

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:        Deborah Platt Majoras, Chairman  
                                 Orson Swindle  
                                 Thomas B. Leary  
                                 Pamela Jones Harbour  
                                 Jon Leibowitz

	)	
<b>In the Matter of</b>	)	
	)	
<b>ENTERPRISE PRODUCTS PARTNERS L.P.,</b>	)	
<b>a limited partnership,</b>	)	<b>Docket No. C-4123</b>
	)	
<b>and</b>	)	
	)	
<b>DAN L. DUNCAN,</b>	)	
<b>a natural person.</b>	)	
	)	

**ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS**

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed merger of Respondent Enterprise Products Partners, L.P., which is controlled by Respondent Dan L. Duncan, hereinafter collectively referred to as “Respondents”, with GulfTerra Energy Partners, L.P. (“GulfTerra”) and GulfTerra Energy Company, LLC (“GulfTerra GP”) and Respondents having been furnished thereafter with 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 determined to accept the executed Agreement Containing Consent Orders and having 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 this Order to Hold Separate and Maintain Assets (“Hold Separate Order”):

1. Respondent Enterprise Products Partners L.P. is a publicly traded, 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 2727 North Loop West, Houston, Texas 77008.
2. Respondent Dan L. Duncan is an individual with his office and principal place of business located at 2727 North Loop West, Houston, Texas 77008.
3. 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, as used in this Hold Separate Order, the following definitions shall apply:

- A. “Duncan” means Dan L. Duncan, a natural person, all partnerships, joint ventures, subsidiaries, divisions, groups and affiliates controlled by Dan L. Duncan, including, but not limited to, Enterprise Products Company, Dan Duncan L.L.C., Enterprise Products GP, LLC, and Enterprise Product Partners L.P., and the respective partners, directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each.
- B. “Enterprise” means Enterprise Products Partners L.P., a publicly traded limited partnership, its partners, directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns; all joint ventures, subsidiaries, divisions, groups and affiliates controlled by Enterprise Products Partners L.P., and the respective partners, directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each.

- C. “El Paso” means El Paso Corporation, an international energy company organized and doing business under the laws of the State of Delaware with its executive offices at 1001 Louisiana Street, Houston, Texas 77002.
- D. “GulfTerra” means GulfTerra Energy Partners, L.P., a publicly traded limited partnership, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 4 Greenway Plaza, Houston, Texas 77046.
- E. “GulfTerra GP” means GulfTerra Energy Company, LLC, a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 4 Greenway Plaza, Houston, Texas 77046. El Paso controls GulfTerra GP.
- F. “Commission” means the Federal Trade Commission.
- G. “Divestiture Trustee” means any trustee appointed by the Commission pursuant to Paragraph IV of the Decision and Order in this matter.
- H. “Effective Date of Pipeline Divestiture” means the date on which Respondents (or a Divestiture Trustee) divest to the Pipeline Acquirer the Starfish Pipeline Interest or HIOS/East Breaks Assets completely and as required by Paragraphs II or IV of the Decision and Order in this matter.
- I. “Effective Date of Propane Divestiture” means the date on which Respondents (or a Divestiture Trustee) divest to the Propane Acquirer the Enterprise Propane Storage Interest or the Enterprise Petal LPG Storage Facility completely and as required by Paragraphs III or IV of the Decision and Order in this matter.
- J. “Enterprise Propane Storage Interest” means all of Enterprise’s and Duncan’s interests in the propane storage and terminaling facility located at 18 Chappell Hill Road, Petal, Mississippi 39465, in Forrest County, Mississippi, that are jointly owned with Dynegy Midstream Services, L.P. (“Dynegy”) including, but not limited to, all of Enterprise’s and Duncan’s interests in:
  - 1. five propane salt dome storage wells with a combined usable capacity of approximately 5.6 million barrels;
  - 2. existing easements and rights of way;
  - 3. odorizing facilities;

4. related facilities required for the operation of the propane storage facilities including, but not limited to: product pumps, a brine pond and brine pumping facilities, pipelines, pipeline pumps, pipeline injection facilities and related equipment, buildings, equipment, machinery, fixtures and other appurtenances;
  5. truck, rail, and pipeline facilities, including truck and rail racks, for the receipt and delivery of propane stored in the wells;
  6. approximately 115 acres of land located in Forrest County, Mississippi;
  7. all licenses, permits, contracts, agreements, and understandings relating to the ownership and operation of the facility.
- K. “Enterprise Petal LPG Storage Facility” means all of Respondent’s 100 percent interest in the Petal LPG Storage Facility located at 1364 Highway 11 North, Petal, Mississippi 39464, in Forrest County, Mississippi, including, but not limited to:
1. nine LPG salt dome storage wells, seven of which are active with a combined usable capacity of approximately seven million barrels and two of which are not currently in service;
  2. two brine production wells and one brine disposal well;
  3. truck, rail and pipeline facilities, including truck and rail racks, for the receipt and delivery of product stored in the wells;
  4. odorizing facilities;
  5. existing easements and rights of way held by Respondents for operation of the Enterprise Petal LPG Storage Facility;
  6. related facilities required for the operation of the LPG storage facilities including, but not limited to, product pumps, a brine pond and brine pumping facilities, dehydrators, pipelines, pipeline injection pumps and related facilities and equipment, tanks, buildings, equipment, machinery, fixtures and other appurtenances;
  7. approximately 115 acres of land located in Forrest County, Mississippi; and

