

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
J. Thomas Rosch
Edith Ramirez
Julie Brill
Maureen K. Ohlhausen

_____)
In the Matter of)
) Docket No. C-
Kinder Morgan, Inc.,)
a corporation.)
_____)

DECISION AND ORDER
[Redacted Public Version]

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Kinder Morgan, Inc. (“Kinder Morgan” or “Respondent”) of the outstanding voting securities of El Paso Corporation (“El Paso”), and Respondent having been furnished thereafter with a copy of the draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and its Order to Hold Separate and Maintain Assets (“Hold Separate Order”) and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity

with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Kinder Morgan is a corporation 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 500 Dallas Street, Suite 1000, Houston, Texas 77002.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent and the proceeding is in the public interest.

ORDER

I.

IT IS HEREBY ORDERED that, as used in this Order, the following definitions, and all other definitions used in the Hold Separate Order, shall apply:

- A. “Kinder Morgan” means Kinder Morgan, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates in each case controlled by Kinder Morgan, Inc. (including, but not limited to, Kinder Morgan Energy Partners L.P. and Kinder Morgan Management LLC), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. Kinder Morgan includes El Paso, after the Acquisition Date.
- B. “Commission” means the Federal Trade Commission.
- C. “Acquirer” means any Person that receives the prior approval of the Commission to acquire any of the KM Pipeline Assets pursuant to this Decision and Order.
- D. “Acquisition” means the proposed acquisition described in the Agreement and Plan of Merger, dated as of October 16, 2011, among Kinder Morgan, Inc., Sherpa Merger Sub, Inc., Sherpa Acquisition, LLC, Sirius Holdings Merger Corporation, Sirius Merger Corporation, and El Paso Corporation.
- E. “Acquisition Date” means the date the Acquisition is consummated.
- F. “Business Records” means all originals and all copies of any operating, financial or other information, documents, data, computer files (including files stored on a computer’s hard drive or other storage media), electronic files, books, records, ledgers, papers, instruments, and other materials, whether located, stored, or maintained in traditional paper format or by means of electronic, optical, or magnetic media or devices, photographic or video images, or any other format or media, including, without

limitation: distributor files and records; customer files and records, customer lists, customer product specifications, customer purchasing histories, customer service and support materials, customer approvals, and other information; credit records and information; correspondence; referral sources; supplier and vendor files and lists; advertising, promotional, and marketing materials, including website content; sales materials; research and development data, files, and reports; technical information; data bases; studies; drawings, specifications and creative materials; production records and reports; service and warranty records; equipment logs; operating guides and manuals; employee and personnel records; education materials; financial and accounting records; and other documents, information, and files of any kind.

- G. “Confidential Business Information” means competitively sensitive, proprietary and all other business information of any kind, except for any information that Respondent demonstrates (i) was or becomes generally available to the public other than as a result of a wrongful disclosure by Respondent, or (ii) was available, or becomes available, to Respondent on a non-confidential basis, but only if, to the knowledge of Respondent, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information.
- H. “Direct Cost” means the actual cost of labor, including employee benefits, materials, resources, and services plus the actual cost of any third-party charges.
- I. “Divestiture Agreement” means any agreement that receives the prior approval of the Commission between Respondent (or between a Divestiture Trustee appointed pursuant to Paragraph IV. of this Order) and an Acquirer to purchase all or any of the KM Pipeline Assets, and all amendments, exhibits, attachments, agreements, and schedules thereto that have been approved by the Commission.
- J. “Divestiture Date” means, with regard to any of the KM Pipeline Assets, the date on which Respondent (or a Divestiture Trustee) closes on the divestiture of those assets completely and as required by Paragraph II. (or Paragraph IV.) of this Order.
- K. “El Paso” means El Paso Corporation, a corporation 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 1001 Louisiana Street, Houston, Texas 77002.
- L. “El Paso Rockies Pipeline Business” means El Paso’s business of providing natural gas transportation services and any related natural gas processing, treatment, storage, and pipeline operating services through the Cheyenne Plains Gas pipeline system (“CPG”), Colorado Interstate Gas pipeline system (“CIG”), and the Wyoming Interstate Company gas pipeline system (“WIC”).
- M. “Hold Separate Business” means the business that Respondent shall hold separate pursuant to the Hold Separate Order.

