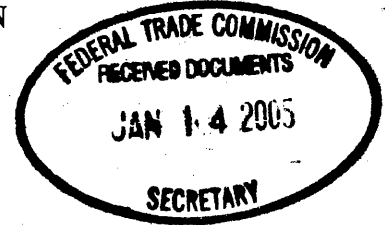


UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



PUBLIC RECORD VERSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour
Jon Leibowitz

In the Matter of)	
)	
MAGELLAN MIDSTREAM)	Docket No. C-4122
PARTNERS, L.P.,)	File No. 041-0164
a limited partnership,)	
)	
and)	
)	
SHELL OIL COMPANY,)	
a corporation.)	
)	

PETITION OF MAGELLAN MIDSTREAM PARTNERS, L.P.
FOR APPROVAL OF PROPOSED DIVESTITURE

Pursuant to Section 2.41(f) of the Federal Trade Commission ("Commission" or "FTC") Rules of Practice and Procedure, 16 C.F.R. § 2.41(f) (2004), and Paragraph II.A of the Decision and Order (the "Decision and Order") contained in the Agreement Containing Consent Orders approved by the Commission in the above-captioned matter, Magellan Midstream Partners, L.P. ("Magellan") hereby files this Petition for Approval of Proposed Divestiture (the "Petition")

requesting the Commission's approval of the divestiture of the former Shell Oil Company ("Shell") Oklahoma City Terminal¹ to SemFuel, L.P. ("SemFuel").

I. INTRODUCTION

On September 16, 2004, Magellan and the Commission entered into an Agreement Containing Consent Orders, including a Decision and Order and an Order to Hold Separate and Maintain Assets (collectively, the "Consent Agreement"). On September 29, 2004, the Commission accepted the Consent Agreement for public comment. On October 1, 2004, pursuant to a Purchase and Sale Agreement between Magellan and Shell dated June 23, 2004, Magellan completed its acquisition from Shell of certain refined petroleum products pipelines, tankage, and terminal assets in the Midwest United States (the "Shell Assets"), including a refined petroleum product terminal that serves the Oklahoma City, Oklahoma Metropolitan Area. On November 26, 2004, the Commission granted final approval of the Consent Agreement.

Paragraph IV.15 of the Commission's Complaint alleges that the acquisition by Magellan of the Shell Assets will substantially lessen competition in the supply of terminaling services for gasoline, diesel fuel, and other light petroleum products in the Oklahoma City Metropolitan Area. Paragraph II.A of the Decision and Order requires Magellan to divest the former Shell Oklahoma City Terminal within six months from the date Magellan executed the Consent Agreement. Paragraph II.B of the Decision and Order requires prior Commission approval of such divestiture.

¹ Also referred to herein as the "Terminal" or the "Shell Terminal." All capitalized terms not defined herein have the meanings assigned to them in the Consent Agreement approved by the Federal Trade Commission on November 26, 2004.

PUBLIC RECORD VERSION

On December 16, 2004, Magellan (through its Magellan Pipeline Company, L.P. subsidiary) and SemFuel executed an Asset Purchase and Sale Agreement (including attachments, exhibits, and schedules) (collectively, the "Agreement") for the sale of the Oklahoma City Terminal. A copy of the Agreement, which was provided to FTC Staff on December 17, 2004, is attached as Confidential Exhibit 1.²

Magellan desires to complete the proposed divestiture of the Oklahoma City Terminal as soon as possible following Commission approval. Prompt consummation will further the purposes of the Decision and Order and is in the interests of the Commission, the public, SemFuel, and Magellan because it will allow SemFuel to move forward with its business plans for the competitive operation of the divested business, and it will allow Magellan to fulfill its obligations under the Consent Agreement. Magellan accordingly requests that the Commission promptly commence the period of public comment pursuant to Section 2.41(f)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(2) (2004), limit the public comment period to the customary thirty-day period, and grant this Petition by approving the divestiture of the Oklahoma City Terminal to SemFuel pursuant to the proposed agreements as soon as practicable after the close of the public comment period.

