

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

**COMMISSIONERS: Deborah Platt Majoras, Chairman
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch**

In the Matter of)	
)	
)	
DAN L. DUNCAN,)	
a natural person,)	
)	
EPCO, INC.,)	
a corporation,)	
)	
TEXAS EASTERN PRODUCTS PIPELINE COMPANY, LLC,)	
a limited liability company,)	
)	
and)	
)	
TEPPCO PARTNERS, L.P.,)	
a limited partnership.)	
)	

**Docket No. C-
DECISION AND ORDER**

The Federal Trade Commission (“Commission”), having initiated an investigation of the acquisition of Respondent Texas Eastern Products Pipeline Company, LLC, the general partner of Respondent TEPPCO Partners, L.P., and limited partnership interests in Respondent TEPPCO Partners, L.P., from Duke Energy Field Services, LLC, by entities indirectly controlled by Respondent EPCO, Inc. and Respondent Dan L. Duncan, hereinafter collectively referred to as “Respondents,” 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 Order (“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 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 issues the following Decision and Order ("Order"):

1. Respondent Dan L. Duncan is a natural person with his office and principal place of business located at 1100 Louisiana Street, Suite 1800, Houston, Texas 77002.

2. Respondent EPCO, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business at 1100 Louisiana Street, Suite 1800, Houston, Texas 77002.

3. Respondent Texas Eastern Products Pipeline Company, LLC is a limited liability company 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 at 1100 Louisiana Street, Suite 1300, Houston, Texas 77002.

4. Respondent TEPPCO 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 1100 Louisiana Street, Suite 1300, Houston, Texas 77002.

5. 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 Dan L. Duncan (including, but not limited to, EPCO, Texas Eastern, and TEPPCO), and the respective partners, directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each.
- B. "EPCO" means EPCO, Inc., a corporation, its directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns; its joint ventures,

subsidiaries, divisions, groups, and affiliates controlled by EPCO, Inc., and the respective partners, directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each.

- C. “TEPPCO” means TEPPCO Partners, L.P., a publicly traded limited partnership, its partners (including, but not limited to, Texas Eastern), directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by TEPPCO Partners L.P. (including, but not limited to, TE Products Pipeline Company), and the respective partners, directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each. *PROVIDED, HOWEVER*, TEPPCO does not include Mont Belvieu Storage Partners or Louis Dreyfus.
- D. “Texas Eastern” means Texas Eastern Products Pipeline Company, LLC, a limited liability company, its directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Texas Eastern Products Pipeline Company, LLC, and the respective partners, directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each. *PROVIDED, HOWEVER*, Texas Eastern does not include Mont Belvieu Storage Storag

- M. “Effective Date of Divestiture” means the date on which Respondents (or a Divestiture Trustee) divest to an Acquirer the TEPPCO NGL Storage Assets as required by Paragraphs II or III of this Order.
- 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. “Intangible Property” means intangible property relating to the assets associated with Mont Belvieu Storage Partners and the TEPPCO NGL Partnership Agreements including, but not limited to, intellectual property, software, computer programs, patents, know-how, goodwill, technology, trade secrets, technical information, marketing information, protocols, quality control information, trademarks, trade names, service marks, logos, and any modifications or improvements to such intangible property. *PROVIDED, HOWEVER*, Intangible Property does not include Licensed Intangible Property or TEPPCO trademarks, trade names, service marks, or logos.
- P. “Licensed Intangible Property” means Intangible Property licensed to Respondents from a third party. *PROVIDED, HOWEVER*, Licensed Intangible Property does not include any modifications and improvements to Intangible Property that are not themselves licensed to Respondents.
- Q. “Louis Dreyfus” means Louis Dreyfus Energy Services 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 20 Westport Road, Wilton, Connecticut 06897.
- R. “LPGs” means normal butane, isobutane, mixed butanes, and propane.
- S. “Material Confidential Information” means competitively sensitive or proprietary information not independently known to a Person from sources other than the Person to which the information pertains, and includes, but is not limited to, all customer lists, price lists, cost information, marketing methods, patents, technologies, processes, or other trade secrets.
- T. “Mont Belvieu Storage Partners” means the partnership by and between TE Products Pipeline Company and Louis Dreyfus pursuant to the Agreement of Limited Partnership of Mont Belvieu Storage Partners, L.P., dated January 21, 2003, as amended or clarified by that certain Letter of Agreement Clarifying Rights and Obligations of the Parties Under the Mont Belvieu Storage Partners, L.P., Partnership Agreement and the Mont Belvieu Venture, LLC, LLC Agreement, dated October 25, 2003, and amendments, schedules, and attachments thereto. Mont Belvieu Storage Partners also means the partnership existing after the divestiture required by this Order and any successors or assigns to that entity.

