PUBLIC VERSION

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of **Conoco Inc.,** a corporation, and **Phillips Petroleum Company,** a corporation.	Docket No. C-4058

PETITION OF CONOCOPHILLIPS FOR APPROVAL OF AN AMENDMENT TO THE PROPANE SUPPLY AGREEMENT WITH NGL SUPPLY, INC.

Pursuant to Section 2.41 of the Federal Trade Commission ("Commission") Rules of Practice and Procedure, 16 C.F.R. §2.41 (2005), ConocoPhillips hereby petitions the Commission to approve an amendment to the propane supply agreement with NGL Supply, Inc. ("NGL"), which was required by Paragraph IV.D.1 of the Decision and Order (the "Order") in the above-captioned matter.[1]

The proposed amendment has been agreed to by NGL. In addition, both the Propane Monitor and the FTC Compliance staff have reviewed the amendment and neither has objected to the terms. This petition describes the terms of the proposed amendment and explains how the proposed amendment is consistent with the purposes of the Commission's Order.

1 All capitalized terms used but not otherwise defined in this petition have the meanings ascribed to them in the Commission's Order.

For the convenience of maintaining the public record, ConocoPhillips is submitting this petition in two versions—one that includes confidential and proprietary information (the "Confidential Version") and another that has certain confidential and proprietary information redacted in both the petition and in Confidential Exhibit 2 (the "Public Version"). Pursuant to Section 21 of the Federal Trade Commission Act, 15 U.S.C. §57b-2, and the Commission's Rules of Practice 4.10-4.11, 16 C.F.R. §§4.10-4.11, ConocoPhillips hereby requests that certain information provided in this petition and Confidential Exhibit 2 be treated by the Commission as strictly confidential and not be made available to the public. Portions of this petition and Confidential Exhibit 2 contain commercially and competitively sensitive information relating to the ConocoPhillips and NGL propane businesses. Disclosure of the information contained herein to the public will prejudice ConocoPhillips and NGL.

I. Background and Rationale

In connection with the above captioned merger, ConocoPhillips divested the Phillips Propane Business, including two propane terminals and supply agreements along the Blue Line pipeline, to NGL. The majority of propane from terminals along the Blue Line is sold during the winter months to supply local heating needs. During the winter, propane is shipped east along the Blue Line, from sources such as the WRB Refining LLC ("WRB")[2] Borger, TX refinery and the industry storage and trading hub in Conway, KS, to the Missouri and Illinois Blue Line terminals.[3] From March 15 to September 15 of each year (the "Reversal Period"), ConocoPhillips has historically reversed the Blue Line and shipped propane from the WRB Wood River, IL refinery to NGL terminals along the Blue Line, with any excess being shipped to Conway storage. During this period, demand for propane as a heating fuel typically begins to

[2] WRB Refining LLC is a joint venture between ConocoPhillips Company and EnCana US Refineries, LLC.

taper down in March and then back up in September, with significant decreases in demand occurring in the mid-summer months relative to demand outside the Reversal Period.

The main reason for the annual Blue Line reversal is to accommodate excess summer supply of a different product, butane. During the winter, most butane produced at the Wood River refinery is consumed in the manufacture of gasoline, with relatively small quantities stored or sold to third parties. In the summer season, ConocoPhillips is required to produce gasoline with a lower vapor pressure. Butane increases vapor pressure. Consequently, Wood River's consumption of butane is reduced dramatically. Because both butane storage at the Wood River refinery and alternative options for transporting butane out of the Wood River refinery are limited (and it is not practical or economical to cease production of butane at the refinery), ConocoPhillips reverses the pipeline and sends butane to storage in Conway, KS. If it did not reverse the pipeline, ConocoPhillips would actually need to reduce Wood River refined petroleum products (*e.g.*, gasoline) output by up to [redacted] percent. This seasonal geographic switch in the direction of the pipeline has been ConocoPhillips' (and previously, Phillips') customary practice, both before and after the divestiture.

To fulfill its obligations under the Order and meet its contractual obligations to NGL, ConocoPhillips ships propane along the Blue Line to fill NGL's storage capacity, which is approximately [redacted] barrels ("bbls") at the Jefferson City terminal and approximately [redacted] bbls at the E. St. Louis terminal. Propane production and demand is somewhat variable from month-to-month and year-to-year. Historically, during the Reversal Period, ConocoPhillips has supplied NGL with anywhere from approximately [redacted] barrels per day ("bpd") to approximately [redacted] bpd of propane, with an average of approximately [redacted] bpd. Wood River

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[3] A map depicting the relevant assets and seasonal flow of the Blue Line is provided at Exhibit 1.

historically has produced anywhere from approximately [redacted] bpd to approximately [redacted] bpd of propane during this period, with an average of approximately [redacted] bpd, and has approximately [redacted] bbls of propane storage capacity. ConocoPhillips strives to ensure that its Wood River propane storage is adequately stocked at the beginning of the Reversal Period, when the Blue Line is switched to run from east to west, to meet shortfalls between anticipated demand and Wood River production.

