B. Propane Storage and Terminaling Services

Propane is used as a heating fuel during the winter months in much of the Southeastern United States. Propane marketers generally purchase propane from the major supply sources in Texas and Louisiana and ship that propane eastward over the Dixie Pipeline System (''Dixie''), the only common carrier propane pipeline in the Southeast. Because of certain physical and capacity constraints on Dixie west of Baton Rouge, Louisiana, the segments of Dixie west of Baton Rouge are often full (capacity constrained) during the winter months. Therefore, propane shippers along Dixie often must purchase propane during the spring and summer (non-peak) seasons, ship it eastward on Dixie and store the propane at locations east of Baton Rouge, such as Hattiesburg, Mississippi (''Hattiesburg''). This enables these propane marketers to access Dixie's unconstrained capacity during the winter months to meet the peak demand of their customers for heating fuel.

Hattiesburg is the site of massive, naturally occurring underground salt domes, which when leached out, provide economic storage capacity for propane. The salt domes and associated terminaling facilities located at Hattiesburg receive propane from Dixie during the non-peak months and then re-inject propane into Dixie during the winter heating season. Dixie shippers and other propane marketers pay significant fees to the owners of propane storage facilities for the right to store propane at Hattiesburg and inject it into Dixie. Enterprise and GulfTerra are direct and substantial competitors in providing propane storage and terminaling services in Hattiesburg. Enterprise currently owns a 50 percent undivided interest in a propane storage and terminaling facility located in Hattiesburg (with Dynegy Midstream Services, L.P. owning the other 50 percent interest). Enterprise also owns a 100 percent interest in a second propane storage facility located in nearby Petal, Mississippi. GulfTerra currently owns and operates a wholly owned propane storage and terminaling facility in Hattiesburg.

The market for propane storage and terminaling services in Hattiesburg is highly concentrated, with Enterprise and GulfTerra currently controlling approximately 53 percent of propane storage capacity in that market. The proposed merger would leave Respondents with an ownership interest in three of the four propane storage and terminaling facilities located in Hattiesburg and substantially increase concentration in an already highly concentrated market. Entry into the market for propane storage and terminaling services requires substantial sunk costs and such entry is highly unlikely in response to a post-merger increase in propane storage and terminaling fees at Hattiesburg. By eliminating the actual, direct, and substantial competition that exists between Enterprise and GulfTerra in the relevant market, the proposed merger would be substantially likely to cause significant competitive harm to propane marketers who would likely incur increased prices and fees for propane storage and terminaling services in Hattiesburg. These increased costs would likely be passed on to propane customers supplied from Hattiesburg.

The proposed Consent Order remedies the alleged anticompetitive effect of this merger in the propane storage and terminaling services market in Hattiesburg by requiring that Respondents divest either (1) their undivided 50 percent interest in the facility Enterprise co-owns with Dynegy, (the ''Enterprise Propane Storage Interest,'') or (2) their wholly owned Hattiesburg propane storage facility (the ''Enterprise Petal LPG Storage Facility''). If Respondents fail to divest either of these competing propane storage and terminaling assets on or before December 31, 2004, the Commission may appoint a Divestiture Trustee to divest either of the above referenced assets. The December 31, 2004 deadline for the divestiture of the specified propane storage and terminaling assets of Respondents at Hattiesburg is designed to assure that a new owner of the divested assets will be in place prior to the 2005–06 propane storage contract season, which begins in April 2005.

The Commission believes that divestiture by Respondents of their partially owned assets in each market to a Commission-approved purchaser would restore competition in each of the two markets potentially affected by the merger. However, as certain third parties have contractual rights that may impact on Respondents' ability to transfer such partially owned assets, or that may affect or delay the timing of any such transfer, the proposed Consent Order gives Respondents the option of divesting either their partially owned assets or their wholly owned assets in each relevant market by the dates specified in the proposed Consent Order.

III. The Hold Separate Order

Because the Consent Agreement would allow the merger to proceed prior to the completion of each of the required divestitures, the Consent Agreement contains a Hold Separate Order covering the Starfish Interest and the Enterprise Propane Storage Interest. The purpose of the Hold Separate Order is to ensure that the Starfish Interest and the Enterprise Storage Propane Interest operate independently from Enterprise and GulfTerra pending the divestitures required under the proposed Consent Order. The Hold Separate Order is also intended to ensure the continuing viability, marketability, and competitiveness of these partially owned assets until they are divested.

The Commission has appointed Richard J. Black as a monitor to oversee the management and operations of the Starfish Interest and the Enterprise Propane Storage Interest until the divestitures required by the Consent Order are complete. Mr. Black has more than 15 years of relevant experience in the midstream energy services business, including experience in pipeline transportation of natural gas in the deepwater regions of the Gulf of Mexico and in the marketing and sale of natural gas liquids.

To assure that the Commission remains informed about the status of the required divestitures, the proposed Consent Order requires Respondents to file reports with the Commission periodically until the divestitures required under the Consent Order are accomplished. The Hold Separate Order will remain in effect until the Respondents or the Divestiture Trustee successfully divests the assets required to be divested under the Consent Order.