- U. “Mont Belvieu Storage Partners Terminals” means the NGL salt dome storage facility owned by Mont Belvieu Storage Partners in Mont Belvieu, Texas, and described in the TEPPCO NGL Partnership Agreements.
- V. “NGL” means natural gas liquids either as a mixed stream, known as “y-grade” or “raw mix,” or separately as ethane, propane, butane, isobutane, natural gasoline, and ethane-

any modifications or improvements to such intangible property. *PROVIDED, HOWEVER*, TEPPCO Intangible Property does not include TEPPCO trademarks, trade names, service marks, and logos, or Licensed Intangible Property.

- CC. “TEPPCO Land” means certain parcels of real property, or portions thereof, located in Chambers County, Texas, owned by TEPPCO, situated south of road FM-1942

1. all of Respondents' interests in Mont Belvieu Storage Partners and the TEPPCO NGL Partnership Agreements. The assets of Mont Belvieu Storage Partners include, but are not limited to:
 - a. Mont Belvieu Storage Partners Terminals;
 - b. brine handling and storage facilities;
 - c. pipelines to and from the Mont Belvieu Storage Partners Terminals, including, but not limited to, pipelines designated as P-11, P-12, P-13, P-14, P-15;

Storage Partners, the TEPPCO NGL Partnership Agreements, and Respondents' interests in Mont Belvieu Storage Partners;

1. Intangible Property; and
 - m. all licenses, permits, contracts, agreements, and understandings relating to the ownership and operation of Mont Belvieu Storage Partners Terminals.
2. TEPPCO NGL Pipelines;
3. TEPPCO Land;
4. all documents relating to the assets described in subparagraphs 1, 2, and 3, of this Paragraph, above, including, but not limited to, copies of plans, tariffs, customer lists, strategic planning documents that have been submitted to the managing board, and annual and quarterly financial statements;
5. a royalty-free perpetual worldwide license for the use, without any limitation, of all TEPPCO Intangible Property including the right to transfer or sublicense such TEPPCO Intangible Property, exclusively or nonexclusively, to others by any means;
6. lease agreements or access easements for the TEPPCO NGL Pipelines at the Baytown Terminal, including, but not limited to, those listed in Appendix D.

II.

IT IS FURTHER ORDERED that:

- A. No later than December 31, 2006, Respondents shall divest the TEPPCO NGL Storage Assets absolutely and in good faith, at no minimum price.
- B. Respondents shall divest the TEPPCO NGL Storage 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, Respondents shall take such actions as are necessary to maintain the viability and marketability of the TEPPCO NGL Storage Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of the TEPPCO NGL Storage Assets, except for ordinary wear and tear.
- D. Prior to the Effective Date of Divestiture, Respondents shall secure all consents and waivers, including rights of approval and rights of first refusal, from all Persons and Governmental Entities that are necessary for the divestiture of the TEPPCO NGL Storage

Assets to the Acquirer, including, but not limited to, any consents or waivers required from Louis Dreyfus or its successor with respect to the TEPPCO NGL Storage Assets.

- E. Beginning from the date the Respondents sign the Consent Agreement until sixty (60) days after the Effective Date of Divestiture of the TEPPCO NGL Storage Assets, Respondents shall:
1. facilitate employment interviews between each TEPPCO MBSP Employee and the Acquirer, including providing the names and contact information for such employees and allowing such employees reasonable opportunity to interview with the Acquirer, and shall not discourage such employee from participating in such interviews;
 2. not interfere in employment negotiations b

make general advertisements for employees including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at the Acquirer's employees; *PROVIDED FURTHER, HOWEVER*, Respondents may hire TEPPCO MBSP Employees who apply for employment with Respondents as long as such employees were not solicited by Respondents in violation of this Paragraph.

- G. Respondents shall convey to the Acquirer the right to use any Licensed Intangible Property (to the extent permitted by the third-party licensor), if such right is needed for the operation of the TEPPCO NGL Storage Assets by the Acquirer and if the Acquirer is unable, using commercially reasonable efforts, to obtain equivalent rights from other third parties on commercially reasonable terms and conditions.
- H. The purposes of this Order with respect to the divestiture of the TEPPCO NGL Storage Assets are: (1) to ensure the continuation of the TEPPCO NGL Storage Assets as a going concern in the same manner as of the date the Consent Agreement is signed, and (2) to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligation to divest the TEPPCO NGL Storage Assets as required by, and within the time required by, Paragraph II of this Order, the Commission may appoint a Divestiture Trustee to divest the TEPPCO NGL Storage Assets in a manner that satisfies the requirements of Paragraph II.

