

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Terrell McSweeney

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In the Matter of)	
)	
ArcLight Energy Partners Fund VI, L.P.,)	Docket No. C-4563
a limited partnership.)	
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)	

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission, having initiated an investigation of the proposed acquisition by ArcLight Energy Partners Fund VI, L.P. (“ArcLight” or “Respondent”) of 100% of the partnership interests of Gulf Oil Limited Partnership from Cumberland Farms, Inc., 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 orders, an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said 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 accepted the Consent Agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure described in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following Order to Maintain Assets:

1. Respondent ArcLight Energy Partners Fund VI, L.P. is a limited partnership organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its corporate office and principal place of business located at 200 Clarendon Street, 55th Floor, Boston, Massachusetts 02116.
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 to Maintain Assets, the following definitions shall apply (to the extent any capitalized term appearing in this Order to Maintain Assets is not defined below, the term shall be defined as that term is defined in the Decision and Order contained in the Consent Agreement):

- A. “ArcLight” or “Respondent” means ArcLight Energy Partners Fund VI, L.P., its directors, officers, employees, agents, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates in each case controlled by ArcLight Energy Partners Fund VI, L.P. (including Gulf Oil Limited Partnership, after the Acquisition) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Commission” means the Federal Trade Commission.
- C. “Acquirer” means (i) Arc Logistics or (ii) any other Person that acquires the PA Terminals Assets pursuant to the Decision and Order.
- D. “Acquisition” means the proposed acquisitions described in the (i) Equity Interests Purchase and Sale Agreement by and among Cumberland Farms, Inc., Gulf Acquisition LLC, and Chelsea Petroleum Products I, LLC, dated May 15, 2015 and (ii) Asset Purchase and Sale Agreement by and between Cumberland Farms, Inc. and Blue Hills Fuels, LLC, dated May 15, 2015.
- E. “Acquisition Date” means the date the Acquisition is consummated.
- F. “Confidential Information” means any and all of the following information:
 1. all information that is a trade secret under applicable trade secret or other law;
 2. all information concerning product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and

processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer hardware, software and computer software and database technologies, systems, structures, and architectures;

3. all information concerning the relevant business (which includes historical and current financial statements, financial projections and budgets, tax returns and accountants' materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel and personnel training techniques and materials); and
4. all notes, analyses, compilations, studies, summaries and other material to the extent containing or based, in whole or in part, upon any of the information described above;

Provided, however, that Confidential Information shall not include information that (i) was, is or becomes generally available to the public other than as a result of a breach of this Order; (ii) was or is developed independently of and without reference to any Confidential Information; or (iii) was available, or becomes available, on a non-confidential basis from a third party not bound by a confidentiality agreement or any legal, fiduciary, or other obligation restricting disclosure.

G. "Decision and Order" means the:

1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance and service of a final Decision and Order by the Commission; and
2. Final Decision and Order issued by the Commission in this matter following the issuance and service of a final Decision and Order by the Commission.

H. "Divestiture Agreement" means (i) the PA Terminal Agreement or (ii) any other agreement between Respondent (or a Divestiture Trustee) and Acquirer that receives the prior approval of the Commission to divest the PA Terminals Assets, including all related ancillary agreements, schedules, exhibits, and attachments thereto.

I. "Divestiture Date" means the date on which Respondent (or the Divestiture Trustee) closes on the transaction to divest the PA Terminals Assets to Acquirer.

J. "PA Terminals Assets" means the assets identified in Paragraph I.T. of the Decision and Order.

K. "PA Terminals Business" means the business of providing temporary storage for light petroleum products received via pipeline, marine vessel, tank trucks, rail, or transport

trailers, and the re-delivery of such products from storage tanks into tank trucks, rail cars, transport trailers, or pipelines, conducted by Cumberland (through Gulf Oil Limited Partnership) at the Pennsylvania Locations, prior to the Acquisition.

- L. “PA Terminals Employee” means (i) any individual employed by Gulf on a full-time, part-time, or contract basis at each location of the PA Terminals Business at any time as of and after the date of the announcement of the Acquisition and (ii) up to ten individuals employed by Gulf at any other location whose job responsibilities relate or related to the PA Terminals Business; *provided, however*, that PA Terminals Employee shall not include any individuals of Gulf Oil Limited Partnership retained by Cumberland after the Acquisition.
- M. “Pennsylvania Locations” means the Pennsylvania cities of Altoona, Mechanicsburg, Pittston Township, and Williamsport.
- N. “Person” means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture, or other entity or a governmental body.

II.

IT IS FURTHER ORDERED that during the time period before the Divestiture Date, Respondent shall operate the PA Terminals Business and PA Terminals Assets in the ordinary course of business consistent with past practices as of the date that Respondent announced the Acquisition, including but not limited to, the following responsibilities:

- A. Respondent shall maintain (i) the PA Terminals Business and PA Terminals Assets in substantially the same condition (except for normal wear and tear) existing at the time Respondent signs the Consent Agreement, and (ii) relations and good will with suppliers, customers, landlords, creditors, agents, and other having business relationships with the PA Terminals Business and PA Terminals Assets;
- B. Respondent shall provide the PA Terminals Business with sufficient financial and other resources to (i) operate the PA Terminals Business and PA Terminals Assets at least at the current rate of operation and staffing and to carry out, at their scheduled pace, all business plans and promotional activities in place prior to the Acquisition; (ii) perform all maintenance to, and replacements or remodeling of, the assets of the PA Terminals Business in the ordinary course of business and in accordance with past practice and current plans; (iii) carry on such capital projects, physical plant improvements, and business plans as are already underway or planned for which all necessary regulatory and legal approvals have been obtained, including but not limited to, existing or planned renovation, remodeling, or expansion projects; and (iv) maintain the viability,

competitiveness, and marketability of the PA Terminals Business and PA Terminals Assets.

- C. Respondent shall preserve the PA Terminals Business and PA Terminals Assets as an ongoing business and not take any affirmative action, or fail to take any action within Respondent's control, as a result of which the viability, competitiveness, and marketability of the PA Terminals Business and PA Terminals Assets would be diminished.

III.

IT IS FURTHER ORDERED that prior to the Divestiture Date, Respondent shall secure all consents, assignments, and waivers or other authorizations from all Persons that are necessary for the divestiture of the PA Terminals Assets; *provided, however*, that Respondent may satisfy this requirement by certifying that Acquirer has executed appropriate agreements or obtained necessary authorizations directly with each of the relevant Persons.

IV.

IT IS FURTHER ORDERED that:

- A. Until the Divestiture Date, Respondent shall staff the PA Terminals Business and PA Terminals Assets with sufficient employees to maintain the viability and competitiveness of the PA Terminals Business and PA Terminals Assets, including but not limited to, providing each PA Terminals Employee with reasonable financial incentives, if necessary, including continuation of all employee benefits and regularly scheduled raises and bonuses, to continue in his or her position pending divestiture of the PA Terminals Assets.
- B. Respondent shall cooperate with and assist Acquirer to evaluate and retain any PA Terminals Employee necessary to operate the PA Terminals Business in substantially the same manner as Cumberland prior to the divestiture, including but not limited to:
 - 1. Not later than fifteen (15) days before the Divestiture Date, Respondent shall (i) identify all PA Terminals Employees, (ii) allow Acquirer to inspect the personnel files and other documentation of all PA Terminals Employees, to the extent permissible under applicable laws, and (iii) allow Acquirer an opportunity to interview any PA Terminals Employee;

2. Respondent shall (i) not offer any incentive to any PA Terminals Employee to decline employment with Acquirer, (ii) remove any contractual impediments that may deter any PA Terminals Employee from accepting employment with Acquirer, including but not limited to, any non-compete or confidentiality provision of employment or other contracts with Respondent that would affect the ability of such employee to be employed by Acquirer, and (iii) not otherwise interfere the recruitment, hiring, or employment of any PA Terminals Employee by Acquirer;
3. Respondent shall (i) vest all current and accrued pension benefits as of the date of transition of employment with Acquirer for any PA Terminals Employee who accepts an offer of employment from Acquirer and (ii) provide each PA Terminals Employee with reasonable financial incentive as necessary to accept offers of employment with Acquirer; and
4. For a period of two (2) years after the PA Terminals Assets are divested, Respondent shall not solicit the employment of any PA Terminals Employee who becomes employed by Acquirer at the time the PA Terminals Assets are divested; *provided, however,* that a violation of this provision will not occur if: (i) the individual's employment has been terminated by Acquirer, (ii) Respondent advertises for employees in newspapers, trade publications, or other media not targeted specifically at the employees, or (iii) Respondent hires employees who apply for employment with Respondent, so long as such employees were not solicited by Respondent in violation of this paragraph.

V.

IT IS FURTHER ORDERED that:

- A. At any time after Respondent signs the Consent Agreement, the Commission may appoint a Person ("Monitor") to monitor Respondent's compliance with its obligations under this Order.
- B. The Commission shall select the Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed in writing, including the reasons for opposing, the selection of any proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Monitor, Respondent shall be deemed to have consented to the selection of the proposed Monitor.