- N. “Intellectual Property” means all intellectual property owned or licensed (as licensor or licensee) by Kinder Morgan, in which Kinder Morgan has a proprietary interest, including (i) commercial names, trade names, “doing business as” (d/b/a) names, registered and unregistered trademarks, logos, service marks and applications; (ii) all patents, patent applications and inventions, and discoveries that may be patentable; (iii) all registered and unregistered copyrights in both published works and unpublished works; (iv) all know-how, trade secrets, confidential or proprietary information, protocols, quality control information, customer lists, software, technical information, data, process technology, plans, drawings, and blue prints; (v) and all rights in internet web sites and internet domain names presently used by Kinder Morgan.
- O. “Interstate Pipeline Systems” means:
1. Kinder Morgan Interstate Gas Transmission LLC (“KMIGT”), which includes approximately 5,100 miles of transmission lines in Colorado, Kansas, Nebraska, Missouri, and Wyoming;
 2. Rockies Express Pipeline LLC (“REX”), a natural gas pipeline system in which Kinder Morgan owns a fifty (50) percent membership interest, which includes an approximately 1,679 mile natural gas pipeline originating at a point near Meeker, in Rio Blanco County, Colorado and terminating at a point near Clarington, in Monroe county, Ohio; and
 3. Trailblazer Pipeline Company LLC (“Trailblazer”), a natural gas pipeline system that includes a 436-mile natural gas pipeline originating at an interconnection with Wyoming Interstate Company, LLC’s pipeline system near Rockport, Colorado and runs through southeastern Wyoming to a terminus near Beatrice, Nebraska.
- P. “IP License-Back” means (i) a worldwide, royalty-free, paid-up, perpetual, irrevocable, transferable, sublicensable, non-exclusive license under all Intellectual Property included in the KM Pipeline Assets relating to Respondent’s operation of a business that Respondent is not required to divest under this Order; and (ii) such tangible embodiments of the licensed rights (including but not limited to physical and electronic copies) as may be necessary or appropriate to enable Respondent to use the rights.
- Q. “KM Key Employee” means any KM Pipeline Employee identified by agreement between Respondent and an Acquirer and made a part of a Divestiture Agreement.
- R. “KM Pipeline Assets” means all of Kinder Morgan’s right, title, and interest in and to all property and assets, tangible or intangible, of every kind and description, wherever located, and any improvements or additions thereto, relating to operation of the KM Pipeline Business, including but not limited to:

1. All real property interests (including fee simple interests and real property leasehold interests), including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;
2. All Tangible Personal Property, including any Tangible Personal Property removed from any location of the KM Pipeline Business since the date of the announcement of the Acquisition, and not replaced, if such property was used in connection with the operations of the KM Pipeline Business prior to the Acquisition Date;
3. All inventories, wherever located;
4. All (a) trade accounts receivable and other rights to payment from customers of Kinder Morgan and the full benefit of all security for such accounts or rights to payment, (b) all other accounts or notes receivable by Kinder Morgan and the full benefit of all security for such accounts or notes and (c) any claim, remedy, or other right related to any of the foregoing;
5. All agreements and contracts with customers (including but not limited to agreements, contracts, and understandings for transportation, storage, and other services), suppliers, vendors, representatives, agents, licensees and licensors; and all leases, mortgages, notes, bonds, and other binding commitments, whether written or oral, and all rights thereunder and related thereto;
6. All consents, licenses, certificates, registrations, or permits issued, granted, given, or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement, and all pending applications therefor or renewals thereof;
7. All intangible rights and property, including Intellectual Property (subject to an IP License-Back to Respondent), going concern value, goodwill, telephone, telecopy, and e-mail addresses and listings;
8. All Business Records; *provided, however*, that where documents or other materials included in the Business Records to be divested contain information: (a) that relates both to the KM Pipeline Assets to be divested and to Respondents' retained assets or other products or businesses and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the KM Pipeline Assets to be divested; or (b) for which the relevant party has a legal obligation to retain the original copies, the relevant party shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the

Acquirer, the relevant party shall provide the Acquirer access to original documents under circumstances where copies of the documents are insufficient for evidentiary or regulatory purposes.

9. All insurance benefits, including rights and proceeds; and
10. All rights relating to deposits and prepaid expenses, claims for refunds, and rights to offset in respect thereof.

