier Refining, Inc.; Phillips' contractual right to receive refined products from Conoco at Conoco's Grand Junction, Colorado, terminal pursuant to an exchange agreement, and, at the acquirer's option, all exchange agreements involving the refinery (but only to the extent the exchange agreement involve products produced at the refinery); provided, however, that if any such contract, agreement, or understanding includes matters, terms, or locations not related to the Conoco Denver Refinery Assets, then only those provisions relating to the Conoco Denver Refinery Assets shall be included;
6. all joint ventures relating to the operation of the refinery and in the production, marketing, distribution, or sale of the products produced at the refinery (excluding those relating solely to the marketing, distribution, or sale of Conoco Branded Fuels as branded products);
7. all plans (including proposed and tentative plans, whether or not adopted), specifications, drawings, and other assets (including the non-exclusive right to use patents, know-how, and other intellectual property relating to such plans) related to the operation of the Denver refinery.

“Conoco Denver Refinery Assets” does not include:

- a. the assets listed in Exhibit A;
- b. Conoco's lease of a connecting line from Stapleton Airport to Chases's Aurora, Colorado, terminal (which is connected by common carrier pipeline to Denver International Airport), provided that, Respondents instead establish and divest to the acquirer a pipeline connection to an existing Phillips line to provide access to Chase's Aurora, Colorado, terminal (which is connected by common carrier pipeline to Denver

International Airport) at a capacity equal to or greater than the capacity Conoco had to Chase's Aurora, Colorado, terminal, and Respondents enter into a connection agreement with or assignable to acquirer at terms consistent with standard industry practices;

- c. Conoco's interest in the KPAC Joint Venture, subject to the requirements of Paragraph III.I.;
 - d. Conoco's interests in the Jupiter Joint Venture, subject to the requirements of Paragraph III.J.; and
 - e. any books and records that Respondents are required by law to retain, provided that Respondents deliver at least one copy of such books and records to the acquirer.
- R. "Conoco Existing Supply Agreements" means all agreements, in effect as of the date Respondents executed the Agreement Containing Consent Orders, between Conoco and Conoco Branded Sellers relating to such Person's right or obligation to sell or resell Branded Fuels using any trademark, trade name, or logo owned by or licensed to Conoco at a Gasoline Outlet, including but not limited to, each Branded Fuels supply contract, distributor agreement, dealer agreement, image agreement, amortization agreement, jobber outlet incentive program contract.
- S. "ConocoPhillips DEFS Board Members" means all board members appointed by ConocoPhillips, Conoco, or Phillips to the board of directors of DEFS.
- T. "ConocoPhillips Non-Public GCF Information" means Non-Public Information relating to GCF.
- U. "Cost" means all direct costs, including raw materials, labor, utilities, and third-party contract services actually used to provide services to the acquirer of the relevant business. "Cost" also includes the pro rata share of the cost of the capital employed in the relevant facility and those indirect costs related to operating the relevant facility, including taxes, depreciation, overhead, and third-party contracts. When calculating the pro rata shares of the costs of a facility, Respondents shall use the following formula: the amount of capacity used by the acquirer of the relevant business divided by the then-current total capacity utilization of the relevant facility.
- V. "DEFS" means Duke Energy Field Services, LLC, a limited liability company, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 370 17th Street, Suite 900, Denver, Colorado 80202, its directors, officers, employees, agents and representatives.
- W. "DEFS Non-Public Fractionation Information" means Non-Public Information relating to Enterprise or Mont Belvieu I.

