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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
Maureen K. Ohlhausen
Terrell McSweeny

In the Matter of	)	
	)	**Docket No. C- 4574**
American Air Liquide Holdings, Inc., a corporation.	)	

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed merger of a wholly owned subsidiary of Respondent American Air Liquide Holdings, Inc. ("Air Liquide," a wholly owned subsidiary of L'Air Liquide, S.A.) with and into Airgas, Inc. ("Airgas") 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 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 Maintain Assets 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 comments received from an interested person, 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 enters the following Decision and Order ("Order"):

1. Respondent American Air Liquide Holdings, Inc. 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 9811 Katy Freeway, Suite 100, Houston, Texas 77024. American Air Liquide Holdings, Inc., is an indirect wholly owned subsidiary of L'Air Liquide, S.A., a French *société anonyme*.

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. "Air Liquide" means American Air Liquide Holdings, Inc., its directors, officers, employees, agents, representatives, successors, and assigns and includes its parent L'Air Liquide, S.A.; and the subsidiaries, divisions, groups, and affiliates in each case controlled by American Air Liquide Holdings, Inc. (including Airgas, Inc., 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 any Person that acquires any of the Gases Assets pursuant to this Order.

D. "Acquisition" means the proposed merger described in the Agreement and Plan of Merger by and among Airgas, Inc., L'Air Liquide, S.A. and AL Acquisition Corporation, dated as of November 17, 2015.

E. "Acquisition Date" means the date the Acquisition is consummated.

F. "Airgas" means Airgas, Inc., a corporation 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 259 N. Radnor-Chester Road, Suite 100, Radnor, Pennsylvania 19087.

G. "CO_2 Business" means the business of producing, distributing, marketing, or selling liquid CO_2 and dry ice conducted by Air Liquide prior to the Acquisition at the CO_2 and CO_2/dry ice locations identified in Appendix A of this Order.

H. "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, 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.

I. "Contract" means any agreement, contract, lease, license agreement, consensual obligation, promise, or undertaking (whether written or oral and whether express or implied).

J. "Corporate Trade Names" means all trademarks, trade names, service marks, trade dress, logos, corporate names, domain names, emblems, signs or insignia, and other source identifiers whether registered or common law, including but not limited to all such items containing or comprising the brands and marks "Air Liquide," "Airgas," "EMIXAL," "Penguin," "Blue Ice," "Red-D-Arc," and "Radnor."

K. "Cost" means the actual cost of raw materials or parts, direct labor, utilities, administrative and third party expenses, and reasonably allocated operations, distribution, and factory expenses and shared corporate services overhead used to develop, manufacture, and supply the relevant good or service.

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

M. "Divestiture Date" means the date on which Respondent (or the Divestiture Trustee) closes on the transaction to divest any of the Gases Assets to an Acquirer.

N. "Divestiture Trustee" means the Person appointed by the Commission pursuant to Paragraph V. of this Order.

O. "Gases Assets" means all of Respondent's right, title, and interest in and to all property and assets, real, personal, or mixed, tangible and intangible, of every kind and description, wherever located, relating to operation of the Gases Business, including, but not limited to:

1. all real property interests (including fee simple interests and real property leasehold interests), including all easements, and appurtenances, 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 (outside of the ordinary course of business) from any Gases Location since the date of the announcement of the Acquisition and not replaced;

3. all inventories;

4. all Contracts and all outstanding offers or solicitations to enter into any Contract, and all rights thereunder and related thereto;

5. all consents, licenses, 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, to the extent assignable;

6. all data and Records, including client and customer lists and Records, referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, notices, orders, inquiries, correspondence, and other similar documents and Records, and copies of all personnel Records (to the extent permitted by law);

7. all intangible rights and property, including Intellectual Property owned or licensed (as licensor or licensee) by Respondent (to the extent transferable or licensable), going concern value, goodwill, and telephone and telecopy listings; and

8. all rights relating to deposits and prepaid expenses, claims for refunds and rights to offset in respect thereof;

Provided, however, that the Gases Assets need not include (i) the Retained Assets, (ii) the Retained Intellectual Property, or (iii) any part of the Gases Assets if not needed by Acquirer and the Commission approves the divestiture without such assets.

