



Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues this Order to Hold Separate and Maintain Assets (“Hold Separate”):

1. Respondent Magellan Midstream Partners, L.P., is a publicly-traded limited partnership organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at Magellan GP, LLC, P.O. Box 22186, Tulsa, Oklahoma 74121.

2. Respondent Shell Oil Company is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 910 Louisiana Street, Houston, Texas 77002.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

## **ORDER**

### **I.**

**IT IS ORDERED** that, as used in this Order to Hold Separate and Maintain Assets, the following definitions shall apply:

- A. “Magellan” means Magellan Midstream Partners, L.P., its partners, directors, officers, employees, agents, representatives, predecessors, successors, and assigns (including but not limited to Magellan GP, LLC); its joint ventures, subsidiaries,

- D. “Acquisition” means the proposed acquisition by Magellan of certain refined petroleum assets from Shell pursuant to a Purchase and Sale Agreement dated June 23, 2004, including but not limited to the Oklahoma City Terminal.
- E. “Closing Date” means the date on which Magellan (or a trustee) and an Acquirer close on a transaction to divest the Oklahoma City Terminal as required by Paragraph II. of the Decision and Order in this matter.
- F. “Commission” means the Federal Trade Commission.
- G. “Confidential Business Information” means all information that is not in the public domain, including but not limited to information relating to marketing, transportation, terminaling, distribution, plans, costs, pricing, supply, sales, or sales support.
- H. “Decision and Order” means:
1. until the issuance and service of a final Decision and Order by the Commission, the proposed Decision and Order contained in the Consent Agreement in this matter; and
  2. following the issuance and service of a final Decision and Order by the Commission, the final Decision and Order issued by the Commission.
- I. “Held Separate Business” means the Oklahoma City Terminal and all Held Separate Employees.
- J. “Held Separate Employees” means all full-time, part-time, or contract employees whose duties relate primarily to the Oklahoma City Terminal.
- K. “Hold Separate Period” means the time period during which the Hold Separate is in effect, which shall begin as of the date the Acquisition occurs and terminate pursuant to Paragraph VI. hereof.
- L. “Hold Separate Trustee” means the Person appointed to act as the Hold Separate Trustee pursuant to Paragraph II. hereof.
- M. “Oklahoma City Metropolitan Area” means the Oklahoma City Metropolitan Statistical Area as defined by the U.S. Office of Management and Budget as of the date Respondents execute the Consent Agreement in this matter.



trucks, rail, or transport trailers, and the re-delivery of refined petroleum products from storage tanks into tank trucks, rail cars, transport trailers, or pipelines.

## **II.**

### **IT IS FURTHER ORDERED that:**

- A. Until the Closing Date, Respondents shall take such actions as are necessary to maintain the viability, marketability, and competitiveness of the Held Separate Business, and shall prevent the destruction, removal, wasting, deterioration, sale, disposition, transfer, or impairment of the Held Separate Business or assets related thereto, except for ordinary wear and tear.
- B. During the Hold Separate Period, Respondent Magellan shall:
  - 1. hold the Held Separate Business separate, apart, and independent as required by this Hold Separate, and vest the Held Separate Business with all rights, powers, and authority necessary to conduct its business;
  - 2. maintain all insurance necessary for the Held Separate Business, including but not limited to general and product liability insurance and property and casualty insurance; and
  - 3. not exercise direction or control over, or influence directly or indirectly, the Held Separate Business or any of its operations, or the Hold Separate Trustee, except to the extent that Respondent Magellan must exercise direction and control over the Held Separate Business as is necessary to assure compliance with this Hold Separate, the Decision and Order, and

Business and shall manage the Held Separate Business independently from Respondent Magellan's other operations.

- b. Respondent Shell shall continue to provide or contract to provide, or offer to provide or contract to provide, the same services to the Held Separate Business as are being provided to the Held Separate Business by Respondent Shell or other persons as of the date the Consent Agreement is signed by Respondents.
- c. The services that Respondent Shell shall offer the Held Separate Business shall include, but shall not be limited to, the following:
  - (1) federal and state regulatory policy development and compliance;
  - (2) human resources and administrative services, including but not limited to procurement and administration of employee benefits;
  - (3) environmental, health and safety services, including but not limited to services to develop policies and insure compliance with federal and state regulations and corporate policies;
  - (4) financial accounting services;
  - (5) preparation of tax returns;
  - (6) audit services;
  - (7) technical support and engineering services;
  - (8) information technology support services;
  - (9) processing of accounts payable and accounts receivable;
  - (10) billing and collection services;
  - (11) payroll processing;
  - (12) security clearance services;
  - (13) compliance with import and export controls; and



for monitoring (i) the management of the Held Separate Business by Shell, (ii) the maintenance of the independence of the Held Separate Business, and (iii) Respondents' compliance with their obligations pursuant to this Hold Separate and the Decision and Order.