8. all licenses, permits, contracts, agreements, and understandings relating to the ownership and operation of the facility.
- L. “Governmental Entity” means any Federal, state, local or non-U.S. government or any court, legislature, governmental agency or governmental commission or any judicial or regulatory authority of any government.
- M. “Held Separate Businesses” means the Starfish Pipeline Interest and the Enterprise Propane Storage Interest.
- N. “HIOS/East Breaks Assets” means all of GulfTerra’s assets, properties, information or technology, businesses and goodwill (tangible and intangible), contracts, licenses, permits, options, agreements and understandings, records,
- rights, titles, and interests in or relating to the ownership or physical or commercial operation of:
1. HIOS Pipeline, a 204-mile natural gas pipeline system located in the western Gulf of Mexico, extending from within the West Cameron Area into the High Island South Addition Area. HIOS Pipeline provides transportation services subject to regulation of the Federal Energy Regulatory Commission; and
  2. East Breaks Gathering System, an 86-mile natural gas gathering system located in the western Gulf of Mexico, extending from within the High Island South Addition Area into the Alaminos Canyon Area.
- O. “Enterprise Propane Monitor” means the person appointed pursuant to Paragraph IV of this Hold Separate Order.
- P. “Hold Separate Period” means the time period during which the Hold Separate Order is in effect, which shall begin no later than five (5) days after the date the Hold Separate Order becomes final and terminate pursuant to Paragraph VII hereof.
- Q. “Material Confidential Information” means competitively sensitive or proprietary information not independently known to a Person from sources other than the Person to which the information pertains, and includes, but is not limited to, all customer lists, price lists, cost information, marketing methods, patents, technologies, processes, or other trade secrets. The individual Held Separate Businesses shall be considered Persons separate from Respondents (as defined in this Hold

Separate Order and the Decision and Order in this matter) for this purpose.

- R. “Merger” means the proposed merger of Enterprise with GulfTerra and GulfTerra GP pursuant to and as described in (i) the Merger Agreement dated December 15, 2003, as amended, by and among Enterprise Products Partners L.P., Enterprise Products GP, LLC, Enterprise Products Management LLC, GulfTerra Energy Partners L.P., and GulfTerra Energy Company, LLC; and (ii) the Parent Company Agreement dated December 15, 2003, as amended, by and among (a) El Paso Corporation, Sabine River Investors I, L.L.C., Sabine River Investors II, L.L.C., El Paso EPN Investments, L.L.C., and GulfTerra GP Holding Company, and (b) Respondents, Enterprise Products GP, LLC, and Enterprise Products GTM, LLC.
- S. “Merger Date” means the date the Merger is consummated.
- T. “Person” means any individual, partnership, association, company or corporation.
- U. “Pipeline Acquirer” means any entity that receives the prior approval of the Commission to acquire the Starfish Pipeline Interest or the HIOS/East Breaks Assets pursuant to Paragraphs II or IV of the Decision and Order in this matter.
- V. “Pipeline Divestiture Agreement” means any agreement that receives the prior approval of the Commission between Respondents and a Pipeline Acquirer (or a Divestiture Trustee and a Pipeline Acquirer) related to the Starfish Pipeline Interest or the HIOS/East Breaks Assets required to be divested pursuant to Paragraphs II or IV of the Decision and Order in this matter.
- W. “Propane Acquirer” means any entity that receives the prior approval of the Commission to acquire the Enterprise Propane Storage Interest or Enterprise Petal LPG Storage Facility pursuant to Paragraphs II or IV of the Decision and Order in this matter.
- X. “Propane Divestiture Agreement” means any agreement that receives the prior approval of the Commission between Respondents and a Propane Acquirer (or a Divestiture Trustee and a Propane Acquirer) related to the Enterprise Propane Storage Interest or the Enterprise Petal LPG Storage Facility required to be divested pursuant to Paragraphs III or IV of the Decision and Order in this matter.

