

**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

**TC GROUP, L.L.C.,
a limited liability company,**

**RIVERSTONE HOLDINGS LLC,
a limited liability company,**

**CARLYLE/RIVERSTONE GLOBAL
ENERGY AND POWER FUND II, L.P.,
a limited partnership,**

and

**CARLYLE/RIVERSTONE GLOBAL
ENERGY AND POWER FUND III, L.P.,
a limited partnership.**

Docket No. C-

[Public Record Version]

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition of equity interests in Kinder Morgan, Inc. by Carlyle Partners IV, L.P., an affiliate of TC Group, L.L.C. d/b/a The Carlyle Group (“Carlyle”), and by Carlyle/Riverstone Global Energy and Power Fund III, L.P., an affiliate of Carlyle and Riverstone Holdings LLC (“Riverstone”) (hereinafter Carlyle, Riverstone, Carlyle/Riverstone Global Energy and Power Fund III, L.P., and Carlyle-Riverstone Global Energy and Power Fund II, L.P. collectively referred to as “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 its Order to Maintain Assets and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent TC Group, L.L.C., is a limited liability company doing business as The Carlyle Group, and is 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 1001 Pennsylvania Avenue, N.W., Suite 220 S, Washington, DC 20004.
2. Respondent Riverstone Holdings 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 located at 712 Fifth Avenue, 51st Floor, New York, NY 10019.
3. Respondent Carlyle/Riverstone Global Energy and Power Fund II, L.P., is a limited partnership organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 712 Fifth Avenue, 51st Floor, New York, NY 10019 (c/o Riverstone Holdings LLC).
4. Respondent Carlyle/Riverstone Global Energy and Power Fund III, L.P., is a limited partnership organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 712 Fifth Avenue, 51st Floor, New York, NY 10019 (c/o Riverstone Holdings LLC).
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. "Carlyle" means TC Group, L.L.C., doing business as The Carlyle Group, its directors, officers, partners, employees, agents, representatives, successors, and assigns; and its joint

28, 2006, pursuant to which a group of investors, including, but not limited to, CP-IV and CR-III, plan to acquire KMI.

- G. "Amendment" means Amendment No. 1 dated November 17, 2006 to the MGG GP Agreement.
- H. "CR Passive Investment Fund" means a current or future investment fund controlled or managed by Respondent Carlyle or Respondent Riverstone that:
1. invests in publicly traded securities or securities convertible into publicly traded securities;
 2. is prohibited from receiving or using, directly or indirectly, Non-Public Information from Respondents or any other source about KMI or Magellan;
 3. does not, directly or indirectly, by its managers or otherwise, exercise any voting rights in KMI or Magellan;
 4. does not have, directly or indirectly, the right or ability to appoint a representative to any KMI Board or Magellan Board; and
 5. does not influence or attempt to influence, directly or indirectly, the management or operations of KMI or Magellan.
- I. "Effective Date" means the date on which the Acquisition is consummated.
- J. "KMI" means Kinder Morgan, Inc., its directors, officers, partners, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, partnerships, divisions, groups and affiliates controlled by Kinder Morgan, Inc. (including, but not limited to, Kinder Morgan Energy Partners L.P. and Kinder Morgan Management Ltd. ~~by the date of~~ 1/7/2017)

- N. “Magellan Board” means any board of directors or board of managers of Magellan, including, but not limited to, the Board of Managers of MGG Midstream Holdings GP, LLC, the Board of Directors of Magellan Midstream Holdings GP, LLC, and the Board of Directors of Magellan GP, LLC.
- O. “Magellan CR Director” means a Person who is or at any time was elected or appointed by, or who is or at any time was an agent or representative of, Carlyle, Riverstone, CR-II, or CR-III, on any Magellan Board, including, but not limited to, Pierre F. Lapeyre, Jr., David M. Leuschen, N. John Lancaster, Jr., and James Derryberry.
- P. “Magellan Investment Entities” means MGG Midstream Holdings GP, LLC and MGG Midstream Holdings, L.P.
- Q. “Magellan Operating Entities” means Magellan Midstream Holdings GP, LLC, Magellan Midstream Holdings, L.P., Magellan GP, LLC, Magellan IDR, L.P., and Magellan Midstream Partners, L.P. and the joint ventures, subsidiaries, partnerships, divisions, groups and affiliates controlled by such entities.
- R. “MDP-IV” means Madison Dearborn Capital Partners IV, L.P., a limited partnership, organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Three N j11.76 0 Td(rsws of the State of

1. Respondents shall:

- a. not elect or appoint a Magellan CR Director;
- b. not have a director, officer, partner, employee, agent, or representative on any Magellan Board;
- c. not influence or attempt to influence, directly or indirectly, by voting or otherwise, the Magellan Operating Entities, or the management or operation of the Magellan Operating Entities;
- d. not influence or attempt to influence, directly or indirectly, the Magellan Investment Entities, or the management or operation of the Magellan Investment Entities, except and only to the extent as provided in the MGG GP Agreement as amended by the Amendment; and
- e. not receive or attempt to receive, directly or indirectly, any Non-Public Information of, from or Relating To the Magellan Operating Entities.

