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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
Julie Brill
Maureen K. Ohlhausen
Terrell McSweeny

In the Matter of	)	
	)	
ArcLight Energy Partners Fund VI, L.P., a limited partnership.	)	**Docket No. C-4563**

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by ArcLight Energy Partners Fund VI, L.P. ("ArcLight" or "Respondent") of 100% of the partnership interests of Gulf Oil Limited Partnership from Cumberland Farms, Inc. ("Cumberland") and Respondent 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 Respondent 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

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement ("Consent Agreement") containing consent orders, an admission by Respondent 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 Respondent 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 Respondent has 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 enters the following Decision and Order ("Order"):

1. Respondent ArcLight Energy Partners Fund VI, L.P. is a limited partnership organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its corporate office and principal place of business located at 200 Clarendon Street, 55th Floor, Boston, Massachusetts 02116.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent and the proceeding is in the public interest.

ORDER

I.

IT IS HEREBY ORDERED that, as used in this Order, the following definitions shall apply:

A. "ArcLight" or "Respondent" means ArcLight Energy Partners Fund VI, L.P., its directors, officers, employees, agents, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates in each case controlled by ArcLight Energy Partners Fund VI, L.P. (including Gulf Oil Limited Partnership, after the Acquisition) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

B. "Commission" means the Federal Trade Commission.

C. "Acquirer" means (i) Arc Logistics or (ii) any other Person that acquires the PA Terminals Assets pursuant to this Order.

D. "Acquisition" means the proposed acquisitions described in the (i) Equity Interests Purchase and Sale Agreement by and among Cumberland Farms, Inc., Gulf Acquisition LLC, and Chelsea Petroleum Products I, LLC, dated May 15, 2015 and (ii) Asset Purchase and Sale Agreement by and between Cumberland Farms, Inc. and Blue Hills Fuels, LLC, dated May 15, 2015.

E. "Acquisition Date" means the date the Acquisition is consummated.

F. "ArcLight Terminal Assets" means an option to acquire the Williamsport terminal assets located at 1606 and 2080 Sylvan Road, Armstrong Township, Lycoming County, Pennsylvania; Tax parcel nos. 02-3500-0156B-000 and 02-3500-0158-000.

G. "Arc Logistics" means Arc Logistics Partners LP, a limited partnership organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its 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 trade secret or other law;

2. all information concerning product 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, strategic plans, 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 material 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 obligation restricting disclosure.

I. "Contract" means any agreement, contract, lease, 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 Agreement or (ii) any other agreement between Respondent (or a Divestiture Trustee) and Acquirer that receives the prior approval of the Commission to divest the PA Terminals Assets, including all related ancillary agreements, schedules, exhibits, and attachments thereto.

M. “Divestiture Date” means the date on which Respondent (or the Divestiture Trustee) closes on the transaction to divest the PA Terminals Assets to Acquirer.

N. “Divestiture Trustee” means the Person appointed by the Commission pursuant to Paragraph VI. of this Order.

O. “Excluded Assets” means:

1. Real property and Tangible Personal Property at locations other than the Pennsylvania Locations; *provided, however*, Excluded Assets shall not include any assets at locations other than the Pennsylvania Locations if included as Tangible Personal Property under Paragraph I.T.2. of this Order;

2. Corporate Trade Names and portions of website content, domain names, or e-mail addresses that contain Corporate Trade Names;

3. Software that can readily be purchased or licensed from sources other than Respondent and which has not been materially modified (other than through user preference settings), or enterprise software also used by Respondent to manage and account for businesses acquired in the Acquisition, but not included in the PA Terminals Business; and

4. Any other assets that are shared with, or also pertain to, other businesses acquired by Respondent in the Acquisition, unless such assets primarily relate to the operation of the PA Terminals Business.

P. “Gulf” means Gulf Oil Limited Partnership, a limited partnership organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its corporate office and principal place of business located at 100 Crossing Boulevard, Framingham, Massachusetts 01702.

Q. “Intellectual Property” means all intellectual property, including (i) commercial names, all assumed fictional business names, trade names, “doing business as” (d/b/a names), registered and unregistered trademarks, service marks and applications, and tradedress; (ii) all patents, patent applications and inventions and discoveries that may be patentable; (iii) all registered and unregistered copyrights in both published works and unpublished works; (iv) all rights in mask works; (v) all know-how, trade secrets, confidential or proprietary information, customer lists, software, technical information, data, process technology, plans, drawings, and blue prints; and (vi) and all rights in internet web sites and internet domain names presently used.

R. “License” means a worldwide, royalty-free, fully paid-up, perpetual, irrevocable, transferable, and sublicensable license and such tangible embodiments of the licensed rights (including, but not limited to, physical and electronic copies) as may be necessary or appropriate to enable Acquirer to use the rights.

S. “PA Terminals Agreement” means the Asset Purchase and Sale Agreement by and between Chelsea Petroleum Products I, LLC and Arc Terminals Pennsylvania Holdings, LLC, dated December 17, 2015, including all related ancillary agreements, schedules, exhibits, and attachments thereto.

T. “PA Terminals Assets” means all of Respondent’s right, title, and interest (acquired by ArcLight as a result of the Acquisition) in and to all property and assets, real, personal, or mixed, tangible and intangible, of every kind and description, wherever located, relating to operation of the PA Terminals Business, including, but not limited to:

1. all real property interests (including fee simple interests and real property leasehold interests), including all easements, and appurtenances, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;

2. all Tangible Personal Property, including any Tangible Personal Property removed from any location of the PA Terminals Business since the date of the announcement of the Acquisition, and not replaced, unless such Tangible Personal Property was removed in the ordinary course of business and has a replacement cost of less than $5,000;

3. all inventories other than inventories held by a customer;

4. all Contracts and all outstanding offers or solicitations to enter into any Contract, and all rights thereunder and related thereto;

5. all consents, licenses, registrations, or permits issued, granted, given, or otherwise made available by or under the authority of any governmental body or pursuant to

any legal requirement, and all pending applications therefor or renewals thereof, to the extent assignable;

6. all data and Records, including client and customer lists and Records, referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, notices, orders, inquiries, correspondence, and other similar documents and Records, and copies of all personnel Records (to the extent permitted by law);

7. all intangible rights and property, including Intellectual Property owned or licensed (as licensor or licensee) by Respondent, going concern value, goodwill, and telephone and telecopy listings;

8. all insurance benefits, including rights and proceeds; and

9. all rights relating to deposits and prepaid expenses, claims for refunds and rights to offset in respect thereof;

Provided, *however*, that the PA Terminals Assets need not include Respondent's right, title, and interest in the Excluded Assets and, *provided further* that the PA Terminals Assets shall include the ArcLight Terminal Assets.

U. "PA Terminals Business" means the business of providing temporary storage for light petroleum products received via pipeline, marine vessel, tank trucks, rail, or transport trailers, and the re-delivery of such products from storage tanks into tank trucks, rail cars, transport trailers, or pipelines, conducted by Cumberland (through Gulf Oil Limited Partnership) at the Pennsylvania Locations, prior to the Acquisition.

V. "PA Terminals Employee" means (i) any individual employed by Gulf on a full-time, part-time, or contract basis at each location of the PA Terminals Business at any time as of and after the date of the announcement of the Acquisition and (ii) up to ten individuals employed by Gulf at any other location whose job responsibilities relate or related to the PA Terminals Business; *provided, however,* that PA Terminals Employee shall not include any individuals of Gulf retained by Cumberland after the Acquisition.

W. "Pennsylvania Locations" means the Pennsylvania cities of Altoona, Mechanicsburg, Pittston Township, and Williamsport.

X. "Person" means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a governmental body.

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 documents relating thereto.

BB. "Terminal Customer" means any Person who has a Contract with Respondent for terminaling services at any of the Pennsylvania Locations in effect as of the Public Record Date.

CC. "Transitional Assistance" means any (i) administrative assistance (including, but not limited to, order processing, shipping, accounting, and information transitioning services) or (ii) technical assistance with respect to the provision of light petroleum products terminaling services.

II.

IT IS FURTHER ORDERED that:

A. No later than twenty (20) days after the Acquisition Date, Respondent shall divest the PA Terminals Assets, absolutely and in good faith, to Arc Logistics pursuant to the PA Terminals Agreement, *provided, however*, that if, at the time the Commission determines to make this Order final, the Commission notifies Respondent that:

1. Arc Logistics is not an acceptable purchaser of the PA Terminals Assets, then Respondent shall immediately rescind the PA Terminals Agreement, and shall divest the PA Terminals Assets no later than 120 days from the date this Order is issued, absolutely and in good faith, at no minimum price, to a Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission; or

2. The manner in which the divestiture to Arc Logistics was accomplished is not acceptable, the Commission may direct Respondent, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the PA Terminals Assets (that shall be incorporated into a revised PA Terminals Agreement) as the Commission may determine are necessary to satisfy the requirements of this Order.

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 the 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 authorizations 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) as 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 Business; and

3. For a period of five (5) years from the Divestiture Date, supply ethanol and biodiesels and terminaling services for ethanol and biodiesels to Acquirer at Respondent's terminals at the Pennsylvania Locations in quantities as needed by Acquirer;

Provided, however, that Respondent shall perform the obligations set forth in this Paragraph II.C. in a manner that receives the prior approval of the Commission;

Provided further that the terms of such obligations shall be extended at the request of Acquirer, subject to the prior approval of the Commission; and

Provided further that Respondent shall not (i) terminate any agreement relating to such obligations because of a material breach by Acquirer, in the absence of a final order of a court of competent jurisdiction or (ii) seek to limit the damages (such as indirect, special, and consequential damages) which Acquirer would be entitled to receive in the event of Respondent's breach of any such agreement.

D. Respondent shall cooperate with and assist Acquirer to evaluate and retain any PA Terminals Employee, including, but not limited to:

1. Not later than fifteen (15) days before the Divestiture Date, Respondent shall (i) identify all PA Terminals Employees, (ii) allow Acquirer to inspect the personnel files and other documentation of all PA Terminals Employees, to the extent permissible under applicable laws, and (iii) allow Acquirer an opportunity to interview any PA Terminals Employee;

2. Respondent shall (i) not offer any incentive to any PA Terminals Employee to decline employment with Acquirer, (ii) remove any contractual impediments that may deter any PA Terminals Employee from accepting employment with Acquirer, including, but not limited to, any non-compete or confidentiality provision of employment or other contracts with Respondent that would affect the ability of such employee to be employed by Acquirer, and (iii) not otherwise interfere with the recruitment, hiring, or employment of any PA Terminals Employee by Acquirer;

3. Respondent shall (i) vest all current and accrued pension benefits as of the date of transition of employment with Acquirer for any PA Terminals Employee who accepts an offer of employment from Acquirer and (ii) provide each PA Terminals Employee with reasonable financial incentive as necessary to accept offers of employment with Acquirer; and

4. For a period of two (2) years after the PA Terminals Assets are divested, Respondent shall not solicit the employment of any PA Terminals Employee who becomes employed by Acquirer at the time the PA Terminals Assets are divested; *provided*, *however*, that a violation of this provision will not occur if: (i) the individual's employment has been terminated by Acquirer, (ii) Respondent advertises for employees in newspapers, trade publications, or other media not targeted specifically at the employees, or (iii) Respondent hires employees who apply for employment with Respondent, so long as such employees were not solicited by Respondent in violation of this paragraph.

E. With respect to any Intellectual Property that is:

1. Retained by Respondent under Paragraph I.O.4. of this Order, Respondent shall grant a License to Acquirer under such Intellectual Property sufficient for Acquirer to operate the PA Terminals Business in substantially the same manner as Cumberland prior to the Acquisition with the freedom to extend existing services and develop new services; and

2. Included in the PA Terminals Assets that also relates to operation of any other business that Respondent acquired in the Acquisition, Respondent may enter into

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 the 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) in 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 or PA Terminals Assets; *provided, however,* that Respondent may disclose or use such Confidential Information in the course of:

1. Performing its obligations or as permitted under this Order, 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 or PA Terminals Assets, or as required by law.

B. If disclosure or use of any Confidential Information is permitted to Respondent's employees or to any other Person under Paragraph IV.A. of this Order, Respondent shall limit such disclosure or use (i) only to the extent such information is required; (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph IV.A.; and (iii) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.

C. Respondent shall enforce the terms of this Paragraph IV. as to its employees or any other Person, and take such action as is necessary to cause each of its employees and any other Person to comply with the terms of this Paragraph IV., including implementation of access and data controls, training of its employees, and all other actions that Respondent would take to protect its own trade secrets and proprietary information.

V.

IT IS FURTHER ORDERED that:

A. At any time after Respondent signs the Consent Agreement, the Commission may appoint a Person ("Monitor") to monitor Respondent's compliance with its obligations under this Order.

B. The Commission shall select the Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed in writing, including the reasons for opposing, the selection of any proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Monitor, Respondent shall be deemed to have consented to the selection of the proposed Monitor.

C. Respondent shall enter into an agreement with the Monitor, subject to the prior approval of the Commission, that (i) shall become effective no later than one (1) day after the date the Commission appoints the Monitor, and (ii) confers upon the Monitor all rights, powers, and authority necessary to permit the Monitor to perform his duties and responsibilities on the terms set forth in this Order and in consultation with the Commission:

1. The Monitor shall (i) monitor Respondent's compliance with the obligations set forth in this Order and (ii) act in a fiduciary capacity for the benefit of the Commission;

2. Respondent shall (i) insure that the Monitor has full and complete access to all Respondent's personnel, books, records, documents, and facilities relating to compliance with this Order or to any other relevant information as the Monitor may reasonably request, and (ii) cooperate with, and take no action to interfere

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 other 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 each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided*, *however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.

D. The Monitor shall report in writing to the Commission concerning Respondent's compliance with this Order on a schedule as determined by Commission staff, including a final report after Respondent has completed all obligations required by Paragraph II. of this Order (not including Paragraph II.D.4.).

E. The Commission may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

F. The Monitor's power and duties shall terminate ten (10) business days after the Monitor has completed his final report pursuant to Paragraph V.D. of this Order, or at such other time as directed by the Commission.

G. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld:

1. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of the substitute Monitor within five (5) days after notice by the staff of the Commission to Respondent of the identity of any substitute Monitor, then Respondent shall be deemed to have consented to the selection of the proposed substitute Monitor; and

2. Respondent shall, no later than five (5) days after the Commission appoints a substitute Monitor, enter into an agreement with the substitute Monitor that, subject to the approval of the Commission, confers on the substitute Monitor all the rights, powers, and authority necessary to permit the substitute Monitor to perform his or her duties and responsibilities pursuant to this Order on the same terms and conditions as provided in this Paragraph V.

H. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

VI.

IT IS FURTHER ORDERED that:

A. If Respondent has not fully complied with the divestiture and other obligations as required by Paragraph II. of this Order, the Commission may appoint a Divestiture Trustee to divest the PA Terminals Assets and perform Respondent's other obligations in a manner that satisfies the requirements of this Order.

B. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to Section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondent to comply with this Order.

C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee 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 Divestiture Trustee's powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and to take such other action as may be required to divest the Divestiture Assets.

2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed Divestiture Trustee, by the court.

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph VI. in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

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. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent, 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 Respondent, 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 and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's 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 gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph VI.E.6., the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph VI.E.5. of this Order.

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.

8. The Divestiture Trustee shall report in writing to 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 agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

F. The Commission may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.

G. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph VI.

H. 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 divestitures and other obligations or action required by this Order.

VII.

IT IS FURTHER ORDERED that:

A. The Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof, and Respondent shall comply with all terms of such agreement. The Divestiture Agreement shall not limit or contradict, or be construed to limit or contradict, the terms of this Order and nothing in this Order shall be construed to reduce any rights or benefits of Acquirer or to reduce any obligations of Respondent under such agreement.

B. If any term of the Divestiture Agreement varies from Paragraphs I.-X. of this Order ("Order Term"), then to the extent that Respondent cannot fully comply with both terms, the Order Term shall determine Respondent's obligations under this Order. Respondent shall not modify, replace, or extend the terms of the Divestiture Agreement without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5).

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 II.A.1. 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 accomplished.

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; or

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 Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

A. Access, during business office hours of the Respondent 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 the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at its expense; and

B. To interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

XI.

IT IS FURTHER ORDERED that this Order shall terminate on February 4, 2026.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: February 4, 2016

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. ArcLights'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 xxxxxxxxxxxxx, Tel: xxxxxxxxxxx, 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]