- Y. “Starfish” means Starfish Pipeline Company, LLC, a limited liability company owned by Shell Gas Transmission, LLC (“Shell”) and Respondents. Starfish includes the Stingray Pipeline System, a 325-mile pipeline comprised of four segments serving the West Central Deepwater, the Triton (Gunnison) lateral pipeline, a 41 mile extension from the Stingray Pipeline in the Garden Banks section of the West Central Deepwater, and the West Cameron Dehydration Company located at Holly Beach, Cameron Parish, Louisiana. Shell is a 50 percent owner of Starfish and operates the Stingray and Triton pipelines and the West Cameron Dehydration Company.
- Z. “Starfish Pipeline Interest” means all of Respondent Enterprise’s and Respondent Duncan’s interests in the Starfish Pipeline Company, LLC.
- AA. “Starfish Monitor” means the person appointed pursuant to Paragraph III of this Hold Separate Order.
- BB. “West Central Deepwater” means a quadrilateral shaped area of the Gulf of Mexico cornered by and including the following blocks (as those areas and blocks are defined by the Mineral Management Service of the United States Department of Interior): East Breaks Area Block 111, Garden Banks Area Block 60, Keithley Canyon Area Block 984, and Alaminos Canyon Area Block 947.

## II.

### **IT IS FURTHER ORDERED** that:

- A. During the Hold Separate Period, Respondents:
  - 1. shall hold the Starfish Pipeline Interest separate, apart, and independent of Respondents and GulfTerra as required by this Hold Separate Order and shall vest the Starfish Pipeline Interest with all rights, powers, and authority necessary to conduct its business;
  - 2. shall not exercise direction or control over, or influence directly or indirectly, the Starfish Pipeline Interest or any of its operations, or the Starfish Monitor except to the extent that Respondents and GulfTerra must exercise such direction and control over the Starfish Pipeline Interest as is necessary to assure compliance with this Hold Separate Order, the Consent Agreement, and with all applicable laws, including, in consultation with the Starfish Monitor, continued oversight of the Starfish Pipeline Interest’s

compliance with policies and standards concerning the safety, health, and environmental aspects of its operations and the integrity of its financial controls; and Respondents shall have the right to defend any legal claims, investigations or enforcement actions threatened or brought against the Starfish Pipeline Interest.

3. shall hold the Enterprise Propane Storage Interest separate, apart, and independent of Respondents and GulfTerra as required by this Hold Separate Order and shall vest the Enterprise Propane Storage Interest with all rights, powers, and authority necessary to conduct its business;
  4. shall not exercise direction or control over, or influence directly or indirectly, the Enterprise Propane Storage Interest or any of its operations, or the Enterprise Propane Monitor except to the extent that Respondents must exercise direction and control over the Enterprise Propane Storage Interest as is necessary to assure compliance with this Hold Separate Order, the Consent Agreement, and with all applicable laws, including, in consultation with the Enterprise Propane Monitor, continued oversight of the Enterprise Propane Storage Interest's compliance with policies and standards concerning the safety, health, and environmental aspects of its operations and the integrity of its financial controls; and Respondents shall have the right to defend any legal claims, investigations or enforcement actions threatened or brought against the Enterprise Propane Storage Interest.
- B. Until the Effective Date of Pipeline Divestiture and the Effective Date of Propane Divestiture, respectively, Respondents shall take such actions as are necessary to maintain the viability and marketability of the Held Separate Businesses,

HIOS/East Breaks Assets, and the Enterprise Petal LPG Storage Facility, to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear.

- C. The purposes of this Hold Separate Order are: (1) to preserve the Held Separate Businesses as viable, competitive, and ongoing businesses, independent of the Respondents and GulfTerra until the divestitures required by the Decision and Order are achieved; (2) to preserve HIOS/East Breaks Assets and the Enterprise Petal LPG Storage Facility as viable, competitive, and ongoing businesses independent of the Held Separate Businesses until the divestitures required by the Decision and Order are achieved; (3) to assure that no Material Confidential Information is exchanged between Respondents, GulfTerra, and the Held



Separate Businesses, except in accordance with the provisions of this Hold Separate Order; (4) to prevent interim harm to competition pending the required divestitures and other relief; and (5) to help remedy the lessening of competition resulting from the Merger as alleged in the Commission's Complaint.

### III.

**IT IS FURTHER ORDERED** that Respondents shall hold the Starfish Pipeline Interest separate, apart, and independent from the Respondents and GulfTerra on the following terms and conditions.

- A. Mr. Richard J. Black, 7600 West Tidwell, Suite 705, Houston, Texas, shall serve as Starfish Monitor, pursuant to the agreement executed by the Starfish Monitor and Respondents and attached as Confidential Appendix A ("Starfish Monitor Agreement").
1. The Starfish Monitor Agreement shall require that, no later than either ten (10) days after the Hold Separate Order is final or one (1) day after the Merger Date, whichever is earlier, Respondents shall transfer to the Starfish Monitor all rights, powers, and authorities necessary to permit the Starfish Monitor to perform his/her duties and responsibilities, pursuant to this Hold Separate Order and consistent with the purposes of the Decision and Order.
  2. No later than either ten (10) days after the date the Hold Separate Order becomes final or one (1) day after the Merger Date, whichever is earlier, Respondents shall, pursuant to the Starfish Monitor Agreement, transfer to the Starfish Monitor all rights, powers, and authorities necessary to permit the Starfish Monitor to perform his/her duties and responsibilities, pursuant to this Hold Separate Order and consistent with the purposes of the Decision and Order.
  3. The Starfish Monitor shall have the responsibility, consistent with the terms of this Hold Separate Order and the Decision and Order, for monitoring the organization of the Starfish Pipeline Interest; for managing the Starfish Pipeline Interest; for maintaining the independence of the Starfish Pipeline Interest; and for monitoring Respondents' compliance with its obligations pursuant to this Hold Separate Order and the Decision and Order.
  4. The Starfish Monitor shall have full and complete access to all personnel, books, records, documents and facilities of the Starfish