This Petition describes the principal terms of the Agreement by which Magellan proposes to divest the Oklahoma City Terminal to SemFuel and explains why the Agreement satisfies the objectives of the Consent Agreement by establishing a strong and effective competitor in the

² Magellan and SemFuel amended the Agreement on December 20, 2004, and January 6, 2005; copies of such amendments, which previously were provided to FTC Staff, are attached as Confidential Exhibit 2 and Confidential Exhibit 3, respectively.

market for terminaling services for gasoline, diesel fuel, and other light petroleum products in the Oklahoma City Metropolitan Area.

II. REQUEST FOR CONFIDENTIAL TREATMENT

Because this Petition and its attachments contain confidential and competitively sensitive business information relating to the divestiture of the Oklahoma City Terminal, Magellan has redacted such confidential information from the public version of this Petition and its attachments.³ The public disclosure of this information would prejudice Magellan and SemFuel, cause harm to the ongoing competitiveness of the Oklahoma City Terminal, and impair Magellan's ability to comply with its obligations under the Consent Agreement.

Pursuant to Sections 2.41(f)(4) and 4.9(c) of the Commission's Rules of Practice and Procedure, 16 C.F.R. §§ 2.41(f)(4), 4.9(c) (2004), Magellan requests, on its own behalf and on behalf of SemFuel, that the confidential version of this Petition and its attachments and the information contained therein be accorded confidential treatment under 5 U.S.C. § 552 (2000) and Section 4.10(a)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 4.10(a)(2) (2004). The confidential version of this Petition is also exempt from disclosure under Exemptions 4, 7(A), 7(B), and 7(C) of the Freedom of Information Act, 5 U.S.C. §§ 552(b)(4), (b)(7)(A)-(C), and the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a(h) (2000).

³ For the convenience of maintaining the public record, Magellan is submitting two versions of this Petition: a confidential version that contains confidential and proprietary information and documents necessary for the Commission to assess this Petition, and a redacted version that excludes confidential and proprietary information for placement on the public record.

III. THE PROPOSED ACQUIRER

Paragraph II of the Decision and Order requires Magellan to divest the former Shell Oklahoma City Terminal within six months from the date Magellan executed the Consent Agreement to an Acquirer that receives the prior approval of the Commission. Pursuant to this requirement, Magellan has diligently sought a buyer that would be acceptable to the Commission.

According to the 2003 “Statement of the Federal Trade Commission’s Bureau of Competition on Negotiating Merger Remedies” (the “Merger Remedies Statement”), to be an acceptable buyer, a divestiture buyer must be financially and competitively viable. The buyer must be able—with the package of assets to be divested—to maintain or restore competition in the relevant market. Key factors to consider in this analysis are whether the proposed buyer has (1) the financial capacity and incentives to acquire and operate the package of assets, and (2) the competitive ability to maintain or restore competition in the marketplace.

As discussed in more detail below, SemFuel has both the financial capacity and the incentives to acquire and operate the Oklahoma City Terminal and the competitive ability to maintain or restore competition in the marketplace. SemFuel’s satisfaction of these key factors demonstrates that it is an acceptable buyer suitable for approval by the Commission.

A. SemFuel Has The Financial Ability To Successfully Complete The Transaction And Invest In The Oklahoma City Terminal On A Going-Forward Basis.

SemFuel has the financial capacity, resources, and incentives to acquire the former Shell Oklahoma City Terminal and ensure its continued operation as a viable, ongoing business.

SemFuel⁴ is a Texas limited partnership owned 99.5% by SemGroup, L.P. (the limited partner of SemFuel) and 0.5% by SemOperating G.P., L.L.C. (the general partner of SemFuel), which in turn is wholly owned by SemGroup, L.P. (a private holding company for various operating affiliates, including SemFuel). SemGroup, L.P. owns assets in excess of \$1 billion and has annual revenues in excess of \$8 billion. SemFuel's current financial statements are appended to SemFuel's business plan for the Oklahoma City Terminal, which was submitted by counsel for SemFuel to FTC Staff on December 16, 2004. As these statements demonstrate, SemFuel's current financial condition provides great flexibility in making additional investments in the business, as such investments may become necessary or propitious in the future.

