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NO. ____________

FAIRWAY ENERGY PARTNERS, LLC *Plaintiff,* v. MAGELLAN PIPELINE COMPANY, L.P., MAGELLAN CRUDE OIL PIPELINE COMPANY, L.P., and MAGELLAN MIDSTREAM PARTNERS, L.P. *Defendants*.	§ § § § § § § § § §	IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS ____ JUDICIAL DISTRICT

FAIRWAY ENERGY'S ORIGINAL PETITION AND REQUESTS FOR DISCLOSURE

Fairway Energy Partners, LLC ("Fairway Energy") files this Original Petition and Requests for Disclosure against Magellan Pipeline Company, L.P., Magellan Crude Oil Pipeline Company, L.P., and Magellan Midstream Partners, L.P. (collectively, "Magellan").

I. Statement of the Case

1. Magellan is violating Texas antitrust law by exercising control of access to essential crude oil distribution facilities in the Houston Gulf Coast market to keep competitors out of the marketplace for crude oil transportation and storage and to demand exorbitant tolls to enrich itself at the expense of new entrants to the market and ultimately, at the expense of the public.

2. Magellan owns and operates one of the largest petroleum pipeline systems in the United States. Magellan describes its Houston-area Crude Oil Distribution System as "the most comprehensive system to deliver crude oil to the Houston Gulf Coast area." The Houston Crude Oil Distribution System provides access to "***all*** domestic inbound crude petroleum," including crude oil from the Permian Basin, Eagle Ford, and Cushing hub, and it delivers "to every major refinery within Houston and Texas City," two deep water marine terminals, storage facilities, and pipelines transporting crude oil from Houston. Magellan not only dominates how crude oil flows

in and around Houston but also the storage of crude oil through its operation of three large storage facilities within the market.

3. Over the past six years, Magellan has consolidated its hold on the Houston Gulf Coast market through acquisitions from BP,[1] Shell,[2] and Occidental Petroleum.[3] As its CEO has acknowledged, those acquisitions "further solidif[ied] Magellan's position as the premiere system to deliver crude oil within the Houston Gulf Coast" market.[4] As a consequence, the Houston Crude Oil Distribution System exerts market dominance and controls essential facilities for the movement of crude oil from the Permian Basin to markets in the Houston area, and Magellan has market incentives to keep new entrants out, which conflict with its obligations under antitrust law as well as its duties as a "common carrier."

4. Plaintiff, Fairway Energy, is a midstream oil company that is completing and will operate the Fairway Energy Crude Oil Storage Facility ("Storage Facility") in Harris County. The Storage Facility is three salt caverns[5] that will initially store approximately 7.5 million barrels of crude oil in Harris County, Texas with the ability to expand to approximately 20 million barrels in volume. The Storage Facility is a public utility and the pipelines connecting the Storage Facility are approved to operate as common carrier pipelines. There is a need for additional storage capacity in the Houston Gulf Coast market as reflected by, among other

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[1] Magellan acquired approximately 40 miles of crude oil pipelines in the Houston-area in July 2010. As Magellan told investors at the time, the acquisition is a "common carrier pipeline system" that can connect "to every major refinery within Houston and Texas City."

See https://www.sec.gov/Archives/edgar/data/1126975/000119312510157969/dex991.htm.

[2] Magellan acquired a 15 mile bi-directional crude oil pipeline from Genoa Junction to Magellan's East Houston terminal in August 2013. *See* http://www.reuters.com/article/magellan-pipeline-crude-idUSL2N0GG0Y220130815.

[3] Magellan acquired a 40 mile crude oil pipeline system from BridgeTex Pipeline Company, which it co-owned with Occidental Petroleum, in November 2014. *See* http://www.prnewswire.com/news-releases/magellan-midstream-to-acquire-40-mile-houston-crude-oil-distribution-system-from-bridgetex-pipeline-281745931.html.