Pipeline Interest or to any other relevant information as the Starfish Monitor may reasonably request including, but not limited to, all documents and records kept by Respondents and GulfTerra in the ordinary course of business that relate to the Starfish Pipeline Interest. Respondents and GulfTerra shall develop such financial or other information as the Starfish Monitor may request and shall cooperate with the Starfish Monitor. Respondents shall take no action to interfere with or impede the Starfish Monitors' ability to monitor Respondents' compliance with this Hold Separate Order and the Consent Agreement or otherwise to perform their duties and responsibilities consistent with the terms of this Hold Separate Order.

5. The Starfish Monitor shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Starfish Monitor's duties and responsibilities.
6. The Starfish Monitor shall act in a fiduciary capacity for the benefit of the Commission.
7. The Commission may require the Starfish Monitor to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with performance of the Starfish Monitor's duties.
8. Respondents and GulfTerra may require the Starfish Monitor to sign a confidentiality agreement prohibiting the disclosure of any Material Confidential Information gained as a result of his/her role as Starfish Monitor to anyone other than the Commission.
9. Thirty (30) days after the Starfish Monitor receives the rights, powers, and authorities pursuant to this Paragraph III, and every thirty (30) days thereafter until the Hold Separate Order terminates, the Starfish Monitor shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate Order. Included within each report shall be the Starfish Monitor's assessment of the extent to which the business comprising the Starfish Pipeline Interest is meeting (or exceeding) its projected goals as are reflected in operating plans, budgets, projections or any other regularly prepared financial statements.
10. If the Starfish Monitor ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the

Commission may appoint a substitute Starfish Monitor consistent with the terms of this paragraph, 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 the substitute Starfish Monitor within five (5) days after notice by the staff of the Commission to Respondents of the identity of any substitute Starfish Monitor Respondents shall be deemed to have consented to the selection of the proposed substitute monitor. Respondents and the substitute Starfish Monitor shall execute a new monitor agreement, subject to the approval of the Commission, consistent with this paragraph.

- B. The Starfish Pipeline Interest shall be staffed with sufficient employees to maintain the viability and competitiveness of the Starfish Pipeline Interest. To the extent that any employees leave or have left the Starfish Pipeline Interest prior to the Effective Date of Pipeline Divestiture, the Starfish Monitor may replace departing or departed employees with persons who have similar experience and expertise or determine not to replace such departing or departed employees.
- C. In connection with support services or products not included within the Starfish Pipeline Interest, Respondents shall continue to provide, or offer to provide, the same support services to the Starfish Pipeline Interest as are being provided to each such business interest by Respondents as of the date the Consent Agreement is signed by Respondents. For any services or products that Respondents may provide to the Starfish Pipeline Interest, Respondents may charge no more than the lowest price they charge any of their other internal subsidiaries or divisions for the same services or products. Respondents' personnel providing such services or products must retain and maintain all Material Confidential Information of the Starfish Pipeline Interest on a confidential basis, and, except as is permitted by this Hold Separate Order, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of Respondents' or GulfTerra's businesses, other than the Starfish Pipeline Interest. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of the Starfish Pipeline Interest.
  - 1. Respondents shall offer to the Starfish Pipeline Interest any services and products that Respondents provided to their other businesses directly or through third party contracts, or that they have provided directly or through third party contracts to the businesses constituting the Starfish Pipeline Interest at any time since January 1, 2003. The Starfish Pipeline Interest may, at the

option of the individual Starfish Monitor, obtain such services and products from Respondents. The services and products that Respondents shall offer the Starfish Pipeline Interest shall include, but shall not be limited to, the following:

- a. Human resources administrative services, including but not limited to payroll processing, labor relations support, pension administration, and health benefits;
  - b. Environmental health and safety services, which develops corporate policies and insures compliance with federal and state regulations and corporate policies;
  - c. Preparation of tax returns;
  - d. Audit services;
  - e. Information systems, which constructs, maintains, and supports all computer systems;
  - f. Processing of accounts payable;
  - g. Technical support;
  - h. Finance and financial accounting services;
  - i. Procurement of supplies;
  - j. Procurement of goods and services utilized in the ordinary course of business by the Held Separate Businesses; and
  - k. Legal services.
2. the Starfish Pipeline Interest shall have, at the option of the Starfish Monitor, the ability to acquire services and products from third parties unaffiliated with Respondents.
- D. Respondents shall cause the Starfish Monitor and each employee having access to Material Confidential Information to submit to the Commission a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Hold Separate Order. These individuals must retain and maintain all Material Confidential Information relating to the Starfish Pipeline Interest on a confidential basis and, except as is permitted by this Hold Separate Order, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person

who is employed by, or is involved in the management of, any of Respondents' businesses other than the Starfish Pipeline Interest. These persons shall not be involved in any way in the management, production, distribution, sale, marketing, or financial operations of the competing businesses of Respondents.

- E. No later than either twelve (12) days after the date this Hold Separate Order becomes final or three (3) days after the Merger Date, whichever is earlier, Respondents shall establish written procedures, subject to the approval of the Starfish Monitor, covering the management, maintenance, and independence of Starfish Pipeline Interest consistent with the provisions of this Hold Separate Order.
- F. No later than either twelve (12) days after the date this Hold Separate Order becomes final or three (3) days after the Merger Date, whichever is earlier, Respondents shall circulate to employees of the Starfish Pipeline Interest and to Respondents' and GulfTerra's employees, a notice of this Hold Separate Order and the Consent Agreement.
- G. The Starfish Monitor shall serve, without bond or other security, at the cost and expense of Respondents, on reasonable and customary terms commensurate with the person's experience and responsibilities. The Starfish Monitor shall act in a fiduciary capacity for the benefit of the Commission.
- H. Respondents shall indemnify the Starfish Monitor and hold him/her harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of Starfish Monitor'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 liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Starfish Monitor.
- I. Respondents shall provide the Starfish Pipeline Interest with sufficient financial resources:
  - 1. as are appropriate in the judgment of the Starfish Monitor to operate the Starfish Pipeline Interest as it is currently operated;
  - 2. to perform all maintenance to, and replacements of, the assets of the Starfish Pipeline Interest;

3. to carry on existing and planned capital projects and business plans; and
4. to maintain the viability, competitive vigor, and marketability of the Starfish Pipeline Interest;

Such financial resources to be provided to the Starfish Pipeline Interest shall include, but shall not be limited to, (a) general funds, (b) capital, (c) working capital, and (d) reimbursement for any operating losses, capital losses, or other losses; provided, however, that, consistent with the purposes of the Decision and Order, the Starfish Monitor may reduce in scale or pace any capital or research and development project, or substitute any capital or research and development project for another of the same cost.

- J. Respondents and GulfTerra shall not, during the Hold Separate Period up until the Pipeline Divestiture Agreement is signed, enter into any agreements, offer, promise, or otherwise guarantee the Starfish Monitor and employees of Respondents or GulfTerra who are responsible for the management or operation of the Starfish Pipeline Interest or the HIOS/East Breaks Assets positions with Respondents or GulfTerra. The Pipeline Acquirer shall have the option of offering employment to any Starfish Pipeline Interest's employees. Respondents and GulfTerra shall not interfere with the employment, by the Pipeline Acquirer, of such employees; shall not offer any incentive to such employees to decline employment with the Pipeline Acquirer or to accept other employment with the Respondents or GulfTerra; and shall remove any impediments that may deter such employees from accepting employment with the Pipeline Acquirer including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts that would affect the ability of such employees to be employed by the Pipeline Acquirer, and the payment, or the transfer for the account of the employee, of all current and accrued bonuses, pensions and other current and accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of the Respondents or GulfTerra.
- K. Except for the Starfish Monitor, the Starfish Pipeline Interest's employees, and support services employees involved in providing services to the Held Separate Starfish Pipeline Interest pursuant to this Paragraph III, and except to the extent provided in Paragraph II.A, Respondents shall not permit any other of its employees, officers, or directors to be involved in the operations of the Starfish Pipeline Interest.

- L. Respondents and GulfTerra shall assure that Starfish Pipeline Interest employees receive, during the Hold Separate Period, their salaries, all current and accrued bonuses, pensions and other current and accrued benefits to which those employees would otherwise have been entitled.
- M. Respondents, GulfTerra, and GulfTerra's and Respondents' employees (excluding support services employees involved in providing support to the Starfish Pipeline Interest pursuant to this Paragraph III) shall not receive, or have access to, or use or continue to use any Material Confidential Information of the Starfish Pipeline Interest not in the public domain except:
1. as required by law;
  2. to the extent that necessary information is exchanged in the course of consummating the Merger;
  3. in negotiating agreements to divest assets pursuant to the Consent Agreement and engaging in related due diligence;
  4. in complying with this Hold Separate Order or the Consent Agreement;
  5. in overseeing compliance with policies and standards concerning the safety, health and environmental aspects of the operations of the Starfish Pipeline Interest and the integrity of the Starfish Pipeline Interest's financial controls;
  6. in defending legal claims, investigations or enforcement actions threatened or brought against or related to the Starfish Pipeline Interest; or
  7. in obtaining legal advice.

Nor shall the Starfish Monitor or the Starfish Pipeline Interest's employees receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about Respondents, except such information as is necessary to maintain and operate the Starfish Pipeline Interest. Respondents may receive aggregate financial and operational information relating to the Starfish Pipeline Interest only to the extent necessary to allow Respondents to comply with the requirements and obligations of the laws of the United States and other countries, and to prepare consolidated financial reports, tax returns, reports required by securities laws, and personnel reports. Any such

information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

- N. Respondents and the Starfish Pipeline Interest shall jointly implement, and at all times during the Hold Separate Period maintain in operation, a system, as approved by the Starfish Monitor, of access and data controls to prevent unauthorized access to or dissemination of Material Confidential Information of the Starfish Pipeline Interest, including, but not limited to, the opportunity by the Starfish Monitor, on terms and conditions agreed to with Respondents, to audit Respondents' networks and systems to verify compliance with this Hold Separate Order.

#### IV.

**IT IS FURTHER ORDERED** that Respondents shall hold the Enterprise Propane Storage Interest separate, apart, and independent from the Respondents and GulfTerra on the following terms and conditions:

- A. Mr. Richard J. Black, 7600 West Tidwell, Suite 705, Houston, Texas, shall serve as Enterprise Propane Monitor, pursuant to the agreement executed by the Enterprise Propane Monitor and Respondents and attached as Confidential Appendix C ("Enterprise Propane Monitor Agreement").
1. The Enterprise Propane Monitor Agreement shall require that, no later than either ten (10) days after the Hold Separate Order is final or one (1) day after the Merger Date, whichever is earlier, Respondents shall transfer to the Enterprise Propane Monitor all rights, powers, and authorities necessary to permit the Enterprise Propane Monitor to perform his/her duties and responsibilities, pursuant to this Hold Separate Order and consistent with the purposes of the Decision and Order.
  2. No later than either ten (10) days after the date the Hold Separate Order becomes final or one (1) day after the Merger Date, whichever is earlier, Respondents shall, pursuant to the Enterprise Propane Monitor Agreement, transfer to the Enterprise Propane Monitor all rights, powers, and authorities necessary to permit the Enterprise Propane Monitor to perform his/her duties and responsibilities, pursuant to this Hold Separate Order and consistent with the purposes of the Decision and Order.
  3. The Enterprise Propane Monitor shall have the responsibility, consistent with the terms of this Hold Separate Order and the



Decision and Order, for monitoring the organization of the Enterprise Propane Storage Interest; for managing the Enterprise Propane Storage Interest; for maintaining the independence of the Enterprise Propane Storage Interest; and for monitoring Respondents' compliance with its obligations pursuant to this Hold Separate Order and the Decision and Order.

4. The Enterprise Propane Monitor shall have full and complete access to all personnel, books, records, documents and facilities of the Enterprise Propane Storage Interest or to any other relevant information as the Enterprise Propane Monitor may reasonably request including, but not limited to, all documents and records kept by Respondents and GulfTerra in the ordinary course of business that relate to the Enterprise Propane Storage Interest. Respondents and GulfTerra shall develop such financial or other information as the Enterprise Propane Monitor may request and shall cooperate with the Enterprise Propane Monitor. Respondents shall take no action to interfere with or impede the Enterprise Propane Monitors' ability to monitor Respondents' compliance with this Hold Separate Order and the Consent Agreement or otherwise to perform their duties and responsibilities consistent with the terms of this Hold Separate Order.
5. The Enterprise Propane Monitor shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Enterprise Propane Monitor's duties and responsibilities.
6. The Enterprise Propane Monitor shall act in a fiduciary capacity for the benefit of the Commission.
7. The Commission may require the Enterprise Propane Monitor to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with performance of the Enterprise Propane Monitor's duties.
8. Respondents and GulfTerra may require the Enterprise Propane Monitor to sign a confidentiality agreement prohibiting the disclosure of any Material Confidential Information gained as a result of his/her role as Enterprise Propane Monitor to anyone other than the Commission.
9. Thirty (30) days after the Enterprise Propane Monitor receives the rights, powers, and authorities pursuant to this Paragraph IV, and

every thirty (30) days thereafter until the Hold Separate Order terminates, the Enterprise Propane Monitor shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate Order. Included within each report shall be the Enterprise Propane Monitor's assessment of the extent to which the business comprising the Enterprise Propane Storage Interest is meeting (or exceeding) its projected goals as are reflected in operating plans, budgets, projections or any other regularly prepared financial statements.

10. If the Enterprise Propane Monitor ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Commission may appoint a substitute Enterprise Propane Monitor consistent with the terms of this paragraph, 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 the substitute Enterprise Propane Monitor within five (5) days after notice by the staff of the Commission to Respondents of the identity of any substitute Enterprise Propane Monitor Respondents shall be deemed to have consented to the selection of the proposed substitute monitor. Respondents and the substitute Enterprise Propane Monitor shall execute a new monitor agreement, subject to the approval of the Commission, consistent with this paragraph.
- B. The Enterprise Propane Storage Interest shall be staffed with sufficient employees to maintain the viability and competitiveness of the Enterprise Propane Storage Interest. To the extent that any employees leave or have left the Enterprise Propane Storage Interest prior to the Effective Date of Pipeline Divestiture, the Enterprise Propane Monitor may replace departing or departed employees with persons who have similar experience and expertise or determine not to replace such departing or departed employees.
  - C. In connection with support services or products not included within the Enterprise Propane Storage Interest, Respondents shall continue to provide, or offer to provide, the same support services to the Enterprise Propane Storage Interest as are being provided to each such business interest by Respondents as of the date the Consent Agreement is signed by Respondents. For any services or products that Respondents may provide to the Enterprise Propane Storage Interest, Respondents may charge no more than the lowest price they charge any of their other internal subsidiaries or divisions for the same services or products. Respondents' personnel providing such services or products must retain and maintain all Material Confidential Information of the Enterprise Propane Storage

Interest on a confidential basis, and, except as is permitted by this Hold Separate Order, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of Respondents' or GulfTerra's businesses, other than the Enterprise Propane Storage Interest. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of the Enterprise Propane Storage Interest.

1. Respondents shall offer to the Enterprise Propane Storage Interest any services and products that Respondents provided to their other businesses directly or through third party contracts, or that they have provided directly or through third party contracts to the businesses constituting the Enterprise Propane Storage Interest at any time since January 1, 2003. The Enterprise Propane Storage Interest may, at the option of the individual Enterprise Propane Monitor, obtain such services and products from Respondents. The services and products that Respondents shall offer the Enterprise Propane Storage Interest shall include, but shall not be limited to, the following:
  - a. Human resources administrative services, including but not limited to payroll processing, labor relations support, pension administration, and health benefits;
  - b. Environmental health and safety services, which develops corporate policies and insures compliance with federal and state regulations and corporate policies;
  - c. Preparation of tax returns;
  - d. Audit services;
  - e. Information systems, which constructs, maintains, and supports all computer systems;
  - f. Processing of accounts payable;
  - g. Technical support;
  - h. Finance and financial accounting services;
  - i. Procurement of supplies;
  - j. Procurement of goods and services utilized in the ordinary course of business by the Held Separate Businesses; and

- k. Legal services.
  - 2. the Enterprise Propane Storage Interest shall have, at the option of the Enterprise Propane Monitor, the ability to acquire services and products from third parties unaffiliated with Respondents.
- D. Respondents shall cause the Enterprise Propane Monitor and each employee having access to Material Confidential Information to submit to the Commission a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Hold Separate Order. These individuals must retain and maintain all Material Confidential Information relating to the Enterprise Propane Storage Interest on a confidential basis and, except as is permitted by this Hold Separate Order, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person who is employed by, or is involved in the management of, any of Respondents' businesses other than the Enterprise Propane Storage Interest. These persons shall not be involved in any way in the management, production, distribution, sale, marketing, or financial operations of the competing businesses of Respondents.
- E. No later than either twelve (12) days after the date this Hold Separate Order becomes final or three (3) days after the Merger Date, whichever is earlier, Respondents shall establish written procedures, subject to the approval of the Enterprise Propane Monitor, covering the management, maintenance, and independence of Enterprise Propane Storage Interest consistent with the provisions of this Hold Separate Order.
- F. No later than either twelve (12) days after the date this Hold Separate Order becomes final or three (3) days after the Merger Date, whichever is earlier, Respondents shall circulate to employees of the Enterprise Propane Storage Interest and to Respondents' and GulfTerra's employees, a notice of this Hold Separate Order and the Consent Agreement.
- G. The Enterprise Propane Monitor shall serve, without bond or other security, at the cost and expense of Respondents, on reasonable and customary terms commensurate with the person's experience and responsibilities. The Enterprise Propane Monitor shall act in a fiduciary capacity for the benefit of the Commission.
- H. Respondents shall indemnify the Enterprise Propane Monitor and hold him/her harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of Enterprise Propane Monitor'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 liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Enterprise Propane Monitor.

- I. Respondents shall provide the Enterprise Propane Storage Interest with sufficient financial resources:
1. as are appropriate in the judgment of the Enterprise Propane Monitor to operate the Enterprise Propane Storage Interest as it is currently operated;
  2. to perform all maintenance to, and replacements of, the assets of the Enterprise Propane Storage Interest;
  3. to carry on existing and planned capital projects and business plans; and
  4. to maintain the viability, competitive vigor, and marketability of the Enterprise Propane Storage Interest;

Such financial resources to be provided to the Enterprise Propane Storage Interest shall include, but shall not be limited to, (a) general funds, (b) capital, (c) working capital, and (d) reimbursement for any operating losses, capital losses, or other losses; provided, however, that, consistent with the purposes of the Decision and Order, the Enterprise Propane Monitor may reduce in scale or pace any capital or research and development project, or substitute any capital or research and development project for another of the same cost.

- J. Respondents and GulfTerra shall not, during the Hold Separate Period up until the Propane Divestiture Agreement is signed, enter into any agreements, offer, promise, or otherwise guarantee the Enterprise Propane Monitor and employees of Respondents or GulfTerra who are responsible for the management or operation of the Enterprise Propane Storage Interest or the Enterprise Petal LPG Storage Facility positions with Respondents or GulfTerra. The Propane Acquirer shall have the option of offering employment to any Enterprise Propane Storage Interest's employees. Respondents and GulfTerra shall not interfere with the employment, by the Propane Acquirer, of such employees; shall not offer any incentive to such employees to decline employment with the Propane Acquirer or to accept other employment with the Respondents or GulfTerra; and shall remove any impediments that may deter such

employees from accepting employment with the Propane Acquirer including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts that would affect the ability of such employees to be employed by the Propane Acquirer, and the payment, or the transfer for the account of the employee, of all current and accrued bonuses, pensions and other current and accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of the Respondents or GulfTerra.

- K. Except for the Enterprise Propane Monitor, the Enterprise Propane Storage Interest's employees, and support services employees involved in providing services to the Held Separate Enterprise Propane Storage Interest pursuant to this Paragraph IV., and except to the extent provided in Paragraph II.A., Respondents shall not permit any other of its employees, officers, or directors to be involved in the operations of the Enterprise Propane Storage Interest.
- L. Respondents and GulfTerra shall assure that Enterprise Propane Storage Interest employees receive, during the Hold Separate Period, their salaries, all current and accrued bonuses, pensions and other current and accrued benefits to which those employees would otherwise have been entitled.
- M. Respondents, GulfTerra, and GulfTerra's and Respondents' employees (excluding support services employees involved in providing support to the Enterprise Propane Storage Interest pursuant to this Paragraph IV.) shall not receive, or have access to, or use or continue to use any Material Confidential Information of the Enterprise Propane Storage Interest not in the public domain except:
  - 1. as required by law;
  - 2. to the extent that necessary information is exchanged in the course of consummating the Merger;
  - 3. in negotiating agreements to divest assets pursuant to the Consent Agreement and engaging in related due diligence;
  - 4. in complying with this Hold Separate Order or the Consent Agreement;
  - 5. in overseeing compliance with policies and standards concerning the safety, health and environmental aspects of the operations of the Enterprise Propane Storage Interest and the integrity of the Enterprise Propane Storage Interest's financial controls;

6. in defending legal claims, investigations or enforcement actions threatened or brought against or related to the Enterprise Propane Storage Interest; or
7. in obtaining legal advice.

Nor shall the Enterprise Propane Monitor or the Enterprise Propane Storage Interest's employees receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about Respondents, except such information as is necessary to maintain and operate the Enterprise Propane Storage Interest. Respondents may receive aggregate financial and operational information relating to the Enterprise Propane Storage Interest only to the extent necessary to allow Respondents to comply with the requirements and obligations of the laws of the United States and other countries, and to prepare consolidated financial reports, tax returns, reports required by securities laws, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

- N. Respondents and the Enterprise Propane Storage Interest shall jointly implement, and at all times during the Hold Separate Period maintain in operation, a system, as approved by the Enterprise Propane Monitor, of access and data controls to prevent unauthorized access to or dissemination of Material Confidential Information of the Enterprise Propane Storage Interest, including, but not limited to, the opportunity by the Enterprise Propane Monitor, on terms and conditions agreed to with Respondents, to audit Respondents' networks and systems to verify compliance with this Hold Separate Order.

#### V.

**IT IS FURTHER ORDERED** that Respondents shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of the Respondents, (2) acquisition, merger or consolidation of Respondents, or (3) any other change in the Respondents that may affect compliance obligations arising out of the order, including but not limited to assignment and the creation or dissolution of subsidiaries.

#### VI.

**IT IS FURTHER ORDERED** that for the purpose of determining or securing compliance with this Hold Separate Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their

principal United States offices, 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 relating to any matters contained in this Hold Separate Order; and
- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview partners, officers, directors, or employees of Respondents, who may have counsel present, regarding any such matters.

## VII.

**IT IS FURTHER ORDERED** that this Hold Separate Order shall terminate:

- A. With regard to the Starfish Pipeline Interest at the earlier of:
  - 1. 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
  - 2. the day after the Effective Date of Pipeline Divestiture required by the Decision and Order in this matter; or
  - 3. at such other time as the Commission otherwise directs that this Hold Separate Order is terminated.
- B. With regard to the Enterprise Propane Storage Interest, at the earlier of:
  - 1. 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



2. the day after the Effective Date of Propane Divestiture required by the Decision and Order in this matter; or
3. at such other time as the Commission otherwise directs that this Hold Separate Order is terminated.

By the Commission.

Donald S. Clark  
Secretary

SEAL  
ISSUED: September 29, 2004

**Confidential Appendix A: Starfish Monitor Agreement**  
**[Redacted From Public Record Version But Incorporated By Reference]**

**Confidential Appendix C: Enterprise Propane Monitor Agreement**  
**[Redacted From Public Record Version But Incorporated By Reference]**