- d. Subject to all applicable laws and regulations, the Hold Separate Trustee shall have full and complete access to all personnel, books, records, documents and facilities of the Held Separate Business and to any other relevant information as the Hold Separate Trustee may reasonably request, including but not limited to all documents and records kept by Respondents in the ordinary course of business that relate to the Held Separate Business. Respondents shall develop such financial or other information as the Hold Separate Trustee may reasonably request and shall cooperate with the Hold Separate Trustee. Respondents shall take no action to interfere with or impede the Hold Separate Trustee's ability to monitor Respondents' compliance with this Hold Separate and the Decision and Order or otherwise to perform his/her duties and responsibilities consistent with the terms of this Hold Separate.
- e. The Hold Separate Trustee shall have the authority to employ, at Magellan's cost and expense, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Trustee's duties and responsibilities.
- f. The Hold Separate Trustee shall serve, without bond or other security, at Magellan's cost and expense, on reasonable and customary terms commensurate with the Hold Separate Trustee's experience and responsibilities.
- g. Respondent Magellan shall indemnify the Hold Separate Trustee and hold him or her harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate 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 misfeasance, gross negligence, willful or wanton acts or omissions, or bad faith by the Hold Separate Trustee, or the respective agents.



- h. The Commission may require the Hold Separate Trustee to sign an appropriate confidentiality agreement relating to materials and information received from the Commission in connection with performance of the Hold Separate Trustee's duties.
  - i. Respondents may require the Hold Separate Trustee to sign an appropriate confidentiality agreement prohibiting the disclosure of any Confidential Business Information gained as a result of his/her role as Hold Separate Trustee to anyone other than the Commission.
  - j. The Hold Separate Trustee shall act in a fiduciary capacity for the benefit of the Commission.
  - k. Thirty (30) days after the Hold Separate becomes final, and every thirty (30) days thereafter until the Hold Separate terminates, the Hold Separate Trustee shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate.
  - l. If the Hold Separate Trustee ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate, the Commission may appoint a substitute Hold Separate Trustee consistent with the terms of this paragraph, subject to the consent of Respondent Magellan, which consent shall not be unreasonably withheld. If Respondent Magellan has not opposed, in writing, including the reasons for opposing, the selection of the substitute Hold Separate Trustee within five (5) days after notice by the staff of the Commission to Magellan of the identity of any substitute Hold Separate Trustee, Magellan shall be deemed to have consented to the selection of the proposed substitute trustee. Magellan and the substitute Hold Separate Trustee shall execute a trustee agreement, subject to the approval of the Commission, consistent with this paragraph.
3. Respondents shall staff the Held Separate Business with sufficient employees to maintain the viability, marketability, and competitiveness of the Held Separate Business, including but not limited to the Held Separate Employees. To the extent that any employees of the Held Separate Business leave or have left the Held Separate Business prior to the Closing Date, Respondent Shell – in consultation with the Hold Separate Trustee – may replace departing or departed employees with Persons who have

similar experience and expertise or determine not to replace such departing or departed employees.

4. Respondents shall:
- a. not later than forty-five (45) days before the Closing Date, (i) provide to the Acquirer a list of all Held Separate Employees; (ii) allow the Acquirer to interview any Held Separate Employee; and (iii) in compliance with all laws, allow the Acquirer to inspect the personnel files and other documentation relating to such Held Separate Employees;
  - b. not later than thirty (30) days before the Closing Date, provide an opportunity for the Acquirer, (i) to meet personally, and outside the presence or hearing of any employee or agent of Respondents, with any one or more of the Held Separate Employees; and (ii) to make offers of employment to any one or more of the Held Separate Employees;
  - c. not directly or indirectly interfere with the Acquirer's offer of employment to any one or more of the Held Separate Employees, not directly or indirectly attempt to persuade any one or more of the Held Separate Employees to decline any offer of employment from the Acquirer, and not offer any incentive to any Held Separate Employee to decline employment with the Acquirer;
  - d. irrevocably waive any legal or equitable right to deter any Held Separate Employee from accepting employment with the Acquirer, including but not limited to waiving any non-compete or confidentiality provisions of employment or other contracts with

Held Separate Employees

the Acquirer to terminate their employment relationship with the Acquirer; *provided, however*, a violation of this provision will not occur if: (1) the individual's employment has been terminated by the Acquirer, (2) Respondents advertise for employees in newspapers, trade publications, or other media not targeted specifically at the employees, or (3) Respondents hire employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this paragraph.

6. For a period of six (6) months from the Closing Date, Respondents shall not employ or make offers of employment to any Held Separate Employee who has accepted offers of employment with the Acquirer unless any such individual's employment has been terminated by the Acquirer.
7. Except for Held Separate Employees and employees involved in the provision of services to the Held Separate Business pursuant to Paragraph II.C.1.c., and except to the extent provided in Paragraph II.A., Respondents shall not permit any other of its employees, officers, or directors to be involved in the operations of the Held Separate Business.
8. Respondents shall cause the Hold Separate Trustee and each employee of the Held Separate Business having access to Confidential Business Information to submit to the Commission a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Hold Separate. These individuals must retain and maintain all Confidential Business Information relating to the Held Separate Business on a confidential basis and, except as is permitted by this Hold Separate, such individuals shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing, directly or indirectly, any such information to or with any other Person whose

10. Magellan's employees (excluding the Held Separate Employees and employees involved in the provision of services to the Held Separate Business pursuant to Paragraph II.C.1.c.) shall not receive, have access to, or use or continue to use any Confidential Business Information of the Held Separate Business except:
  - a. as required by law; and
  - b. to the extent that necessary information is exchanged:
    - (1) in the course of consummating the Acquisition;
    - (2) in negotiating agreements to divest assets pursuant to the Consent Agreement and engaging in related due diligence;
    - (3) in complying with the Hold Separate or the Consent Agreement;
    - (4) in overseeing compliance with policies and standards concerning the safety, health and environmental aspects of the operations of the Held Separate Business and the integrity of the financial controls of the Held Separate Business;
    - (5) in defending legal claims, investigations or enforcement actions threatened or brought against or related to the Held Separate Business; or
    - (6) in obtaining legal advice.

Nor shall the Held Separate Employees receive, have access to, or use or continue to use, any Confidential Business Information about Respondent Magellan and relating to Respondent Magellan's businesses, except such information as is necessary to maintain and operate the Held Separate Business. Magellan may receive aggregate financial and operational information relating to the Held Separate Business only to the extent necessary to allow Magellan to prepare consolidated financial reports, tax returns, reports required by securities laws, and personnel reports. Any such information that is obtained pursuant to this paragraph shall be used only for the purposes set forth in this paragraph.

11. Respondents and the Held Separate Business shall jointly implement, and at all times during the Hold Separate Period maintain in operation, a

system, as approved by the Hold Separate Trustee, of access and data controls to prevent unauthorized access to or dissemination of Confidential Business Information of the Held Separate Business.

12. During the Hold Separate Period, Respondent Magellan shall provide the Held Separate Business with sufficient financial resources:
  - a. as are appropriate in the judgment of Respondent Shell, subject to the approval of the Hold Separate Trustee, to operate the Held Separate Business at no less than current rates of operation;
  - b. to perform all reasonable maintenance to, and replacements of, the assets of the Held Separate Business;
  - c. to carry on existing and planned capital projects and business plans for the Held Separate Business; and
  - d. to maintain the viability, marketability, and competitiveness of the Held Separate Business.

Such financial resources to be provided to the Held Separate Business shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; *provided, however*, that, consistent with the purposes of the Decision and Order, the Hold Separate Trustee may substitute any capital or research and development project for another of the same cost.

- D. Notwithstanding the requirements of Paragraph II.C.1. above, if the Commission appoints a trustee to divest the Oklahoma City Terminal pursuant to Paragraph III. of the Decision and Order, Shell may terminate the management agreement required by Paragraph II.C.1. of this Order. If Shell determines to terminate the management agreement required by paragraph II.C.1. above:
  1. Shell shall give ninety (90) days' prior written notice to the Commission of its intention to terminate the management agreement.
  2. Magellan shall, prior to Shell's termination of the management agreement, enter into a substitute management agreement with a substitute manager, subject to the prior approval of the Hold Separate Trustee, whereby such substitute manager will manage the Held Separate Business for the duration of the Hold Separate Period, and Magellan shall transfer to the

substitute manager all rights, powers, and authorities necessary to manage and maintain the Held Separate Business.

- a. The substitute manager shall report directly and exclusively to the Hold Separate Trustee relating to the operation of the Held Separate Business and shall manage the Held Separate Business independently from Respondent Magellan's other operations.
- b. Magellan shall provide or contract to provide, or offer to provide or contract to provide, the same services to the Held Separate Business as are being provided to the Held Separate Business by Respondent Shell or other persons as of the date the Consent Agreement is signed by Respondents.
- c. The services that Magellan shall offer the Held Separate Business shall include, but shall not be limited to, the following:
  - (1) federal and state regulatory policy development and compliance;
  - (2) human resources and administrative services, including but not limited to procurement and administration of employee benefits;
  - (3) environmental, health and safety services, including but not limited to services to develop policies and insure compliance with federal and state regulations and corporate policies;
  - (4) financial accounting services;
  - (5) preparation of tax returns;
  - (6) audit services;
  - (7) technical support and engineering services;
  - (8) information technology support services;
  - (9) processing of accounts payable and accounts receivable;
  - (10) billing and collection services;

- (11) payroll processing;
- (12) security clearance services;
- (13) compliance with import and export controls; and
- (14) legal services.

*Provided, however,* Respondent Magellan's personnel providing such services must retain and maintain all Confidential Business Information of the Held Separate Business on a confidential basis, and, except as permitted by this Hold Separate, such Persons shall be prohibited from using such Confidential Business Information in connection with their responsibilities to Magellan, and from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other Person employed by Magellan or whose employment relates to any of Magellan's businesses, other than the Held Separate Business. Such

**III.**

**IT IS FURTHER ORDERED**



**VI.**

**IT IS FURTHER ORDERED** that this Hold Separate shall terminate on the earlier of:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The day after the divestiture of the Oklahoma City Terminal, as described in and required by the Decision and Order, is completed.

By the Commission, Chairman Majoras recused.

Donald S. Clark  
Secretary

SEAL

ISSUED: September 28, 2004