

By direction of the Commission.

Donald S. Clark,

Secretary.

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FEDERAL TRADE COMMISSION

[File No. 151 0149]

ArcLight Energy Partners Fund VI, L.P.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 27, 2016.

ADDRESSES: Interested parties may file a comment at <https://ftcpublic.commentworks.com/ftc/arclightgulfoilconsent> online or on paper, by following the instructions in the Request for Comment part of the

SUPPLEMENTARY INFORMATION section below. Write “ArcLight Energy Partners Fund VI, L.P., Consent Agreement, File No. 151-0149” on your comment and file your comment online at <https://ftcpublic.commentworks.com/ftc/arclightgulfoilconsent> by following the instructions on the web-based form. If you prefer to file your comment on paper, write “ArcLight Energy Partners Fund VI, L.P., Consent Agreement, File No. 151-0149” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Jennifer Milici (202-326-2912), Bureau of Competition, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent orders to cease and desist, having been filed with and accepted, subject to final

approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 28, 2015), on the World Wide Web, at <http://www.ftc.gov/os/actions.shtm>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 27, 2016. Write “ArcLight Energy Partners Fund VI, L.P., Consent Agreement, File No. 151-0149” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).¹ Your comment will be kept

¹ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the

comment only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/arclightgulfoilconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov#!/home>, you also may file a comment through that Web site.

If you file your comment on paper, write “ArcLight Energy Partners Fund VI, L.P., Consent Agreement, File No. 151-0149” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 27, 2016. You can find more information, including routine uses permitted by the Privacy Act, in the Commission’s privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Analysis of Agreement Containing Consent Orders To Aid Public Comment

Introduction

The Federal Trade Commission (“Commission”) has accepted from ArcLight Energy Partners Fund VI, L.P. (“ArcLight”), subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) designed to remedy the anticompetitive effects resulting from ArcLight’s proposed acquisition of Gulf Oil Limited Partnership (“Gulf”) and related assets from Cumberland Farms, Inc.

comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

(“Cumberland”). Under the terms of the proposed Decision and Order (“Order”) contained in the Consent Agreement, ArcLight must divest four of Gulf’s terminals located in Pennsylvania—in Mechanicsburg, Altoona, Pittston Township, and Williamsport—to Arc Logistics Partners, LP (“Arc Logistics”).

The Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or make the Order final.

The Parties

ArcLight invests in energy infrastructure. Through its wholly-owned subsidiary, Pyramid LLC, ArcLight owns and operates twelve light petroleum product (“LPP”) terminals in Pennsylvania. ArcLight uses its terminals to meet its own marketing needs and offers terminaling services to third parties for a fee.

Cumberland, one of the largest convenience store operators in the country, operates a petroleum marketing, terminaling, and distribution business through its Gulf subsidiary. Gulf owns and operates twelve LPP terminals in the Northeast, including seven in Pennsylvania. Gulf also uses its terminals to meet its own marketing needs and provides terminaling services to third parties for a fee.

The Proposed Acquisition

Pursuant to two contingent Purchase and Sale Agreements dated May 15, 2015, ArcLight proposes to acquire Gulf, and certain other assets, from Cumberland (the “Acquisition”). The Commission’s Complaint alleges that the Acquisition, if consummated, would violate 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, by substantially lessening competition for gasoline and distillate terminaling services in relevant geographic markets within Pennsylvania.

The Relevant Market

Terminals are critical to the efficient distribution of LPPs. Transporting bulk quantities of LPPs via pipeline or marine vessel is significantly less expensive on a per gallon basis than trucking LPPs the same distance. Terminals serve as the delivery points on pipeline and marine routes and are capable of receiving bulk quantities of

LPPs, holding LPPs in storage tanks, and loading smaller quantities of LPPs onto tanker trucks for local delivery. Tanker trucks pick up product from the terminals through specialized loading systems and transport LPPs to retail locations and end-use customers. Terminaling services include the off-loading, temporary storage, and dispensing of LPPs into trucks.

The Commission’s Complaint alleges that the relevant product markets within which to analyze the Acquisition are gasoline terminaling services and distillates terminaling services. Gasoline terminaling service customers can only use terminals that meet gasoline-specific environmental regulations. A terminal must have specialized equipment, including vapor recovery units and tanks with internal floating roofs, to offer gasoline terminaling services. While distillate terminaling customers may be able to use gasoline terminals, the reverse is not possible due to the more stringent regulatory requirements for the storage and handling of gasoline.

The Commission’s Complaint alleges three relevant geographic markets in Pennsylvania in which to assess the competitive effects of the Acquisition: (1) Altoona, which includes terminals in Altoona; (2) Scranton, which includes terminals in Pittston Township and Edwardsville; and (3) Harrisburg, which includes terminals in Northumberland, Williamsport, Mechanicsburg, and Highspire.