P. "Gases Business" means the I&M Gases Business, CO_2 Business, and the Retail Business.

Q. "Gases Employee" means any individual (i) employed on a full-time, part-time, or contract basis at any of the Gases Locations as of and after the date of the announcement of the Acquisition or (ii) identified by agreement between Respondent and an Acquirer and made a part of a Divestiture Agreement.

R. "Gases Locations" means the locations identified on Appendix A of this Order.

S. "I&M Gases Business" means the business of producing, refining, distributing, marketing, or selling atmospheric gases (liquid oxygen, liquid nitrogen, and liquid argon) and nitrous oxide conducted by either Air Liquide or Airgas prior to the Acquisition at their respective atmospheric gases and nitrous oxide locations identified in Appendix A of this Order.

T. "Intellectual Property" means all intellectual property, including (i) commercial names, all assumed fictional business names, trade names, "doing business as" (d/b/a names), registered and unregistered trademarks, service marks and applications, and tradedress; (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 rights in mask works; (v) all know-how, trade secrets, confidential or proprietary information, customer lists, software, technical information, data, process

technology, plans, drawings, and blue prints; and (vi) all rights in internet web sites and internet domain names currently used.

U. "License" means a royalty-free, fully paid-up, perpetual, irrevocable, non-exclusive, transferable, and sublicensable license and such tangible embodiments of the licensed rights (including, but not limited to, physical and electronic copies) as may be necessary or appropriate to enable Acquirer to use the rights.

V. "Multi-Product Customer" means any customer who purchased from Respondent, as of the Acquisition Date, both (i) atmospheric gases (liquid oxygen, liquid nitrogen, and liquid argon) or nitrous oxide and (ii) any other products or services.

W. "Multi-Location Customer" means any customer who purchased from Respondent atmospheric gases (liquid oxygen, liquid nitrogen, and liquid argon) or nitrous oxide, as of the Acquisition Date, both (i) from the Gases Locations and (ii) from other facilities of Respondent.

X. "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.

Y. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Z. "Retail Business" means the business of selling hardgoods, welding products, and gases conducted by Airgas prior to the Acquisition at the retail locations identified in Appendix A of this Order.

AA. "Retained Assets" means:

1. Corporate Trade Names and portions of website content, domain names, or e-mail addresses that contain Corporate Trade Names;

2. Software that can readily be purchased or licensed from sources other than Respondent and which has not been materially modified (other than through user preference settings), or enterprise software that Respondent also uses to manage and account for businesses other than the Gases Business;

3. Corporate headquarters of Air Liquide and Airgas;

4. Assets located outside of the United States;

5. Assets relating to the Gases Business that are shared with, or also pertain to, retained businesses of Respondent, including but not limited to, plants and facilities, computers, telecommunications equipment, and Tangible Personal Property, unless such assets primarily relate to the operation of any or all of the Gases Business;

6. Data and Records that contain information (a) that relates to both the Gases Business and to retained businesses of Respondent, or (b) of which Respondent has a legal obligation to retain the original copies; *provided*, *however*, that Respondent shall provide copies of those portions of such data and Records that relate to the Gases Business;

7. Insurance benefits, including rights and proceeds; and

8. Any assets, rights, or interests relating to the production, refinement, distribution, marketing, or sale of packaged gases (including packaged atmospheric gases), such as dewars, cylinders, or cylinder fill plants, other than the Retail Business.

BB. "Retained Intellectual Property" means any Intellectual Property, other than Retained Assets, that relates to the operation of the Gases Business and is shared with, or also pertains to, businesses operated by Respondent other than the Gases Business unless such Intellectual Property primarily relates to the operation of any or all of the Gases Business.

CC. "Tangible Personal Property" means all machinery, equipment, spare parts, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, and other items of tangible personal property (other than inventories) of every kind owned or leased, together with any express or implied warranty by the manufacturers or sellers or lessors (to the extent transferable) of any item or component part thereof and all maintenance records and other documents relating thereto.

