

**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-4183

ORDER TO MAINTAIN ASSETS

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 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 issues its Complaint, makes the following jurisdictional findings, and issues the following Order to Maintain Assets:

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, all capitalized terms used in this Order to Maintain Assets, but not defined herein, shall have the meanings attributed to such terms in the Decision and Order (“Order”) contained in the Consent Agreement.

II.

IT IS FURTHER ORDERED that:

- A. Respondents shall not consummate the Acquisition unless and until:
 - 1. Respondents have removed all Magellan CR Directors from all Magellan Boards; and
 - 2. Respondent CR-II has agreed with MDP-IV that as of the Effective Date:
 - a. all Magellan CR Directors shall be removed from all Magellan Boards;
 - b. Respondent CR-II, Respondent Carlyle, and Respondent Riverstone shall have no rights to elect or appoint a Magellan CR Director; and
 - c. the Amendment will be effective.

The MGG GP Agreement and the Amendment are attached to the Order as Appendix A and Appendix B, respectively, including all amendments, exhibits, attachments, agreements, and schedules thereto. The MGG GP Agreement, currently and as amended in the future, and the Amendment shall not vary or contradict, or be construed to vary or contradict, the terms of the Order, it being understood that nothing in the MGG GP Agreement, currently and as amended in the future, or the Amendment shall be construed to reduce any obligations of the Respondents under the Order. The Amendment shall be deemed incorporated into the Order, and any failure by Respondents to comply with any term of such Amendment shall constitute a failure to comply with the Order. The Amendment shall not be modified, directly or indirectly, without the prior approval of the Commission.

- B. For the time period following the Effective Date that Respondent Carlyle, Respondent Riverstone, or Respondent CR-III holds, directly or indirectly, any interest in KMI; has the ability or right to elect or appoint a KMI CR Director or has a KMI CR Director; has VCOC Exemption Rights with respect to KMI; or has any right to Non-Public Information of or Relating To KMI,

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 Justice; and (iii) the Notification is required from Respondent Carlyle and Respondent Riverstone, and not from any other party to the transaction. Respondent Carlyle and Respondent Riverstone 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), no Respondent shall consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

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 Section 7A of the Clayton Act, 15 U.S.C. § 18a.

- E. Within ten (10) days after its occurrence, Respondents shall provide written notification to the Commission (with copies to the Assistant Director for Mergers III Division, Bureau of Competition, and the Assistant Director for the Compliance Division, Bureau of Competition):
1. if Respondents no longer hold any interest in Magellan other than a CR Passive Investment Fund interest in Magellan;
 2. if Respondents no longer hold any interest in Magellan;
 3. if Respondent Carlyle, Respondent Riverstone, and Respondent CR-III no longer hold, directly or indirectly, any interest in KMI; no longer have the ability or right to appoint a KMI CR Director or have a KMI CR Director; no longer retain VCOC Exemption Rights with respect to KMI; and no longer have any right to Non-Public Information of or Relating To KMI;
 4. if Respondents engage in any of the acquisitions listed in Paragraph II.D.2 above, with such notice including, among other things, the amount of the acquisition, the type of acquisition, the Person acquiring the interest, the date of the acquisition, and any other information prepared by the Person making the acquisition Related To such acquisition; or
 5. of any acquisition by any Respondent of stock, share capital, equity or other interest in Magellan, including acquisitions by a CR Passive Investment Fund, with such notice including, among other things, the amount of the acquisition, the type of acquisition, the Person acquiring the interest, the date of the acquisition, and any other information prepared by the Person making the acquisition Related To such acquisition.
- F. The purpose of Paragraph II of this Order to Maintain Assets is to ensure that KMI and Magellan are operated independently of, and in competition with, each other, and to remedy the lessening of competition alleged in the Commission’s Complaint.

III.

IT IS FURTHER ORDERED that Respondents shall:

- A. Within twenty (20) days after the Effective Date, send a copy of the 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 level or above;
 2. All Persons who serve on each Magellan Board, including, but not limited to, each Magellan CR Director;
 3. All Persons who serve on each KMI Board, including, but not limited to, each KMI CR Director; and
 4. All investors in Knight Holdco LLC and Knight Acquisition Co.
- B. Send a copy of the Order, the Complaint, and the Analysis to Aid Public Comment, by first class mail, return receipt requested, or hand delivery (with signed confirmation) to:
1. each Person who becomes a KMI CR Director;
 2. each Person known to Respondents who becomes an equity investor in Knight Holdco LLC or Knight Acquisition Co. after the Acquisition unless and until Knight Holdco LLC and Knight Acquisition Co. become publicly traded; and
 3. each Person who serves on each Magellan Board.