- X. “Duke” means Duke Energy Corporation, a corporation, organized, existing and doing business under and by virtue of the laws of the State of North Carolina, with its offices and principal place of business located at 526 South Church Street, Charlotte, North Carolina 28202, its directors, officers, employees, agents and representatives.
- Y. “Duke DEFS Board Members” means all board members appointed by Duke to the board of directors of DEFS.
- Z. “Effective Date of Divestiture” means the date on which the applicable divestiture is consummated. Each Asset To Be Divested may have its own Effective Date of Divestiture.
- AA. “Enterprise” means the fractionating facility located at 10207 Farm Road, FM 1942, Mont Belvieu, Chambers County, Texas.
- AB. “FERC” means the United States Federal Energy Regulatory Commission.
- AC. “Gas Gathering” means pipeline transportation, for oneself or other persons, of natural gas over any part or all of the distance between a well and a gas transmission pipeline or gas processing plant.
- AD. “Gasoline Outlet” means a business establishment from which Motor Fuels are sold to the general public.
- AE. “GCF” means the fractionating facility owned by Gulf Coast Fractionators and located 1.5 miles west of Highway 146 on Farm Road FM 1942, Mont Belvieu, Chambers County, Texas.
- AF. “KPAC Joint Venture” means the asphalt joint venture (known as the Koch Performance Asphalt Company (“KPAC”)) between Conoco and Koch.
- AG. “Maljamar Processing Plant” means Conoco’s gas processing facility located at 1001 Conoco Road, Maljamar, New Mexico, and includes:
1. all of Conoco’s interest in all tangible assets used in the operation of the facility, including, but not limited to, all facilities, physical assets and pipelines used in the operation of the facility;
 2. all books, records, and documents relating to the facility and to the products processed at the facility; provided, however, that if any such books, records, or documents also include matters not related to the facility or to products processed at the facility, then only those portions of the books records and

Assets” does not include: (1) the assets listed in Exhibit B; or (2) any of Conoco’s ownership interest in real estate related to the assets described in (1), above, provided that Respondents shall grant the acquirer of the New Mexico Assets all easements, rights of way, or other rights necessary to operate the New Mexico Assets.

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

- AU. “Phillips Branded Seller” means any Person (other than Phillips) that has, by virtue of contract or agreement in effect at the time Respondents executed the Agreement Containing Consent Orders, the right to sell Motor Fuels using any trademark, trade name, or logo owned or licensed by Phillips, or to resell Motor Fuels to any such Person. “Phillips Branded Seller” includes marketers, distributors, jobbers, contract dealers and open dealers.
- AV. “Phillips Colorado Retail Assets” means all of Phillips Retail Assets in Colorado as of the date Respondents executed the Agreement Containing Consent Orders, except those Gasoline Outlets subject to an agreement dated June 13, 2002, between Phillips

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

- AY. “Phillips Wichita Terminal Assets” means an undivided 50% interest in Phillips’ assets relating to Terminaling in Wichita, Kansas. “Phillips Wichita Terminal Assets” does not include Phillips proprietary trade names, trademarks and identification signs, any real estate, any refined petroleum products inventory, any refined petroleum products storage tanks that support or are used for or by Phillips in the operation of its Blue Line, Gold Line, or Standish Line, or any intellectual property.
- AZ. “Phillips Woods Cross Assets” means the (1) Phillips Woods Cross Refinery Assets; and (2) Phillips Woods Cross Retail Assets.
- BA. “Phillips Woods Cross Refinery Assets” means Phillips refinery located at Woods Cross, Utah, and includes:
1. all of Phillips’ interest in all tangible assets used in the operation of the refinery, including any leasehold, ownership, fee, or any other interest in real estate at the refinery grounds in Woods Cross, Utah, and in the production, marketing, distribution, or sale of the products produced at the refinery, including, but not limited to:
 - a. the plant;
 - b. all of Phillips’ interest in the Phillips Woods Cross refinery tanks;
 - c. the 4-mile crude oil pipeline between Chevron Salt Lake Station and the refinery;
 - d. any other crude oil pipelines connected to the refinery;
 - e. the refined products pipeline from the refinery to the Chevron manifold;
 - f. the truck loading rack;
 - g. all other refined products pipelines into or from the refinery;
 - h. Phillips’ interests in the Boise terminal and the Burley terminal (subject to Paragraph II.K.);
 - i. loading facilities; and
 - j. at the acquirer’s option, Phillips’ allocation on the Chevron pipeline;
 2. all books, records, and documents relating to the refinery and to the production, marketing, distribution, or sale of products produced at the refinery; provided, however, that if any such books, records, or documents also include matters not related to the refinery or products produced at the refinery, then only those portions of the books records and documents that relate to the refinery or the products produced at the refinery shall be included;
 3. an exclusive right to all intellectual property used solely in the operation of the refinery or in the production, marketing, distribution, or sale of the products produced at the refinery, and a non-exclusive right to use in the operation of the refinery and in the production, marketing, distribution, or sale of the products produced at the refinery all other intellectual property used in the operation of

the Ringer, Kansas, terminal; and (6) an undivided 50% ownership interest in the Jefferson City, Missouri, and East St. Louis, Illinois, terminals, including the right to operate these terminals or, at the option of the acquirer, that portion of the terminal(s) used in Propane Terminaling.