During the summer of 2008, Wood River production and existing inventory was insufficient to enable ConocoPhillips to supply propane to its own customers and NGL. To address this, ConocoPhillips ceased supplying its own customers for approximately four weeks, made propane available to NGL at the Mt. Vernon and Moberly, Missouri terminals (which are within in a few hundred miles of the Jefferson City terminal), and purchased approximately [redacted] bbls on time-exchange from [redacted] Because the price charged by ConocoPhillips to NGL is set by the Order and is based on spot prices in Conway, KS and without regard to ConocoPhillips' actual costs, ConocoPhillips absorbed the costs associated with these exchanges, which resulted in a loss to ConocoPhillips of approximately $[redacted].

II. <u>The Agreement</u>

In order to reduce the risk that this scenario could occur in the future, ConocoPhillips and NGL executed a letter agreement, attached as Confidential Exhibit 2, amending the long term propane supply agreement. The provisions govern the summer supply of propane to NGL when ConocoPhillips' inventories of propane at Wood River drop below certain levels, and provide that ConocoPhillips' supply obligations to NGL are limited under the circumstances to the following:

- If inventory at Wood River drops below [redacted] bbls, NGL has exclusive rights to access up to [redacted] bbls (subject to existing inventory levels). The remaining [redacted] bbls must stay in storage, as this is the minimum volume required to preserve the integrity of the storage cavern.
- If inventory drops below [redacted] bbls,
    - o NGL has exclusive rights to access up to the entire [redacted] bbls of available product, and
    - o has the right to purchase additional volumes from ConocoPhillips at the Mt. Vernon and Moberly terminals at the price set forth in the Long Term Supply Agreement, as amended.

III. <u>Amendment is Consistent with the Order</u>

ConocoPhillips believes that this agreement is consistent with ConocoPhillips' obligation, under section IV.D.1.a of the Order, to provide NGL with "an option to purchase propane or acquire propane through exchanges in an amount of up to no less than the capacity of the Blue Line and the Shocker Line [approximately 28,800 bpd], to be delivered to each of the Jefferson City, Missouri, and East St. Louis, Illinois, terminals *consistent with usual and customary practices*; ..." (emphasis added). While it is conceivable that ConocoPhillips may be unable to supply NGL with an amount equal to the full capacity of the Blue Line at the East St. Louis and Jefferson City terminals at certain points in time, if Wood River inventories drop to the level where this is a risk, ConocoPhillips gives all of its available supply from Wood River production and inventory to NGL, which is all it can reasonably be asked to do. (Indeed, ConocoPhillips goes beyond even this, by permitting NGL to purchase product from ConocoPhillips at the Moberly and Mt. Vernon terminals.)

If Wood River inventory drops below [redacted] bbls, then the agreement provides NGL with approximately four days of supply at the Blue Line capacity of [redacted] bpd.[4] As discussed above, however, ConocoPhillips historically has supplied NGL with far less propane than this in the summer (on average, approximately [redacted] bpd). Thus, ConocoPhillips anticipates that the agreement should provide NGL with sufficient volume to keep its storage full, while also allowing ConocoPhillips to replenish its Wood River storage capacity and end the period of exclusivity. Moreover, it has been ConocoPhillips' "usual and customary" practice, both before and after execution of the Order, to reverse the Blue Line during the Reversal Period and effectively limit summer propane supply to the Blue Line to the level of Wood River output (which is based predominantly on ConocoPhillips' plans regarding light petroleum products, crude oil costs, *etc.*) and storage. The agreement is therefore consistent with the Order's requirement in this regard. Most importantly, pursuant to the agreement, ConocoPhillips anticipates that NGL should continue to receive all of the propane it requires to fill its storage and supply its customers during the summer months.

[redacted]

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4 [redacted]

[redacted]

In addition, it is worth noting that should NGL increase prices to customers in this situation, ConocoPhillips would receive no benefit as ConocoPhillips' price to NGL is set by the Order and is based on spot prices in Conway, KS. Thus, ConocoPhillips has an incentive to try to prevent this situation if possible.