Provided, however, that the KM Pipeline Assets need not include:

- i. Assets whose use is shared between the KM Pipeline Business and other Kinder Morgan businesses unless such assets are primarily related to the operation of the KM Pipeline Business; and
 - ii. Any part of the KM Pipeline Assets if not needed by an Acquirer and the Commission approves the divestiture without such assets.
- S. “KM Pipeline Business” means Kinder Morgan’s business of providing natural gas transportation services and any related natural gas processing, treatment, storage, and pipeline operating services through and/or in connection with the Interstate Pipeline Systems.
- T. “KM Pipeline Employee” means any full-time, part-time, or contract Person (i) employed by Respondent at any time from the date Respondent signs the Consent Agreement, and (ii) whose job responsibilities primarily relate to the KM Pipeline Business.
- U. “KMPB License” means (i) a worldwide, royalty-free, paid-up, perpetual, irrevocable, transferable, sublicensable, non-exclusive license under all Intellectual Property relating to operation of the KM Pipeline Business other than Intellectual Property already included in the KM Pipeline Assets; and (ii) such tangible embodiments of the licensed rights (including but not limited to physical and electronic copies) as may be necessary or appropriate to enable an Acquirer to use the rights.
- V. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization, or other business entity.
- W. “Tangible Personal Property” means all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, rolling stock, and other items of tangible personal property (other than inventories) of every kind owned or leased by Kinder Morgan, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.

- X. “Transitional Assistance” means any (i) administrative assistance (including, but not limited to, order processing, shipping, accounting, and information transitioning services) or (ii) technical assistance with respect to the provision of natural gas transportation, processing, storage, and pipeline operating services.

II.

IT IS FURTHER ORDERED that:

- A. Respondent shall divest the KM Pipeline Assets at no minimum price, absolutely and in good faith, as an on-going business, no later than 180 days from the Acquisition Date, to an Acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission.
- B. No later than the Divestiture Date, Respondent shall:
1. Grant to the Acquirer a KMPB License for any use in any business, and shall take all actions necessary to facilitate the unrestricted use of the license; and
 2. Secure all consents, assignments, and waivers from all Persons that are necessary for the divestiture of such business or assets to the Acquirer.
- C. In the event Respondent is unable to obtain any consents, licenses, certificates, registrations, permits, or other authorizations granted by:
1. Any governmental entity that are necessary to operate the KM Pipeline Assets, Respondent shall provide such assistance as Acquirer may reasonably request in Acquirer’s efforts to obtain a comparable authorization; and
 2. Any other Person that are necessary to divest the KM Pipeline Assets, Respondent shall, with the acceptance of Acquirer and the prior approval of the Commission, substitute equivalent assets or arrangements.
- D. At the request of the Acquirer, pursuant to an agreement that receives the prior approval of the Commission, Respondent shall, for a period not to exceed nine (9) months from the date Respondent divests the KM Pipeline Assets, provide Transitional Assistance to the Acquirer:
1. Sufficient to enable the Acquirer to operate the divested assets and business in substantially the same manner that Respondent conducted the divested assets and business prior to the divestiture; and

2. At substantially the same level and quality as such services are provided by Respondent in connection with its operation of the divested assets and business prior to the divestiture.

Provided, however, that Respondent shall not (i) require the Acquirer to pay compensation for Transitional Assistance that exceeds the Direct Cost of providing such goods and services, (ii) terminate its obligation to provide Transitional Assistance because of a material breach by the Acquirer of any agreement to provide such assistance, in the absence of a final order of a court of competent jurisdiction, or (iii) seek to limit the damages (such as indirect, special, and consequential damages) which an Acquirer would be entitled to receive in the event of Respondent's breach of any agreement to provide Transitional Assistance.

Provided further, that, if Respondent provides Transitional Assistance pursuant to this Paragraph II.D., Respondent shall have no role in negotiating or setting rates, terms, or conditions of service, making expansion or interconnection decisions, or marketing any services relating to the transportation of natural gas (or related products) through each of the Interstate Pipeline Systems; *provided, however,* that Respondent, in providing Transitional Assistance may assist in submitting any necessary regulatory filings and facilitating expansions or interconnections.

- E. From the date Respondent executes the Consent Agreement, Respondent shall provide a proposed Acquirer with the opportunity to recruit and employ any KM Pipeline Employee in conformance with the following:

1. No later than ten (10) days after a request from a proposed Acquirer, or staff of the Commission, Respondent shall provide a proposed Acquirer with the following information for each KM Pipeline Employee, as and to the extent permitted by law:
 - (a) name, job title or position, date of hire and effective service date;
 - (b) a specific description of the employee's responsibilities;
 - (c) the base salary or current wages;
 - (d) the most recent bonus paid, aggregate annual compensation for Respondent's last fiscal year and current target or guaranteed bonus, if any;
 - (e) employment status (*i.e.*, active or on leave or disability; full-time or part-time);
 - (f) any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly-situated employees; and
 - (g) at a proposed Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant KM Pipeline Employee(s).

2. No later than ten (10) days after a request from a proposed Acquirer, Respondents shall provide the proposed Acquirer with (i) an opportunity to meet, personally and outside the presence or hearing of any employee or agent of the Respondent, with any KM Pipeline Employee, (ii) an opportunity to inspect the personnel files and other documentation relating to any such employee, to the extent permissible under applicable laws, and (iii) to make offers of employment to any KM Pipeline Employee.
 3. Respondent shall (i) not interfere, directly or indirectly, with the hiring or employing by a proposed Acquirer of any KM Pipeline Employee, (ii) not offer any incentive to any KM Pipeline Employee to decline employment with a proposed Acquirer, (iii) not make any counteroffer to any KM Pipeline Employee who receives a written offer of employment from a proposed Acquirer; *provided, however,* that nothing in this Order shall be construed to require Respondent to terminate the employment of any employee or prevent Respondent from continuing the employment of any employee; and (iv) remove any impediments within the control of Respondent that may deter any KM Pipeline Employee from accepting employment with a proposed Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondent that would affect the ability of such employee to be employed by a proposed Acquirer.
 4. Respondent shall provide each KM Key Employee to whom the Acquirer has made a written offer of employment with a financial incentive to accept a position with the Acquirer at the time of divestiture of the KM Pipeline Assets, pursuant to the terms set forth in Confidential Appendix A attached to this Order.
- F. For a period of two (2) years after the Divestiture Date, Respondent shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce any KM Pipeline Employee who has accepted an offer of employment with an Acquirer, or who is employed by an Acquirer, to terminate his or her employment relationship with an Acquirer; *provided, however,* the Respondent may:
1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, so long as these actions are not targeted specifically at any KM Pipeline Employees; and
 2. Hire KM Pipeline Employees who apply for employment with Respondent, so long as such individuals were not solicited by the Respondent in violation of this paragraph; *provided further,* that this sub-Paragraph shall not prohibit the Respondent from making offers of employment to or employing any KM Pipeline Employees if an Acquirer has notified the Respondent in writing that an Acquirer does not intend to make an offer of employment to that employee, or where such

an offer has been made and the employee has declined the offer, or where the individual's employment has been terminated by an Acquirer.

- G. In the event that the employee listed in Confidential Appendix B attached to this Order ("Excluded Employee") continues his employment with Respondent after the Acquisition Date, then Respondent is prohibited from assigning the Excluded Employee any work relating to, and shall assure that he is not involved with the operation or management of, the El Paso Rockies Pipeline Business until after the Divestiture Date; *provided, however*, that nothing herein shall prohibit a proposed Acquirer from making an offer of employment to or employing the Excluded Employee pursuant to the provisions of Paragraph II.E. of this Order; *provided further*, that the prohibitions in this Paragraph may terminate prior to the Divestiture Date if a proposed Acquirer has notified the Respondent in writing that the proposed Acquirer does not intend to make an offer of employment to the Excluded Employee and that the proposed Acquirer has no objection to the Excluded Employee engaging in work relating to the operation or management of the El Paso Rockies Pipeline Business prior to the Divestiture Date.
- H. The purpose of the divestiture of the KM Pipeline Assets is to ensure the continued use of the assets in the same businesses in which such assets were engaged at the time of the announcement of the Acquisition by Respondent and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. Respondent's employees shall not receive, have access to, use or continue to use, or disclose any Confidential Business Information pertaining to the KM Pipeline Assets or the KM Pipeline Business except in the course of:
1. Performing their obligations as permitted under this Order or the Hold Separate Order;
 2. Performing their obligations under any Divestiture Agreement; or
 3. Complying with financial reporting requirements, obtaining legal advice, defending legal claims, investigations, or enforcing actions threatened or brought against the KM Pipeline Assets and KM Pipeline Business, or as required by law.

