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March 27, 2025

Via E-mail (ElectronicFilings@ftc.gov)

April Tabor
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: In the Matter of Chevron Corporation and Hess Corporation, Docket No. C-4814

Dear Secretary Tabor:

We write on behalf of Hess Corporation and Chevron Corporation (collectively the “Respondents”) regarding the Commission’s Decision and Order entered on January 17, 2025, In the Matter of Chevron Corporation and Hess Corporation, Docket No. C-4814 (the “Order”).

Pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), and Section 2.51 of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 2.51, the Respondents respectfully submit the enclosed petition to reopen and set aside the Order.

April Tabor
March 27, 2025
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Should you have any questions, please contact me at (212) 403-1361 or nofitts@wlrk.com, or David Higbee at (202) 508-8071 or david.higbee@aoshearman.com.

Sincerely,

A handwritten signature in black ink, appearing to read "N. O. Fitts", written over a light gray rectangular background.

Nelson O. Fitts
Counsel for Hess Corporation

cc: David A. Higbee (Counsel for Chevron Corporation)

Enclosure

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

<p>In the Matter of</p> <p style="padding-left: 40px;">Chevron Corporation, a corporation</p> <p>and</p> <p style="padding-left: 40px;">Hess Corporation, a corporation.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Docket No. C-4814</p>
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PETITION TO REOPEN AND SET ASIDE DECISION AND ORDER

Pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), and Section 2.51 of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 2.51, Respondents Chevron Corporation (“Chevron”) and Hess Corporation (“Hess”) (collectively, the “Respondents”) respectfully request that the Commission reopen and set aside the Commission’s Decision and Order entered on January 17, 2025,¹ in Docket No. C-4814 (the “Order”).

The Order bars Chevron from nominating, designating or appointing Hess CEO John B. Hess from joining Chevron’s Board of Directors, as is required by the Respondents’ merger agreement.² A divided Commission voted to issue a Complaint alleging that Mr. Hess’s appointment to the Chevron Board “would heighten the risk of harm to competition, including meaningfully increasing the risk of industry coordination” in the global market for the development, production, and sale of crude oil.³ As set forth below, and as made clear in Chairman Ferguson’s and Commissioner Holyoak’s September 30, 2024 dissenting statements, the Commission’s Complaint failed to state a cognizable theory of competitive harm under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, or Section 5 of the Federal Trade

¹ The Order was issued on January 16, 2025, and final when received by the Respondents on January 17, 2025. *See* 16 C.F.R. § 2.34(c).

² *See* Decision and Order, *In the Matter of Chevron Corp. & Hess Corp.*, File No. 241-0008 (Jan. 16, 2025), ¶¶ II.A. The Order also prohibits Chevron from appointing Mr. Hess to serve in an advisory or consultative capacity to Chevron or its board, with limited exceptions. *Id.* at ¶ II.B.

³ *See* Complaint, *In the Matter of Chevron Corp. & Hess Corp.*, File No. 241-0008 (Jan. 16, 2025), ¶¶ 19-20, 50.

Commission Act, 15 U.S.C. § 45, under which to challenge the Chevron/Hess merger.⁴ The Respondents hereby respectfully petition the Commission to reopen and set aside the Order in the public interest.

I. Background

A. Merger Transaction

On October 22, 2023, the Respondents entered into an Agreement and Plan of Merger (the “Merger Agreement”) pursuant to which Chevron will acquire Hess. As consideration for the merger, Hess shareholders will receive shares of Chevron voting securities with an aggregate value of approximately \$53 billion at signing. Among other things, Section 1.3(a) of the Merger Agreement requires Chevron and its Board of Directors, upon closing of the proposed merger, to take all actions necessary to increase the size of the Chevron Board from twelve to thirteen members and to appoint Mr. Hess as a Chevron director. Upon closing of the merger, Hess’s shareholders will hold in the aggregate approximately 15 percent of Chevron’s outstanding voting securities, and the covenant to appoint Mr. Hess to Chevron’s Board is consistent with board representation for those shareholders, as well as with their expectations when they voted to approve the merger. Mr. Hess’s appointment to Chevron’s Board is also consistent with Chevron’s communications to Hess before the Merger Agreement was signed, in which Chevron conveyed its desire that Mr. Hess join the Chevron Board upon the closing of the merger. Chevron’s commitment to appoint Mr. Hess as one of thirteen members of the Chevron Board is a fundamental part of the overall merger transaction.