B. As An Established, Integrated, And Experienced Supplier Of Light Petroleum Products, SemFuel Has The Necessary Industry Experience, Customer Relationships, And Knowledge Of The Divestiture Assets To Operate The Business Successfully.

The Bureau of Competition's 1999 "Study of the Commission's Divestiture Process" (the "Divestiture Study") discusses several factors that help to identify an acceptable divestiture buyer. Specifically, the Divestiture Study cites the buyer's experience in the relevant industry and knowledge of the assets to be purchased as key to a successful divestiture.

SemFuel is an established competitor in the petroleum industry. Based in Denver, Colorado, SemFuel is a North American supplier and wholesale distributor of refined petroleum products. The company's vast network predominantly serves the Gulf Coast and Mid-Continent regions of the United States. SemFuel's supply and distribution efforts fill both spot sales and

⁴ SemFuel formerly operated as Seminole Refined Products, Inc. SemFuel's principal corporate offices are located at 8101 East Prentice Avenue, Suite 704, Greenwood Village, CO 80111. SemFuel's officers include: Thomas L. Kivisto, Chief Executive Officer; Darrell R. Weakland, President and Chief Operating Officer; Kevin L. Foxx, Executive Vice President; and Gregory C. Wallace, Vice President, Chief Financial Officer, and Secretary. SemFuel does not have any directors.

contract volumes. As a result, SemFuel markets and supplies refined petroleum products (primarily gasoline and diesel fuel) to jobbers, wholesalers, and large industrial customers, including refiners, utilities, railroads, and cogeneration plants. In addition, SemFuel sells refined petroleum products by the truckload through various rack facilities (i.e. refined products terminals). Currently, SemFuel markets products daily at fifty-five terminals in eleven states.

SemFuel capitalizes on inefficiencies in the United States petroleum distribution system by utilizing strategically placed inventory, historical pipeline shipping volumes, and both proprietary and third-party terminals and storage facilities. SemFuel's arbitrage strategies include, among other things, backwardation/contango markets and location, time, grade, and volumetric trades. In support of its timing-based arbitrage strategies, SemFuel owns over 900,000 barrels of storage located in Oklahoma at Tulsa and Glenpool, and in Iowa at Des Moines. This storage provides direct access to the Magellan, Explorer, and Kaneb pipeline systems. In addition, SemFuel has leased storage, the capacity of which is several times greater than its owned storage capacity.

C. SemFuel Has The Competitive Ability To Maintain Or Restore Competition In The Marketplace.

The Merger Remedies Statement suggests that the proposed buyer have an "economic incentive to maintain or restore competition in the relevant market." With regard to the former Shell Oklahoma City Terminal, SemFuel's intent is to maximize throughput and profitability by operating the Terminal as a "common carrier" facility that is available to all qualified users. Shell previously operated the Terminal as a "proprietary" facility, serving only Shell and its internal uses. The first step in transitioning the Oklahoma City Terminal from a proprietary to a common-carrier facility will involve SemFuel moving its existing truck rack business from

another Magellan terminal in Oklahoma City to the former Shell Terminal upon closing of the proposed divestiture. Marketing efforts to obtain new business and retain existing business at the terminal will be ongoing.

All of the assets needed to operate the former Shell Terminal competitively will be included as part of the sale to SemFuel. As such, it is not anticipated that this acquisition will generate a need for substantial capital to upgrade the Oklahoma City Terminal in the near term. More than adequate capital is available to SemFuel, if and when any such upgrades or expansions are deemed necessary.

Probably the most important tool used by SemFuel in managing and administering its terminal rack business is a customized software package called PetroMan. Among its many applications, this software provides an automated means of capturing and utilizing the data required to track and account for product movement in great detail. Because SemFuel has been using PetroMan in association with its Houston terminal business for the past four years and because the automation at the former Shell Terminal is very similar to that at SemFuel's Houston terminal, SemFuel anticipates a smooth integration of the Oklahoma City business into its operations, including its PetroMan software.