[4] *Id.*

[5] Salt caverns are formed by solution mining in salt domes resulting in a void area (caverns) within the salt formation. Salt caverns are excellent structures to store crude oil in large quantities in that the salt is impervious to hydrocarbons. Salt caverns offer a secure and reliable form of storage for crude oil waiting on market demand. The Department of Energy uses salt caverns to store the nation's Strategic Petroleum Reserve.

things, Magellan's expansion of its own storage facilities. Access to Fairway Energy's Storage Facility would benefit market participants, encourage competition, and increase the amount of crude oil transactions in the Houston Gulf Coast market. Fairway Energy seeks to serve the market and the public interest by interconnecting its Storage Facility and pipelines with two hubs on Magellan's Houston Crude Oil Distribution System – Genoa Junction and Speed Junction – both of which are existing receipt delivery points as designated by Magellan's existing tariffs. Those two hubs control access to all Houston Ship Channel refineries, all Texas City refineries, marine terminals, and pipelines leaving the Houston Gulf Coast market. Fairway Energy has sought to provide the interconnection facilities at its own cost. However, Magellan has refused to grant an interconnection without extorting Fairway Energy. Fairway Energy has no reasonably equivalent alternative other than to interconnect to Magellan in order to compete in this market.

5. Magellan has used its market dominance to block competition from Fairway Energy and to make extraordinary demands in exchange for access to what is supposed to be a common carrier system.[6] As detailed below, Magellan's anticompetitive conduct and its denial of access to essential facilities violates Texas antitrust law, and Magellan is liable to Fairway Energy for damages.

II. DISCOVERY CONTROL PLAN

6. Plaintiff, Fairway Energy intends to conduct discovery under Level 2 pursuant to Tex. R. Civ. P. 190.3 and affirmatively pleads that this case is not governed by the expedited-actions process in Tex. R. Civ. P. 169.

[6] There is a concurrent regulatory proceeding between Fairway Energy and Magellan currently underway at the Texas Railroad Commission. *See Fairway Energy Partners, LLC v. Magellan Pipeline Company, L.P.*, Gas Utilities Docket No. 10507, Railroad Commission of Texas, John Dotson, Administrative Law Judge. This separate proceeding is necessary because the Texas Railroad Commission lacks authority to adjudicate antitrust issues. *See, e.g.*, *Woods Expl. & Producing Co. v. Aluminum Co. of Am.*, 382 S.W.2d 343, 347 (Tex. Civ. App.—Corpus Christi 1964, writ ref'd n.r.e.) ("the Railroad Commission is not a court and does not have jurisdiction to entertain and determine many matters which are within the jurisdiction of district courts, including a suit for damages brought under the antitrust laws of Texas").

III. Claim for Monetary Relief

7. Fairway Energy seeks damages in excess of $1,000,000.00. Tex. R. Civ. P. 47(c).

IV. The Parties

8. Fairway Energy Partners, LLC is a limited liability company based in Houston, Texas with headquarters at 3 Riverway, Suite 1550, Houston, Texas 77056.

9. Magellan Pipeline Company, L.P. is a Delaware limited partnership that maintains its principal place of business at One Williams Center, Suite 2800, Tulsa, OK 74172 USA. It may be served with process through its registered agent, CT Corporation System, at 1999 Bryan St., Suite 900, Dallas, Texas 75201. According to public records, Magellan Pipeline Company, L.P.'s general partner is Magellan Pipeline GP, LLC. On information and belief, members of Magellan Pipeline GP, LLC are Texas citizens.

10. Magellan Crude Oil Pipeline Company, L.P. is a Delaware limited partnership that maintains its principal place of business at One Williams Center, Suite 2800, Tulsa, OK 74172 USA. It may be served with process through its registered agent, CT Corporation System, at 1999 Bryan St., Suite 900, Dallas, Texas 75201. According to public records, Magellan Crude Oil Pipeline Company, L.P.'s general partner is Magellan Pipeline GP, LLC. On information and belief, members of Magellan Pipeline GP, LLC are Texas citizens.