For purposes of this Paragraph III.A., Respondent's employees who provide Support Services under the Hold Separate Order or staff the Hold Separate Business shall be deemed to be performing obligations under the Hold Separate Order.

- B. If the receipt, access to, use, or disclosure of Confidential Business Information pertaining to the KM Pipeline Assets or the KM Pipeline Business is permitted to Respondent's employees under Paragraph III.A. of this Order, Respondent shall limit such information (i) only to those Persons who require such information for the purposes permitted under Paragraph III.A., (ii) only to the extent such Confidential Business Information is required, and (iii) only after such Persons have signed an appropriate agreement in writing to maintain the confidentiality of such information.
- C. Respondent shall enforce the terms of this Paragraph III. as to any Person other than the Acquirer of the KM Pipeline Assets and take such action as is necessary to cause each such Person to comply with the terms of this Paragraph III., including training of Respondent's employees and all other actions that Respondent would take to protect its own trade secrets and proprietary information.

IV.

IT IS FURTHER ORDERED that:

- A. If Respondent has not divested all of the KM Pipeline Assets and otherwise fully complied with the obligations as required by Paragraph II.A. of this Order, the Commission may appoint a Divestiture Trustee to divest the KM Pipeline Assets and/or perform Respondent's other obligations in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Hold Separate Trustee pursuant to the relevant provisions of the Hold Separate Order.
- B. 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, Respondent shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondent to comply with this Order.
- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee,

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

- D. Within ten (10) days after appointment of a Divestiture Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture or transfer required by the Order.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed.
 2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed Divestiture Trustee, by the court.
 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph IV in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
 4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided*,

however, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondent from among those approved by the Commission; *provided further, however*, that Respondent shall select such entity within five (5) days of receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.
6. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph IV.E.6., the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph IV.E.5. of this Order.
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
8. The Divestiture Trustee shall report in writing to Respondent and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
9. Respondent may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such

agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

- F. 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 IV.
- G. 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.

V.

IT IS FURTHER ORDERED that:

- A. The Divestiture Agreement shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of an Acquirer or to reduce any obligations of the Respondent under such agreement.
- B. The Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof.
- C. Respondent shall comply with all provisions of the Divestiture Agreement, and any breach by Respondent of any term of such agreement shall constitute a violation of this Order. If any term of the Divestiture Agreement varies from the terms of this Order (“Order Term”), then to the extent that Respondent cannot fully comply with both terms, the Order Term shall determine Respondent’s obligations under this Order. Any failure by the Respondent to comply with any term of such Divestiture Agreement shall constitute a failure to comply with this Order.
- D. Respondent shall not modify or amend any of the terms of the Divestiture Agreement without the prior approval of the Commission.

VI.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until Respondent has fully complied with the provisions of Paragraph II of this Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order and the Hold Separate Order. Respondent shall include in its

compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with this Order and the Hold Separate Order, including a description of all substantive contacts or negotiations relating to the divestiture and approval, and the identities of all parties contacted. Respondent shall include in its compliance reports copies, other than of privileged materials, of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture and approval, and, as applicable, a statement that any divestiture approved by the Commission has been accomplished, including a description of the manner in which Respondent completed such divestiture and the date the divestiture was accomplished.

- B. One (1) year after the date this Order becomes final and annually thereafter until this Order terminates, and at such other times as the Commission may request, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it has complied and is complying with this Order and any Divestiture Agreement.

VII.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed:

- A. dissolution of Respondent;
- B. acquisition, merger, or consolidation of Respondent; or
- C. any other change in the Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondent, with respect to any matter contained in this Order, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all non-privileged books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent related to compliance with the Consent Agreement and/or this Order and the Hold Separate Order, which copying services shall be provided by Respondent at the request of the authorized representative of the Commission and at the expense of Respondent;

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

IX.

IT IS FURTHER ORDERED that this Order shall terminate when all of the obligations of the Divestiture Agreement required in Paragraph II. or Paragraph IV. of this Order have been accomplished.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED:

Confidential Appendix A

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

Confidential Appendix B

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