

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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

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In the Matter of)	
)	
ENTERPRISE PRODUCTS PARTNERS L.P.,)	
a limited partnership,)	Docket No. C-4123
)	
and)	
)	
DAN L. DUNCAN,)	
a natural person.)	
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DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed merger of Respondent Enterprise Products Partners, L.P., which is controlled by Respondent Dan L. Duncan, hereinafter collectively referred to as “Respondents,” with GulfTerra Energy Partners, L.P. (“GulfTerra”) and GulfTerra Energy Company, LLC (“GulfTerra GP”) and Respondents having been furnished thereafter with a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and, that, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Hold Separate and Maintain Assets (“Hold Separate Order”), and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comment received from an interested person pursuant to section 2.34 of its Rules, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Enterprise Product Partners L.P. is a publicly traded limited partnership organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 2727 North Loop West, Houston, Texas 77008.

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

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

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

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

- C. “El Paso” means El Paso Corporation, an international energy company organized and doing business under the laws of the State of Delaware with its executive offices at 1001 Louisiana Street, Houston, Texas 77002.
- D. “GulfTerra” means GulfTerra Energy Partners, L.P., a publicly traded limited partnership, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 4 Greenway Plaza, Houston, Texas 77046.
- E. “GulfTerra GP” means GulfTerra Energy Company, LLC, a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 4 Greenway Plaza, Houston, Texas 77046. El Paso controls GulfTerra GP.
- F. “Commission” means the Federal Trade Commission.
- G. “Divestiture Trustee” means any trustee appointed by the Commission pursuant to Paragraph IV. of this Order.
- H. “Duncan Group” means (i) Dan L. Duncan and all joint ventures, subsidiaries, divisions, groups, affiliates, agents and representatives controlled by him, and (ii) Enterprise Products Partners L.P. and all joint ventures, subsidiaries, divisions, groups, affiliates, agents and representatives controlled by it.
- I. “Effective Date of Pipeline Divestiture” means the date on which Respondents (or a Divestiture Trustee) divest to the Pipeline Acquirer the Starfish Pipeline Interest or HIOS/East Breaks Assets completely and as required by Paragraphs II. or IV. of this Order.
- J. “Effective Date of Propane Divestiture” means the date on which Respondents (or a Divestiture Trustee) divest to the Propane Acquirer the Enterprise Propane Storage Interest or the Enterprise Petal LPG Storage Facility completely and as required by Paragraphs III. or IV. of this Order.
- K. “Enterprise Propane Monitor” means the person appointed pursuant to Paragraph IV. of the Hold Separate Order.
- L. “Enterprise Propane Storage Interest” means all of Enterprise’s and Duncan’s interests in the propane storage and terminaling facility located 18 Chappell Hill Road, Petal, Mississippi 39465, in Forrest County, Mississippi, that are jointly owned with Dynegy Midstream Services, L.P. (“Dynegy”) including, but not limited to, all of Enterprise’s and Duncan’s interests in:
 - 1. five propane salt dome storage wells with a combined usable capacity of approximately 5.6 million barrels;

2. existing easements and rights of way;
3. odorizing facilities;
4. related facilities required for the operation of the propane storage facilities including, but not limited to: product pumps, a brine pond and brine pumping facilities, pipelines, pipeline pumps, pipeline injection facilities and related equipment, buildings, equipment, machinery, fixtures and other appurtenances;
5. truck, rail, and pipeline facilities, including truck and rail racks, for the receipt and delivery of propane stored in the wells;
6. approximately 115 acres of land located in Forrest County, Mississippi;

8. all licenses, permits, contracts, agreements, and understandings relating to the ownership and operation of the facility.
- N. “Governmental Entity” means any Federal, state, local or non-U.S. government or any court, legislature, governmental agency or governmental commission or any judicial or regulatory authority of any government.
- O. “Held Separate Businesses” means the Starfish Pipeline Interest and the Enterprise Propane Storage Interest.
- P. “HIOS/East Breaks Assets” means all of GulfTerra’s assets, properties, information or technology, businesses and goodwill (tangible and intangible), contracts, licenses, permits, options, agreements and understandings, records, rights, titles, and interests in or relating to the ownership or physical or commercial operation of:
1. HIOS Pipeline, a 204-mile natural gas pipeline system located in the western Gulf of Mexico, extending from within the West Cameron Area into the High Island South Addition Area. HIOS Pipeline provides transportation services subject to regulation of the Federal Energy Regulatory Commission; and
 2. East Breaks Gathering System, an 86-mile natural gas gathering system located in the western Gulf of Mexico, extending from within the High Island South Addition Area into the Alaminos Canyon Area.
- Q. “Hold Separate Monitors” means the Starfish Monitor and the Enterprise Propane Monitor.
- R. “Hold Separate Period” means the time period during which the Hold Separate Order is in effect, which shall begin no later than five (5) days after the date the Hold Separate Order becomes final and terminate as provided in the Hold Separate Order in this matter.
- S. “Merger” means the proposed merger of Enterprise with GulfTerra and GulfTerra GP pursuant to and as described in (i) the Merger Agreement dated December 15, 2003, as amended, by and among Enterprise Products Partners L.P., Enterprise Products GP, LLC, Enterprise Products Management LLC, GulfTerra Energy Partners L.P., and GulfTerra Energy Company, LLC; and (ii) the Parent Company Agreement dated December 15, 2003, as amended, by and among (a) El Paso Corporation, Sabine River Investors I, L.L.C., Sabine River Investors II, L.L.C., El Paso EPN Investments, L.L.C., and GulfTerra GP Holding Company, and (b) Respondent, Enterprise Products GP, LLC, and Enterprise Products GTM, LLC.
- T. “Merger Date” means the date the Merger is consummated.