11. Magellan Midstream Partners, L.P. is a Delaware limited partnership that maintains its principal place of business at One Williams Center, Suite 2800, Tulsa, OK 74172 USA. It may be served with process through its registered agent, CT Corporation System, at 1999 Bryan St., Suite 900, Dallas, Texas 75201. According to public records, Magellan Midstream Partners, L.P.'s general partner is Magellan GP, LLC, and the sole member of Magellan GP, LLC is MGG GP Holdings, LLC. On information and belief, members of MGG GP Holdings, LLC are Texas citizens.

V. JURISDICTION AND VENUE

12. Texas District Courts are courts of general jurisdiction, and the damages sought are within the jurisdictional limits of this Court. Tex. Const. Art. 5 § 8; Tex. Gov't Code § 24.007. Texas District Courts have exclusive jurisdiction to hear and determine antitrust claims. *See* Tex. Bus. & Com. Code § 15.26.

13. This Court has personal jurisdiction over Magellan Pipeline Company, L.P., Magellan Crude Oil Pipeline Company, L.P., and Magellan Midstream Partners, L.P. because they actively engage in business in Harris County, Texas, and these entities have sufficient minimum contacts with Texas to establish both specific and general jurisdiction.

14. Venue is proper in Harris County because a substantial part of the acts and omissions giving rise to this lawsuit occurred here and because Harris County is the place where Magellan does business and has conducted the unlawful acts. *See* Tex. Civ. Prac. & Rem. Code § 15.002; Tex. Bus. & Com. Code § 15.21. No mandatory venue provision exists which would cause venue to lie outside of Harris County, Texas.

VI. FACTUAL BACKGROUND

A. <u>Magellan Has a History of Anticompetitive Conduct in Violation of Antitrust Laws.</u>

15. Magellan (through its parent and affiliates) is one of the largest petroleum pipeline system operators in the United States.[7] Magellan has previously been scrutinized by the Federal Trade Commission for its exercise of monopolistic power and anticompetitive conduct. In 2004, the FTC required Magellan to sell assets it planned to acquire from Shell Oil Company in the Oklahoma City market because the proposed acquisition would have "substantially lessened" competition and increased costs for consumers.[8]

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[7] *See* http://phx.corporate-ir.net/phoenix.zhtml?c=80547&p=irol-newsArticle_pf&ID=1509781.

[8] https://www.ftc.gov/news-events/press-releases/2004/09/ftc-clears-magellans-4924-million-acquisition-shell-assets.

16. In 2007, the FTC filed a complaint alleging that Magellan's owners were violating Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act through their planned acquisition of a significant equity position in Kinder Morgan, Inc. The FTC alleged that the acquisition would have given the owners board representation at both firms, the right to exercise veto power over actions by Magellan, and access to non-public competitively sensitive information from or about Kinder Morgan and Magellan, which have potentially allowed those acquirers to exercise unilateral market power, to reduce or destroy competition, and to increase prices for consumers in five states.[9]

