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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and enters the following Decision and Order (“Order”):

corporate office and principal place of business located at 725 Fifth Avenue, 19th Floor, New York, New York 10022.

H. "Confidential Information" means any and all of the following information:

1. all information that is a trade secret under applicable law or other law;
2. all information concerning products, specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, software and computer software and database technologies, systems, structures and architectures;
3. all information concerning the relevant business (which includes historical and current financial statements, financial projections and budgets, tax returns and accountants' materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategies, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel and personnel training techniques and materials); and
4. all notes, analyses, compilations, studies, summaries and other materials to the extent containing or based, in whole or in part, upon any of the information described above;

Provided, however, that Confidential Information shall not include information that (i) was, is or becomes generally available to the public other than as a result of a breach of this Order; (ii) was or is developed independently of and without reference to any Confidential Information; or (iii) was available, or becomes available, on a non-confidential basis from a third party not bound by a confidentiality agreement or any legal, fiduciary or other obligations restricting disclosure.

I. "Contract" means any agreement, contract, license agreement, consensual obligation, promise or undertaking (whether written or oral and whether express or implied), whether or not legally binding

- J. "Corporate Trade Names" means all trademarks, trade names, service marks, trade dress, logos, corporate names, domain names, emblems, signs or insignia, and other source identifiers whether registered or common law, containing or comprising the brand and mark "Gulf."
- K. "Cost" means the actual cost of direct labor, including employee benefits, materials, resources, and services, plus the actual cost of any ~~third~~ party charges.
- L. "Divestiture Agreement" means ~~(i)~~ the PA Terminals

Q. "Intellectual Property" means all intellectual property including (i) commercial names, all assumed fictional business names, trade names, and "doing business as" (d/b/a names),

- Y. "Public Record Date" means the date on which the Commission accepts the Consent Agreement and places it on the public record for comment.
- Z. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- AA. "Tangible Personal Property" means ~~all~~ machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, ~~materials~~, vehicles, and other items of tangible personal property (other than inventories) of every kind owned or ~~leased~~ together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other doc

B. No later than the Divestiture Date, Respondent shall secure all consents, assignments, and waivers or other authorizations from all Persons that are necessary for divestiture of the PA Terminals Assets, provided, however, that Respondent may satisfy this requirement by certifying that Acquirer has executed appropriate agreements or obtained necessary authorization directly with each of the relevant Persons

C. At the request of Acquirer, Respondent shall

1. For a period of twelve (12) months provide Transitional Assistance to Acquirer at a price not to exceed Cost and in quality and quantity sufficient to enable Acquirer to operate the PA Terminals Business in substantially the same manner (including the ability to increase sales) Cumberland prior to the Acquisition;

2. For a period of two (2) years from the Divestiture Date, utilize the divested terminals at each of the Pennsylvania Locations as a customer in volumes sufficient to maintain the viability of the PA Terminals Assets and PA Terminals

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D. Respondents shall cooperate with and assist

an agreement with Acquirer for a license back under such Intellectual Property for use in such other business;

Provided, however, that any license required or permitted under this Paragraph II.E shall be provided in a manner that receives prior approval of the Commission.

- F. The purpose of the divestiture of the PA Terminals Assets is to ensure the continued use of the assets in the same businesses in which such assets were engaged at the time of the announcement of the Acquisition by Respondent and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. For a period of six (6) months after the Divestiture Date, Respondent shall allow any Terminal Customer to terminate its Contract without penalty or charge, upon request of the Terminal Customer.
- B. Respondent shall notify each Terminal Customer of its right to terminate its Contract (i) no later than twenty (20) days after the Public Record Date for Contracts in effect on the Public Record Date; (ii) no later than the execution of the Contract for Contracts that Respondent enters into or renews after the Public Record Date; and (iii) substantially the same form as the notification attached to this Order as Appendix A.

IV.