The Acquisition would substantially increase concentration in relevant markets that are already highly concentrated. In the Altoona market, ArcLight and Gulf are the only firms that offer gasoline terminaling services, and two of three firms that offer distillate terminaling services. ArcLight and Gulf are two of only three firms that offer gasoline or distillate terminaling services in the Scranton market. In the Harrisburg market, ArcLight and Gulf are two of three firms that offer gasoline terminaling services, and two of four firms that offer distillate terminaling services.

Effects of the Acquisition

The Acquisition would substantially lessen competition for terminaling services in the relevant markets by enabling ArcLight to exercise market power unilaterally, and enhancing the likelihood of collusion or coordinated interaction among the few remaining terminaling services providers. Post-acquisition, ArcLight would be the sole firm offering gasoline terminaling services in Altoona. It would own most of the LPP storage capacity in each of the other relevant markets and would be

able to raise terminaling service fees or reduce access to terminaling services unilaterally. The remaining firms have limited ability to accommodate additional throughput customers and would likely be unable to constrain ArcLight from exercising market power. To the extent the remaining firms could offer some limited constraint on ArcLight’s ability to exercise market power unilaterally, they are unlikely to do so because the transaction would increase their incentives to coordinate tacitly with ArcLight.

Entry Conditions

Entry into the relevant markets would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects arising from the Acquisition. Barriers to entry are significant and include high sunk costs associated with the construction of a new terminal, and the substantial amount of time required to design, build, and permit a new facility. ArcLight has significant excess capacity in the relevant markets, and this capacity would also discourage new entry.

The Decision and Order

The Order resolves the competitive concerns raised by the Acquisition by requiring that ArcLight divest Gulf’s terminals in Altoona, Pittston Township, Mechanicsburg, and Williamsport. The Order requires ArcLight to divest to Arc Logistics, or another acquirer approved by the Commission, the four terminals and all associated assets, as well as enter into certain transitional arrangements necessary for the acquirer to become established and compete successfully in the relevant markets. ArcLight is required to divest the terminals within 20 days of closing the Acquisition.

Arc Logistics is a publicly-traded logistics service provider principally engaged in the terminaling, storage, throughput, and transloading of crude oil and LPPs. The company owns twelve LPP terminals in several states, not including Pennsylvania. To ensure that the acquirer has sufficient throughput at the divested terminals while it negotiates contracts with new terminal customers, the Order requires ArcLight to enter a transitional throughput agreement with Arc Logistics, whereby ArcLight commits to throughput certain volumes at Arc Logistics’ terminals for two years. The Order also requires ArcLight to supply Arc Logistics with renewable fuels, at Arc Logistics’ request, for a period of five years, an option that will help Arc Logistics attract throughput customers. Finally, the Order requires ArcLight to let any

customer in the relevant markets out of its terminating service contract without penalty for a period of six months after the divestiture, allowing Arc Logistics to compete for those customers.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the Order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 2016-00028 Filed 1-6-16; 8:45 am]

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FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (“Commission” or “FTC”).

ACTION: Notice.

SUMMARY: The FTC plans to conduct a qualitative survey of consumers who recently purchased an automobile and financed that purchase through a dealer. Through a survey research firm, the FTC seeks to interview consumers about the consumer’s experience in selecting, purchasing, and financing an automobile from a dealer. The interviews also will involve reviewing the consumer’s documentation from the purchase and financing. This is the first of two notices required under the Paperwork Reduction Act (“PRA”) in which the FTC seeks public comments on its proposed consumer research in connection with Office of Management and Budget (“OMB”) review of, and clearance for, the collection of information discussed herein.

DATES: Comments must be received on or before March 7, 2016.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Auto Buyer Consumer Survey, Project No. P154800” on your comment, and file your comment online at <https://ftcpbpublic.commentworks.com/ftc/autobuyersurveypra>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the

following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT:

Carole Reynolds, 202-326-3230, or Teresa Kosmidis, 202-326-3216, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Mail Stop-CC-10232, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

For many consumers, aside from housing costs, a car purchase is their most expensive financial transaction. With prices averaging more than \$33,500 for a new vehicle and \$20,000 for a used vehicle from a dealer, most consumers seek to finance the purchase of a new or used car.¹ Consumers may seek financing from their local bank or credit union, as well as from the dealer selling the vehicle. Financing obtained at the dealership, whether it is provided by a third party or directly by the dealer, may provide benefits for many consumers, such as convenience, special manufacturer-sponsored programs, access to a variety of banks and financial entities, or access to credit otherwise unavailable to a buyer. Financing that is offered or arranged by dealers, however, can be a complicated, opaque process and potentially involve unfair or deceptive practices.

