UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

PUBLIC RECORD VERSION

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

In the Matter of **MAGELLAN MIDSTREAM PARTNERS, L.P.,** a limited partnership, and **SHELL OIL COMPANY,** a corporation.	**Docket No. C-4122** **File No. 041-0164**

PETITION OF MAGELLAN MIDSTREAM PARTNERS, L.P. FOR APPROVAL OF PROPOSED DIVESTITURE

Pursuant to Section 2.41(f) of the Federal Trade Commission ("Commission" or "FTC") Rules of Practice and Procedure, 16 C.F.R. § 2.41(f) (2004), and Paragraph II.A of the Decision and Order (the "Decision and Order") contained in the Agreement Containing Consent Orders approved by the Commission in the above-captioned matter, Magellan Midstream Partners, L.P. ("Magellan") hereby files this Petition for Approval of Proposed Divestiture (the "Petition") requesting the Commission's approval of the divestiture of the former Shell Oil Company ("Shell") Oklahoma City Terminal[1] to TransMontaigne Inc. ("TransMontaigne").

I. INTRODUCTION

On September 16, 2004, Magellan and the Commission entered into an Agreement Containing Consent Orders, including a Decision and Order and an Order to Hold Separate and Maintain Assets (collectively, the "Consent Agreement"). On September 29, 2004, the Commission accepted the Consent Agreement for public comment. On October 1, 2004, pursuant to a Purchase and Sale Agreement between Magellan and Shell dated June 23, 2004, Magellan completed its acquisition from Shell of certain refined petroleum products pipelines, tankage, and terminal assets in the Midwest United States (the "Shell Assets"), including a refined petroleum product terminal that serves the Oklahoma City, Oklahoma Metropolitan Area. On November 26, 2004, the Commission granted final approval of the Consent Agreement.

Paragraph IV.15 of the Commission's Complaint alleges that the acquisition by Magellan of the Shell Assets will substantially lessen competition in the supply of terminaling services for gasoline, diesel fuel, and other light petroleum products in the Oklahoma City Metropolitan Area. Paragraph II.A of the Decision and Order requires Magellan to divest the Oklahoma City Terminal within six months from the date Magellan executed the Consent Agreement. Paragraph II.B of the Decision and Order requires prior Commission approval of such divestiture.

On April 27, 2005, Magellan (through its Magellan Pipeline Company, L.P. subsidiary) and TransMontaigne (through its TransMontaigne Product Services Inc. subsidiary) executed an

[1] Also referred to herein as the "Terminal" or the "Oklahoma City Terminal." All capitalized terms not defined herein have the meanings assigned to them in the Consent Agreement approved by the Federal Trade Commission on November 26, 2004.

Asset Purchase and Sale Agreement (including attachments, exhibits, and schedules) (collectively, the "Agreement") for the sale of the Oklahoma City Terminal.[2] A copy of the Agreement, which was provided to Commission Staff on May 2, 2005, is attached as Confidential Exhibit 1.

Magellan desires to complete the proposed divestiture of the Oklahoma City Terminal as soon as possible following Commission approval. Prompt consummation will further the purposes of the Decision and Order and is in the interests of the Commission, the public, TransMontaigne, and Magellan because it will allow TransMontaigne to move forward with its plans for the competitive operation of the divested business, and it will allow Magellan to fulfill its obligations under the Consent Agreement. Magellan accordingly requests that the Commission promptly commence the period of public comment pursuant to Section 2.41(f)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(2) (2004), limit the public comment period to the customary thirty-day period, and grant this Petition by approving the divestiture of the Oklahoma City Terminal to TransMontaigne pursuant to the proposed agreement as soon as practicable after the close of the public comment period.

This Petition describes the principal terms of the Agreement by which Magellan proposes to divest the Oklahoma City Terminal to TransMontaigne and explains why the Agreement satisfies the objectives of the Consent Agreement by establishing a strong and effective

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[2] On January 14, 2005, Magellan filed a petition for approval of a proposed divestiture of the Oklahoma City Terminal to SemFuel, L.P. ("SemFuel"). Magellan subsequently withdrew this petition on March 15, 2005, based on concerns raised by Commission Staff regarding a minority ownership interest in SemFuel that was acquired by one of the owners of Magellan at approximately the same time as the signing of the agreement between Magellan and SemFuel for the divestiture of the Terminal.

competitor in the market for terminaling services for gasoline, diesel fuel, and other light petroleum products in the Oklahoma City Metropolitan Area.

II. REQUEST FOR CONFIDENTIAL TREATMENT

Because this Petition and its attachments contain confidential and competitively sensitive business information relating to the divestiture of the Oklahoma City Terminal, Magellan has redacted such confidential information from the public version of this Petition and its attachments.[3] The public disclosure of this information would prejudice Magellan and TransMontaigne, cause harm to the ongoing competitiveness of the Oklahoma City Terminal, and impair Magellan's ability to comply with its obligations under the Consent Agreement.

Pursuant to Sections 2.41(f)(4) and 4.9(c) of the Commission's Rules of Practice and Procedure, 16 C.F.R. §§ 2.41(f)(4), 4.9(c) (2004), Magellan requests, on its own behalf and on behalf of TransMontaigne, that the confidential version of this Petition and its attachments and the information contained therein be accorded confidential treatment under 5 U.S.C. § 552 (2000) and Section 4.10(a)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 4.10(a)(2) (2004). The confidential version of this Petition is also exempt from disclosure under Exemptions 4, 7(A), 7(B), and 7(C) of the Freedom of Information Act, 5 U.S.C. §§ 552(b)(4), (b)(7)(A)-(C), and the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a(h) (2000).

[3] For the convenience of maintaining the public record, Magellan is submitting two versions of this Petition: a confidential version that contains confidential and proprietary information and documents necessary for the Commission to assess this Petition, and a redacted version that excludes confidential and proprietary information for placement on the public record.

III. THE PROPOSED ACQUIRER

Paragraph II of the Decision and Order requires Magellan to divest the Oklahoma City Terminal within six months from the date Magellan executed the Consent Agreement to an Acquirer that receives the prior approval of the Commission. Pursuant to this requirement, Magellan has diligently sought a buyer that would be acceptable to the Commission.

According to the 2003 "Statement of the Federal Trade Commission's Bureau of Competition on Negotiating Merger Remedies" (the "Merger Remedies Statement"), to be an acceptable buyer, a divestiture buyer must be financially and competitively viable. The buyer must be able—with the package of assets to be divested—to maintain or restore competition in the relevant market. Key factors to consider in this analysis are whether the proposed buyer has (1) the financial capacity and incentives to acquire and operate the package of assets, and (2) the competitive ability to maintain or restore competition in the marketplace.

As discussed in more detail below, TransMontaigne has both the financial capacity and the incentives to acquire and operate the Oklahoma City Terminal and the competitive ability to maintain or restore competition in the marketplace. TransMontaigne's satisfaction of these key factors demonstrates that it is an acceptable buyer suitable for approval by the Commission.

A. TransMontaigne Has The Financial Ability To Successfully Complete The Transaction And Invest In The Oklahoma City Terminal On A Going-Forward Basis.

TransMontaigne has the financial capacity, resources, and incentives to acquire the Oklahoma City Terminal and ensure its continued operation as a viable, ongoing business. TransMontaigne[4] is a refined petroleum products distribution and supply company based in

[4] TransMontaigne's corporate headquarters are located at 1670 Broadway, Suite 3100, Denver, CO 80202.

Denver, Colorado, with operations in the United States, primarily in the Gulf Coast, Midwest, and East Coast regions. TransMontaigne's revenues for 2004 were in excess of $11 billion. TransMontaigne is in the process of providing to Commission Staff its business plan for the Oklahoma City Terminal, as well as current financial statements and related materials. As these materials will demonstrate, TransMontaigne's current financial condition provides great flexibility in making additional investments in the business, as such investments may become necessary or propitious in the future.

B. As An Established, Integrated, And Experienced Supplier Of Light Petroleum Products, TransMontaigne Has The Necessary Industry Experience, Customer Relationships, And Knowledge Of The Divestiture Assets To Operate The Business Successfully.

The Bureau of Competition's 1999 "Study of the Commission's Divestiture Process" (the "Divestiture Study") discusses several factors that help to identify an acceptable divestiture buyer. Specifically, the Divestiture Study cites the buyer's experience in the relevant industry and knowledge of the assets to be purchased as key to a successful divestiture.

TransMontaigne is an established competitor in the petroleum industry. Its principal business activities consist of: (1) terminal, pipeline, and tug and barge operations; (2) supply, distribution, and marketing; and (3) supply management services. TransMontaigne's customers include refiners, wholesalers, distributors, marketers, and industrial and commercial end-users of refined petroleum products. Through strategic acquisitions, TransMontaigne has assembled a comprehensive portfolio of terminal and pipeline assets with the primary purpose of facilitating supply management requirements for refined petroleum products. Currently, TransMontaigne operates over sixty pipeline, river, and marine terminals in the Gulf Coast, Midwest, and East Coast regions of the United States.

C. TransMontaigne Has The Competitive Ability To Maintain Or Restore Competition In The Marketplace.

The Merger Remedies Statement suggests that the proposed buyer have an "economic incentive to maintain or restore competition in the relevant market." Given TransMontaigne's relevant experience in the petroleum products supply industry, TransMontaigne is fully expected to operate the Oklahoma City Terminal in a manner that will maintain or restore competition in the marketplace.

All of the assets needed to operate the Oklahoma City Terminal competitively will be included as part of the sale to TransMontaigne. As such, it is not anticipated that this acquisition will generate a need for substantial capital to upgrade the Oklahoma City Terminal in the near term. More than adequate capital is available to TransMontaigne, if and when any such upgrades or expansions are deemed necessary.

IV. THE DIVESTITURE AGREEMENT

Although Magellan disagrees with the allegation in the Commission's Complaint that its acquisition of the Shell Assets would lead to a lessening of competition, the acquisition of the Oklahoma City Terminal by TransMontaigne complies with and satisfies the purposes of the Consent Agreement. Pursuant to the Merger Remedies Statement, the divestiture agreement must convey all assets required to be divested and must not contain any provisions inconsistent with the terms of the Commission's order or with the remedial objectives of the order. The Agreement conveys all assets required to be divested and does not contain any provisions inconsistent with the terms of the Consent Agreement or its remedial objectives. As such, the Agreement complies with and satisfies the purposes of the Consent Agreement.

Pursuant to the Agreement, Magellan has agreed to sell and TransMontaigne has agreed to purchase all rights, title, and interest of Magellan in the Oklahoma City Terminal. As set forth in more detail in the Agreement, the acquired assets and rights include: (1) the refined products terminal located at 951 North Vickie Drive in Oklahoma City, Oklahoma; (2) all fee interests in real property associated with the Terminal; (3) all pipe, four tanks, the truck loading rack, pumps, motors, valves, fittings, miscellaneous equipment and facilities, spares, and buildings located on the real property of and associated with the Terminal; (4) the books and records; and (5) all other personal property used primarily in connection with the Terminal. Pursuant to the Agreement, Magellan will use its reasonable best efforts to cooperate with TransMontaigne in connection with its responsibility to obtain all necessary permits and all governmental and third-party consents and approvals necessary for transfer of the Terminal.

V. CONCLUSION

The proposed divestiture of the Oklahoma City Terminal to TransMontaigne will accomplish the purposes of the Consent Agreement and remedy any alleged lessening of competition in the supply of terminaling services for gasoline, diesel fuel, and other light petroleum products in the Oklahoma City Metropolitan Area as a result of Magellan's acquisition of the Shell Assets.

TransMontaigne will be a strong and effective competitor in the relevant market. The company has the financial ability to successfully complete the transaction and invest in the Oklahoma City Terminal on a going-forward basis. As an established, integrated, and experienced supplier of light petroleum products, TransMontaigne has the necessary industry experience, customer relationships, and knowledge of the divestiture assets to operate the business successfully. Finally, TransMontaigne has the competitive ability to maintain or restore competition in the marketplace. Accordingly, Magellan respectfully requests that the Commission approve the proposed divestiture and acquirer.

Dated: May 6, 2005

Respectfully submitted,

MAGELLAN MIDSTREAM PARTNERS, L.P.

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