

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman  
J. Thomas Rosch  
Edith Ramirez  
Julie Brill

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In the Matter of		)
		)
AMERIGAS PROPANE, L.P.,		)
a limited partnership;		)
AMERIGAS PROPANE, INC.,		)
a corporation;		)
		)
and		)
		)
ENERGY TRANSFER PARTNERS, L.P.		)
a limited partnership; and		)
ENERGY TRANSFER PARTNERS, GP, L.P.		)
a limited partnership.		)
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**Docket No. C-4346**

**DECISION AND ORDER**  
**[Redacted Public Version]**

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent AmeriGas Propane, L.P. of certain assets of Respondent Energy Transfer Partners L.P. and Energy Transfer Partners GP, L.P., hereinafter referred to as Respondents, and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of 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; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by

Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and having accepted the executed Consent Agreement and placed 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 makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent AmeriGas Propane, L.P. is a 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 at 460 North Gulph Road, King of Prussia, PA 19406.
2. Respondent AmeriGas Propane, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business at 460 North Gulph Road, King of Prussia, PA 19406. AmeriGas Propane, Inc. is general partner of AmeriGas Propane, L.P and a wholly-owned subsidiary of UGI Corporation. UGI Corporation is a publically-traded corporation, organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its office and principal place of business at 460 North Gulph Road, King of Prussia, PA 19406.
3. Respondent Energy Transfer 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 at 3738 Oak Lawn Avenue, Dallas, TX 75219.
4. Respondent Energy Transfer Partners GP, L.P. is a 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 at 8801 South Yale Ave., Suite 310, Tulsa, OK 74137. Energy Transfer Partners GP, L.P. is the general partner of Energy Transfer Partners, L.P.
5. The Commission has jurisdiction over 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, the following definitions shall apply:

- A. “AmeriGas” means AmeriGas Propane, L.P. and/or AmeriGas Propane, Inc. the directors, partners, officers, employees, agents, representatives, successors, and assigns of each; and their joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by AmeriGas Propane, L.P. or AmeriGas Propane, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each, and includes UGI Corporation, the parent of AmeriGas Propane, Inc.
- B. “ETP” means Energy Transfer Partners, L.P. and/or Energy Transfer Partners GP, L.P., the directors, partners, officers, employees, agents, representatives, successors, and assigns of each; and their joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Energy Transfer Partners, L.P. or Energy Transfer Partners GP, L.P., including but not limited to Heritage ETC and Heritage Propane Express, LLC, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Commission” means the Federal Trade Commission.
- D. “Acquisition” means the acquisition by AmeriGas of certain propane assets from ETP pursuant to the Contribution Agreement.
- E. “Amendment No. 2” means Amendment No. 2 to the Contribution Agreement, attached hereto as Confidential Appendix A, including the Cylinder Exchange Transition Services Agreement and all other annexes, schedules, exhibits, and amendments to the Amendment.
- F. “Buyer” means any person who, pursuant to the terms of this Order, acquires HPX from ETP.
- G. “Closing” means the consummation of the Acquisition under the Contribution Agreement.
- H. “Contribution Agreement” means the Contribution and Redemption Agreement, dated as of October 15, 2011, as amended, among Energy Transfer Partners, L.P., Energy Transfer Partners GP, L.P., Heritage ETC, L.P., and AmeriGas Partners, L.P., including Amendment No. 2.
- I. “Cylinder Exchange Business” means the business of preparing, distributing, marketing and selling 20-pound portable cylinders pre-filled with propane and collecting used 20-

pound portable cylinders for refilling or disposal, within the territory of the United States. As used in this definition, 20-pound portable grill cylinders refer to cylinders that are designed to meet Department of Transportation specifications and are primarily used by consumers in barbeque grills.

- J. “Heritage Propane Express” or “HPX” means Heritage Propane Express, LLC, a limited liability company, 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 at 8801 South Yale Ave., Suite 310, Tulsa, OK 74137. Heritage Propane Express, LLC, is a wholly-owned indirect subsidiary of ETP. As used in this Order, “Heritage Propane Express” and “HPX” shall refer to all rights and assets related to or used in any Cylinder Exchange Business in the possession or control of ETP after Closing, including all rights of ETP pursuant to Amendment No. 2.

## II.

**IT IS FURTHER ORDERED** that:

- A. At or before Closing, Respondents shall amend the Contribution Agreement to include Amendment No. 2.
- B. Upon Closing, Amendment No. 2 shall be incorporated by reference into this Order and made a part hereof. Respondents shall comply with the terms of Amendment No. 2 and a breach by Respondents of any term of Amendment No. 2 shall constitute a violation of this Order. Further, Respondents shall not modify or amend Amendment No. 2 without the prior written approval of the Commission as provided in section 2.41(f) of the Commission’s Rules of Practice, 16 C.F.R. § 2.41(f). To the extent any term in Amendment No. 2 conflicts with the term in this Order such that Respondents cannot fully comply with both, Respondents shall comply with this Order.
- C. For a period lasting until two (2) years after Closing, Respondent ETP shall not sell, transfer or otherwise convey, directly or indirectly, any interest in HPX to any Person, in connection with the Acquisition or otherwise, without the prior approval of the Commission.
- D. For a period lasting ten (10) years after Closing, or until Respondent ETP no longer has an interest in a Cylinder Exchange Business, whichever comes first, Respondent ETP shall not acquire, directly or indirectly, any Cylinder Exchange Business, whether in connection with the Acquisition or otherwise, without providing prior written notification to the Commission before consummating any such transaction; *provided, however*, that prior written notification shall not be required for the acquisition of any business with annual net sales in the United States derived from the Cylinder Exchange Business under

\$22 million. For the avoidance of doubt, revenue from any sales, operations, or line of business other than a Cylinder Exchange Business shall not be included in determining if the revenue figure in this Paragraph is met.