The Respondents have not yet closed the merger. On May 28, 2024, holders of a majority of Hess’s outstanding common stock voted to approve the merger. Hess Guyana Exploration Limited (“HGEL”), a wholly owned subsidiary of Hess, is currently in arbitration relating to the applicability of a right of first refusal (the “Stabroek ROFR”) contained in the operating agreement among HGEL and affiliates of Exxon Mobil Corporation and China National Offshore Oil Corporation to the merger. An arbitration merits hearing about the applicability of the Stabroek ROFR to the merger has been scheduled for May 2025, with a decision expected in the following three months.

⁴ See generally Dissenting Statement of Commissioner Andrew N. Ferguson, *In the Matter of Chevron Corp. & Hess Corp.*, File No. 241-0008 (Sep. 30, 2024) (the “Ferguson Dissent”); Dissenting Statement of Commissioner Melissa Holyoak, *In the Matter of Chevron Corp. & Hess Corp.*, File No. 241-0008 (Sep. 30, 2024) (the “Holyoak Dissent”). While Commissioners Holyoak and Ferguson did not issue separate written dissents to the Commission’s January 17, 2025 final Decision and Order, their dissents are incorporated into the final order, and they are referenced in Commissioner Holyoak’s written dissent to the Commission’s contemporaneous final Decision and Order for the ExxonMobil matter. See Dissenting Statement of Commissioner Melissa Holyoak Joined by Commissioner Andrew N. Ferguson, *In the Matter of ExxonMobil/Pioneer Res.*, Final Decision and Order, File No. 241-0004 (Jan. 17, 2025), at 1 n.3 (“I also voted today to reject the finalization of the Decision and Order that resolves the merger of Chevron and Hess . . . My views have not changed with respect to the flawed nature of the complaint and consent in Chevron/Hess—views that continue to apply to my decision to vote against today’s finalization of the Decision and Order [in the matter of ExxonMobil].”).

B. The Order

On January 17, 2025, on the last federal working day before the change of administrations, the Commission finalized the Order following a 3-to-2 vote. The Order bars Chevron from nominating, designating, or appointing Mr. Hess to the Chevron Board, or allowing Mr. Hess to serve in an advisory or consulting capacity to, or as a representative of, Chevron or the Chevron Board, other than with respect to interactions and discussions with (a) Guyanese government officials about Hess's oil-related and health ministry-related activities in Guyana, and (b) the Salk Institute's Harnessing Plants Initiative.

By its terms, the Order will terminate in ten years. Unless set aside, the Order will preclude Chevron from fulfilling its contractual obligation to appoint Mr. Hess to the Chevron board upon closing of the merger, and deprive shareholders of the benefit of his service.

The Respondents acknowledge that a majority of the prior Commission voted to issue the Order pursuant to an Agreement Containing Consent Order among Chevron, Hess, and the Commission staff (the "ACCO"). The Respondents did not sign the ACCO because they agreed with the prior Commission's characterization of the facts, or with its interpretation and application of Section 7 or Section 5 to those facts. As explicitly noted in the document, the ACCO was "for settlement purposes only and does not constitute an admission . . . that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true."⁵ Chevron and Hess entered into the ACCO solely to satisfy a key closing condition to their Merger Agreement, and thereby to reduce uncertainty and facilitate a more prompt closing of the proposed transaction, in the best interest of each company's shareholders. As noted in the Ferguson Dissent, in getting the Respondents to agree to the ACCO, "[t]he Commission leveraged its Hart-Scott-Rodino Act authority by threatening to hold up Chevron and Hess's \$53 billion merger even though the lack of a plausible Section 7 theory had long been obvious."⁶ That the Respondents acceded to this leverage should not factor into the Commission's decision whether to reopen and set aside this Order.

C. The Respondents' compliance with the Order

Chevron has been in compliance with the Proposed Decision and Order contained in the ACCO since it was executed on September 23, 2024, and with the Order since it was finalized on January 17, 2025, as reflected in the required compliance reports filed by Chevron on October 23, 2024; November 22, 2024; December 20, 2024; and March 17, 2025.

II. The Commission should reopen and set aside the Order in the public interest.

Respondents subject to a Commission decision containing an order which has become effective may file a request that the Commission reopen the proceeding to consider

⁵ Agreement Containing Consent Order, *In the Matter of Chevron Corp. & Hess Corp.*, File No. 241-0008 (Sept. 23, 2024), at ¶ 5.

⁶ Ferguson Dissent at 5-6 (citation omitted).

whether the order should be altered, modified, or set aside in whole or in part, if the public interest requires it.⁷

Here, public interest in the effective enforcement of the antitrust laws, as well as in the continued investment in oil and gas production championed by Mr. Hess, is best served by setting aside the Order and allowing Mr. Hess to join Chevron’s Board.