B. <u>Magellan's Houston-Area Crude Oil Distribution System.</u>

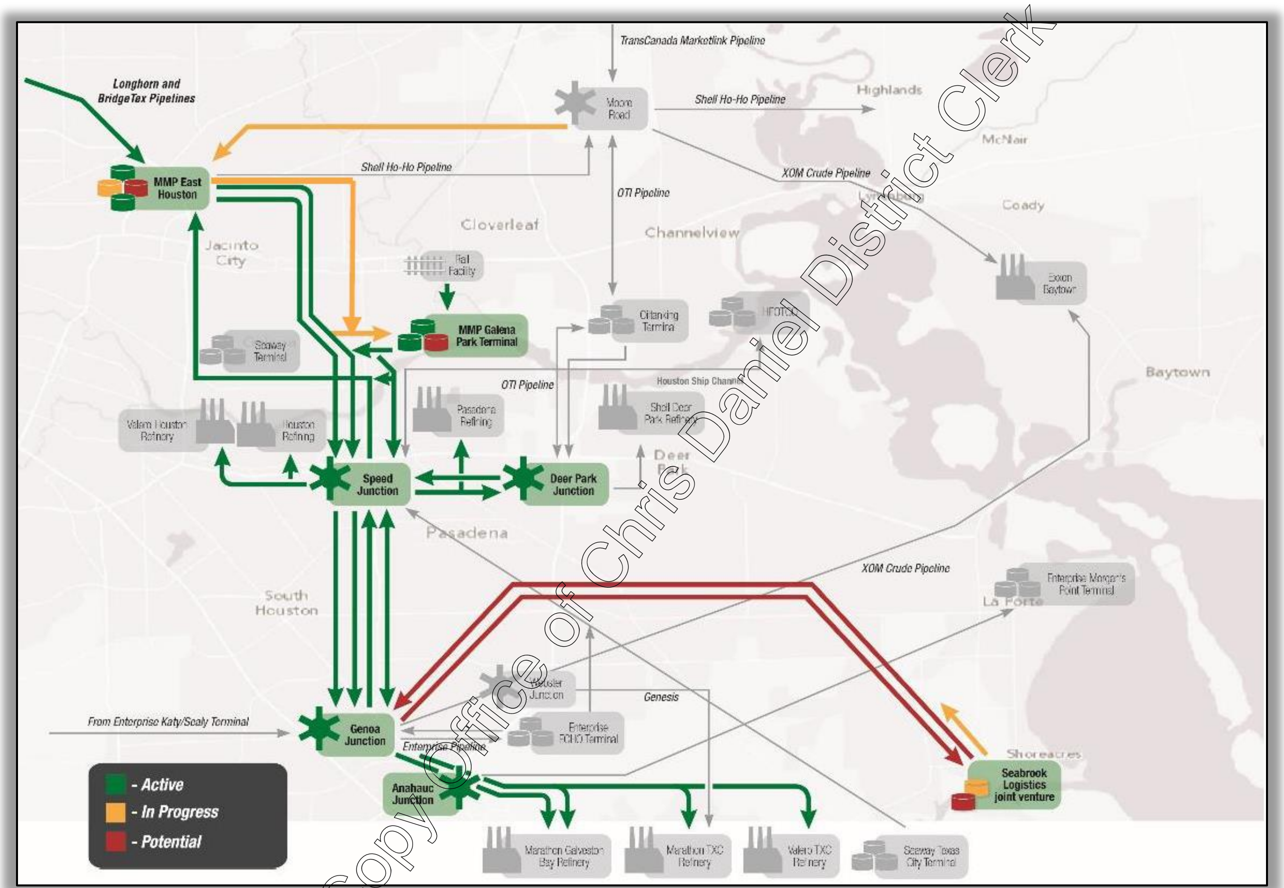
17. Magellan is a publicly traded oil pipeline, storage and transportation company based in Tulsa, Oklahoma that was spun-off from the Williams Companies.

18. Magellan owns and operates a vast network of pipelines and storage facilities, including 1,700 miles of crude oil pipelines and storage facilities with an aggregate storage capacity of approximately 22 million barrels, 9,600 miles of refined products pipelines with 53 connected terminals, and five marine terminals located along coastal waterways with an aggregate storage capacity of approximately 26 million barrels.

19. Magellan's Houston-area Crude Oil Distribution System is one of its most important assets. Magellan Pipeline Company, L.P. is the owner of the Houston Crude Oil Distribution System, and Magellan Crude Oil Pipeline Company, L.P. became the operator of the relevant system on or about August 1, 2016. Magellan Midstream Partners, L.P. owns and operates Magellan's three storage terminals on the Houston-area Crude Oil Distribution System.

[9] "FTC Challenges Acquisition of Interests in Kinder Morgan, Inc. by the Carlyle Group and Riverstone Holdings," Press Release (Jan. 25, 2007), available at https://www.ftc.gov/news-events/press-releases/2007/01/ftc-challenges-acquisition-interests-kinder-morgan-inc-carlyle (discussing the anticompetitive consequences of the proposed transaction for consumers in five Southeastern states).