- CC. “Starfish Pipeline Interest” means all of Respondent Enterprise’s and Respondent Duncan’s interests in the Starfish Pipeline Company, LLC.
- DD. “West Central Deepwater” means a quadrilateral shaped area of the Gulf of Mexico cornered by and including the following blocks (as those areas and blocks are defined by the Mineral Management Service of the United States Department of Interior): East Breaks Area Block 111, Garden Banks Area Block 60, Keithley Canyon Area Block 984, and Alaminos Canyon Area Block 947.

II.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest either:
 - 1. the Starfish Pipeline Interest absolutely and in good faith, at no minimum price, by March 31, 2005; or
 - 2. the HIOS/East Breaks Assets absolutely and in good faith, at no minimum price, by March 31, 2005.
- B. Respondents shall divest the Starfish Pipeline Interest or the HIOS/East Breaks Assets to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.
- C. Until the Effective Date of Pipeline Divestiture, Respondents shall take such actions as are necessary to maintain the viability and marketability of the Starfish Pipeline Interest and the HIOS/East Breaks Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of the Starfish Pipeline Interest and the HIOS/East Breaks Assets, except for ordinary wear and tear.
- D. Prior to the Effective Date of Pipeline Divestiture, Respondents shall secure all consents and waivers, including rights of approval and rights of first refusal, from all private and Governmental Entities that are necessary for the divestiture of the Starfish Pipeline Interest or the HIOS/East Breaks Assets to the Pipeline Acquirer, including, but not limited to, any consents or waivers required from Shell or its successor with respect to Starfish.
- E. The purposes of this Order with respect to the divestiture of the Starfish Pipeline Interest or the HIOS/East Breaks Assets are: (1) to ensure the continuation of Starfish or the HIOS/East Breaks Assets as going concerns in the same manner in which each conducted business as of the date the Consent Agreement is signed until the Effective Date of Pipeline Divestiture, and (2) to remedy the lessening of competition resulting from the Merger as alleged in the Commission’s Complaint.

III.

1. the Starfish Pipeline Interest or the HIOS/East Breaks Assets as required by Paragraph II. of this Order, the Commission may appoint a Divestiture Trustee to divest the Starfish Pipeline Interest or the HIOS/East Breaks Assets in a manner that satisfies the requirements of Paragraph II.
2. the Enterprise Propane Storage Interest or the Enterprise Petal LPG Storage Facility as required by Paragraph III. of this Order, the Commission may appoint a Divestiture Trustee to divest the Enterprise Propane Storage Interest or the Enterprise Petal LPG Storage Facility in a manner that satisfies the requirements of Paragraph III.

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

- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestitures required by this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph IV., Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall, as required, have the exclusive power and authority to divest (i) the Starfish Pipeline Interest or the HIOS/East Breaks Assets, such option to be in his sole discretion (subject to Paragraph IV.D.4., below) and (ii) the Enterprise Propane Storage Interest or the Enterprise Propane Facility, such option to be in his sole discretion (subject to Paragraph IV.D.4., below).

2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture or divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, rprise Proot Tcperio

5. The Divestiture Trustee shall serve, without bond or other security, at the

- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph IV.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.
- G. The Divestiture Trustee(s) appointed pursuant to Paragraph IV. of this Order may be the same Person appointed as Starfish Monitor or the Enterprise Propane Monitor pursuant to the relevant provisions of the Hold Separate Order in this matter.

V.

IT IS FURTHER ORDERED that:

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

or the Enterprise Propane Monitor that any one of them will be employed by Respondents after divestiture of the interest or assets monitored by that person.

VI.

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

- A. Acquire any stock, share capital, equity or other interest in any concern, corporate or non-corporate, other than acquisitions in Duncan or Enterprise, (i) that owns a

PROVIDED, HOWEVER, that prior notification shall not be required by this paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to

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

By the Commission.

Donald S. Clark
Secretary

SEAL:

ISSUED: November 23, 2004