IT IS FURTHER ORDERED that:

- A. Respondent shall (i) keep confidential (including as to Respondent's employees) and (ii) not use for any reason or purpose, any Confidential Information received or maintained by Respondent relating to the PA Terminals Business PA Terminals Assets; *provided, however,* that Respondent may disclose or use such Confidential Information in the course of:
 - 1. Performing its obligations as permitted under this Order or the Order to Maintain Assets, or Divestiture Agreement; or
 - 2. Complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the PA Terminals Business PA Terminals Assets or as required by law.

B.

with or impede the ability of, the Monitor to perform his duties pursuant to this Order;

3. The Monitor (i) shall serve at the expense of Respondent, without bond or security, on such reasonable and customary terms and conditions as the Commission may set, and (ii) may employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
4. Respondent shall indemnify the Monitor and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of his 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 the Monitor's gross negligence or willful misconduct; and
5. Respondent may require the Monitor and 8(-2(ms)-1(t)-2(a)dnst aonitor's grosultants, T

shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has 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 Respondent of the identity of any proposed Divestiture Trustee, Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

- D. Within ten (10) days after appointment of a Divestiture Trustee, Respondent 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 relevant divestiture or other action required by the Order.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondent shall consent to the following terms and conditions regarding the Divest

4. The Divestiture 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's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however,* if the Divestiture 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 Divestiture Trustee shall divest to the acquiring entity selected by Respondent from among those approved by the Commission; *provided further* that Respondent shall select such entity within five (5) days of receiving notification of the Commission's approval.

- 5.

8. The Divestiture Trustee shall report in writing Respondent and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
9. Respondent may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* such agree

VIII.

IT IS FURTHER ORDERED that:

- A. Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order:
1. (i) Thirty (30) days from the date this Order is issued
 - (ii) Every thirty (30) days thereafter until Respondent has fully complied with Paragraphs II.A. and D. of this Order; and
 - (iii) Every 180 days thereafter until Respondent has fully complied with Paragraph II.C. of this Order; and
2. No later than one (1) year after the date this Order is issued and annually thereafter until this Order terminates, and at such other times as the Commission staff may request.
- B. With respect to any divestiture required by Paragraph III. of this Order Respondent shall include in its compliance reports (i) the status of the divestiture and transfer of the PA Terminals Assets; (ii) a description of all substantive contacts with a proposed acquirer; and (iii) as applicable, a statement that the divestiture approved by the Commission has been accomplished, including a description of the manner in which Respondent completed such divestiture and the date the divestiture was completed.

IX.

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

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

X.

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 and upon five (5) days' notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent in the presence of counsel, to all facilities and access to inspect and copy all ledgers, accounts, correspondence, memoranda and all other records and documents in the possession, or under the control of the Respondent related to compliance with this Order, which copying shall be

Appendix A

NOTICE

To settle concerns arising from ArcLight's acquisition of certain assets of Cumberland Farms, Inc., on [insert date of consent agreement], ArcLight agreed with the staff of the Federal Trade Commission ("FTC") to allow customers that purchase terminaling services for light petroleum products in certain Pennsylvania locations to terminate their contracts with respect to any or all of the services, at the option of the customer, without penalty or charge, immediately upon request of the customer at any time from the [insert Public Record Date] until six (6) months after [insert Divestiture Date].

You are being sent this notice because you are or will be a customer that purchases terminaling services from ArcLight in [insert city and state]. You may read and download a copy of the Order from the FTC at its web site at [web link to Order] as well as other documents relating to the settlement. ArcLight's obligations with respect to contract termination are set out in Paragraph __ of the Order. Capitalized terms used in the Order are defined in Paragraph I. of the Order.

If you wish to terminate your contract with respect to any or all of the terminaling services you purchase from ArcLight, please contact xxxxxxxxxxxx, Tel: xxxxxxxxxxxx, Email: xxxxxxxxxxxx. If you have any questions or concerns about these obligations, you may contact the staff of the Compliance Division, Bureau of Competition, Federal Trade Commission, Washington, D.C., Tel: 202-326-xxxx.

Non-Public Appendix B

PA Terminals Agreement

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