- BE. “Propane Business” means (1) the Propane Terminal Assets and (2) all propane supply agreements between Phillips and its customers at, and to the extent they relate to the supply of propane from, Phillips’ terminals in Jefferson City, Missouri, and East St. Louis, Illinois, effective as of the date Respondents executed the Agreement Containing Consent Orders, including, but not limited to, all present and historical reports, data and information relating to those supply agreements.
- BF. “Propane Support Personnel” means persons, employees, agents, contractors or affiliates of Respondents who are involved, directly or indirectly, in satisfying Respondents’ obligations under propane supply agreements or otherwise in the transport of propane or the operation of the Propane Terminal Assets. “Propane Support Personnel” also includes persons, employees, agents, contractors or affiliates who have access to Non-Public Propane Information of the acquirer of the Propane Business.
- BG. “Propane Terminal Assets” means all of Phillips’ interest in Phillips’ propane terminal operations from the Jefferson City, Missouri, and East St. Louis, Illinois, terminals, and includes:
1. all of Phillips’ interest in all tangible assets used exclusively in Propane Terminaling, including the transportation of propane from the Blue Line, including, but not limited to
 - a. offices, buildings, warehouses;
 - b. equipment, machinery, fixtures, tools, spare parts; and
 - c.

9. a general right to use common assets owned by Respondents at each propane terminal location that exist in support of the propane terminal operations and are required on a normal and routine basis to own the Propane Terminal Assets;
and
10. an exclusive right to all intellectual property used solely in the operation of the Propane Terminal Assets or in the production, marketing, distribution, or sale of

- a. all permits, licenses, consents, contracts, understandings, and agreements used in the operation of the ancillary businesses;
- b. the exclusive right to all intellectual property used solely in the operation of the ancillary business, and the non-exclusive right to use in the operation of the ancillary businesses all other intellectual property in the operation of the ancillary businesses.

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

- a. Respondents’ proprietary trademarks, trade names, logos, trade dress, or identification signs;
- b.

1. in Sutton County, Texas, T.W.N.G.R.R. Co. Block A-9, sections 7, 8 and 10; T.W.N.G.R.R. Co. Block 9, sections 26-29, 31-39, 43-46, 72 and 100; H.E.&W.T.R.R. Block A, sections 1, 31-35 and 63; G.C.&S.F.R.R. Co., sections 10-15; H.E.&T.R.R. Co. Block B, sections 14, 15, 23, 24, 48, 59, 69-72 and 134-138; E.L.&R.R.R.R. Co., sections 13-20; and G.C.&S.F.R.R. Co. Block D, sections 68-74;
2. in Schleicher County, Texas, G.C.&S.F.R.R. Co. Block 2, sections 18, 23, 24 and 27; G.C.&S.F.R.R. Co. Block 5, sections 4-8; G.C.&S.F.R.R. Co. Block A, sections 4, 13-28, 31-37, 40-44 and 56½; G.C.&S.F.R.R. Co. Block D, sections 5, 57, 59-61 and 64-68; E.L.&R.R.R.R. Co., sections 2 and 194½;

storage tanks into tank trucks or transport trailers for the throughput customer at Phillips' refined products terminal in Wichita, Kansas.

II.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest the Phillips Woods Cross Assets to a single acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission, absolutely and in good faith and at no minimum price, within twelve (12) months from the date Respondents executed the Agreement

to Phillips, and (ii) used by Phillips or Phillips Branded Sellers in Utah, Idaho, Wyoming, and Montana as of the date Respondents executed the Agreement Containing Consent Orders, in connection with the sale of Ancillary Products elsewhere in Utah, Idaho, Wyoming, and Montana;

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

2. at the end of the ninth year after the Effective Date of Divestiture of the Phillips Woods Cross Assets, Respondents shall offer to meet with the acquirer to discuss a renewal of the agreement;
3. Phillips' proprietary branded and other non-proprietary credit card services, additive, and such brand support as the acquirer may choose to purchase at Phillips' costs in connection with the provision of credit card services, additive, and brand support; and
4. Ancillary Products acquired from Respondents for resale in Utah, Idaho, Wyoming, and Montana at commercial, arms'-length terms no less favorable than those given by Respondents to other wholesale purchasers who buy Ancillary Products of like quantity, grade, and quality from Respondents, but permitting differences in price that arise from Respondents' differences in manufacturing, purchasing, shipping or storage costs, if any.