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 TEPPCO NGL Storage Assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph III 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 Respondents to comply with 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

select such entity within five (5) days after receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies sha

- 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.

IV.

IT IS FURTHER ORDERED that for a period of ten (10) years from the date this Order becomes final:

- A. Respondents shall not, without providing advance written notification to the Commission in the manner described in this Paragraph IV.A, directly or indirectly:
1. Acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, other than acquisitions in Respondents, that owns a salt dome storage facility within Chambers County, Texas permitted or used, either at the time of such acquisition or within the two (2) years preceding such acquisition, to store NGLs;
 2. Acquire any salt dome storage facility within Chambers County, Texas permitted or used, either at the time of such acquisition or within the two (2) years preceding such acquisition, to store NGLs;
 3. Manage or operate any salt dome storage facility within Chambers County, Texas permitted or used, either at the time of such management or operation or within the two (2) years preceding such management or operation, to store NGLs, unless such storage facility is owned by Respondents.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (herein referred to as “the Notification”), 16 C.F.R. § 803 App., and shall be prepared and transmitted in accordance with the requirements of that Part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material.

Respondents acquire no more than one (1) percent of the outstanding securities or other equity interest in an entity described in subparagraphs I

Partners, L.P. and TE Products Pipeline Company, Limited Partnership, dated August 12, 2003 (effective retroactively as of January 21, 2003), or extensions of leases currently in effect if the volume leased under such extended leases is not ten percent (10%) in excess of the volume currently leased pursuant to such current leases.

V.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order becomes final, and every sixty (60) days thereafter until Respondents have fully com

1. at their cost, extend any such New Pipeline to a point agreeable to both Respondents and Mont Belvieu Storage Partners at the property line of property owned by Mont Belvieu Storage Partners (“Terminus Point”); and
2. reimburse Mont Belvieu Storage Partners for Reasonable Construction Costs to extend any such New Pipeline from the Terminus Point to the manifold connected to the Mont Belvieu Storage Partners Terminal.

C. If Respondents build a New Pipeline:

1. and propane is shipped on the New Pipeline from an NGL storage facility to the TEPPCO Mainline Delivery System where there has not been a past practice of shipping propane directly onto such system, then Respondent TEPPCO shall operate the Open Stock Service for shippers who ship propane on the TEPPCO Mainline Delivery System from any NGL storage facility in Mont Belvieu, Texas on terms and conditions that are no less advantageous than those given to shippers who designate that propane be shipped from any NGL storage facility in Mont Belvieu, Texas owned by Respondents;
2. and NGLs, other than propane, are shipped on the New Pipeline from an NGL storage facility directly to the TEPPCO Mainline Delivery System where there has not been a past practice of shipping NGLs, other than propane, directly onto such system, then Respondent TEPPCO shall operate the TEPPCO Mainline Delivery System for shipping NGLs, other than propane, from any NGL storage facility in Mont Belvieu, Texas on terms and conditions that are no less advantageous than those given to shippers who designate that NGLs, other than propane, be shipped from any NGL storage facility in Mont Belvieu, Texas owned by Respondents;
3. At the time Respondents begin to move product to the TEPPCO Mainline Delivery System from any storage facility connected to the New Pipeline (other than the Mont Belvieu Storage Partners Terminals), or any time thereafter, Respondents shall allow Mont Belvieu Storage Partners to amend or terminate the Storage and Service Agreement Between Mont Belvieu Storage Partners, L.P. and TE Products Pipeline Company, Limited Partnership, dated August 12, 2003 (effective retroactively as of January 21, 2003), on the following terms:
 - a. with regard to propane,
 - (1) upon ninety (90) days written notice before termination,
 - (2) with no termination penalty, and
 - (3) provided that the termination cannot occur before March 31, 2007;
 - b. with regard to NGLs, other than propane,

- (1) upon ninety (90) days written notice before termination,
 - (2) with no termination penalty, and
 - (3) provided that the termination cannot occur before March 31, 2008;
4. In the event Respondents implement any new allocation procedures, including rules and regulations, regarding the TEPMnures,9ordin9un5ega

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.

IX.

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: