

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch

In the Matter of)
)
)
 DAN L. DUNCAN,)
 a natural person,)
)
 EPCO, INC.,)
 a corporation,)
)
 TEXAS EASTERN PRODUCTS PIPELINE)
 COMPANY, LLC,)
 a limited liability company,)
)
 and)
)
 TEPPCO PARTNERS, L.P.,)
 a limited partnership.)
)

Docket No. C-4173
DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission (“Commission”), having initiated an investigation of the acquisition of Respondent Texas Eastern Products Pipeline Company, LLC, the general partner of Respondent TEPPCO Partners, L.P., and limited partnership interests in Respondent TEPPCO Partners, L.P., from Duke Energy Field Services, LLC, by entities indirectly controlled by Respondent EPCO, Inc. and Respondent Dan L. Duncan, hereinafter collectively referred to as “Respondents,” 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, that, 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 Order (“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 thereupon issued its Complaint, 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, and having duly considered the comment received from an interested person pursuant to section 2.34 of its Rules, 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 issues the following Decision and Order ("Order"):

1. Respondent Dan L. Duncan is a natural person with his office and principal place of business located at 1100 Louisiana Street, Suite 1800, Houston, Texas 77002.

2. Respondent EPCO, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its office and principal place of business at 1100 Louisiana Street, Suite 1800, Houston, Texas 77002.

3. Respondent Texas Eastern Products Pipeline Company, LLC is a limited liability company 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 at 1100 Louisiana Street, Suite 1300, Houston, Texas 77002.

4. Respondent TEPPCO 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 1100 Louisiana Street, Suite 1300, Houston, Texas 77002.

5. 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 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, EPCO, Texas Eastern, and TEPPCO), and the respective partners, directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each.

- B. “EPCO” means EPCO, Inc., a corporation, its directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by EPCO, Inc., and the respective partners, directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each.
- C. “TEPPCO” means TEPPCO Partners, L.P., a publicly traded limited partnership, its partners (including, but not limited to, Texas Eastern), directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by TEPPCO Partners L.P. (including, but not limited to, TE Products Pipeline Company), and the respective partners, directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each. *PROVIDED, HOWEVER*, TEPPCO does not include Mont Belvieu Storage Partners or Louis Dreyfus.
- D. “Texas Eastern” means Texas Eastern Products Pipeline Company, LLC, a limited liability company, its directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Texas Eastern Products Pipeline Company, LLC, and the respective partners, directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each. *PROVIDED, HOWEVER*, Texas Eastern does not include Mont Belvieu Storage Partners.
- E. “Respondents” means Duncan, EPCO, Texas Eastern, and TEPPCO.
- F. “Commission” means the Federal Trade Commission.
- G. “Acquirer” means any entity that receives the prior approval of the Commission to acquire the TEPPCO NGL Storage Assets pursuant to Paragraphs II or III of this Order.
- H. “Acquisition” means the February 24, 2005, acquisition by entities controlled by Respondent Dan L. Duncan from Duke Energy of (1) Texas Eastern, the general partner of TEPPCO, and (2) 2.5 million limited partnership units of TEPPCO.
- I. “Baytown Terminal” means the NGL and refined products terminal facility and all related assets owned by TEPPCO in Baytown, Texas.
- J. “Divestiture Agreement” means any agreement or agreements pursuant to which Respondents or a Divestiture Trustee divests to an Acquirer pursuant to Paragraphs II or III of this Order and with the prior approval of the Commission.
- K. “Divestiture Trustee” means any trustee appointed by the Commission pursuant to Paragraph III of this Order.
- L. “Duke Energy” means Duke Energy Field Services, LLC, a limited liability company organized, existing, and doing business under and by the virtue of the laws of the State of

Delaware, with its executive offices at 370 17th Street, Suite 2500, Denver, Colorado 80202.

- M. “Effective Date of Divestiture” means the date on which Respondents (or a Divestiture Trustee) divest to an Acquirer the TEPPCO NGL Storage Assets as required by Paragraphs II or III of this Order.
- N. “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.
- O. “Intangible Property” means intangible property relating to the assets associated with Mont Belvieu Storage Partners and the TEPPCO NGL Partnership Agreements including, but not limited to, intellectual property, software, computer programs, patents, know-how, goodwill, technology, trade secrets, technical information, marketing information, protocols, quality control information, trademarks, trade names, service marks, logos, and any modifications or improvements to such intangible property. *PROVIDED, HOWEVER*, Intangible Property does not include Licensed Intangible Property or TEPPCO trademarks, trade names, service marks, or logos.
- P. “Licensed Intangible Property” means Intangible Property licensed to Respondents from a third party. *PROVIDED, HOWEVER*, Licensed Intangible Property does not include any modifications and improvements to Intangible Property that are not themselves licensed to Respondents.
- Q. “Louis Dreyfus” means Louis Dreyfus Energy Services 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 20 Westport Road, Wilton, Connecticut 06897.
- R. “LPGs” means normal butane, isobutane, mixed butanes, and propane.
- S. “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.
- T. “Mont Belvieu Storage Partners” means the partnership by and between TE Products Pipeline Company and Louis Dreyfus pursuant to the Agreement of Limited Partnership of Mont Belvieu Storage Partners, L.P., dated January 21, 2003, as amended or clarified by that certain Letter of Agreement Clarifying Rights and Obligations of the Parties Under the Mont Belvieu Storage Partners, L.P., Partnership Agreement and the Mont Belvieu Venture, LLC, LLC Agreement, dated October 25, 2003, and amendments, schedules, and attachments thereto. Mont Belvieu Storage Partners also means the

partnership existing after the divestiture required by this Order and any successors or assigns to that entity.

- U. “Mont Belvieu Storage Partners Terminals” means the NGL salt dome storage facility owned by Mont Belvieu Storage Partners in Mont Belvieu, Texas, and described in the TEPPCO NGL Partnership Agreements.
- V. “NGL” means natural gas liquids either as a mixed stream, known as “y-grade” or “raw mix,” or separately as ethane, propane, butane, isobutane, natural gasoline, and ethane-propane mixture. NGLs include LPGs.
- W. “Open Stock Service” means Respondent TEPPCO’s practice, through TE Products Pipeline Company, of allowing shippers, who have adequate inventory in storage under the custody and control of TE Products Pipeline Company on, or in storage facilities connected to, the TEPPCO Mainline Delivery System including, but not limited to, the Mont Belvieu Storage Partners Terminals, to take delivery of propane at TEPPCO’s terminals along the TEPPCO Mainline Delivery System, when propane is available at the terminal, without making the shipper wait for the pipeline transit time it would take to move the propane from origin to destination. Such Open Stock Service practice is subject to, and historically has been subject to, availability of inventory and operational constraints including, but not limited to, pipeline prorating, transit time requirements, scheduling requirements, regulatory constraints, emergency conditions, and force majeure events. *PROVIDED, HOWEVER*, Open Stock Service does not require, and nothing in this Order shall be construed as requiring, Respondent TEPPCO to lease space in its name at any NGL storage facility or continue its earned storage program at any NGL storage facility.
- X. “Person” means any individual, partnership, association, company, or corporation.
- Y. “Reasonable Construction Costs” means all direct costs and expenses necessary for safe and environmentally sound design, engineering, and construction.
- Z. “South Mont Belvieu” means the NGL salt dome storage facility owned by Mont Belvieu Storage Partners in Mont Belvieu, Texas known as the South Terminal, and described in the TEPPCO NGL Partnership Agreements.
- AA. “TE Products Pipeline Company” means TE Products Pipeline Company, Limited Partnership, a limited partnership, its partners (including, but not limited to, TEPPCO), directors, officers, employees, agents, attorneys, representatives, predecessors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by TE Products Pipeline Company, Limited Partnership, and the respective partners, directors, officers, employees, agents, attorneys, representatives, predecessors, successors, and assigns of each. *PROVIDED, HOWEVER*, TE Products Pipeline Company does not include Mont Belvieu Storage Partners.

- BB. “TEPPCO Intangible Property” means Intangible Property solely relating to the TEPPCO NGL Pipelines and the TEPPCO Land including, but not limited to, intellectual property, software, computer programs, patents, know-how, goodwill, technology, trade secrets, technical information, marketing information, protocols, quality control information, and any modifications or improvements to such intangible property. *PROVIDED, HOWEVER*, TEPPCO Intangible Property does not include TEPPCO trademarks, trade names, service marks, and logos, or Licensed Intangible Property.
- CC. “TEPPCO Land” means certain parcels of real property, or portions thereof, located in Chambers County, Texas, owned by TEPPCO, situated south of road FM-1942 and west of Highway TX-146, including, but not limited to, those parcels described in Appendix B, and TEPPCO Intangible Property to the extent it relates to such parcels of land. *PROVIDED, HOWEVER*, TEPPCO may retain easements and rights of way in Parcels 11 and 21 for the P-78 pipeline, and TEPPCO may retain easements and rights of way in Parcels 24, 41, and 46 for the P-61 pipeline.
- DD. “TEPPCO Mainline Delivery System” means TE Products Pipeline Company’s 18-inch/20-inch diameter pipelines running from Mont Belvieu, Texas, to Middletown, Ohio (TE Products Pipeline Company’s Todhunter Terminal); 8-inch diameter pipeline running from Middletown, Ohio, to Greensburg, Pennsylvania; 6-inch/8-inch diameter pipelines running from Greensburg, Pennsylvania, to Eagle, Pennsylvania; and 8-inch diameter pipeline running from Greensburg, Pennsylvania, to Selkirk, New York, and all associated assets, including all NGL terminals owned by TEPPCO or in which TEPPCO leases storage.
- EE. “TEPPCO MBSP Employee” means any individual who is employed by Respondent EPCO and who has worked more than ten (10) percent of his or her time in support of the TEPPCO NGL Storage Assets or the TEPPCO NGL Pipelines at any time since October 1, 2005, regardless of whether the individual has also worked on or in support of other operations owned by Respondents, including, but not limited to, the area manager, operations coordinators, maintenance supervisor, measurement specialist, integrity specialist, technicians, control point operators, operators, and the individuals listed in Appendix C.
- FF. “TEPPCO NGL Partnership Agreements” means the “Limited Liability Company Agreement of Mont Belvieu Venture, LLC, Between TE Products Pipeline Company, Limited Partnership, and Louis Dreyfus Energy Services L.P.,” dated January 21, 2003, and the “Agreement of Limited Partnership of Mont Belvieu Storage Partners, L.P.,” dated January 21, 2003, and any other documents, appendices, or schedules related to those agreements.
- GG. “TEPPCO NGL Pipelines” means the NGL pipelines owned by TEPPCO, described in Appendix A, with the continued use of all current easements and rights of way and any lease agreements or access easements at the Baytown Terminal, and TEPPCO Intangible Property to the extent it relates to such pipelines.

HH. “TEPPCO NGL Storage Assets” means:

1. all of Respondents’ interests in Mont Belvieu Storage Partners and the TEPPCO NGL Partnership Agreements. The assets of Mont Belvieu Storage Partners include, but are not limited to:
 - a. Mont Belvieu Storage Partners Terminals;
 - b. brine handling and storage facilities;
 - c. pipelines to and from the Mont Belvieu Storage Partners Terminals, including, but not limited to, pipelines designated as P-11, P-12, P-13, P-14, P-15, P-49, P-53, P-54, P-55, P-67, P-68, P-86, P-96, P-96A, P-97, P-97A, P-97B, P-97C, P-97D, P-105, and P-106 in Appendix E , with all associated pipeline pumps, pipeline injection facilities and related equipment, buildings, equipment, machinery, fixtures, and other appurtenances, and with the continued use of all current easements and rights of way;
 - d. truck and rail facilities, including truck and rail racks, for the receipt and delivery of NGLs stored in the Mont Belvieu Storage Partners Terminals, and related software;
 - e. land owned or leased by Mont Belvieu Storage Partners;
 - f. current contracts, *PROVIDED, HOWEVER*, TEPPCO’s rights and obligations as an independent entity in the Storage and Service Agreement Between Mont Belvieu Storage Partners, L.P. and TE Products Pipeline Company, Limited Partnership, dated August 13, 2003 (effective retroactively as of January 21, 2003) are not considered part of Mont Belvieu Storage Partners’ assets;
 - g. the continued use of all current easements and rights of way;
 - h. the Dixie dehydrator;
 - i. the scraper trap site, header site, and LPG manifold, located at the Baytown Terminal;
 - j. pipelines to and from the Baytown Terminal including, but not limited to, pipelines designated as P-3, P-5, P-6 (from the interconnection with the P-59 pipeline at the Deepwater Cogen plant westward to the termination of the P-6 pipeline within the Lyondell refinery), P-7, P-50, P-59, P-60, and P-94 in Appendix E, with the continued use of all current easements and rights of way;

- k. documents, plans, strategies, financials, and other documents relating to Mont Belvieu Storage Partners, the assets included in Mont Belvieu Storage Partners, the TEPPCO NGL Partnership Agreements, and Respondents' interests in Mont Belvieu Storage Partners;
 - l. Intangible Property; and
 - m. all licenses, permits, contracts, agreements, and understandings relating to the ownership and operation of Mont Belvieu Storage Partners Terminals.
- 2. TEPPCO NGL Pipelines;
 - 3. TEPPCO Land;
 - 4. all documents relating to the assets described in subparagraphs 1, 2, and 3, of this Paragraph, above, including, but not limited to, copies of plans, tariffs, customer lists, strategic planning documents that have been submitted to the managing board, and annual and quarterly financial statements;
 - 5. a royalty-free perpetual worldwide license for the use, without any limitation, of all TEPPCO Intangible Property including the right to transfer or sublicense such TEPPCO Intangible Property, exclusively or nonexclusively, to others by any means;
 - 6. lease agreements or access easements for the TEPPCO NGL Pipelines at the Baytown Terminal, including, but not limited to, those listed in Appendix D.

II.

IT IS FURTHER ORDERED that:

- A. No later than December 31, 2006, Respondents shall divest the TEPPCO NGL Storage Assets absolutely and in good faith, at no minimum price.
- B. Respondents shall divest the TEPPCO NGL Storage Assets to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.
- C. Until the Effective Date of Divestiture, Respondents shall take such actions as are necessary to maintain the viability and marketability of the TEPPCO NGL Storage Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of the TEPPCO NGL Storage Assets, except for ordinary wear and tear.
- D. Prior to the Effective Date of Divestiture, Respondents shall secure all consents and waivers, including rights of approval and rights of first refusal, from all Persons and

Governmental Entities that are necessary for the divestiture of the TEPPCO NGL Storage Assets to the Acquirer, including, but not limited to, any consents or waivers required from Louis Dreyfus or its successor with respect to the TEPPCO NGL Storage Assets.

- E. Beginning from the date the Respondents sign the Consent Agreement until sixty (60) days after the Effective Date of Divestiture of the TEPPCO NGL Storage Assets, Respondents shall:
1. facilitate employment interviews between each TEPPCO MBSP Employee and the Acquirer, including providing the names and contact information for such employees and allowing such employees reasonable opportunity to interview with the Acquirer, and shall not discourage such employee from participating in such interviews;
 2. not interfere in employment negotiations between each TEPPCO MBSP Employee and the Acquirer;
 3. with respect to each TEPPCO MBSP Employee who receives an offer of employment from the Acquirer:
 - a. not prevent, prohibit, or restrict, or threaten to prevent, prohibit, or restrict the TEPPCO MBSP Employee from being employed by the Acquirer, and shall not offer any incentive to the TEPPCO MBSP Employee to decline employment with the Acquirer;
 - b. cooperate with the Acquirer in effecting transfer of the TEPPCO MBSP Employee to the employ of the Acquirer, if the TEPPCO MBSP Employee accepts an offer of employment from the Acquirer;
 - c. eliminate any contractual provisions or other restrictions entered into or imposed by Respondents that would otherwise prevent the TEPPCO MBSP Employee from being employed by the Acquirer;
 - d. eliminate any confidentiality restrictions that would prevent the TEPPCO MBSP Employee who accepts employment with the Acquirer from using or transferring to the Acquirer any information relating to the operation of the TEPPCO NGL Storage Assets;
 - e. pay, for the benefit of any TEPPCO MBSP Employee who accepts employment with the Acquirer, all accrued bonuses, vested pensions, and other accrued benefits.
- F. Respondents shall, for a period of two (2) years following the Effective Date of Divestiture, not, directly or indirectly, solicit, induce, or attempt to solicit or induce any TEPPCO MBSP Employee who is employed by the Acquirer to terminate his or her employment relationship with the Acquirer, unless that employment relationship has

already been terminated by the Acquirer; *PROVIDED, HOWEVER*, Respondents may make general advertisements for employees including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at the Acquirer's employees; *PROVIDED FURTHER, HOWEVER*, Respondents may hire TEPPCO MBSP Employees who apply for employment with Respondents as long as such employees were not solicited by Respondents in violation of this Paragraph.

- G. Respondents shall convey to the Acquirer the right to use any Licensed Intangible Property (to the extent permitted by the third-party licensor), if such right is needed for the operation of the TEPPCO NGL Storage Assets by the Acquirer and if the Acquirer is unable, using commercially reasonable efforts, to obtain equivalent rights from other third parties on commercially reasonable terms and conditions.
- H. The purposes of this Order with respect to the divestiture of the TEPPCO NGL Storage Assets are: (1) to ensure the continuation of the TEPPCO NGL Storage Assets as a going concern in the same manner as of the date the Consent Agreement is signed, and (2) to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligation to divest the TEPPCO NGL Storage Assets as required by, and within the time required by, Paragraph II of this Order, the Commission may appoint a Divestiture Trustee to divest the TEPPCO NGL Storage Assets in a manner that satisfies the requirements of Paragraph II.

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

- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have 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 Respondents of the identity of any proposed Divestiture

Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondents 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 divestitures required by this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph III, Respondents 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 divest the TEPPCO NGL Storage Assets.
 2. The Divestiture Trustee shall have one (1) year after 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 one (1) year 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; *PROVIDED, HOWEVER*, the Commission may extend the divestiture period only two (2) times.
 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 divested by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph III in an amount equal to the delay, as determined by the Commission.
 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 Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture or divestitures 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 Respondents from among those approved by the Commission; *PROVIDED FURTHER, HOWEVER*, that Respondents shall

select such entity within five (5) days after receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, 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 Respondents, 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 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 Respondents, 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. Respondents 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 misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
 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 act in a fiduciary capacity for the benefit of the Commission.
 9. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 10. Respondents 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.
- E. 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 III.

- F. 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 divestiture required by this Order.

IV.