D. Respondent may include in the agreement with the acquirer of the Phillips Woods Cross Assets a requirement that the acquirer:

1. take commercially reasonable steps to protect the integrity of any trademark, tradename or logo licensed to the acquirer of the Phillips Woods Cross Assets pursuant to this Paragraph; and
2. comply with all standards and requirements relating to the display and presentation of trademarks, tradenames, or logos licensed to the acquirer of the Phillips Woods Cross Assets pursuant to this Paragraph if such standards or

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

- J. In the event that Respondents are unable to satisfy all conditions necessary to divest any intangible asset, Respondents shall: (1) with respect to permits, licenses, or other rights granted by governmental authorities (other than patents), provide such assistance as the acquirer may reasonably request in the acquirer's efforts to obtain comparable permits, licenses or rights, and (2) with respect to other intangible assets (including patents and contractual rights), substitute equivalent assets or arrangements, subject to the prior approval of the Commission. A substituted asset or arrangement will not be deemed equivalent unless it enables the Woods Cross refinery to perform the same function at the same or less cost.

- K. In the event that Respondents are unable to divest the Phillips interest in the Boise or Burley terminals solely due to the failure of any co-owner to waive its preferential rights should those rights exist (and only after Respondents have used best efforts to obtain such waiver), Respondents shall enter into a substitute equivalent arrangement or agreement, subject to the prior approval of the Commission, such as a throughput arrangement, a lease agreement, or any other arrangement to enable the acquirer of the

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the proposed Merger as alleged in the Commission's Complaint. A further purpose of this Paragraph is to ensure that the acquirer of the Phillips Woods Cross Assets has the same capabilities and incentives as did Phillips prior to the Merger to expand and develop alternative sources of Motor Fuels and other light petroleum products for the Northern Utah market as alleged in the Commission's Complaint and is able to take control of the assets and, with minimal additional investment, compete as aggressively as did Phillips prior to the Merger.

III.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest the Colorado Assets to a single acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission, absolutely and in good faith and at no minimum price, within twelve (12) months from the date Respondents executed the Agreement Containing Consent Orders.
- B. Respondents shall, upon the Effective Date of Divestiture of the Colorado Assets, assign to the acquirer of the Colorado Assets all Phillips Colorado Supply Agreements.
- C. Respondents shall provide the acquirer of the Colorado Assets (and shall enter into an agreement with the acquirer of the Colorado Assets, to be effective upon the Effective Date of Divestiture of the Colorado Assets, which shall be subject to the prior approval of the Commission, that includes terms that provide for) the following:
 1. for a period of ten (10) years from the Effective Date of Divestiture of the Colorado Assets, at no payment by the acquirer to the Respondents:
 - a. in connection with the sale of Motor Fuels, the exclusive right to use in Colorado all brand names that are (i) owned by or licensed to Phillips, and (ii) used by Phillips or Phillips Branded Sellers in Colorado as of the date Respondents executed the Agreement Containing Consent Orders, including the exclusive rights to use Phillips' identification signs, trademarks, and other trade indicia, and the non-exclusive right to accept and process Phillips credit cards in connection with such sales of Phillips Branded Fuels;
 - b. in connection with the sale of Ancillary Products, the exclusive right to use all brand names that are (i) owned by or licensed to Phillips, and (ii) used by Phillips or Phillips Branded Sellers in Colorado as of the date Respondents executed the Agreement Containing Consent Orders, at all Gasoline Outlets owned or operated by the acquirer in Colorado; and the non-exclusive right to use all brand names that are (1) owned by or licensed to Phillips, and (2) used by Phillips or Phillips Branded

Sellers in Colorado as of the date Respondents executed the Agreement Containing Consent Orders, in connection with the sale of Ancillary Products elsewhere in Colorado;

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

2. at the end of the ninth year after the Effective Date of Divestiture of the Colorado Assets, Respondents shall offer to meet with the acquirer to discuss a renewal of the agreement;
3. Phillips' proprietary branded and other non-proprietary credit card services, additive, and such brand support as the acquirer may choose to purchase at Phillips' costs in connection with the provision of credit card services, additive, and brand support; and
4. Ancillary Products acquired from Respondents for resale in Colorado at commercial, arms'-length terms no less favorable than those given by Respondents to other wholesale purchasers who buy Ancillary Products of like quantity, grade, and quality from Respondents, but permitting differences in price that arise from Respondents' differences in manufacturing, purchasing, shipping or storage costs, if any.

