

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

**COMMISSIONERS:**      **Andrew N. Ferguson, Chairman**  
                                 **Melissa Holyoak**  
                                 **Mark R. Meador**

**In the Matter of**

**Exxon Mobil Corporation,  
a corporation.**

**DOCKET NO. C-4815**

**ORDER DENYING PETITION TO REOPEN**

This matter arises from Exxon Mobil Corporation’s \$64.5 billion acquisition of Pioneer Natural Resources Corporation. To settle the Commission’s allegations that the acquisition would violate the antitrust laws, Exxon consented to an order that, among other things, prohibited Exxon from appointing Scott Sheffield, Pioneer’s founder and former CEO, to its Board of Directors.<sup>1</sup> The Commission finalized the Decision and Order on January 16, 2025 (“Order”) by a 3-2 vote.<sup>2</sup>

Mr. Sheffield filed a petition on March 14, 2025 (“Petition”) pursuant to Section 5(b) of the Federal Trade Commission Act (“FTC Act”)<sup>3</sup> and Commission Rule 2.51<sup>4</sup> seeking to reopen and set aside the Order. Mr. Sheffield’s Petition asserts that the public interest requires vacating the Order in its entirety. For the reasons explained below, the Commission must deny the Petition because Mr. Sheffield is not a party to the Order and therefore cannot avail himself of the petition process in Rule 2.51.

**I. BACKGROUND**

Exxon is a publicly traded, multinational, and vertically integrated producer and refiner of oil and gas headquartered in Spring, Texas. It operates refineries throughout the world. Pioneer, before its acquisition by Exxon, was a publicly traded, independent oil and gas company headquartered in Irving, Texas. It was the largest crude oil producer in the Permian Basin, a

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<sup>1</sup> Proposed Decision and Order, *In re Exxon Mobil Corp.*, Matter No. 2410004 (May 1, 2024), at 3 (“Proposed Order”).

<sup>2</sup> Decision and Order, *In re Exxon Mobil Corp.*, Matter No. 2410004 (Jan. 16, 2025) (“Order”).

<sup>3</sup> 15 U.S.C. § 45(b).

<sup>4</sup> 16 C.F.R. § 2.51.

major oil field located in western Texas and southeastern New Mexico. The two companies entered into an Agreement and Plan of Merger dated October 10, 2023 (“Merger Agreement”), by which Exxon agreed to acquire Pioneer. The terms of the Merger Agreement required Exxon to “take all necessary actions to cause Scott D. Sheffield.... to be appointed to [Exxon’s] board of directors” immediately following the acquisition’s consummation.<sup>5</sup>

The Commission issued a Complaint in this matter on May 1, 2024, alleging that Exxon’s proposed acquisition of Pioneer would violate Section 7 of the Clayton Act<sup>6</sup> and Section 5 of the FTC Act.<sup>7</sup> The Complaint did not allege that the acquisition would significantly increase market concentration. It did not allege that the acquisition would eliminate substantial head-to-head competition between Exxon and Pioneer. Nor did it allege any vertical theories of harm involving any upstream or downstream markets. Instead, the Complaint alleged that the appointment of Mr. Sheffield to Exxon’s Board “would meaningfully increase the likelihood of coordination, and thereby harm competition, in the market for development, production, and sale of crude oil.”<sup>8</sup>

According to the Complaint, Mr. Sheffield previously sought to coordinate output levels with other crude oil producers to keep production artificially low.<sup>9</sup> The Complaint alleged he made public and private communications aimed “to organize tacit (and potentially express) coordination of capital investment discipline and oil production levels in the Permian Basin and across the United States.”<sup>10</sup> The Complaint further alleged that he communicated directly with officials from OPEC member states about curtailing oil production, and used his relationships with those officials “to encourage OPEC production controls and to discuss U.S. producers’ efforts to maintain capital discipline in order to increase Pioneer’s profits.”<sup>11</sup> Mr. Sheffield’s appointment to Exxon’s Board would cause the company’s acquisition of Pioneer to violate Section 7, the Complaint reasoned, because he would have “a larger platform from which to advocate for greater industry-wide coordination[.]”<sup>12</sup>

The Complaint also alleged that Mr. Sheffield’s appointment to Exxon’s Board might constitute an unlawful interlocking directorate.<sup>13</sup> Mr. Sheffield serves on the Board of Directors of The Williams Companies, Inc. (“Williams”), a company focused primarily on natural gas transportation.<sup>14</sup> The Complaint did not allege that Mr. Sheffield’s service on both boards would have violated Section 8 of the Clayton Act, which specifically prohibits interlocking directorates between “competitors,” so long as the two companies’ “competitive sales” surpass certain statutory thresholds.<sup>15</sup> Nor did the Complaint contain any specific allegations about the extent to

<sup>5</sup> Exxon Mobil Corp., Current Report (Form 8-K), Ex. 2.1 at 79 (Oct. 11, 2023).

<sup>6</sup> 15 U.S.C. § 18.

<sup>7</sup> *Id.* § 45.

<sup>8</sup> Complaint, *In re Exxon Mobil Corp.*, Matter No. 2410004, at ¶ 2 (May 1, 2024) (“Initial Complaint”).

<sup>9</sup> *Id.* ¶¶ 1, 6–7, 22, 26–43.

<sup>10</sup> *Id.* ¶ 22.

<sup>11</sup> *Id.* ¶ 34.

<sup>12</sup> *Id.* ¶ 44.

<sup>13</sup> *Id.* ¶ 9.

<sup>14</sup> See The Williams Companies, Inc., Annual Report for the Fiscal Year Ended Dec. 31, 2024 (Form 10-K), at 4 (Feb. 25, 2025) (“Williams is an energy company committed to being the leader in providing infrastructure that safely delivers natural gas products to reliably fuel the clean energy economy.”).

<sup>15</sup> 15 U.S.C. § 19(a).

which Exxon and Williams compete. It merely asserted that if Exxon were to place Mr. Sheffield on the Board, then the acquisition itself would have violated Section 5 of the FTC Act.<sup>16</sup>

To settle the Commission's allegations, Exxon consented to an order that prohibited Exxon from (1) appointing Mr. Sheffield, current Pioneer employees, and certain other persons affiliated with Pioneer to Exxon's Board; (2) appointing Mr. Sheffield to serve as an advisor to Exxon's Board or management; and (3) violating the prohibitions on interlocking directorates in Section 8 of the Clayton Act.<sup>17</sup> Exxon and Pioneer then consummated the acquisition.<sup>18</sup> Now-Chairman Ferguson and Commissioner Holyoak dissented from the Commission's vote approving the order, stating "[t]he Commission should not leverage its merger enforcement authority—or any authority—the way it does today."<sup>19</sup> Mr. Sheffield, who was not a party to the order, submitted a 23-page comment during the order's public comment period providing context and alleging deficiencies with the Complaint and the Commission's investigation.<sup>20</sup> But on January 16, 2025, the Commission voted 3-2 to finalize the Complaint and Order. Commissioner Holyoak wrote in a dissent joined by Now-Chairman Ferguson that the Commission had "fabricated one of the most ludicrous theories of harm in its merger-enforcement history."<sup>21</sup>

Shortly after the Order became final, Mr. Sheffield sued the Commission in the United States District Court for the Northern District of Texas seeking to have the Order vacated.<sup>22</sup> His complaint alleged that the Commission violated the U.S. Constitution, the Administrative Procedure Act, and the FTC Act, and that he would have been able to challenge the substance of the Commission's allegations against him.<sup>23</sup> Mr. Sheffield's litigation against the Commission is still ongoing, and has been on hold pending the Commission's resolution of this Petition.

## II. THE PETITION

On March 14, 2025, Mr. Sheffield petitioned the Commission to set aside and vacate the Order under Section 5(b) of the FTC Act and Commission Rule 2.51. Exxon, the only party to the Order, did not join the Petition.

Mr. Sheffield's Petition argues that the Commission should not have challenged Exxon's acquisition of Pioneer because the acquisition does not violate the antitrust laws under any established theory.<sup>24</sup> The Petition also asserts that vacating the Order would preserve the resources of the Commission, the U.S. Attorney's Office, and the federal judiciary, because it

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<sup>16</sup> Initial Complaint ¶ 46.

<sup>17</sup> Proposed Order at 3.

<sup>18</sup> Press Release, ExxonMobil Completes Acquisition of Pioneer Natural Resources (May 3, 2024), [https://corporate.exxonmobil.com/news/news-releases/2024/0503\\_exxonmobil-completes-acquisition-of-pioneer-natural-resources](https://corporate.exxonmobil.com/news/news-releases/2024/0503_exxonmobil-completes-acquisition-of-pioneer-natural-resources) (last accessed July 14, 2025).

<sup>19</sup> Joint Dissenting Statement of Comm'r Melissa Holyoak and Comm'r Andrew N. Ferguson, *In re Exxon Mobil Corp.*, Matter No. 2410004, at 3 (May 2, 2024).

<sup>20</sup> Comment on Behalf of Scott Sheffield, *In re Exxon Mobil Corp.*, Matter No. 2410004 (May 28, 2024), [https://downloads.regulations.gov/FTC-2024-0027-0003/attachment\\_2.pdf](https://downloads.regulations.gov/FTC-2024-0027-0003/attachment_2.pdf).

<sup>21</sup> Dissenting Statement of Comm'r Melissa Holyoak, Joined by Comm'r Andrew N. Ferguson, *In re Exxon Mobil Corp.*, Matter No. 2410004, at 1 (Jan. 17, 2025).

<sup>22</sup> Complaint, *Sheffield v. FTC*, Case No. 4:25-cv-00048, Dkt. No. 1 (N.D. Tex. Jan. 21, 2025).

<sup>23</sup> *Id.* ¶¶ 10–12.

<sup>24</sup> Petition at 2.

would resolve Mr. Sheffield's pending federal court litigation against the Commission seeking the same relief.<sup>25</sup> Furthermore, the Petition claims that the Order unnecessarily restricts Mr. Sheffield and other Pioneer employees and violates his constitutional rights.<sup>26</sup> The Petition therefore argues that the public interest requires the Order to be set aside and vacated in its entirety.<sup>27</sup>

The Petition was placed on the public record for a thirty-day comment period and it received nearly 3,000 comments, 336 of which were relevant to the matter. The Petition is now ripe for disposition by the Commission.

### III. ANALYSIS

Before the Commission can reach the merits of the Petition, it must decide a threshold issue: whether Mr. Sheffield, who is not a party to the Order, may petition the Commission to reopen the Order under Section 5(b) of the FTC Act and Rule 2.51 of the Commission's Rules of Practice. We conclude that he cannot.

#### A.

Prior to 1980, the decision to reopen an order was purely within the Commission's discretion.<sup>28</sup> Regarding the modification of final orders, Section 5(b) of the FTC Act provided only that the Commission could "at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or law have so changed as to require such action or if the public interest shall so require[.]"<sup>29</sup>

In 1980, however, Congress passed the Federal Trade Commission Improvements Act ("FTC Improvements Act"), which amended Section 5(b) to curtail some of the Commission's discretion.<sup>30</sup> The FTC Improvements Act added a new provision to Section 5(b) that *required* the Commission to reopen an order "to consider whether such order ... should be altered, modified, or set aside, in whole or in part, if the person, partnership, or corporation *involved* files a request with the Commission which makes a satisfactory showing that changed conditions of law or fact require" such modification.<sup>31</sup> The new provision also required the Commission to determine whether to modify the order in response to the request within 120 days.<sup>32</sup> Thus, Section 5(b) requires that the Commission consider petitions to reopen that have been filed by the "person, partnership, or corporation involved" with the order.<sup>33</sup>

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<sup>25</sup> *Id.* at 4.

<sup>26</sup> *Id.* at 4–7.

<sup>27</sup> *Id.* at 1 (citing 16 C.F.R. § 2.51(b)).

<sup>28</sup> *United States v. La.-Pac. Corp.*, 754 F.2d 1445, 1448 (9th Cir. 1985).

<sup>29</sup> 15 U.S.C. § 45(b) (1976).

<sup>30</sup> Pub. L. No. 96-252, 94 Stat. 374 (1980); *La.-Pac. Corp.*, 754 F.2d at 1448–49.

<sup>31</sup> 15 U.S.C. § 45(b) (emphasis added).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

Section 5(b) lays out a series of requirements for Commission proceedings. It begins with the filing of a complaint, and ends with the process for modifying a final administrative order. The statute requires the Commission (1) to serve the “person, partnership, or corporation” that the Commission believes used unfair methods of competition or unfair or deceptive practices with a complaint stating the Commission’s charges; (2) to give “[t]he person, partnership, or corporation so complained of” an opportunity to “show cause why an order should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist” from the violation charged; and (3), if a violation is found, to serve “such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from” the unlawful practice.<sup>34</sup> This “person, partnership, or corporation” is the same person, partnership, or corporation that may request reopening and modification of the order under the mandatory process in Section 5(b). The plain language of Section 5(b) makes clear, then, that the “person ... involved” for purposes of reopening an order is the same person who was charged with violating the FTC Act in the complaint, was given an opportunity for a hearing, and was ordered by the order to cease and desist from violating the FTC Act.<sup>35</sup>

The text of the statute is enough, and we need not consider other sources to determine who may avail themselves of the Section 5(b)’s reopening process.<sup>36</sup> But for “[t]hose ... who make use of legislative history,” the history confirms our interpretation.<sup>37</sup> The Senate Report for the bill that became the FTC Improvements Act emphasized the limited scope of the mandatory reopening process. It clarified that the relevant section of the bill “obliged [the Commission] to consider whether changed conditions have caused a company *under order* to be unfairly disadvantaged[.]”<sup>38</sup> It explained further that, to prevent misuse of the mandatory reopening process, Congress put in the “safeguard” that “only an entity subject to an order may avail itself of this section.”<sup>39</sup>

Commission Rule 2.51 reflects this same limitation. This Rule, adopted pursuant to the Administrative Procedure Act after notice and an opportunity to comment, governs the process for reopening orders consistent with Section 5(b) as Congress amended it in 1980.<sup>40</sup> Rule 2.51 sets out the process for reopening an order on request of a party subject to the order, and was revised in 1980 “to conform [the Commission’s] procedures to the amendments made by the FTC Improvement Act of 1980.”<sup>41</sup> Although Congress’s amendment to Section 5(b) applied only to requests to reopen orders based on “changed conditions of law or fact,” the Commission in

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> See, e.g., *State Farm Fire & Cas. Co. v. United States ex rel. Rigsby*, 580 U.S. 26, 36–37 (2016) (holding that where a statute’s “text and structure is ‘plain and unambiguous, [courts] need not accept [an] invitation to consider the legislative history.’”) (quoting *Whitfield v. United States*, 543 U.S. 209, 215 (2005)).

<sup>37</sup> *Milner v. Dep’t of the Navy*, 562 U.S. 562, 572 (2011).

<sup>38</sup> S. Rep. No. 96-500, at 9 (1979) (emphasis added).

<sup>39</sup> *Id.* at 9-10; see also *id.* at 9 (stating that “[t]he purpose of this section is to require the Commission to reopen any order issued under section 5 of the FTC Act if a person, partnership, or corporation subject to that order files a request” making the requisite showing).

<sup>40</sup> See Organization; General Procedures; Nonadjudicative Procedures; and Miscellaneous Rules, 45 Fed. Reg. 36338, 36339, 36344 (May 29, 1980); Organization Changes in the Commission’s Rulemaking and Investigatory Procedures, 46 Fed. Reg. 26284, 26285, 26291 (May 12, 1981).

<sup>41</sup> 45 Fed. Reg. at 36338; see also *id.* at 36339 (“Section 2.51 has been amended to conform to the requirements of amended section 5(b).”).

Rule 2.51 applied the same procedural provisions to requests to reopen orders based on the “public interest.”<sup>42</sup> Under Rule 2.51, the petitioner must first file a petition that contains a detailed, fact-based “satisfactory showing” that modification is required.<sup>43</sup> After that, the Commission must place the request on the public record for a thirty-day public comment period.<sup>44</sup> Finally, no later than 120 days after the request is filed, the Commission must rule on the request and either reopen and modify the order, issue an order to show cause under Rule 3.72, or take other action as appropriate.<sup>45</sup>

Rule 2.51 mirrors Section 5(b)’s limitations on who may petition the Commission to reopen its administrative orders. Only a “person, partnership, or corporation *subject to* a Commission decision containing a rule or order which has become effective, or an order to cease and desist which has become final” may petition the Commission to reopen an order.<sup>46</sup> This limitation aligns, and is coextensive, with the restrictions about who may use the mandatory reopening process in Section 5(b) of the FTC Act, which is limited to the “person ... involved” with the order.<sup>47</sup>

## B.

Mr. Sheffield is not eligible under Section 5(b) or Rule 2.51 to petition the Commission to reopen the Order. We begin with the statute, which is the governing law.<sup>48</sup> The statutory text makes plain that the “person ... involved” who is permitted to petition to reopen an order must be the same person who was charged in the complaint with unlawful conduct, given a hearing, and commanded by order to cease violating the FTC Act. But that entity is Exxon, not Mr. Sheffield.<sup>49</sup> Although the complaint certainly accuses Mr. Sheffield of many things, it does not charge him with violating Section 7 or Section 5. Nor is he the “person complained of” in the complaint. Nor does the Order command him to cease and desist from doing anything, although the Order obviously affects him. He therefore is not eligible for the Section 5(b) reopening process.