IV. THE DIVESTITURE AGREEMENT

Although Magellan disagrees with the allegation in the Commission's Complaint that its acquisition of the Shell Assets would lead to a lessening of competition, the acquisition of the former Shell Oklahoma City Terminal by SemFuel complies with and satisfies the purposes of the Consent Agreement. Pursuant to the Merger Remedies Statement, the divestiture agreement must convey all assets required to be divested and must not contain any provisions inconsistent with the terms of the Commission's order or with the remedial objectives of the order. The

PUBLIC RECORD VERSION

Agreement conveys all assets required to be divested and does not contain any provisions inconsistent with the terms of the Consent Agreement or its remedial objectives. As such, the Agreement complies with and satisfies the purposes of the Consent Agreement.

Pursuant to the Agreement, Magellan has agreed to sell and SemFuel has agreed to purchase all rights, title, and interest of Magellan in the Oklahoma City Terminal. As set forth in more detail in the Agreement, the acquired assets and rights include: (1) the refined products terminal located at 951 North Vickie Drive in Oklahoma City, Oklahoma; (2) all fee interests in real property associated with the Terminal; (3) all pipe, four tanks, the truck loading rack, pumps, motors, valves, fittings, miscellaneous equipment and facilities, spares, and buildings located on the real property of and associated with the Terminal; (4) the books and records; and (5) all other personal property used primarily in connection with the Terminal. Pursuant to the Agreement, Magellan will use its reasonable best efforts to cooperate with SemFuel in connection with its responsibility to obtain all necessary permits and all governmental and third-party consents and approvals necessary for transfer of the Terminal.

Exhibit J to the Agreement contains a Terminal Operating and Maintenance Agreement between SemFuel and Magellan (the "Operating Agreement"). It is anticipated that upon acquisition of the former Shell Terminal by SemFuel, the Terminal will be operated by Magellan under this Operating Agreement (just as SemFuel's Houston terminal is serviced by a contract operator). By utilizing Magellan to operate the Terminal, SemFuel will realize significant cost savings compared to direct operation by SemFuel personnel. Additionally, the presence of Magellan as the Terminal operator will allow SemFuel to benefit from the substantial expertise that Magellan has developed through its many years of terminal operations experience.

As provided in the Operating Agreement, Magellan's role will be strictly limited to the physical operation and maintenance of the Terminal. The Operating Agreement also contains provisions prohibiting the coordination or exchange between SemFuel and Magellan of confidential information regarding prices, costs, revenues, profits, volumes, market share, or any other competitively sensitive information relating to the sale or marketing of terminaling services and/or petroleum products at the Terminal or in the Oklahoma City Area.⁵ It should be noted, however, that Magellan does not market refined products in Oklahoma City and, therefore, will not compete with SemFuel in selling refined products. Magellan's current role in the Oklahoma City Area is limited to that of a provider of terminaling services. Competition between SemFuel and Magellan in Oklahoma City, therefore, will occur only with respect to terminaling services, and not with respect to product marketing.

V. CONCLUSION

The proposed divestiture of the former Shell Oklahoma City Terminal to SemFuel will accomplish the purposes of the Consent Agreement and remedy any alleged lessening of competition in the supply of terminaling services for gasoline, diesel fuel, and other light petroleum products in the Oklahoma City Metropolitan Area as a result of Magellan's acquisition of the Shell Assets.

SemFuel will be a strong and effective competitor in the relevant market. The company has the financial ability to successfully complete the transaction and invest in the Oklahoma City Terminal on a going-forward basis. As an established, integrated, and experienced supplier of light petroleum products, SemFuel has the necessary industry experience, customer relationships,

⁵ Such provisions were included in the Operating Agreement at the request of, and following discussions with, the Compliance Division at the FTC.


PUBLIC RECORD VERSION

and knowledge of the divestiture assets to operate the business successfully. Finally, SemFuel has the competitive ability to maintain or restore competition in the marketplace. Accordingly, Magellan respectfully requests that the Commission approve the proposed divestiture and acquirer.

Dated: January 14, 2005

Respectfully submitted,

MAGELLAN MIDSTREAM PARTNERS, L.P.

By: 

Tom D. Smith, Esq.
Gregory P. Luib, Esq.
JONES DAY
51 Louisiana Avenue, NW
Washington, DC 20001-2113

Counsel for Respondent Magellan