D. Respondent may include in the agreement with the acquirer of the Colorado Assets a requirement that the acquirer:

1. take commercially reasonable steps to protect the integrity of any trademark, tradename or logo licensed to the acquirer of the Colorado Assets pursuant to this Paragraph; and
2. comply with all standards and requirements relating to the display and presentation of trademarks, tradenames, or logos licensed to the acquirer of the Colorado Assets pursuant to this Paragraph if such standards or requirements are also imposed on Respondents' sellers of Phillips Branded Fuels in other geographies.

- E. Respondents shall divest the Colorado Assets, assign all Phillips Colorado Supply Agreements, and enter into the agreements as required by Paragraphs III.A., III.B., III.C., and III.D. only to a single acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission; provided, however, that, with respect to assets that are to be divested or agreements entered into pursuant to this Paragraph at the acquirer's option, Respondents need not divest such assets or enter into such agreements if the acquirer chooses not to acquire such assets or enter into such agreements and the Commission approves the divestiture without such assets or agreements.
- F. Respondents shall offer the acquirer of the Colorado Assets an indemnity, subject to the prior approval of the Commission and to be effective upon the Effective Date of Divestiture of the Colorado Assets, which indemnity shall allocate among Respondents and the acquirer, on such terms as the Respondents and the acquirer agree, responsibility with respect to potential claims and liabilities arising out of failure to comply with local, state, and federal environmental obligations in connection with the Colorado Assets that are divested or assigned pursuant to this Paragraph.
- G. Notwithstanding the provisions of Paragraph III.C., in the event that the acquirer of the Phillips Colorado Retail Assets ceases using any Phillips brand in Colorado pursuant to the agreement conveying the right to use that Phillips brand described in Paragraph III.C., Respondents shall have the right to use that Phillips brand in Colorado beginning two (2) years after the acquirer of the Colorado Assets ceases to use that Phillips brand in Colorado.
- H. Respondents shall, at the acquirer's option and subject to the prior approval of the Commission, establish and divest to the acquirer a pipeline connection to an existing Phillips line to provide access to Denver International Airport at a capacity equal to or greater than the capacity Conoco had to Denver International Airport, and Respondents shall enter into a connection agreement relating to the Phillips line with or assignable to the acquirer at terms consistent with standard industry practices.
- I. Respondents shall, at the acquirer's option and subject to the prior approval of the Commission, assign the asphalt supply agreement for the Conoco Denver Refinery Assets between Conoco and K.C. Asphalt, LLC, to the acquirer.
- J. Respondents shall, at the acquirer's option and subject to the prior approval of the Commission, enter into a substitute agreement or arrangement with the acquirer that provides at least an equivalent commercial benefit to that which Conoco receives from the portion of the Jupiter Joint Venture relating to the Conoco Denver Refinery Assets.

IV.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest the Propane Business absolutely and in good faith and at no minimum price by January 15, 2003.
- B. Respondents shall divest the Propane Business to and enter into the agreements required by Paragraph IV.D. with a single acquirer who receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.
- C. Respondents shall:
 - 1. ensure that the acquirer of the Propane Business has access to the Blue Line, the Shocker Line, and the Shocker Station to ship propane to the Jefferson City, Missouri, or East St. Louis, Illinois, terminals on the same terms as any similarly situated Blue Line and Shocker Line shipper, including but not limited to any affiliate of Respondents;
 - 2. not impede, deter, delay, prevent, or otherwise inhibit, directly or indirectly, (including discriminating against or disfavoring relative to any other similarly situated Blue Line and Shocker Line shipper) the acquirer of the Propane Business from shipping, under its own name, on the Blue Line and Shocker Line to the Jefferson City, Missouri, or East St. Louis, Illinois, terminals;
 - 3. submit to the Commission, at the same time Respondents submit to the FERC, a copy of any rate filing that may result in an increase in the tariff rate for the transportation of propane on the Blue Line and the Shocker Line from any point of origin to the Jefferson City, Missouri, and East St. Louis, Illinois, terminals;
 - 4. not seek authority from the FERC to charge or set market-based rates on the Blue Line or Shocker Line without the prior approval of the Commission;
 - 5. file for and make reasonable efforts to obtain FERC approval for a published tariff rate to transport propane on the Blue Line from East St. Louis, Illinois, to Jefferson City, Missouri. Such published tariff rate shall apply only to westward transportation of propane during the period in which other westward published tariff rates on the Blue Line apply. Such filing shall not seek market-based rates; and
 - 6. provide the acquirer of the Propane Business an unqualified right to expand the propane storage and throughput capacity of the Propane Terminal Assets within a defined area agreed to by Respondents and the acquirer, subject to the prior approval of the Commission. The acquirer shall bear only direct costs related to expanding the Propane Terminal Assets, including the costs of obtaining all necessary permits and licenses. Respondents shall bear any and all other costs

associated with the expansion, including but not limited to costs to remove and/or relocate any facilities or assets from the designated and agreed expansion areas that would interfere with such expansion.

- D. Respondents shall, by the Effective Date of Divestiture of the Propane Business, subject to the prior approval of the Commission, enter into:
 - 1. A propane supply contract with the acquirer of the Propane Business containing, among other things, the following provisions:
 - a. an option to purchase propane or acquire propane through exchanges

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

V.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest the Phillips Spokane Terminal absolutely and in good faith and at no minimum price, within nine (9) months from the date Respondents executed the Agreement Containing Consent Orders.
- B. Respondents shall divest the Phillips Spokane Terminal to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.
- C. Until the Effective Date of Divestiture of the Phillips Spokane Terminal, Respondents shall take such actions as are necessary to maintain the viability and marketability of the Phillips Spokane Terminal and to prevent the destruction, removal, wasting, deterioration, or impairment of the Phillips Spokane Terminal, except for ordinary wear and tear.
- D. Respondents shall offer the acquirer of the Phillips Spokane Terminal an indemnification agreement.

VI.

IT IS FURTHER ORDERED that:

- A. Respondents shall, within six (6) months from the date Respondents executed the Agreement Containing Consent Orders, enter into a Wichita Refined Products Throughput Agreement that receives the prior approval of the Commission with Williams Pipe Line Company, LLC (or another designated subsidiary of The Williams Companies Inc.) or with a single throughput customer that receives the prior approval of the Commission.
- B. The Wichita Refined Products Throughput Agreement shall include, subject to the prior approval of the Commission, without limitation, the following terms:
 - 1. no minimum volume requirement;
 - 2. a maximum throughput volume of 8,500 barrels per day;
 - 3. a term of no less than ten (10) years;
 - 4. for the acquisition of additive and information technology services; and
 - 5. an option to purchase the Phillips Wichita Terminal Assets, including if the acquirer exercises such option, a right to expand the capacity of such loading racks and storage tanks on the terminal property at the acquirer's own risk, cost, and expense; provided, however, that Phillips may remain the operator of the Phillips Wichita Terminal Assets.
- C. The purpose of this Paragraph is to ensure the continued use of the Phillips Wichita Terminal Assets in the same business in which they were engaged at the time of the announcement of the proposed Merger, and to remedy the lessening of competition in the Terminaling of gasoline and other petroleum products in Wichita, Kansas, resulting from the proposed Merger, as alleged in the Commission's Complaint.

VII.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest the New Mexico Assets absolutely and in good faith and at no minimum price within nine (9) months from the date Respondents executed the Agreement Containing Consent Orders.
- B. Respondents shall divest the New Mexico Assets to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

- C. Until the Effective Date of Divestiture of the New Mexico Assets, Respondents shall take such actions as are necessary to maintain the viability and marketability of such assets and to prevent the destruction, removal, wasting, deterioration or impairment of such assets, except for ordinary wear and tear.
- D. The purpose of this Paragraph is to ensure the continued use of the New Mexico Assets in the same business in which they were engaged at the time of the announcement of the proposed Merger, and to remedy the lessening of competition in Gas Gathering resulting from the Merger, as alleged in the Commission's Complaint.