A. Setting aside the Order serves the public interest in the effective enforcement of the antitrust laws, as the Complaint failed to state a cognizable theory of harm under Section 7 or Section 5.

Section 7 prohibits acquisitions the effect of which “may be substantially to lessen competition, or to tend to create a monopoly,”⁸ and Section 5 declares unlawful “unfair methods of competition in or affecting commerce.”⁹ As noted in the Holyoak Dissent, the Complaint “does not take issue with Chevron’s acquisition of Hess Corporation’s assets. Nor could it.”¹⁰ The Respondents’ combined share in the global market for oil and gas is in the low single digits, and Hess’s incremental portion of that share — what Hess will add to Chevron post-close — is *de minimis*. Even under the agencies’ 2023 Merger Guidelines, the Respondents’ combined share is far below the level at which a merger could be presumed to harm competition. The fact that the prior Commission, after its months-long investigation into the Respondents’ operations, allowed the merger to proceed without any structural or behavioral remedies demonstrates that there are no anticompetitive grounds on which to challenge the combination of these two companies. That fact was amplified by Senator Mike Lee and Congressman Jim Jordan in their November 18, 2024 joint letter to former Chair Khan: “These mergers did not present any anticompetitive concerns, thus the FTC’s consent decrees are unwarranted and did nothing to enforce the Clayton Act or protect consumers from anticompetitive harm.”¹¹

Rather, the prior Commission relied on a novel theory on which to extract a concession from the parties, focused not on the two companies’ asset footprints and oil and gas production, but rather on the appointment of Mr. Hess to Chevron’s Board of Directors. Pointing to certain communications by Mr. Hess with Organization of the Petroleum Exporting Countries (“OPEC”) officials and a representative of an OPEC member state — but without alleging any improper collusion — the Commission alleged that, through the merger, Mr. Hess would have access to Chevron’s “broader platform” from which to continue such communications, and in turn increase the likelihood that Chevron would collude with OPEC regarding the supply and price of oil and gas.

⁷ See 16 C.F.R. § 2.51.

⁸ 15 U.S.C. § 18.

⁹ 15 U.S.C. § 45(a)(1).

¹⁰ Holyoak Dissent at 2.

¹¹ Letter from Sen. Mike Lee and Congressman Jim Jordan to Chair Lina Khan (Nov. 18, 2024), at 2, <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-11-18%20JDJ%20Lee%20to%20Khan%20re%20Exxon%20Pioneer%20Chevron%20Hess%20briefing.pdf>.

This allegation fails to state a cognizable antitrust theory of harm. As highlighted in the Holyoak Dissent,

Nothing in the complaint alleges that Mr. Hess has ever attempted to, or coordinated with, a rival.

...

Taking the allegations and the implications against Mr. Hess as true, neither he nor Hess Corporation ever coordinated or attempted to coordinate with Hess Corporation's rivals.¹²

Given that fact, there is no basis under the 2023 Merger Guidelines to conclude the proposed merger would violate Section 7 or Section 5 under a coordinated effects theory of competitive harm. But as also noted in the Holyoak Dissent, “the tangible and intangible assets of Hess Corporation have nothing to do with the violation of law [alleged in the prior Commission’s complaint]—it’s all about the acquisition of Mr. Hess.” This theory of harm, Commissioner Holyoak notes, is “farcical” and one that “[c]ertainly no court would endorse.”¹³

Even were the Respondents to accept that this is a plausible theory of harm under Section 7, it fails on its own terms. As highlighted in the Ferguson Dissent, this theory assumes that: (i) Chevron would allow Mr. Hess to continue such communications post-closing of the transaction; (ii) that such communication is made worse by the transaction — a transaction through which Mr. Hess’s role would be reduced from CEO and significant shareholder (as he currently is in Hess Corporation) to non-executive member of a thirteen-person Board (as he would be at Chevron post-merger); and (iii) that this conduct would have a significant effect on global oil prices, which, as stated above, is implausible given the Respondents’ low combined shares and lack of any coordinated behavior or sharing of competitively sensitive information. The Complaint provides no justification for any of these three assumptions.

While the former Chair touted the withdrawal of Mr. Hess’s nomination to the Chevron Board in exchange for clearance of the Respondents’ merger in a list of Commission Accomplishments achieved under her tenure,¹⁴ the Ferguson Dissent rightly notes that this settlement “does not vindicate the rule of law,” but rather serves to further reduce antitrust enforcement to a “pay-for-peace racket inflict[ing] serious injury on the rule of law—and on the Commission’s credibility.”¹⁵ Preserving the Commission’s credibility is paramount to the public interest in the effective enforcement of the antitrust laws, and this interest is best served by setting aside the Order in recognition of the Complaint’s deficiencies.