IT IS FURTHER ORDERED that for a period of ten (10) years from the date this Order becomes final:

- A. Respondents shall not, without providing advance written notification to the Commission in the manner described in this Paragraph IV.A, directly or indirectly:
1. Acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, other than acquisitions in Respondents, that owns a salt dome storage facility within Chambers County, Texas permitted or used, either at the time of such acquisition or within the two (2) years preceding such acquisition, to store NGLs;
 2. Acquire any salt dome storage facility within Chambers County, Texas permitted or used, either at the time of such acquisition or within the two (2) years preceding such acquisition, to store NGLs;
 3. Manage or operate any salt dome storage facility within Chambers County, Texas permitted or used, either at the time of such management or operation or within the two (2) years preceding such management or operation, to store NGLs, unless such storage facility is owned by Respondents.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (herein referred to as “the Notification”), 16 C.F.R. § 803 App., and shall be prepared and transmitted in accordance with the requirements of that Part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. *PROVIDED, HOWEVER*, that prior notification shall not be required by this Paragraph for an acquisition, if the

Respondents acquire no more than one (1) percent of the outstanding securities or other equity interest in an entity described in subparagraphs IV.A and IV.B, unless such acquisition results in the Respondents controlling the entity or having a controlling interest in the entity. *PROVIDED FURTHER, HOWEVER*, that prior notification shall not be required by this Paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a. *PROVIDED FURTHER, HOWEVER*, that prior notification shall not be required by this Paragraph for Respondents' continued ownership, management, or operation of the assets required to be divested (i) pursuant to Paragraph II of this Order pending such divestiture; and (ii) pursuant to the Divestiture Agreement.

- B. Respondents shall not, without providing advance written notification to the Commission, implement new allocation procedures relating to the movement of NGLs from and between storage facilities, the TEPPCO Mainline Delivery System, and customers, including all rules and regulations regarding NGL nominations and scheduling.

The notification for the allocation procedures in this Paragraph IV.B., shall be as follows: (1) Respondent TEPPCO shall not be required to use the Notification and Report form. No filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondent TEPPCO and not of any other party. Respondent TEPPCO shall file the allocation procedures and all documents relating to such procedures including, but not limited to, related rules and regulations, memoranda, or other documents discussing the allocation procedures, rules, and regulations, correspondence with the Federal Energy Regulatory Commission and any other third party regarding such procedures; (2) Respondent TEPPCO shall submit such documentation at least ninety (90) days before the implementation of such allocation procedures (hereinafter referred to as the "first waiting period"); (3) If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent TEPPCO shall not implement the allocation procedures until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

- C. Within fifteen (15) days of the earlier of the signing date or the effective date, Respondents shall submit to the Commission, with copies to Bureau of Competition Mergers III Division and Compliance Division, any lease, and any contract summary relating to the lease, for NGL storage within Chambers County, Texas from any Person, including Mont Belvieu Storage Partners. Upon request of the Commission, Respondents shall provide copies of all documents relating to the lease including, but not limited to, memoranda, meeting notes, emails, or other documents. *PROVIDED, HOWEVER*, that Respondents do not have to submit any storage leases currently in effect, including the Storage and Service Agreement Between Mont Belvieu Storage

Partners, L.P. and TE Products Pipeline Company, Limited Partnership, dated August 12, 2003 (effective retroactively as of January 21, 2003), or extensions of leases currently in effect if the volume leased under such extended leases is not ten percent (10%) in excess of the volume currently leased pursuant to such current leases.

V.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order becomes final, and every sixty (60) days thereafter until Respondents have fully complied with Paragraphs II.A-II.E, II.G, and III of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order. Respondents shall submit at the same time a copy of their reports concerning compliance with this Order to the Divestiture Trustee, if any Divestiture Trustee has been appointed pursuant to this Order. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant Paragraphs of the Order, including a description of all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all parties contacted. Respondents shall include in their reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations.
- B. Beginning twelve (12) months after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, until the Order terminates, Respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they are complying and have complied with this Order and the Divestiture Agreements.

VI.

IT IS FURTHER ORDERED that:

- A. Respondents shall continue to operate the Open Stock Service for shippers who (1) ship propane on the TEPPCO Mainline Delivery System, and (2) store propane at the Mont Belvieu Storage Partners Terminals;
- B. Respondents shall, in the event Respondents build, or any Respondent builds, a new pipeline connecting an NGL storage facility in Chambers County, Texas (other than the Mont Belvieu Storage Partners Terminals) to the TEPPCO Mainline Delivery System (“New Pipeline”);

1. at their cost, extend any such New Pipeline to a point agreeable to both Respondents and Mont Belvieu Storage Partners at the property line of property owned by Mont Belvieu Storage Partners (“Terminus Point”); and
2. reimburse Mont Belvieu Storage Partners for Reasonable Construction Costs to extend any such New Pipeline from the Terminus Point to the manifold connected to the Mont Belvieu Storage Partners Terminal.

C. If Respondents build a New Pipeline:

1. and propane is shipped on the New Pipeline from an NGL storage facility to the TEPPCO Mainline Delivery System where there has not been a past practice of shipping propane directly onto such system, then Respondent TEPPCO shall operate the Open Stock Service for shippers who ship propane on the TEPPCO Mainline Delivery System from any NGL storage facility in Mont Belvieu, Texas on terms and conditions that are no less advantageous than those given to shippers who designate that propane be shipped from any NGL storage facility in Mont Belvieu, Texas owned by Respondents;
2. and NGLs, other than propane, are shipped on the New Pipeline from an NGL storage facility directly to the TEPPCO Mainline Delivery System where there has not been a past practice of shipping NGLs, other than propane, directly onto such system, then Respondent TEPPCO shall operate the TEPPCO Mainline Delivery System for shipping NGLs, other than propane, from any NGL storage facility in Mont Belvieu, Texas on terms and conditions that are no less advantageous than those given to shippers who designate that NGLs, other than propane, be shipped from any NGL storage facility in Mont Belvieu, Texas owned by Respondents;
3. At the time Respondents begin to move product to the TEPPCO Mainline Delivery System from any storage facility connected to the New Pipeline (other than the Mont Belvieu Storage Partners Terminals), or any time thereafter, Respondents shall allow Mont Belvieu Storage Partners to amend or terminate the Storage and Service Agreement Between Mont Belvieu Storage Partners, L.P. and TE Products Pipeline Company, Limited Partnership, dated August 12, 2003 (effective retroactively as of January 21, 2003), on the following terms:
 - a. with regard to propane,
 - (1) upon ninety (90) days written notice before termination,
 - (2) with no termination penalty, and
 - (3) provided that the termination cannot occur before March 31, 2007;
 - b. with regard to NGLs, other than propane,

- (1) upon ninety (90) days written notice before termination,
 - (2) with no termination penalty, and
 - (3) provided that the termination cannot occur before March 31, 2008;
4. In the event Respondents implement any new allocation procedures, including rules and regulations, regarding the TEPPCO Mainline Delivery System, such new allocation procedures shall allow shippers who ship on the TEPPCO Mainline Delivery System from any NGL storage facility in Mont Belvieu, Texas to ship on terms and conditions that are no less advantageous than those given to shippers who ship from any NGL storage facility in Mont Belvieu, Texas owned by Respondents.
- D. Respondent TEPPCO shall not disclose Material Confidential Information to Respondent Duncan, Respondent Enterprise, and Respondent EPCO concerning shippers who store NGLs in Mont Belvieu Storage Partners Terminals, in any other storage facility, or on the TEPPCO Mainline Delivery System.
- E. The purpose of this Paragraph VI is (1) to allow the operation of the TEPPCO Mainline Delivery System in the same manner as of the date the Consent Agreement is signed, and (2) to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

VII.

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

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request with reasonable notice, 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 related to compliance with this Order; and

- B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on October 31, 2016.

By direction of the Commission, Commissioner Rosch recused.

Donald S. Clark
Secretary

SEAL

ISSUED: October 31, 2006

Nonpublic Appendix C

[Redacted From the Public Record Version But Incorporated By Reference]