20. The Houston Crude Oil Distribution System consists of more than 100 miles of large-diameter pipeline segments which connect Magellan's East Houston terminal through several interchanges to various points throughout the Houston area and beyond. The Houston Crude Oil Distribution System is depicted below:[10]



21. Magellan describes the Houston Crude Oil Distribution System as "the most comprehensive system to deliver crude oil to the Houston Gulf Coast area;" the access point for "***all*** domestic inbound crude petroleum," including crude oil from the Permian Basin, Eagle

[10] This diagram – which Magellan published – shows the Houston Crude Oil Distribution System as of mid-2016. Since that time, Magellan began construction of one of the "potential" pipelines from Genoa Junction to Seabrook Logistics, and the "in progress" projects shown in the diagram are completed or nearing completion.

Ford, and Cushing hub; with delivery capability to seven refineries, two deep water marine terminals, storage facilities, and pipelines transporting crude oil from Houston.[11]

22. Magellan's acquisition of its dominant market position was not home-grown. Instead, Magellan acquired the system through a series of acquisitions during the past six years. Magellan set out to establish and consolidate its hold on the Houston crude oil market through acquisitions of approximately 40 miles of pipelines from BP,[12] 15 miles of pipelines from Shell,[13] and 40 miles of pipelines from Occidental Petroleum.[14] As its CEO said after completing those acquisitions, the transactions "solidif[ied] Magellan's position as the premiere system" in the Houston market.[15] Indeed, it has acquired a dominant system and facilities that are essential to the transportation of crude oil throughout the area.

23. As the Oil and Gas Financial Journal reported, Magellan devoted more than $1.1 billion of its capital projects budget for 2014-2016 (i.e. more than 85% of its total capital projects budget) to acquiring and expanding crude oil distribution assets,[16] and it has focused that expansion on the "niche" of the Houston Gulf Coast market.[17]

24. As a strategic consequence of Magellan's growth in this market through amalgamation, Magellan now has a substantial hold on distribution and storage of crude oil within the Houston market, and Magellan uses that control to benefit itself and its joint venture partners to the exclusion of other market participants. The Houston Crude Oil Distribution

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[11] Magellan Presentation, Argus Crude Oil Conference, June 6 – 8, 2016, Houston, Texas by Senior Vice President Robb Barnes.

[12] *See , supra*, FN 1.

[13] *See, supra*, FN 2.

[14] *See, supra*, FN 3.

[15] http://portal.magellanlp.com/magellannews.aspx?id=2147484001.

[16] *See* Sandy Fielden, *The Stocks of Magellan – Circumnavigating Crude Oil Storage and Distribution*, Oil and Gas Financial Journal, Dec. 18, 2012, available at http://www.ogfj.com/articles/2012/12/circumnavigating-crude-oil-storage-and-distribution.html.

[17] Tyler Crowe, *Why I Added This MLP to My Retirement Account*, The Motley Fool, May 5, 2014, available at http://www.fool.com/investing/general/2014/05/05/why-im-adding-this-mlp-to-my-retirement-account.aspx.

System is directly connected to two Magellan-operated crude oil pipelines – the Longhorn[18] and BridgeTex[19] pipelines – that deliver crude oil from the Permian Basin to Houston. Both of those pipelines terminate at Magellan's East Houston storage terminal.

25. In addition to controlling inbound Permian Basin oil, Magellan recently announced that TransCanada will ship Canadian crude oil to the Houston Crude Oil Distribution System via the Keystone pipeline.[20] In connection with that announcement, Magellan also announced that it will expand the reach of the Houston Crude Oil Distribution System and enhance delivery capacity for its Magellan's East Houston storage terminal.[21] Finally, through agreements with other large crude oil pipelines, Magellan's Houston Crude Oil Distribution System is an access point for crude oil from the Eagle Ford shale and is scheduled to access crude oil from the strategic hub in Cushing, Oklahoma, as well as crude oil imports.[22]

26. The Houston Crude Oil Distribution System also dominates the delivery market. The Houston Crude Oil Distribution System has delivery capability to seven refineries in Houston and Texas City, two deep water access marine terminals, and other facilities in the Houston area.[23] In addition to local distribution, Magellan's Houston Crude Oil Distribution System provides access to Shell's Zydeco pipeline connecting Houston to the distribution hub in Houma, Louisiana.

