

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour
Jon Leibowitz

<hr/>)
In the Matter of)
)
MAGELLAN MIDSTREAM)
PARTNERS, L.P.,)
a limited partnership,)
)
and)
)
SHELL OIL COMPANY,)
a corporation.)
<hr/>)

Docket No. C-4122

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Magellan Midstream Partners, L.P. (“Magellan”) of certain refined product pipeline and terminaling assets from Respondent Shell Oil Company (“Shell”) (collectively “Respondents”), and Respondents 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 Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

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

The Commission, having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Hold Separate and Maintain Assets (“Hold Separate”) and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of

- D. “Acquisition” means the proposed acquisition by Magellan of certain refined petroleum assets from Shell pursuant to a Purchase and Sale Agreement dated June 23, 2004, including but not limited to the Oklahoma City Terminal.
- E. “Closing Date” means the date on which Magellan (or a trustee) and an Acquirer close on a transaction to divest the Oklahoma City Terminal as required by Paragraph II. of this Order.
- F. “Commission” means the Federal Trade Commission.
- G. “Oklahoma City Metropolitan Area” means the Oklahoma City Metropolitan Statistical Area as defined by the U.S. Office of Management and Budget as of the date Respondents execute the Consent Agreement in this matter.
- H. “Oklahoma City Terminal” means all assets relating to Shell’s refined petroleum product storage and distribution terminal located in Oklahoma City (Del City), Oklahoma, including but not limited to:
 - 1. All of Shell’s rights, title, and interest in and to all tangible or intangible assets that are located at, or used in connection with Terminating at, the Oklahoma City Terminal, including but not limited to:
 - a. real estate, including existing rights of way and easements;
 - b. storage tanks;
 - c. local connector pipelines;
 - d. loading and unloading racks, equipment and facilities;
 - e. inventory, equipment, pumps, compressors, machinery, fixtures, tools, and spare parts; and
 - f. offices, buildings, and warehouses;
 - 2. An exclusive right to all intellectual property used solely in the operation of the terminal, and a non-exclusive license to all other intellectual property acquired by or transferred to Magellan as part of the Acquisition and necessary for the operation of the terminal;
 - 3. All governmental licenses and permits used in the operation of the terminal and transferred to Magellan as part of the Acquisition;

4. All storage, throughput, and Terminaling contracts, and all other contracts, agreements or understandings relating to the terminal or its operation; and
 5. All books, records, and files.
- I. "Person" means any individual, partnership, firm, trust, association, corporation, joint venture, unincorporated organization, or other business or governmental entity.
 - J. "Respondents" means Magellan and Shell, individually and collectively.
 - K. "Terminaling" means the services performed by a facility that provides temporary storage of refined petroleum products received via pipeline, marine vessel, tank trucks, rail, or transport trailers, and the re-delivery of refined petroleum products from storage tanks into tank trucks, rail cars, transport trailers, or pipelines.

II.

IT IS FURTHER ORDERED that:

- A. Respondent Magellan shall divest the Oklahoma City Terminal absolutely and in good faith, at no minimum price, within six (6) months from the date Magellan executed the Consent Agreement.
- B. Respondent Magellan shall divest the Oklahoma City Terminal only 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. Respondent Shell shall cooperate with and shall not interfere with Respondent Magellan's efforts to divest the Oklahoma City Terminal.
- D. For a period of not less than three (3) months after the Closing Date, Respondent Shell shall utilize the Oklahoma City Terminal for Terminaling services for all of its branded and unbranded refined petroleum product requirements in the Oklahoma City Metropolitan Area.
- E. Prior to three (3) months after the Closing Date, Respondents shall not enter into or maintain, or attempt to enter into or maintain, any agreement or understanding relating to the movement or transfer of Shell's refined petroleum products volume from the Oklahoma City Terminal to any other Terminaling facility owned, leased or operated by Magellan, and shall not discuss or negotiate with each other any potential agreement or understanding relating to such movement or transfer.