The purpose of this analysis is to facilitate public comment on the Consent Agreement. This analysis is not intended to constitute an official interpretation of the Consent Agreement, nor is it intended to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–22697 Filed 10–7–04; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 041 0164]

Magellan Midstream Partners, L.P., et al.; 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 or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 1, 2004.

ADDRESSES: Comments should refer to ''Magellan Midstream Partners, L.P., *et al.*, File No. 0410164,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the **SUPPLEMENTARY INFORMATION** section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *consentagreement@ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Dennis Johnson, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2712.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order 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 September 29, 2004), on the World Wide Web, at *http://www.ftc.gov/os/2004/09/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before November 1, 2004. Comments should refer to ''Magellan Midstream Partners, L.P., *et al.*, File No. 041 0164,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Analysis of Proposed Agreement Containing Consent Orders to Aid Public Comment

The Federal Trade Commission, subject to its final approval, has accepted for public comment an Agreement Containing Consent Orders (''Agreement'') with Magellan Midstream Partners, L.P. (''Magellan'') and Shell Oil Company (''Shell'') to resolve the anticompetitive effects alleged in the Complaint issued by the Commission concerning Magellan's acquisition of certain pipeline and terminal assets from Shell.

By purchase and sale agreement dated June 23, 2004, Magellan plans to acquire a package of Midwest pipelines and terminals from Shell. Included in the assets being acquired is a refined petroleum products terminal in Oklahoma City, Oklahoma, that supplies light petroleum products, including gasoline and diesel fuel. Magellan already owns and operates another refined petroleum products terminal in Oklahoma City, and the proposed acquisition would substantially increase concentration in the terminaling of light petroleum products in the Oklahoma City Metropolitan Area. The Agreement requires that Magellan divest the terminal acquired from Shell to a Commission-approved buyer.

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

I. The Parties

Magellan is a publicly traded limited partnership that is owned 64% by public shareholders, and 36% by Magellan Midstream Holdings, L.P. (which in turn is owned 50% by Madison Dearborn Partners and 50% by Carlyle Group/Riverstone Holdings). Magellan is primarily engaged in the storage, transportation, and distribution of refined petroleum products and ammonia. Its assets include a petroleum products pipeline and terminal system that serves the Mid-continent region of the United States, marine terminals along the Gulf Coast and near the New York Harbor, inland petroleum products terminals located principally in the southeastern United States, and a pipeline system for ammonia in the Mid-continent region. For the year ending December 31, 2003, Magellan had total annual revenues of approximately $485 million and total assets of nearly $1.2 billion.

Shell Oil Company is the United States operating entity for the Royal Dutch/Shell Group of companies, which ultimately is owned 60% by Royal Dutch Petroleum Company of the Netherlands and 40% by The Shell Transport and Trading Company, p.l.c. of the United Kingdom (collectively referred to as ''Shell''). Shell is one of the largest integrated petroleum companies in the world, and is engaged in virtually all aspects of the energy business, including exploration, production, refining, transportation, distribution, and marketing. For the year ending December 31, 2003, Shell reported total gross revenues of more than $268 billion and total assets of approximately $124 billion.

II. The Commission's Complaint

The Commission's Complaint charges that Magellan's agreement to acquire the Oklahoma City refined products terminal from Shell violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and would, if consummated, 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.

The Complaint alleges that a relevant line of commerce in which to evaluate the effects of this acquisition is the terminaling of gasoline, diesel fuel, and other light petroleum products. Refined petroleum product terminals are specialized facilities that provide temporary storage for gasoline, diesel fuel, and other light petroleum products. Depending on their location, terminals receive deliveries from pipelines or marine vessels, store the products in large tanks, and redeliver them into tank trucks for ultimate delivery to retail gasoline stations or other buyers. There are no substitutes for petroleum terminals for providing such terminaling services.

The Complaint alleges that a relevant section of the country in which to evaluate the effects of this acquisition is the Oklahoma City Metropolitan Area. Buyers of gasoline, diesel fuel, and other light petroleum products in the Oklahoma City Metropolitan Area, such as gasoline marketers and others, have no effective alternative to terminals located within the Oklahoma City Metropolitan Area. Because of costs and delivery logistics, terminals located outside the Oklahoma City Metropolitan Area are too far away to supply buyers in that area.

The Complaint charges that Magellan and Shell are actual and potential competitors in the supply of terminaling services for gasoline, diesel fuel, and other light petroleum products in the Oklahoma City Metropolitan Area. Magellan and Shell have two of only a very limited number of terminals that can serve the Oklahoma City area. According to the Complaint, the market for terminaling services in the Oklahoma City Metropolitan Area is highly concentrated and would become significantly more highly concentrated as a result of this acquisition. Even if a terminal located 40 miles outside of Oklahoma City is included, the pre-merger Herfindahl-Hirschman Index is more than 3,100, and would increase by more than 1,200 points to a level exceeding 4,300. The Complaint further maintains that entry into the relevant market is not likely and if entry did occur, it would be neither timely nor sufficient to prevent or mitigate the anticompetitive effects of the acquisition.

