

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright
 Terrell McSweeney

)	
In the Matter of)	
)	Docket No. C-4522
Par Petroleum Corporation,)	
a corporation.)	
)	

**DECISION AND ORDER
[Public Record Version]**

The Federal Trade Commission, having initiated an investigation of the proposed acquisition by Respondent Par Petroleum Corporation of 100% of the outstanding voting securities of Koko’oha Investments, Inc., which owns all of the membership interests of Mid Pac Petroleum, LLC, and Respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge 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 (“Consent Agreement”) containing consent order, 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 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 issues its complaint, makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Par Petroleum Corporation is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its corporate office and principal place of business located at 800 Gessner Road, Suite 875, Houston, Texas 77010.
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 shall apply:

- A. “Respondent” means Par Petroleum Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates in each case controlled by Par Petroleum Corporation including Hawaii Independent Energy, LLC (and after the Acquisition, Koko’oha Investments, Inc., and Mid Pac Petroleum, LLC) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Commission” means the Federal Trade Commission.
- C. “Acquisition” means the proposed acquisition described in the Agreement and Plan of Merger by and among Par Petroleum Corporation, Bogey, Inc., Koko’oha Investments, Inc., and Bill D. Mills, dated as of June 2, 2014.
- D. “Aloha” means Aloha Petroleum, Ltd., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Hawaii, with its offices and principal place of business located at 1132 Bishop Street, Suite 1700, Honolulu, Hawaii 96813.
- E. “Amended Honolulu Terminal Agreement” means the Terminalling Agreement between Aloha Petroleum, Ltd. and Tesoro Hawaii Corporation (now known as Hawaii Independent Energy, LLC), executed on September 23, 2010, relating to the storage and throughput of petroleum products at Aloha’s terminal located at 789 N. Nimitz Highway, Honolulu, Hawaii 96817, including the First Amendment To Terminalling Agreement between Aloha Petroleum, Ltd. and Hawaii Independent Energy, LLC, dated January 28, 2015, attached to this Order as Confidential Appendix B.
- F. “Barbers Point Terminal” means Aloha’s petroleum products storage facility located at 91-119 Hanua Street, Kapolei, Hawaii 96707.

- G. “Barbers Point Terminal Agreement” means the Terminalling Agreement between Aloha Petroleum, Ltd. and Mid Pac Petroleum, LLC, dated September 30, 2005, (including any amendments), relating to the Barbers Point Terminal, attached to this Order as Confidential Appendix A.
- H. “Bulk Supply” means the provision of larger-than-truckload volumes of petroleum products, which can come from local refineries or via ocean-going vessels.
- I. “Mid Pac” means Mid Pac Petroleum, LLC, a wholly-owned subsidiary of Koko’oha Investments, Inc., and a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 1100 Alakea Street, 8th Floor, Honolulu, Hawaii 96813.
- J. “Person” means any natural person, partnership, corporation, association, trust, joint venture, government, government agency, or other business or legal entity.

II.

IT IS FURTHER ORDERED that:

- A. No later than five (5) days after the closing date of the Acquisition, Respondent shall terminate the Barbers Point Terminal Agreement; provided, however, that Respondent may retain rights necessary to load petroleum products at the Barbers Point Terminal truck rack pursuant to the Amended Honolulu Harbor Terminal Agreement.
- B. Respondent shall not, without the prior approval of the Commission, (i) modify the Amended Honolulu Terminal Agreement relating to storage or throughput at Barbers Point Terminal or (ii) enter into any new agreement relating to storage or throughput at Barbers Point Terminal; provided, however, that Respondent may agree to renew or extend the term of the Amended Honolulu Terminal Agreement without prior approval.
- C. The purpose of this Order is to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission’s complaint, by preserving flexibility for Hawaii-grade gasoline blendstock imports at Barbers Point Terminal.

III.

IT IS FURTHER ORDERED that:

- A. Respondent shall not, without providing advance written notification to the Commission, acquire, directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, in any Person, corporate or non-corporate, or in any assets engaged in Bulk Supply of Hawaii-grade gasoline

blendstock in the state of Hawaii; provided, however, that this Paragraph III.A. shall not apply to acquisitions of (i) pipeline throughput rights; (ii) barges or other vessels that transport Hawaii-grade gasoline blendstock only between or among islands in Hawaii; or (iii) petroleum product terminals or other storage facilities not capable of receiving imports of at least 150,000 barrels of petroleum products in a single delivery from out of state on ocean-going vessels.

- B. The prior notification required by this Paragraph III. 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 (hereinafter referred to as “the Notification”), 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 the Respondent and not of any other party to the transaction. Respondent 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), Respondent 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 III. 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 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.

IV.

IT IS FURTHER ORDERED that Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order no later than (i) thirty (30) days from the date this Order is issued; and (ii) one (1) year after the date this Order is issued and annually thereafter until this Order terminates, and at such other times as the Commission staff may request.

V.

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

- A. Any proposed dissolution of Respondent;
- B. Any proposed 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.

VI.

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 and upon five (5) days' notice to Respondent, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent 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 the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at its expense; and
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Order shall terminate on May 8, 2025.

By the Commission, Commissioner Wright dissenting.

Donald S. Clark
Secretary

SEAL:
ISSUED: May 8, 2015

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]