ConocoPhillips discussed the amendment with both the FTC Compliance staff and the Propane Monitor. Neither raised any substantive concerns.

IV. Conclusion

The terms of the February 2009 amendment further the purposes of the Commission's Order. Accordingly, ConocoPhillips respectfully requests that the Commission approve the proposed amendments as expeditiously as possible.

Respectfully submitted,

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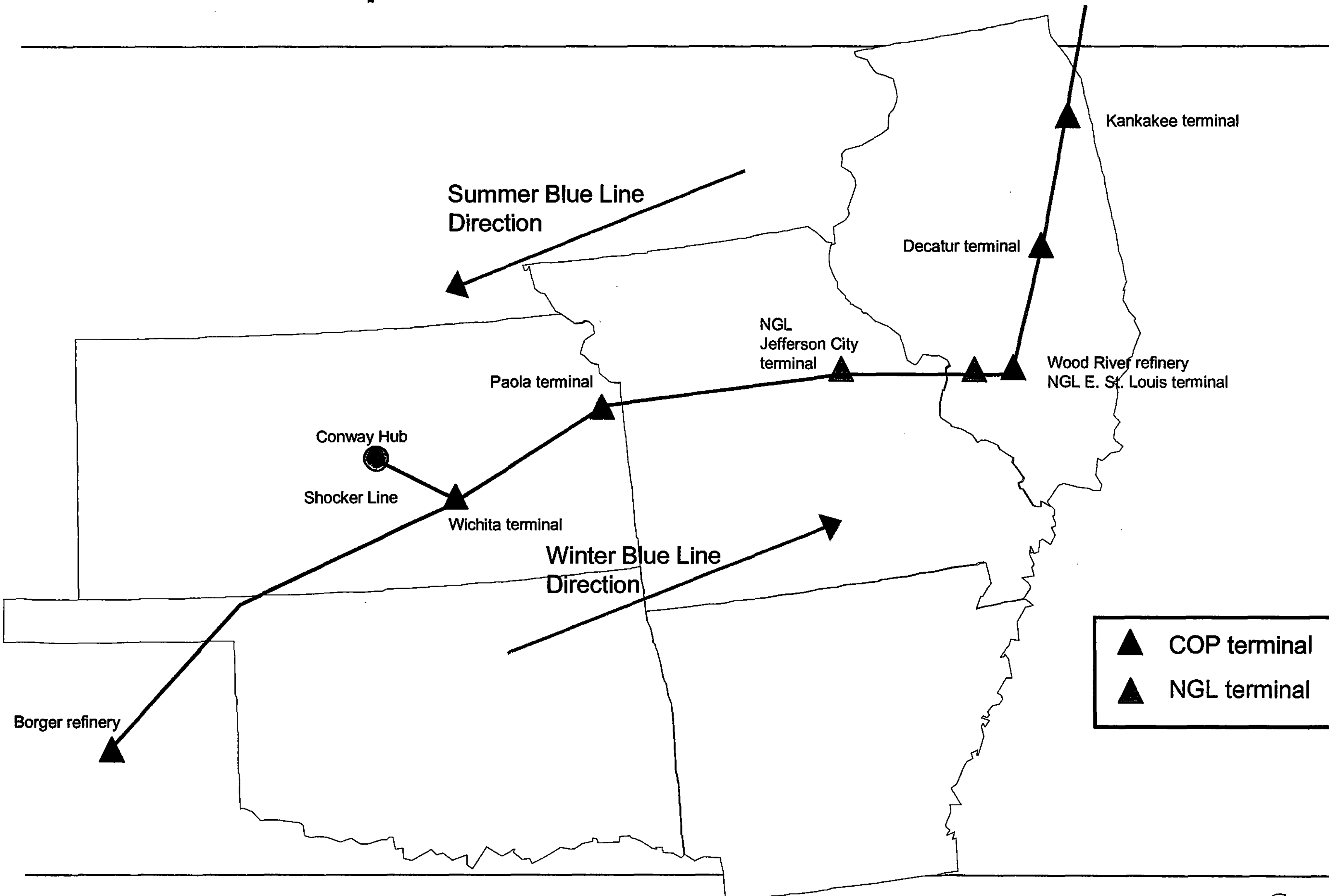
EXHIBIT 1

Blue Line Map

Blue Line Pipeline and Related Assets



CLEARY GOTTLIEB

CONFIDENTIAL EXHIBIT 2

Proposed Amendment to the Propane Supply Agreement