¹² Holyoak Dissent at 2, 4.

¹³ *Id.* at 2.

¹⁴ Federal Trade Commission Accomplishments, June 2021 – January 2025 (Jan. 19, 2025), at 16, https://www.ftc.gov/system/files/ftc_gov/pdf/ftc-accomplishments-june-2021-january-2025.pdf (claiming the Order and the ExxonMobil/Pioneer settlement “[a]dvanced the increased risk of coordination as a basis for Section 7 liability”).

¹⁵ Ferguson Dissent at 6, 7.

B. The public interest in continued investment in oil and gas supply is served by setting aside the Order.

In addition to the public's interest in the just enforcement of the antitrust laws, there is a significant public interest in continued investment in oil and gas supply. Ensuring that U.S. oil and gas producers can meet expected increases in consumer demand for energy is vital to the interest of consumers, downstream industries that rely on oil and gas production, as well as U.S. national and energy security.¹⁶

Mr. Hess has spent his career advocating for such an increase in investment to grow oil and gas supply, for the benefit of consumers, workers, and U.S. energy security. Throughout his career, Mr. Hess has been recognized as an industry authority on energy policy. He has been called on to advise U.S. administrations on their energy policy, including as an informal advisor to members of the cabinets of Presidents Clinton, Bush, Obama, Biden, and Trump.

As CEO of Hess, Mr. Hess has put this advocacy for greater investment into practice. Under Mr. Hess's leadership, Hess has differentiated itself from its peers with the highest levels of cash flow reinvestment in the industry in order to increase future oil and gas supply. This prioritization of reinvestment for long-term production growth is manifest in Hess's global production of oil and gas, which grew from 101 million barrels of oil equivalent in 2018 to 144 million barrels in 2023, an increase of nearly 45 percent.¹⁷ This reinvestment strategy is projected to yield further robust growth in the near-term: a recent Bloomberg analyst consensus projects Hess will achieve a 14 percent compound annual growth rate ("CAGR") over the years 2023 to 2025, compared to the median cohort CAGR of two percent.¹⁸ This projected organic growth rate is approximately double that of Hess's closest peer, and is multiples of that of U.S. major oil and gas producers. Hess, under Mr. Hess's leadership, has chosen to invest its capital in future oil and gas production for the long term, rather than return capital to shareholders.

This record shows Mr. Hess's longstanding commitment in investing to grow long-term oil and gas supply; it is this same commitment that first led Chevron to propose his appointment to the Chevron Board under the Merger Agreement, and that would make Mr. Hess an asset to the Chevron Board. At this vital moment when the administration looks to expand oil and gas production, it is in the public interest that Mr. Hess be allowed to continue this work.

¹⁶ See Exec. Order No. 14156, 90 Fed. Reg. 8433, 8433 (Jan. 29, 2025), <https://www.federalregister.gov/documents/2025/01/29/2025-02003/declaring-a-national-energy-emergency> ("The integrity and expansion of our Nation's energy infrastructure—from coast to coast—is an immediate and pressing priority for the protection of the United States' national and economic security.").

¹⁷ Hess Corp., 2020 Annual Report (Mar. 2021), at 7, <https://investors.hess.com/static-files/0869f80e-06ec-419d-b18a-b51d34968c44>; Hess Corp., 2023 Annual Report (Feb. 2024), at 12, <https://investors.hess.com/static-files/64c3f1e7-08e2-40b1-9190-ca2492e17343>.

¹⁸ These data are based on FactSet, Enverus, and Bloomberg consensus estimates as of July 8, 2024. The 2023-2025 production growth estimates are pro forma for announced mergers, acquisitions, and divestitures per public company disclosures.

III. Conclusion

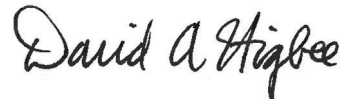
The Respondents agree with Chairman Ferguson that “[n]othing in Section 7 requires Mr. Hess to stay off the Chevron board.”¹⁹ Consistent with the discussion above, the Respondents respectfully request that the Commission reopen and set aside the Order. Setting aside the Order is consistent with the public interest in the Commission’s appropriate and effective enforcement of the antitrust laws, and will promote long-term capital investments to grow American oil and gas supplies.

Dated: March 27, 2025

Respectfully submitted,



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¹⁹ Ferguson Dissent at 6-7.