Rule 2.51, which implements Section 5(b), operates the same way. Mr. Sheffield is not “subject to” the Order.<sup>50</sup> A person is “subject to” an order when he is subject to the obligations imposed by it, such that failure to abide by the order could result in an adverse judgment against him.<sup>51</sup> The Order here does not bind Mr. Sheffield or require him to cease and desist, and he cannot be held liable for violating it. As noted, he undoubtedly is affected by the Order, but the

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<sup>42</sup> 16 C.F.R. § 2.51(a)–(b).

<sup>43</sup> *Id.* § 2.51(b).

<sup>44</sup> *Id.* § 2.51(c).

<sup>45</sup> *Id.* § 2.51(d).

<sup>46</sup> *Id.* § 2.51(a) (emphasis added).

<sup>47</sup> 45 Fed. Reg. at 36339.

<sup>48</sup> *United States v. Larionoff*, 431 U.S. 864, 873 (1977) (“[R]egulations, in order to be valid, must be consistent with the statute under which they are promulgated.”).

<sup>49</sup> See Complaint, *In re Exxon Mobil Corp.*, Matter No. 2410004 (Jan. 16, 2025).

<sup>50</sup> 16 C.F.R. § 2.51(a).

<sup>51</sup> See Subject to Liability, Black’s Law Dictionary (12th ed. 2024) (defining “subject to liability” as “susceptible to a lawsuit that would result in an adverse judgment”).

Rule 2.51 reopening process is not available to those who are only affected by Commission orders; it is limited to parties actually subject to, or required to follow, those orders.

C.

That is not to say that Mr. Sheffield is without recourse. Individuals affected by, but not subject to, Commission orders, including Mr. Sheffield, may submit information to the Commission or ask the Commission to amend an order. Such submissions or requests, however, fall outside the Rule 2.51 process. Instead, they could serve as a basis for the Commission, in its discretion, to reopen and modify an order on its own initiative under Rule 3.72, a process that allows the parties who must actually comply with the order an opportunity to oppose such modification, including, where appropriate, through an evidentiary hearing.<sup>52</sup> In other words, requests and information from those not subject to the order may be submitted to the Commission for review and consideration, but any action on such requests would be in the Commission's discretion, and any resulting modification would follow the procedural requirements of Rule 3.72.

Although Mr. Sheffield cannot avail himself of the petition process in Rule 2.51, the Commission shall consider his arguments in support of reopening and vacating the Order under Rule 3.72.

Accordingly,

**IT IS ORDERED** that the Petition of Scott Sheffield to Reopen and Modify or Set Aside Decision and Order is hereby **DENIED**.

By the Commission.

April J. Tabor  
Secretary

SEAL:

ISSUED: July 14, 2025

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<sup>52</sup> Rule 3.72 provides that whenever the Commission is of the opinion that changed conditions of fact or law or the public interest may require an order to be altered, modified, or set aside, the Commission is to serve upon the person subject to the order an order to show cause, stating the changes it proposes to make and the reasons they are deemed necessary. 16 C.F.R. § 3.72(b)(1). Within thirty days after service of such order to show cause, the respondent may file an answer. *Id.* If the order is not opposed or is opposed but the pleadings do not raise issues of fact to be resolved, the Commission, in its discretion, may decide the matter on the papers, or the Commission may serve the parties with a notice of hearing, setting the date when the cause will be heard. *Id.* § 3.72(b)(2). When the pleadings raise substantial factual issues, Rule 3.72(b) instructs the Commission to direct such hearings as it deems appropriate, including hearings for the receipt of evidence by it or by an Administrative Law Judge, who after such hearings would certify the record and recommendations to the Commission for final disposition of the matter. *Id.*