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FEDERAL TRADE COMMISSION

[File No. 151 0149]

ArcLight Energy Partners Fund VI, L.P.; 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 methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent orders -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before January 27, 2016.

ADDRESSES: Interested parties may file a comment at https://ftcpublic.commentworks.com/ftc/arclightgulfoilconsent online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "ArcLight Energy Partners Fund VI, L.P., Consent Agreement, File No. 151-0149" on your comment and file your comment online at https://ftcpublic.commentworks.com/ftc/arclightgulfoilconsent by following the instructions on the web-based form. If you prefer to file your comment on paper, write "ArcLight Energy Partners Fund VI, L.P., Consent Agreement, File No. 151-0149" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Jennifer Milici (202-326-2912), Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR § 2.34, notice is hereby given that the above-captioned consent agreement containing consent orders 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 December 28, 2015), on the World Wide Web, at http://www.ftc.gov/os/actions.shtm.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 27, 2016. Write "ArcLight Energy Partners Fund VI, L.P., Consent Agreement, File No. 151-0149" on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at http://www.ftc.gov/os/publiccomments.shtm. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social

Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which . . . is privileged or confidential," as discussed in Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), and FTC Rule 4.10(a)(2), 16 CFR § 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR § 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at https://ftcpublic.commentworks.com/ftc/arclightgulfoilconsent by following the instructions on the web-based form. If this Notice appears at http://www.regulations.gov/#!home, you also may file a comment through that website.

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[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR § 4.9(c).

If you file your comment on paper, write "ArcLight Energy Partners Fund VI, L.P., Consent Agreement, File No. 151-0149" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at http://www.ftc.gov to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 27, 2016. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at http://www.ftc.gov/ftc/privacy.htm.

Analysis of Agreement Containing Consent Orders to Aid Public Comment

INTRODUCTION

The Federal Trade Commission ("Commission") has accepted from ArcLight Energy Partners Fund VI, L.P. ("ArcLight"), subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") designed to remedy the anticompetitive effects resulting from ArcLight's proposed acquisition of Gulf Oil Limited Partnership ("Gulf") and related assets from Cumberland Farms, Inc. ("Cumberland"). Under the terms of the proposed Decision and Order ("Order") contained in the Consent Agreement, ArcLight must divest four of Gulf's terminals located in Pennsylvania – in Mechanicsburg, Altoona, Pittston Township, and Williamsport – to Arc Logistics Partners, LP ("Arc Logistics").

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

THE PARTIES

ArcLight invests in energy infrastructure. Through its wholly-owned subsidiary, Pyramid LLC, ArcLight owns and operates twelve light petroleum product ("LPP") terminals in Pennsylvania. ArcLight uses its terminals to meet its own marketing needs and offers terminaling services to third parties for a fee.

Cumberland, one of the largest convenience store operators in the country, operates a petroleum marketing, terminaling, and distribution business through its Gulf subsidiary. Gulf owns and operates twelve LPP terminals in the Northeast, including seven in Pennsylvania. Gulf also uses its terminals to meet its own marketing needs and provides terminaling services to third parties for a fee.

THE PROPOSED ACQUISITION

Pursuant to two contingent Purchase and Sale Agreements dated May 15, 2015, ArcLight proposes to acquire Gulf, and certain other assets, from Cumberland (the "Acquisition"). The Commission's Complaint alleges that the Acquisition, if consummated, would 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, by substantially lessening competition for gasoline and distillate terminaling services in relevant geographic markets within Pennsylvania.

THE RELEVANT MARKET

Terminals are critical to the efficient distribution of LPPs. Transporting bulk quantities of LPPs via pipeline or marine vessel is significantly less expensive on a per gallon basis than trucking LPPs the same distance. Terminals serve as the delivery points on pipeline and marine routes and are capable of receiving bulk quantities of LPPs, holding LPPs in storage tanks, and loading smaller quantities of LPPs onto tanker trucks for local delivery. Tanker trucks pick up product from the terminals through specialized loading systems and transport LPPs to retail locations and end-use customers. Terminaling services include the off-loading, temporary storage, and dispensing of LPPs into trucks.