The Complaint further charges that the proposed acquisition, if consummated, may substantially lessen competition in the supply of terminaling services for gasoline, diesel fuel, and other light petroleum products in the Oklahoma City Metropolitan Area. Specifically, the acquisition would (1) eliminate direct competition between Magellan and Shell in the supply of terminaling services in the Oklahoma City Metropolitan Area, and (2) increase the likelihood of, or facilitate, collusion or coordinated interaction in the relevant market, each of which increases the likelihood that the prices of gasoline, diesel fuel, and other light petroleum products will increase in the relevant market.

III. Terms of the Decision and Order and Order to Hold Separate and Maintain Assets

The Decision and Order (''Proposed Order'') effectively remedies the acquisition's alleged anticompetitive effects by requiring Magellan to divest the overlapping Shell terminal assets. The Shell Oklahoma City terminal is to be divested to a Commission-approved buyer and in a manner approved by the Commission.

The Proposed Order requires that Magellan divest the Shell terminal, at no minimum price, within six months after Magellan signs the Agreement, to a buyer approved by the Commission. The Proposed Order includes several additional provisions to ensure the interim viability of the subject terminal, to ensure that the acquirer has an opportunity to enter into an agreement with Shell for the Shell volumes at the terminal, and to remedy the lessening of competition resulting from the proposed acquisition. In particular, the Proposed Order requires Shell to utilize the subject terminal for all of its branded and unbranded refined petroleum product requirements in the Oklahoma City Metropolitan Area until three months after divestiture of the terminal. It further prohibits Shell and Magellan until three months after divestiture from entering into or maintaining, or attempting to enter into or maintain, any agreement or understanding relating to the movement or transfer of Shell's refined petroleum products volume from the subject terminal to any other terminaling facility owned, leased, or operated by Magellan. The order further prohibits Shell and Magellan from discussing or negotiating with each other any potential agreement or understanding relating to such movement or transfer.

The Proposed Order also provides that should Magellan be unable to satisfy all conditions necessary to divest any intangible asset, Magellan will: (1) with respect to permits, licenses or other rights granted by governmental authorities (other than patents), provide such assistance as the acquirer may reasonably request in the acquirer's efforts to obtain comparable permits, licenses or rights, and (2) with respect to other intangible assets (including patents and contractual rights), substitute equivalent assets or arrangements, subject to the prior approval of the Commission. A substituted asset or arrangement will not be deemed to be equivalent unless it enables the terminal to perform the same function at the same or less cost.

The Proposed Order further provides that if the subject terminal has not been divested within the allotted time, a trustee may be appointed to sell the terminal to a buyer approved by the Commission.

Other paragraphs of the Proposed Order contain provisions regarding compliance reports, notification of changes that may affect compliance, and access to materials that may be necessary to monitor compliance.

The Order to Hold Separate and Maintain Assets (''Hold Separate Order'') contains provisions designed to ensure that the Oklahoma City terminal at issue will be maintained separately and apart from Magellan pending divestiture.

The Hold Separate Order provides that Magellan will hold the terminal assets separate from its other businesses and continue to maintain the terminal assets during the period prior to divestiture. Paragraph II also provides that pending divestiture Magellan will contract with Shell for Shell to manage the terminal independently from Magellan's other operations. Shell will report directly and exclusively to a hold separate trustee with respect to the operation of the terminal. Shell is required to keep confidential business information related to the terminal from Magellan employees, except as permitted by the Hold Separate Order.

Other paragraphs of the Hold Separate Order contain provisions regarding compliance reports, notification of changes that may affect compliance, and access to materials that may be necessary to monitor compliance.

The Hold Separate Order terminates on the earlier of two dates, either (1) three business days after the Commission withdraws its acceptance of the consent agreement, or (2) the day after the divestiture of the Oklahoma City terminal, as described in and required by the Proposed Order, is completed.

IV. Opportunity for Public Comment

By accepting the Agreement, subject to final approval, the Commission anticipates that the competitive problems alleged in the Complaint will be resolved. The purpose of this analysis is to invite public comment on the Agreement, including the proposed divestiture, to aid the Commission in its determination of whether it should make the Agreement final. This analysis is not intended to constitute an official interpretation of the Agreement or modify the terms of the Agreement in any way.

By direction of the Commission, Chairman Majoras recused.

Donald S. Clark,

Secretary.

[FR Doc. 04–22698 Filed 10–7–04; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 031 0135]

White Sands Health Care System, L.L.C., et al.; 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 or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 28, 2004.

ADDRESSES: Comments should refer to ''White Sands Health Care System, L.L.C., et al., File No. 031 0135,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the **SUPPLEMENTARY INFORMATION** section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *consentagreement@ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Steve Vieux, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2306.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order 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 September 28, 2004), on the World Wide Web, at *http://www.ftc.gov/os/2004/09/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before October 28, 2004. Comments should refer to ''White Sands Health Care System, L.L.C., et al., File No. 031 0135,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed Consent Order with the White Sands Health Care System, L.L.C., Alamogordo Physicians' Cooperative, Inc., Dacite, Inc., and James R. Laurenza. The agreement settles charges that these

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[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).