As the nation’s consumer protection agency, the Commission is committed to protecting consumers in connection with auto-related transactions. The Commission has broad authority to protect consumers in this area. The agency enforces the FTC Act, which prohibits unfair and deceptive practices by a wide variety of entities, including automobile dealers.² Also pursuant to

¹ In 2015, the average price of a new car sold in the U.S. is \$33,560, according to Kelly Blue Book. See Kelly Blue Book, Average New Car Transaction Prices Rise Steadily, Up 2.6% in April 2015 (May 1, 2015), available at <http://mediaroom.kbb.com/2015-05-01-New-Car-Transaction-Prices-Rise-Steadily-Up-2-6-Percent-in-April-2015-According-to-Kelley-Blue-Book>. The average price of a used car is \$20,057. See Used Car Prices Hold Up in Strong New-Vehicle Market, J.D. Power (Sept. 8, 2015), available at <http://www.jdpower.com/cars/articles/used-cars/used-car-prices-hold-strong-new-vehicle-market>. Used cars available from independent dealers and from “buy here pay here” dealers have been lower in price. For example, in 2014, over 42% of cars were sold at an average sales price of \$5,000–\$10,000 at independent dealers; the average cost of cars was \$7,150 at “buy here pay here” dealers. See 2015 NIADA Used Car Industry Report, at 6 and 16, respectively, available at <http://www.niada.com/publications.php>.

² 15 U.S.C. 45(a). The Commission also has enforcement authority over automobile dealers

the Dodd-Frank Act,³ the FTC is authorized to prescribe rules under Section 553 of the Administrative Procedure Act (APA)⁴ with respect to unfair or deceptive acts or practices by motor vehicle dealers.⁵

In recent years, the FTC has been particularly active in enforcement and other initiatives related to automobile transactions. Since 2011, the FTC has brought more than twenty-five cases protecting consumers in this area, including a sweep of ten actions against automobile dealers for deceptive advertising, and a coordinated federal-state effort that yielded more than two hundred automobile actions for fraud, deception, and other illegal practices.⁶ In 2011, the FTC conducted three automobile “roundtables” around the country, where panelists from government, consumer advocacy groups, and industry discussed consumer protection issues related to sales, financing, and leasing practices involving automobiles; the Commission also sought and received public

under various other statutes, including, for example, the Truth in Lending Act, 15 U.S.C. 1601–1666j, and its implementing Regulation Z, 12 CFR 226, 12 CFR 1026; the Consumer Leasing Act, 15 U.S.C. 1667–1667f, and its implementing Regulation M, 12 CFR 213, 12 CFR 1013; the Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691–1691f, and its implementing Regulation B, 12 CFR 202, 12 CFR 1002; the Electronic Fund Transfer Act, 15 U.S.C. 1693–1693r, and its implementing Regulation E, 12 CFR 205, 12 CFR 1005; and the privacy and safeguard provisions of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801–6809, and related privacy rule, 16 CFR 313, and safeguards rule, 16 CFR 314.

³ Dodd-Frank Wall Street Reform and Consumer Protection Act § 1029, 12 U.S.C. 5519.

⁴ 5 U.S.C. 553.

⁵ See Dodd-Frank Act § 1029(d), 12 U.S.C. 5519(d). Under the Dodd-Frank Act, the term “motor vehicle dealer” refers to “any person or resident in the United States, or any territory of the United States, who (A) is licensed by a State, a territory of the United States, or the District of Columbia to engage in the sale of motor vehicles; and (B) takes title to, holds an ownership in, or takes physical custody of motor vehicles.” *Id.* at 1029(f)(2), 12 U.S.C. 5519(f)(2). The term “motor vehicle” includes, among other things, motorcycles, motor homes, recreational vehicle trailers, recreational boats and marine equipment, and other vehicles titled and sold through dealers. See *id.* at 1029(f)(1), 12 U.S.C. 5519(f)(1).

⁶ See Press Releases, FTC Announces Sweep Against 10 Auto Dealers (Jan. 9, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/01/ftc-announces-sweep-against-10-auto-dealers>; FTC Approves Final Consent Orders in Deceptive Auto Dealers’ Ad Cases (May 6, 2014), available at <http://www.ftc.gov/news-events/press-releases/2014/05/ftc-approves-final-consent-orders-deceptive-auto-dealers-ads> and FTC, Multiple Law Enforcement Partners Announce Crackdown on Deception, Fraud in Auto Sales, Financing and Leasing (Mar. 26, 2015), available at <https://www.ftc.gov/news-events/press-releases/2015/03/ftc-multiple-law-enforcement-partners-announce-crackdown>. See also <https://www.ftc.gov/news-events/media-resources/consumer-finance/automarketplace>.