- C. Respondent shall enter into an agreement with the Monitor, subject to the prior approval of the Commission, that (i) shall become effective no later than one (1) day after the date the Commission appoints the Monitor, and (ii) confers upon the Monitor all rights, powers, and authority necessary to permit the Monitor to perform his duties and responsibilities on the terms set forth in this Order and in consultation with the Commission:
1. The Monitor shall (i) monitor Respondent's compliance with the obligations set forth in this Order and (ii) act in a fiduciary capacity for the benefit of the Commission;
 2. Respondent shall (i) insure that the Monitor has full and complete access to all Respondent's personnel, books, records, documents, and facilities relating to compliance with this Order or to any other relevant information as the Monitor may reasonably request, and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his duties pursuant to this Order;
 3. The Monitor (i) shall serve at the expense of Respondent, without bond or other security, on such reasonable and customary terms and conditions as the Commission may set, and (ii) may employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
 4. Respondent shall indemnify the Monitor and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of his 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 the Monitor's gross negligence or willful misconduct; and
 5. Respondent may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; provided, however, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- D. The Monitor shall report in writing to the Commission concerning Respondent's compliance with this Order on a schedule as determined by Commission staff, including a final report after Respondent has completed all obligations required by Paragraph II. of the Decision and Order (not including Paragraph II.D.4.).
- E. The Commission may require the Monitor and each of the Monitor's consultants,

accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

- F. The Monitor's power and duties shall terminate ten (10) business days after the Monitor has completed his final report pursuant to Paragraph V.D. of this Order, or at such other time as directed by the Commission.
- G. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld:
 - 1. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of the substitute Monitor within five (5) days after notice by the staff of the Commission to Respondent of the identity of any substitute Monitor, then Respondent shall be deemed to have consented to the selection of the proposed substitute Monitor; and
 - 2. Respondent shall, no later than five (5) days after the Commission appoints a substitute Monitor, enter into an agreement with the substitute Monitor that, subject to the approval of the Commission, confers on the substitute Monitor all the rights, powers, and authority necessary to permit the substitute Monitor to perform his or her duties and responsibilities pursuant to this Order on the same terms and conditions as provided in this Paragraph V.
- H. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

VI.

IT IS FURTHER ORDERED that:

- A. Respondent shall (i) keep confidential (including as to Respondent's employees) and (ii) not use for any reason or purpose, any Confidential Information received or maintained by Respondent relating to the PA Terminals Business or PA Terminals Assets; *provided, however,* that Respondent may disclose or use such Confidential Information in the course of:

1. Performing its obligations or as permitted under this Order to Maintain Assets, Decision and Order, or Divestiture Agreement; or
 2. Complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the PA Terminals Business or PA Terminals Assets, or as required by law.
- B. If disclosure or use of any Confidential Information is permitted to Respondent's employees or to any other Person under Paragraph VI.A. of this Order, Respondent shall limit such disclosure or use (i) only to the extent such information is required, (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph VI.A., and (iii) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.
- C. Respondent shall enforce the terms of this Paragraph VI. as to its employees or any other Person, and take such action as is necessary to cause each of its employees and any other Person to comply with the terms of this Paragraph VI., including implementation of access and data controls, training of its employees, and all other actions that Respondent would take to protect its own trade secrets and proprietary information.

VII.

IT IS FURTHER ORDERED that:

- A. 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 to Maintain Assets and Decision and Order within thirty (30) days from the date Respondent signs the Consent Agreement (as set forth in the Consent Agreement) and every thirty (30) days thereafter until this Order to Maintain Assets terminates.
- B. With respect to any divestiture required by Paragraph II.A. of the Decision and Order, Respondent shall include in its compliance reports (i) the status of the divestiture and transfer of the PA Terminals Assets; (ii) a description of all substantive contacts with a proposed acquirer (in the event that the PA Terminals Assets are divested pursuant to Paragraph II.A.1. of the Decision and Order); and (iii) as applicable, a statement that the 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.

VIII.

IT IS FURTHER ORDERED that the purpose of this Order to Maintain Assets is to (i) preserve the PA Terminals Business and PA Terminals Assets as a viable, competitive, and ongoing business until the divestiture required by the Decision and Order is achieved; (ii) prevent interim harm to competition pending the relevant divestiture and other relief; and (iii) help remedy any anticompetitive effects of the proposed Acquisition as alleged in the Commission's Complaint.

IX.

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.

X.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order to Maintain Assets, 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 other records and documents in the possession or under the control of Respondent related to compliance with this Order to Maintain Assets, which copying services shall be provided by Respondent at its expense; and
- B. To interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

XI.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. Three (3) business days after the date that Respondent completes the divestiture required by Paragraph II.A. of the Decision and Order; *provided, however*, that if at the time such divestiture has been completed, the Decision and Order in this matter is not yet final, then this Order to Maintain Assets shall terminate three (3) business days after the Decision and Order becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: December 28, 2015