DD. "Third Party Consent" means any consent, assignment, license, permit, or other authorization from any Person other than Respondent that is necessary to divest or operate the Gases Assets.

EE. "Transitional Assistance" means logistical, administrative, and technical support, as required by Acquirer.

II.

IT IS FURTHER ORDERED that:

A. No later than 120 days after the Acquisition Date, Respondent shall divest the Gases Assets, absolutely and in good faith, at no minimum price, as on-going businesses, to a Person or Persons that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission (including execution of a Divestiture Agreement); *provided, however,* that Respondent shall divest the Gases Assets relating to operation of the I&M Gases Business to no more than one Person.

B. No later than the Divestiture Date, Respondent shall secure all Third Party Consents; *provided, however,* that if Respondent is unable to obtain any Third Party Consent, Respondent shall (i) provide such assistance as an Acquirer may reasonably request in its efforts to obtain a comparable consent or (ii) with the acceptance of an Acquirer and the prior approval of the Commission, substitute equivalent assets or arrangements.

C. Respondent shall cooperate with and assist an Acquirer to evaluate and hire any Gases Employee necessary to operate the I&M Gases Business, CO_2 Business, or Retail Business in substantially the same manner as Air Liquide or Airgas prior to the Acquisition, including, but not limited to:

1. Not later than twenty (20) days before the Divestiture Date, Respondent shall (i) identify the relevant Gases Employees, (ii) allow an Acquirer to inspect the personnel files and other documentation of the relevant Gases Employees, to the extent permissible under applicable laws, and (iii) allow an Acquirer an opportunity to interview the relevant Gases Employees;

2. Respondent shall (i) not offer any incentive to any Gases Employee to decline employment with an Acquirer, (ii) remove any contractual impediments that may deter any Gases Employee from accepting employment with an 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 an Acquirer, and (iii) not otherwise interfere with the recruitment, hiring, or employment of any Gases Employee by an Acquirer;

3. Respondent shall (i) vest all current and accrued pension benefits as of the date of transition of employment with an Acquirer for any Gases Employee who accepts an offer of employment from Acquirer and (ii) provide each Gases Employee with a financial incentive as necessary to accept an offer of employment with an Acquirer; and

4. For a period of two (2) years after divestiture of any of the Gases Assets, Respondent shall not solicit the employment of any Gases Employee who becomes employed by an Acquirer at the time any of the Gases Assets are divested; *provided, however,* that a violation of this provision will not occur if: (i) the individual's employment has been terminated by an 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.

D. At the option of an Acquirer, Respondent shall:

1. For a period of twelve (12) months after the divestiture of any of the Gases Assets, provide Transitional Assistance to Acquirer at a price not to exceed Cost and in quality and quantity sufficient to enable Acquirer to operate the relevant Gases Business in substantially the same manner (including allowing for growth of the Gases Business) as Air Liquide or Airgas prior to the Acquisition;

2. For a period of three (3) years after the divestiture of any of the Gases Assets, provide Acquirer a supply of products at a price not to exceed Cost and in quality and quantity sufficient to enable Acquirer to operate the relevant Gases Business in substantially the same manner (including allowing for growth of the Gases Business) as Air Liquide or Airgas prior to the Acquisition; and

3. For a period of three (3) years after the divestiture of the Gases Assets relating to operation of the I&M Gases Business, purchase products from Acquirer as a customer in volumes equivalent to the historical internal transfers to Respondent's businesses other than the I&M Gases Business;

Provided, however, that the period of time for providing any assistance under this Paragraph II.D. shall be extended at the request of an Acquirer, subject to the prior approval of the Commission.

E. With respect to Intellectual Property, Respondent:

1. Shall grant a License to an Acquirer under the Retained Intellectual Property sufficient for Acquirer to operate the relevant Gases Business in substantially the same manner as Air Liquide or Airgas prior to the Acquisition with the freedom to extend existing products and services and develop new products and services; and

2. May enter into an agreement with an Acquirer for a License back under any Intellectual Property included in the Gases Assets that also relates to operation of a business other than the Gases Business for use in such other business.

F. Respondent's obligations pursuant to Paragraphs II.D. and II.E. of this Order shall be set forth in one or more agreements incorporated into the Divestiture Agreement, subject to the prior approval of the Commission. Respondent shall not terminate its obligations pursuant to Paragraphs II.D. and II.E. because of a material breach by an Acquirer of any such agreement in the absence of a final order of a court of competent jurisdiction.

G. For a period of two (2) years after divestiture of the Gases Assets relating to operation of the I&M Gases Business, Respondent shall not solicit any Multi-Product or Multi-Location Customer to discontinue or reduce such customer's purchases from the Gases Locations relating to the I&M Gases Business; *provided, however,* that a violation of this provision will not occur if: (1) a customer initiates communications with Respondent to purchase atmospheric gases or nitrous oxide or (2) Respondent advertises in newspapers, trade publications, or other media in a manner not targeted specifically at customers of an Acquirer.

H. The purpose of the divestiture of the Gases 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 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 Gases Assets or Gases Business; *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, the Order to Maintain Assets, 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 Gases Assets, Gases Business, or as required by law or rules or regulations of any stock exchange.

B. If disclosure or use of any Confidential Information related to the Gases Assets or Gases Business is permitted to Respondent's employees or to any other Person under Paragraph III.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 III.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 III. 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 III., 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.

IV.

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. The Monitor may be the same person appointed as Monitor under the Order to Maintain Assets issued in this matter.

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, no later than five (5) days after the Commission appoints a Monitor, 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) ensure 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 this Order (other than any obligations pursuant to any extensions of the agreements contemplated by Paragraph II.D. beyond the earlier of (i) their respective initial terms or (ii) three years after the divestiture of the relevant Gases Assets).

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 fifteen (15) days after the Monitor has completed his final report pursuant to Paragraph IV.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 in the manner described in this Paragraph IV.

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.

V.

IT IS FURTHER ORDERED that:

A. If Respondent has not fully complied with the divestiture and other obligations as required by Paragraph II. of this Order, the Commission may appoint a Divestiture Trustee to divest the Gases Assets and perform Respondent's other obligations in a manner that satisfies the requirements of this Order.

B. In the event that the Commission or the Attorney General brings an action pursuant to Section 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 Section 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 other action 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, and to take such other action as may be required to divest the Divestiture Assets.

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 V. 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 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* 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 V.E.6., the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph V.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. The Commission may require the Divestiture Trustee and each of the Divestiture Trustee'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 Divestiture Trustee's duties.

G. 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 V.

H. 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 divestitures and other obligations or action required by this Order.

I. The Divestiture Trustee may be the same person as the Monitor appointed under this Order.

VI.

IT IS FURTHER ORDERED that:

A. The Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof, and Respondent shall comply with all terms of such agreement. The Divestiture Agreement shall not limit or contradict, or be construed to limit or contradict, the terms of this Order and nothing in this Order shall be construed to reduce any rights or benefits of Acquirer or to reduce any obligations of Respondent under such agreement.

B. If any term of the Divestiture Agreement varies from Paragraphs I.-IX. 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. Respondent shall not modify, replace, or extend the terms of the Divestiture Agreement without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5).

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:

1. Every thirty (30) days from the date this Order is issued until Respondent has fully complied with Paragraph II.D.1. of this Order;

2. Every six (6) months thereafter until Respondent has fully complied with Paragraphs II.D.2. and II.D.3. of this Order (other than any obligations under any extension of the agreements contemplated by those Paragraphs beyond the earlier of (i) the respective initial terms of such agreements or (ii) three years after the divestiture of the Gases Assets); and

3. One (1) year from the date this Order is issued, annually thereafter for the next four (4) years on the anniversary of the date this Order is issued, and at such other times as the Commission staff may request.

B. With respect to any divestiture required by Paragraph II.A. of this Order, Respondent shall include in its compliance reports (i) the status of the divestiture and transfer of the Gases Assets; (ii) a description of all substantive contacts with a proposed acquirer; 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 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.

IX.

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 Respondent, who may have counsel present, regarding such matters.

X.

IT IS FURTHER ORDERED that this Order shall terminate on July 15, 2026.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: July 15, 2016