The Commission's Complaint alleges that the relevant product markets within which to analyze the Acquisition are gasoline terminaling services and distillates terminaling services. Gasoline terminaling service customers can only use terminals that meet gasoline-specific environmental regulations. A terminal must have specialized equipment, including vapor recovery units and tanks with internal floating roofs, to offer gasoline terminaling services. While distillate terminaling customers may be able to use gasoline terminals, the reverse is not possible due to the more stringent regulatory requirements for the storage and handling of gasoline.

The Commission's Complaint alleges three relevant geographic markets in Pennsylvania in which to assess the competitive effects of the Acquisition: (1) Altoona, which includes terminals in Altoona; (2) Scranton, which includes terminals in Pittston Township and Edwardsville; and (3) Harrisburg, which includes terminals in Northumberland, Williamsport, Mechanicsburg, and Highspire.

The Acquisition would substantially increase concentration in relevant markets that are already highly concentrated. In the Altoona market, ArcLight and Gulf are the only firms that offer gasoline terminaling services, and two of three firms that offer distillate terminaling services. ArcLight and Gulf are two of only three firms that offer gasoline or distillate terminaling services in the Scranton market. In the Harrisburg market, ArcLight and Gulf are two of three firms that offer gasoline terminaling services, and two of four firms that offer distillate terminaling services.

EFFECTS OF THE ACQUISITION

The Acquisition would substantially lessen competition for terminaling services in the relevant markets by enabling ArcLight to exercise market power unilaterally, and enhancing the likelihood of collusion or coordinated interaction among the few remaining terminaling services providers. Post-acquisition, ArcLight would be the sole firm offering gasoline terminaling services in Altoona. It would own most of the LPP storage capacity in each of the other relevant markets and would be able to raise terminaling service fees or reduce access to terminaling services unilaterally. The remaining firms have limited ability to accommodate additional throughput customers and would likely be unable to constrain ArcLight from exercising market power. To the extent the remaining firms could offer some limited constraint on ArcLight's ability to exercise market power unilaterally, they are unlikely to do so because the transaction would increase their incentives to coordinate tacitly with ArcLight.

ENTRY CONDITIONS

Entry into the relevant markets would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects arising from the Acquisition. Barriers to entry are significant and include high sunk costs associated with the construction of a new terminal, and the substantial amount of time required to design, build, and permit a new facility. ArcLight has significant excess capacity in the relevant markets, and this capacity would also discourage new entry.

THE DECISION AND ORDER

The Order resolves the competitive concerns raised by the Acquisition by requiring that ArcLight divest Gulf's terminals in Altoona, Pittston Township, Mechanicsburg, and Williamsport. The Order requires ArcLight to divest to Arc Logistics, or another acquirer approved by the Commission, the four terminals and all associated assets, as well as enter into certain transitional arrangements necessary for the acquirer to become established and compete successfully in the relevant markets. ArcLight is required to divest the terminals within 20 days of closing the Acquisition.

Arc Logistics is a publicly-traded logistics service provider principally engaged in the terminaling, storage, throughput, and transloading of crude oil and LPPs. The company owns twelve LPP terminals in several states, not including Pennsylvania. To ensure that the acquirer has sufficient throughput at the divested terminals while it negotiates contracts with new terminal customers, the Order requires ArcLight to enter a transitional throughput agreement with Arc Logistics, whereby ArcLight commits to throughput certain volumes at Arc Logistics' terminals for two years. The Order also requires ArcLight to supply Arc Logistics with renewable fuels, at Arc Logistics' request, for a period of five years, an option that will help Arc Logistics attract throughput customers. Finally, the Order requires ArcLight to let any customer in the relevant markets out of its terminaling service contract without penalty for a period of six months after the divestiture, allowing Arc Logistics to compete for those customers.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the Order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,
Secretary.

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