Such notice pursuant to this Paragraph III.B. shall occur no later than thirty (30) days after the commencement of such Person's employment or affiliation, except with respect to Persons serving on the Magellan Board, for which such notice shall be given no later than thirty (30) days after Respondents become aware of such person becoming a director or manager. *PROVIDED, HOWEVER*, that Respondents are not required to send such notices pursuant to this Paragraph III.B. if the Effective Date has not occurred or if and when the Respondents have given the Commission notice pursuant to Paragraph II.E.1., II.E.2., or II.E.3.

IV.

IT IS FURTHER ORDERED that:

- A. Kevin Sudy of Navigant Consulting shall be appointed as Implementation Monitor to monitor Respondents' implementation of the firewall procedures under Paragraphs II.B. and II.C. of this Order to Maintain Assets and under Paragraphs II.B. and II.C. of the Order, which Implementation Monitor shall have the rights, duties, and responsibilities as described below.
- B. No later than one (1) day after this Order to Maintain Assets is made final, Respondents shall, pursuant to the Monitor Agreement, which is attached hereto as Appendix A, and pursuant to this Order to Maintain Assets, transfer to the Implementation Monitor all the rights, powers, and authorities necessary to permit the Implementation Monitor to monitor Respondents' implementation of the firewall procedures required under Paragraphs II.B. and II.C. of this Order to Maintain Assets and Paragraphs II.B. and II.C. of the Order, in a manner consistent with the purposes of this Order to Maintain Assets and the Order.
- C. In the event a substitute Implementation Monitor is required, the Commission shall select the Implementation Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Implementation Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Implementation Monitor, Respondents shall be deemed to have consented to the selection of the proposed Implementation Monitor. Not later than ten (10) days after appointment of a substitute Implementation Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Implementation Monitor all the rights and powers necessary to permit the Implementation Monitor to monitor Respondents' compliance with the terms of this Order to Maintain Assets as stated in this Paragraph IV.
- D. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Implementation Monitor:
 - 1. The Monitor shall have the power and authority to monitor Respondents' implementation of the firewall procedures of Paragraphs II.B. and II.C. of this Order to Maintain Assets and Paragraphs II.B. and II.C. of the Order, in a manner consistent with the purposes of this Order to Maintain Assets and the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Implementation Monitor in a manner consistent with the purposes of this Order to Maintain Assets and the Order and in consultation with the Commission, including, but not limited to:

- a. Assuring that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities to assure that Non-Public Information is protected as required by this Order to Maintain Assets, the Order, and the Amendment;
 - b. Assuring that Non-Public Information is not received or used by Respondents, except as allowed in this Order to Maintain Assets, the 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 to Maintain Assets, and Paragraphs II.B. and II.C. of the 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 reasonably request, related to Respondents' compliance with their obligations under Paragraphs II.B. and II.C. of this Order to Maintain Assets, Paragraphs II.B. and II.C. of the Order, and the Amendment. Respondents shall cooperate with any reasonable request of the Implementation Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with this Order to Maintain Assets, the Order, and the Amendment.
5. The Implementation Monitor shall serve, without bond or other security, at the expense of Respondents on such reasonable and customary terms and conditions as the Commission may set. The Implementation Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Implementation Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.
6. Respondents shall indemnify the Implementation Monitor and hold the Implementation Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Implementation Monitors' duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations 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 Implementation Monitor.

7. Within one (1) month from the date the Implementation Monitor is appointed pursuant to this paragraph, every sixty (60) days thereafter, and otherwise as requested by the Commission, during the term of the Implementation Monitor, the Implementation Monitor shall report in writing to the Commission concerning performance by Respondents of its obligations to protect Non-Public Information under Paragraphs II.B. and II.C. of this Order to Maintain Assets, Paragraphs II.B. and II.C. of the 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 performance of the Implementation Monitor's duties.
 - F. If the Commission determines that the Implementation Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Implementation Monitor in the same manner as provided in this Paragraph IV.
 - G. The Commission may on its own initiative, or at the request of the Implementation Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order to Maintain Assets, the Order, and the Amendment including, but not limited to, reinstating the Implementation Monitor to monitor Respondents' compliance with the firewalls as required in this Order to Maintain Assets and the Order.

V.

IT IS FURTHER ORDERED that, beginning fifteen (15) days after the date on which Respondents sign the Consent Agreement and every thirty (30) days thereafter until this Order to Maintain Assets terminates pursuant to Paragraph VIII, 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 the terms of this Order to Maintain

Assets. Respondents shall submit at the same time a copy of these reports to the Implementation Monitor.

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 to Maintain Assets.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order to Maintain Assets, 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 to Maintain Assets; 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 to Maintain Assets shall terminate at the earlier of:

- A. three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. such time as the Decision and Order has been made final.

By the Commission, Commissioner Leibowitz dissenting and Commissioner Rosch recused.

Donald S. Clark
Secretary

SEAL

ISSUED: January 24, 2007

APPENDIX A

MONITOR AGREEMENT