2. Respondent Carlyle, Respondent Riverstone and Respondent CR-II shall:

- a. not discuss with, or provide, disclose or otherwise make available to, KMI or any KMI CR Director, directly or indirectly, any Non-Public Information of, from or Relating To Magellan;
- b. prohibit any Magellan CR Director from discussing with, or providing, disclosing or otherwise making available to, KMI or any KMI CR Director, directly or indirectly, any Non-Public Information of, from or Relating To Magellan; *PROVIDED, HOWEVER*, that the foregoing shall not prevent either David M. Leuschen or Pierre F. Lapeyre, Jr., from serving as a KMI CR Director; and
- c. institute procedures and requirements throughout the various entities of the Respondents to ensure that Non-Public Information is protected as required by this Paragraph II.B.

C. Respondent Carlyle, Respondent Riverstone, and Respondent CR-III shall:

1. not discuss with, or provide, disclose or otherwise make available to, Magellan, directly or indirectly, any Non-Public Information of, from or Relating To KMI;
2. prohibit all KMI CR Directors from discussing with, or providing, disclosing or otherwise making available to, Magellan, directly or indirectly, any Non-Public Information of, from or Relating To KMI; and

3. institute procedures and requirements throughout the various entities of the Respondents to ensure that Non-Public Information is protected as required pursuant to this Paragraph II.C.
- D. For the time period that Respondent Carlyle or Respondent Riverstone holds, directly or indirectly, any interest in Magellan,
1. Respondent Carlyle and Respondent Riverstone shall not, without providing thirty (30) days advance written notification to the Commission in the manner described in this paragraph, directly or indirectly, acquire any stock, share capital, equity or other interest in KMI other than the interest acquired through the Acquisition.
 2. *PROVIDED, HOWEVER*, that such prior advance written notice shall not be required if:
 - a. the acquisition is by a CR Passive Investment Fund;
 - b. the acquisition does not change the acquiring Respondent's pro rata interest in KMI received as part of the Acquisition; or
 - c. as a result of the acquisition, the acquiring Respondent:
 - (1) does not, and cannot in the future, receive the right or ability to appoint or elect an additional member to any KMI Board; and
 - (2) does not, and cannot in the future, vote any of the stock, share capital, equity or other interest in KMI it receives as a result of such acquisition.

Said advance written notification shall contain: (i) a detailed term sheet for the proposed acquisition, including, among other things, the amount of the acquisition, the type of acquisition, the Person acquiring the interest, the date such acquisition will take effect, and any other information prepared by the Person making the acquisition Related To such acquisition, and (ii) documents that would be responsive to Item 4(c) of the Premerger Notification and Report Form under the Hart-Scott-Rodino Premerger Notification Act, Section 7A of the Clayton Act, 15 U.S.C. § 18a, and Rules, 16 C.F.R. § 801-803, relating to the proposed transaction (hereinafter referred to as "the Notification), *PROVIDED, HOWEVER*, (i) no filing fee will be required for the Notification, (ii) an original and one copy of the Notification shall be filed with the Secretary of the Commission with additional copies to the Assistant Director for Mergers III Division, Bureau of Competition, and the Assistant Director for the Compliance Division, Bureau of Competition. The Notification need not be submitted to the United States Department of

(30) days prior to consummating the transacti

III.

IT IS FURTHER ORDERED that Respondents shall:

- A. Within twenty (20) days after the Effective Date, send a copy of this Order, the Complaint, and the Analysis to Aid Public Comment, by first class mail, return receipt requested, or by hand delivery (with signed confirmation) to:
 1. All Persons employed by Respondents at the Managing Director

IV.

IT IS FURTHER ORDERED that:

A.

- b. Assuring that Non-Public Information is not received or used by Respondents, except as allowed in this Order and the Amendment.
2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
3. The term of the Implementation Monitor shall end when the Implementation Monitor reports to the Commission that Respondents have put in place adequate procedures in accordance with Paragraphs II.B. and II.C. of this Order, and that those procedures provide the appropriate firewall protections, and the Commission staff notifies Respondents that such procedures are acceptable.
4. Subject to any demonstrated legally recognized privilege, the Implementation Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Implementation Monitor may

Respondents of its obligations to protect Non-Public Information under Paragraphs II.B. and II.C. of this Order and the Amendment.

8. Respondents may require the Implementation Monitor and each of the Implementation Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Implementation Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Implementation Monitor and each of the Implementation Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement Relating To Commission materials and information received in connection with the per

- B. Beginning twelve (12) months after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, for the next ten (10) years, each Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it is complying and has complied with this Order and the Amendment. Respondents shall submit at the same time a copy of these reports to the Implementation Monitor, if any Implementation Monitor has been appointed and whose term has not ended.

VI.

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

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

VII.

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 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.

VIII.

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

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED:

CONFIDENTIAL APPENDIX A

**FIRST AMENDED & RESTATED LIMITED LIABILITY
COMPANY AGREEMENT OF MGG MIDSTREAM HOLDINGS GP, LLC**

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

CONFIDENTIAL APPENDIX B

**AMENDMENT NO. 1 TO FIRST AMENDED & RESTATED
LIMITED LIABILITY COMPANY AGREEMENT OF MGG**

APPENDIX C

MONITOR AGREEMENT

[Public Record Version]