- F. In the event that Respondent Magellan is unable to satisfy all conditions necessary to divest any intangible asset, Respondent Magellan 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 to be equivalent unless it enables the terminal to perform the same function at the same or less cost.
- G. The purpose of this Paragraph II is to ensure the continued use of the Oklahoma City Terminal in the same business in which it was engaged at the time of the announcement of the proposed Acquisition, to ensure that the Acquirer of the Oklahoma City Terminal has an opportunity to enter into a Terminating agreement with Shell for the volumes at the Oklahoma City Terminal, and to remedy the lessening of competition in the Terminating of gasoline, diesel fuel, and other refined petroleum products resulting from the proposed Acquisition, as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. If Respondent Magellan has not divested the Oklahoma City Terminal, absolutely and in good faith, as required by Paragraph II. of this Order, the Commission may appoint a trustee to divest the Oklahoma City Terminal in a manner that satisfies the requirements of Paragraph II. of this Order. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent Magellan shall consent to the appointment of a trustee in such action to divest the Oklahoma City Terminal in accordance with the terms of this Order. Neither the appointment of a trustee nor a decision not to appoint a 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 trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent Magellan to comply with this Order.
- B. The Commission shall select the trustee, subject to the consent of Respondent Magellan, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent Magellan has 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 Respondent Magellan of the identity of any proposed trustee, Respondent Magellan shall be deemed to have consented to the selection of the proposed trustee.

- C. Within ten (10) days after appointment of a trustee, Respondent Magellan shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.
- D. If a trustee is appointed by the Commission or a court pursuant to this Order, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:
 - 1. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Oklahoma City Terminal as required by this Order.
 - 2. The 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 trustee has submitted a divestiture plan or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period for no more than two (2) additional periods of twelve (12) months each.
 - 3. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Oklahoma City Terminal and to any other relevant information, as the trustee may request. Respondents shall develop such financial or other information as the 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. Respondents shall cooperate with the efforts of the trustee to divest the Oklahoma City Terminal. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph III. in an amount equal to the delay, as determined by the Commission.
 - 4. The 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 Magellan's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made only in a manner that receives the prior approval of the Commission and only to an Acquirer that receives the prior

approval of the Commission; *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 selected by Respondent Magellan from among those approved by the Commission; *provided further, however*, that Respondent Magellan shall select such entity within five (5) days of receiving notification of the Commission's approval.

5. The trustee shall serve, without bond or other security, at the cost and expense of Respondent Magellan, on such reasonable and customary terms and conditions as the Commission may set. The trustee shall have the authority to employ, at the cost and expense of Respondent Magellan, 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, of the account of the trustee, including fees for the trustee's services, all remaining monies shall be paid at the direction of Respondent Magellan, and the trustee's power shall be terminated. The compensation of the trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of the Oklahoma City Terminal as required by this Order.
6. Respondent Magellan 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 losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.
7. The trustee shall have no obligation or authority to operate or maintain the Oklahoma City Terminal.
8. The trustee shall act in a fiduciary capacity for the benefit of the Commission.
9. The trustee shall report in writing to the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.
10. Respondent Magellan may require the trustee and each of the trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such

agreement shall not restrict the trustee from providing any information to the Commission.

- E. If the Commission determines that a trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute trustee in the same manner as provided in this Paragraph III.
- F. The Commission may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

IV.

IT IS FURTHER ORDERED that within thirty (30) days after the initial report is required to be filed pursuant to the Agreement Containing Consent Orders in this matter, and every sixty (60) days thereafter until Respondents have fully complied with Paragraph II. of this Order, each Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Each Respondent shall include in its reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant Paragraphs of the Order, including a description of all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all parties contacted. Each Respondent shall include in its reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning its obligations under this Order.

V.

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

VI.

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 either Respondent, each Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of that Respondent and in the presence of counsel, to