*Further*, the prior written notification required by this Paragraph shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as the Notification), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such Notification, Notification shall be filed with the Secretary of the Commission, Notification need not be made to the United States Department of Justice, and Notification is required only of Respondent ETP and not of any other party to the transaction, unless otherwise expressly required by this Order. Respondent ETP shall provide the Notification to the Secretary of the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent ETP shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Commission's Bureau of Competition; provided, however that Respondent ETP shall not be required to provide prior notification pursuant to this paragraph of a transaction for which notification is required to be made, and has been made pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

- E. For a period lasting until ten (10) years after Closing, Respondent AmeriGas shall not acquire, directly or indirectly, any Cylinder Exchange Business, whether in connection with the Acquisition or otherwise, without providing prior written notification to the Commission before consummating any such transaction; *provided, however*, that prior written notification shall not be required for the acquisition of any business with annual net sales in the United States derived from the Cylinder Exchange Business under \$22 million. For the avoidance of doubt, revenue from any sales, operations, or line of business other than a Cylinder Exchange Business shall not be included in determining if the revenue figure in this Paragraph is met.

*Further*, the prior written notification required by this Paragraph shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as the Notification), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such Notification, Notification shall be filed with the Secretary of the Commission, Notification need not be made to the United States Department of Justice, and Notification is required only of Respondent AmeriGas and not of any other party to the transaction, unless otherwise expressly required by this Order. Respondent AmeriGas shall provide the Notification to the Secretary of the Commission

at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondent AmeriGas shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Commission's Bureau of Competition; provided, however that Respondent AmeriGas shall not be required to provide prior notification pursuant to this paragraph of a transaction for which notification is required to be made, and has been made pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

- F. For a period lasting until up to one (1) year after Closing, Respondent AmeriGas shall, at the request of ETP or the Buyer, provide the services required in Amendment No. 2 ("Transition Services") in a manner sufficient to permit ETP or the Buyer to operate HPX in the same manner in all material respects equivalent to the manner in which ETP operated its Cylinder Exchange Business prior to Closing. Further, if ETP sells HPX to a Buyer within a year of Closing, AmeriGas shall, at the request of the Buyer, provide such Buyer with Transition Services for a period of up to six months, which period may, at the option of the Buyer be extended for up to an additional six months (this sentence is intended to enable a Buyer to receive Transition Services for up to twelve (12) months).
- G. For a period lasting until two (2) years after Closing, or Respondent ETP retains no interest in a Cylinder Exchange Business, whichever comes first; Respondent ETP shall (i) operate HPX in a manner that maintains its full economic viability and marketability and minimizes the risk of any loss of competitive potential, and prevents the destruction, removal, wasting, deterioration or impairment of any assets of HPX; and (ii) upon the sale of HPX, transfer the HPX assets in a manner that retains their full economic viability and provide such services and assistance to the Buyer as are reasonably necessary to enable the Buyer to operate HPX in a manner at least equivalent to the manner in which it was operated by ETP.
- H. The purpose of this Decision and Order is to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint, and to assure that HPX remains viable, independent and competitive.

### III.

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

- A. Respondent AmeriGas shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order:
1. Thirty (30) days after the Order becomes final;
  2. Six (6) months after the Order becomes final and every six months thereafter so long as Respondent AmeriGas is obligated to provide Transition Services pursuant to the Order; and
  3. Annually for ten (10) years after the Order becomes final.
- B. Respondent ETP shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order:
1. Thirty (30) days after the Order becomes final;
  2. Six months (6) after the Order becomes final and every six months thereafter for two (2) years; and
  3. Annually, for ten (10) years after the Order becomes final.
- Provided, however,* that ETP shall not be required to provide reports under this Paragraph if it no longer owns, directly or indirectly, any interest in a Cylinder Exchange Business.
- C. For purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to a Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:
1. access, during business office hours of Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent related to compliance with this Order, which copying services shall be provided by Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and
  2. to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

**IV.**

**IT IS FURTHER ORDERED** that

- A. Respondents shall notify the Commission at least thirty (30) days prior to:
1. any proposed dissolution of such Respondents;
  2. any proposed acquisition, merger or consolidation of Respondents; or
  3. any other change in the Respondents, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

**V.**

**IT IS FURTHER ORDERED** that this Order shall terminate on January 10, 2022.

By the Commission.

Donald S. Clark  
Secretary

SEAL  
ISSUED: January 10, 2012



**In the Matter of AmeriGas Propane, L.P., et al.**

**CONFIDENTIAL APPENDIX A**

**Amendment No. 2 to the Contribution Agreement**

**[Redacted From the Public Record Version, But Incorporated By Reference]**