VIII.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest the Texas Assets absolutely and in good faith and at no minimum price within nine (9) months from the date Respondents executed the Agreement Containing Consent Orders.
- B. Respondents shall divest the Texas Assets to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.
- C. Respondents shall, at the acquirer's option and subject to the prior approval of the Commission, enter into an agreement with the acquirer of the Texas Assets to process natural gas gathered by the Texas Assets, such agreement to include, without limitation, the following terms:
 - 1. the natural gas shall be processed at the Mertzon Facility;
 - 2. the processing fee shall not exceed Cost of processing;
 - 3. the amount to be processed on a daily basis shall be up to the amount gathered on the Texas Assets as of the date Respondents executed the Agreement Containing Consent Orders;
 - 4. the term shall be no less than seven (7) years;
 - 5. the agreement shall be subject to cancellation by the acquirer with no more than twelve (12) months' notice; and
 - 6. at the acquirer's option and subject to the prior approval of the Commission, the agreement shall provide for the transportation at Cost to the Mertzon Facility of natural gas gathered on the Texas Assets.
- D. Until the Effective Date of Divestiture of the Texas Assets, Respondents shall take such actions as are necessary to maintain the viability and marketability of such assets and to prevent the destruction, removal, wasting, deterioration or impairment of such assets, except for ordinary wear and tear.

IT IS FURTHER ORDERED that:

- A. If Respondents fail to complete one or more of the divestitures required by Paragraphs II through VIII of this Order within the time period specified therein, the Commission may appoint one or more Divestiture Trustees to divest the Assets To Be Divested that have not been divested to an acquirer or acquirers approved by the Commission in a manner approved by the Commission. The Divestiture Trustee will have the authority and responsibility to divest the Assets To Be Divested absolutely and in good faith and at no minimum price, and with the Commission's prior approval; provided, however, that if Respondents fail to comply with its obligations under Paragraph IV.A. within the time period specified therein, the Divestiture Trustee appointed by the Commission pursuant to this Paragraph X. shall divest the Propane Alternate Assets subject to Respondents' right to lease back from the acquirer of the Propane Alternate Assets the Ringer, Kansas, terminal and all other tangible and non-tangible assets included in the Propane Alternate Assets other than the Propane Business, on commercially reasonable terms agreed to by the acquirer and subject to the prior approval of the Commission. Neither the decision of the Commission to appoint a Divestiture Trustee, nor the decision of the Commission not to appoint a Divestiture Trustee, to divest any of the assets under this Paragraph X shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45 (l), or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.
- B. If a Divestiture Trustee is appointed by the Commission or a court pursuant to Paragraph X of this Order to divest the Assets To Be Divested, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. The Commission shall select the trustee or trustees, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.
 2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Assets To Be Divested.
 3. Within ten (10) days after appointment of the trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the

trustee all rights and powers necessary to permit the trustee to effect the divestitures required by this Order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph X.B.3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court, provided; however, the Commission may extend this period only two (2) times.
5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Assets To Be Divested or to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.
6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture shall be made in the manner and to the acquirer or acquirers as set out in Paragraphs II through VIII of this Order, as applicable; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Respondents from among those approved by the Commission.
7. The trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondents, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Assets To Be Divested.
8. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable

fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph X.A. of this Order.
10. The Commission or, in the case of a court-appointed trustee, the court, may on

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

XIII.

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

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

XIV.

IT IS FURTHER ORDERED that, if (1) within the time period required for divestiture or other relief pursuant to Paragraphs II, III, IV.A., and V through VIII of this Order, Respondents have submitted a complete application in support of the divestiture or other relief (including the acquirer, manner of divestiture and all other matters subject to Commission approval) as required by Paragraphs II, III, IV.A., and V through VIII; and (2) the Commission has approved the divestiture or other relief and has not withdrawn its acceptance; but (3) Respondents have certified to the Commission prior to the expiration of the applicable time period that (a) notwithstanding timely and complete application for approval by Respondents to the State or District under an applicable consent decree to which the State (or District) and Respondents are parties, the State or District has failed to approve the divestiture or other relief that is also required under this Order, or (b) a State or District has filed a timely motion in court seeking to enjoin the proposed divestiture or other relief under an applicable consent decree to which the State (or District) and Respondents are parties, then, (4) with respect to the particular divestiture or other relief that remains unconsummated, the time in which the divestiture or other relief is required under this Order to be complete shall be extended (a) for ninety (90) days or (b) until the disposition of the motion filed by the State or District pertaining to the proposed divestiture or other relief, whichever is later. During such period of extension, Respondents shall exercise utmost good faith and commercially reasonable best efforts to resolve the concerns of the particular State.

XV.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date the Order becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL:

ISSUED: