

PUBLIC VERSION

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



In the Matter of)
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Valero Energy Corporation,)
a corporation)

and)

Ultramar Diamond Shamrock)
Corporation,)
a corporation)
)
)

Docket No. C-4031
File No. 011-0141

**PETITION OF VALERO ENERGY CORPORATION
FOR APPROVAL OF PROPOSED DIVESTITURE**

Pursuant to Section 2.41(f) of the Federal Trade Commission ("Commission") Rules of Practice and Procedure, 16 C.F.R. §2.41 (2001), and paragraph IIA of the Decision and Order in the above-captioned matter (the "Decision and Order"), Valero Energy Corporation ("Valero") hereby petitions the Commission to approve the divestiture of Valero's Golden Eagle CARB Refining and Marketing Assets (as such term is defined in the Decision and Order) to a wholly-owned subsidiary of Tesoro Petroleum Corporation ("Tesoro").

I. Consent Agreement and Complaint

On November 30, 2001, Valero, Ultramar Diamond Shamrock Corporation ("Ultramar") and the Commission entered into an Agreement Containing Consent Orders that included the Decision and Order and an Order to Hold Separate and Maintain Assets (collectively, the "Consent

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I. Consent Agreement and Complaint

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Agreement”). The Consent Agreement, together with the Commission’s Complaint, was placed in the public record on December 18, 2001, and is presently before the Commission for finalization. On December 31, 2001, Valero completed its acquisition of Ultramar. Currently, Valero’s wholly-owned subsidiary, Ultramar Inc., owns the Golden Eagle CARB Refining and Marketing Assets and operates them in accordance with the Order to Hold Separate and Maintain Assets.

Count IV of the Commission’s Complaint alleges that the acquisition by Valero of Ultramar will substantially lessen competition in the refining and bulk supply of CARB 2 and CARB 3 gasoline for sale in Northern California and in the State of California, markets in which Tesoro has only minimal presence today. Accordingly, paragraph II.A of the Decision and Order requires Valero to divest the Golden Eagle CARB Refining and Marketing Assets no later than twelve (12) months from the date the Consent Agreement was executed.

This application describes the principal terms of the Asset Sale and Purchase Agreement (“Sale and Purchase Agreement”) by which Valero will divest the Golden Eagle CARB Refining and Marketing Assets and explains how the divestiture of the Golden Eagle CARB Refining and Marketing Assets to Tesoro satisfies the purposes of the Decision and Order.

II. The Transaction Documents

On February 4, 2002, Ultramar Inc. and Tesoro’s wholly-owned subsidiary, Tesoro Refining and Marketing Company (the “Purchaser”), entered into the Sale and Purchase Agreement for the sale and purchase of the Golden Eagle CARB Refining and Marketing Assets. A copy of the Sale and Purchase Agreement and all the attachments, exhibits and schedules attached thereto (collectively, the “Transaction Documents”) are attached to this Application as Confidential Appendix A.

Valero requests that the Transaction Documents and other information provided in Confidential Appendix A be treated by the Commission as strictly confidential and not be made available to the public. Confidential Appendix A contains commercially and competitively sensitive information relating to the divestiture of the Golden Eagle CARB Refining and Marketing Assets. Disclosure of the information contained in this Confidential Appendix to the public will prejudice Valero and Tesoro, and negatively affect Valero's ability to comply with the Consent Agreement. Valero requests that the Commission inform it immediately if the Commission will not treat the confidential version of this application and the accompanying documents and information of Valero and Tesoro as confidential so that Valero may seek appropriate relief.¹

As explained below, the terms of the Transaction Documents comply with and satisfy the purposes of the Decision and Order.

A. Sale and Purchase Agreement

Pursuant to the Sale and Purchase Agreement, Ultramar Inc. has agreed to sell and the Purchaser has agreed to purchase the Golden Eagle CARB Refining and Marketing Assets, which include: (i) the Golden Eagle Refinery located in Martinez, California, (ii) the 70 retail marketing sites identified on Schedule B to the Decision and Order (the "Marketing Sites"), (iii) the real and personal property associated with the foregoing locations, (iv) the feedstock, product, warehouse and merchandise inventory associated with the Golden Eagle Refinery and the Marketing Sites, and (v) the other assets related to the operations of the Golden Eagle Refinery and the Marketing Sites as set forth in more detail in the Sale and Purchase Agreement. Tesoro has agreed to pay \$945 million

¹For the convenience of maintaining the public record, Valero is submitting this application in two versions, one that includes confidential and proprietary information (the "Confidential Information") and another that is the same as the Confidential Version, but with Confidential Appendix A redacted (the "Public Version").

for the Golden Eagle Refinery and the Marketing Sites, plus the value of inventory at closing, estimated at \$130 million. In addition, the Sale and Purchase Agreement provides for a contingency payment of up to \$150 million over a five-year period.

B. Employees

Pursuant to the Sale and Purchase Agreement, Tesoro is required to offer each of the employees at the Golden Eagle Refinery and Marketing Sites employment at substantially similar salary, wage, and benefit levels as those provided by Ultramar Inc. prior to the sale. In accordance with the Order to Hold Separate and Maintain Assets, the employees at these facilities are eligible for a retention bonus to be paid by Valcro, payable over the 12-month period following the closing of the sale provided that they continue their employment with Tesoro. Continuity of the employee base associated with the Golden Eagle CARB Refining and Marketing Assets will help ensure the continued success of operations at these Assets.

III. The Proposed Acquirer

A. Background

Tesoro was founded in 1968 and is a natural resource company engaged in the refining, distributing and marketing of petroleum products. It also provides marine logistics services. It has assets of more than \$2 billion and annual revenues of more than \$5 billion.

Tesoro's corporate headquarters are located in San Antonio, Texas and its address is:

Tesoro Petroleum Corporation
300 Concord Plaza Drive
San Antonio, Texas 78216

The common stock of Tesoro is publicly-traded on the New York Stock Exchange and Pacific Exchange, Inc. under the ticker symbol of "TSO". Tesoro and the Purchaser are each Delaware corporations and the Purchaser is qualified to do business in California.

B. Financial

Tesoro has the financial stability to ensure the continued use of the Golden Eagle CARB Refining and Marketing Assets as viable, on-going businesses. As a publicly-traded company, it has access to public financial markets. It anticipates financing its acquisition of the Golden Eagle CARB Refining and Marketing Assets through either a permanent long-term financing which consists of a combination of (i) a senior secured credit facility which would include revolving and term loans, (ii) senior subordinated notes, and (iii) equity securities or an interim bridge facility. Tesoro anticipates completing the long-term financing arrangements prior to closing although this is not a condition to closing.

Tesoro has a history of success regarding its ability to secure financing. In 1998, Tesoro secured \$1.1 billion in connection with the acquisition of the Shell Anacortes and BHP Hawaii refineries. In September 2001, with the completion of Tesoro's acquisition of refining and marketing assets from BP, they secured a \$1.0 billion financing package.

Tesoro has an incentive equivalent to Ultramar's to invest and compete vigorously in the businesses in which the Golden Eagle CARB Refining and Marketing Assets compete. As an independent refiner and marketer, Tesoro is able to take advantage of price differentials among various crude oils and other feedstocks and, with this increased flexibility, Tesoro is better positioned to compete and ultimately provide consumers with lower-priced products.

C. Operation Experience

Tesoro operates five refineries in Alaska, Hawaii, North Dakota, Utah and Washington. Tesoro's refineries have a combined crude throughput capacity of 390,000 barrels per day and produce a range of motor fuels and other petroleum products. Tesoro, one of the largest independent

refining and marketing companies in the western United States, has been involved in the petroleum refining industry for over thirty years and has sufficient operations expertise to ensure the continued viability of the Golden Eagle CARB Refining and Marketing Assets. Since May, 1998, it has acquired four refineries and, accordingly, is very experienced in integrating refining operations such as those at the Golden Eagle Refinery into the Tesoro system. Moreover, with the current Golden Eagle Refinery management team being offered employment with Tesoro, their years of refining experience will only enhance Tesoro's operational expertise.

Tesoro has the retail expertise necessary to operate the Marketing Sites as viable, ongoing business. With over 675 branded retail locations—many of these locations being company owned and operated similar to the Marketing Sites, Tesoro's core retail marketing operations are located in the Western United States (outside of California). Tesoro sells branded gasoline at over 160 company owned stations, including over 50 stations using its Mirastar brand at Wal-Mart stores.. Tesoro currently has a small branded retail market presence in California.

V. Absence of Market Presence

Tesoro does not own any refineries in California and has only a minimal presence in the California petroleum product bulk supply market. The proposed divestiture thus poses no competitive market concerns.

A. Refining Market

Tesoro has no refining operations in California. Its 108,000 barrel per day Anacortes, Washington refinery operates in the Pacific Northwest market. The Anacortes refinery has the capability to produce some CARBOB gasoline (CARB gasoline without oxygenates added in) for the California market; however, most of the Anacortes product slate is sold in the Pacific Northwest

through its retail network or wholesale channels. It is our understanding that Tesoro's other refineries do not produce CARB or CARBOB gasoline, although they do produce components that can be blended into CARB gasoline.

B. Bulk Supply

Tesoro has only minimal presence in the gasoline bulk supply market in California as a producer and reseller of gasoline. We understand that, most gasoline supplied by Tesoro in California, and in Northern California in particular, has been purchased from third parties in California. In Southern California, Tesoro sells some gasoline and gasoline components produced from its own refineries outside of California, as well as gasoline purchased from third parties in California. In Northern California, Tesoro operates a refined products terminal in Stockton, and in Southern California, Tesoro leases dedicated tankage at a third party terminal in Carson.

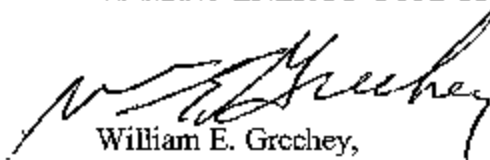
VI. Conclusion

The proposed divestiture of the Golden Eagle CARB Refining and Marketing Assets to Tesoro will accomplish the purposes of the Consent Agreement and remedy any alleged lessening of competition in the refining and bulk supply of CARB 2 and CARB 3 gasoline for sale in Northern California and in the State of California. Tesoro does not own any refineries in California and has only a minimal presence in the California petroleum product bulk supply market and thus poses no competitive market concerns. Tesoro has the financial stability to ensure the continued use of the Golden Eagle CARB Refining and Marketing Assets as viable, on-going businesses. With five refineries in Alaska, Hawaii, North Dakota, Utah and Washington, and a combined crude throughput capacity of 390,000 barrels per day, Tesoro has the refining expertise to ensure the operational vitality of the Golden Eagle Refinery. With over 675 branded retail locations, Tesoro has the retail

expertise necessary to operate the Marketing Sites as a viable, ongoing business. Tesoro has the experience and the resources necessary to ensure that the Golden Eagle CARB Refining and Marketing Assets will prosper as a separate, competitive supplier of refined petroleum products in the State of California and nearby West Coast markets. Accordingly, Valero respectfully requests that the Commission approve the proposed divestiture and acquirer.

Respectfully submitted,

VALERO ENERGY CORPORATION

A handwritten signature in black ink, appearing to read "W. E. Grechey", written over a horizontal line.

William E. Grechey,
Chief Executive Officer and Chairman of the Board

**CONFIDENTIAL APPENDIX A
REDACTED FOR PUBLIC VERSION**