[18] As Magellan has discussed in its annual report, the approximately 450-mile Longhorn crude oil pipeline has the capacity to transport up to 275,000 barrels of crude oil per day from the Permian Basin in to Houston. Shipments originate on the Longhorn pipeline in Crane, Barnhart or Midland, Texas via trucks or interconnections with crude oil gathering systems owned by third parties and are delivered to the Houston Crude Oil Distribution System. *See* Magellan's 2015 Annual Report at p. 8.

[19] Magellan operates and co-owns the BridgeTex pipeline, which is an approximately 400-mile pipeline capable of transporting up to 300,000 barrels per day of Permian Basin crude oil from Colorado City, Texas to Magellan's East Houston terminal on the Houston Crude Oil Distribution System. *See* Magellan's 2015 Annual Report at p. 9.

[20] http://www.transcanada.com/houston-lateral.html (Jan. 13, 2016).

[21] http://www.pipeline-journal.net/news/magellan-midstream-and-transcanada-build-nine-mile-houston-pipeline-connection.

[22] *See* Magellan's 2015 Annual Report at p. 8.

[23] *Id.*

27. In addition to operating the Houston Crude Oil Distribution System and associated pipelines, Magellan operates three storage terminals associated with Houston Crude Oil Distribution System, the East Houston storage terminal, the Galena Park storage terminal, and the Seabrook Logistics JV (which is a joint venture with LBC Tank Terminals, LLC).

28. Magellan is currently expanding its storage capacity at its existing terminals due to demand in the market[24] and because storing crude oil is an increasingly important portion of its earnings.[25] Magellan's Seabrook assets – which will be operational in 2017 – will add over 2.4 million barrels of crude oil storage located adjacent to LBC's existing terminal. In conjunction with that storage expansion, Seabrook is connecting its facility to Magellan's Houston Crude Oil Distribution System by constructing a 24-inch diameter bi-directional pipeline between the Seabrook's facility and Genoa Junction, as well as investing in a new Aframax[26] dock with up to a 45-foot draft.[27]

29. Magellan's three large storage terminals directly compete with Fairway Energy's Storage Facility, and Magellan has an incentive to ensure that shippers who use the Houston Crude Oil Distribution System do not have the option of using Fairway Energy's Storage Facility. By blocking Fairway Energy from the Houston Crude Oil Distribution System, Magellan can maintain substantial control of the connected crude oil storage options, control storage fees, and eliminate competition for its own storage facilities. Since oil producers often do not realize the value of their crude oil until it is gathered from their wells, transported to a

[24] *See* Magellan's 2015 Annual Report at p. 8.

[25] Magellan's fourth quarter 2016 crude oil-related earnings were 17% higher than its fourth quarter 2015 earnings. Magellan's CEO Michael Mears said in a conference call with investors that "This increase was primarily driven by higher storage revenue at our East Houston facility, resulting from additional storage contracts and higher commercial capacity," as well as other factors. Magellan Midstream Partners, LP Q4 2016 Earnings Call Feb. 2, 2017.

[26] Aframax is a medium-size crude oil tanker. The tanker derives its name from AFRA, an acronym for Average Freight Rate Assessment. Due to their favorable size – i.e. larger than a coastal tanker but smaller than a very-large or ultra-larger crude carrier – Aframax tankers can serve most ports and are frequently used for imports to or exports from the Houston Ship Channel.

[27] https://finance.yahoo.com/news/magellan-midstream-lbc-expanding-seabrook-121500303.html.

market, stored, and delivered to refineries or other purchasers, midstream companies play a critical role in determining the producers' revenue. However, when a common carrier pipeline operator like Magellan does not allow connections with another common carrier pipeline in order to avoid competition or when it favors preferred shippers, it has compromised critical safeguards that protect oil from being stranded at the wellhead, burdened with uncompetitive transportation charges and storage fees, or subject to the discretion of the pipeline that controls the final, critical portion of the value chain.

30. Magellan's actions are already leading to higher costs for market participants. As its CEO recently acknowledged, Magellan has been able to realize record-setting profits in its marine storage segment "most[ly]" due to "higher storage rates" for shippers.[28] More than half of Magellan's marine storage is located at its Galena Park facility, which is connected to the Houston Crude Oil Distribution System.[29]

31. Finally, two of the key interchanges on the Houston Crude Oil Distribution System are known as Speed Junction and Genoa Junction. As required by law, Magellan has filed Tariff R.C.T. Nos. 5.0.0, 6.0.0, and 7.0.0, which provide for the delivery of crude petroleum from various points on the Magellan pipeline system to Genoa Junction and Speed Junction in Harris County, Texas, and from those locations to various refineries, terminals, and junctions interconnected with the Magellan pipeline system (the "Tariffs").

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[28] Magellan's CEO recently touted the record-setting revenue Magellan achieved for its marine storage facilities. As Mr. Mears said, the millions in additional revenue were "as a result of higher storage rates overall." When a reporter asked him to further explain the cause of the revenue increases, Mr. Mears said that "the majority of that is rate increases," not additional storage volumes. Magellan Midstream Partners, LP Q4 2016 Earnings Call Feb. 2, 2017.

[29] Magellan has approximately 26 million barrels of marine storage, and its Galena Park marine storage facility has approximately 14 million barrels of storage for crude oil and refined products.

See https://www.magellanlp.com/Investors/~/media/1C0D438D95FB44208C4BBD668EAAA06E.ashx?db=master and http://www.prnewswire.com/news-releases/magellan-midstream-to-expand-galena-park-terminal-capabilities-300167625.html.

32. Through its Tariffs, Magellan purports to be a common carrier. Common carriers serve a critical role in crude oil transportation because they serve the public interest and the crude oil market as a whole by providing open transportation for a fee. In exchange for a special status allowing these companies to exercise the power of eminent domain to take private land for ostensibly "public" use, a common carrier must operate in the public interest, offering its services to the public and providing interconnections for the benefit of market participants without discrimination and without abusing its market power.[30]

33. Magellan's rapid acquisition and amalgamation of previously separate and competitive pipeline segments into the longest, most comprehensive, and self-serving crude oil distribution system in the Houston market and its abuse of its market power to keep competitors out of essential facilities violates Texas antitrust law. Magellan has abused its dominant market position and acted in a concerted matter to keep out competitors.

C. <u>Fairway Energy's Storage Facility and Pipelines.</u>

34. Plaintiff, Fairway Energy, is a midstream oil company that is completing and will operate the Fairway Energy Crude Oil Storage Facility ("Storage Facility"), a salt cavern system that will initially store approximately 7.5 million barrels of crude oil in Harris County, Texas with the ability to expand to approximately 20 million barrels.

35. Salt caverns have been safely and effectively used to store crude oil for decades. Fairway Energy's Storage Facility is functionally equivalent to the system utilized by the federal Strategic Petroleum Reserve, which consists of dozens of salt caverns across the Gulf Coast.

36. Fairway Energy leases storage space to shippers, traders, refiners and exporters that want to stage crude oil supplies for processing or to build up larger volumes for export, and

[30] Magellan's duties to refrain from anticompetitive conduct exist separate and apart from its regulatory obligations.

published reports have documented that Fairway Energy's Storage Facility is attractive to many market participants.[31]

37. The Storage Facility is fully-permitted, has agreements with customers, and is expected to be operational by April 2017. In order to serve the public and provide service to shippers, the Storage Facility must have access to the market, in this case, the Houston Crude Oil Distribution System. No reasonable alternative exists to serve most Houston market participants.

D. <u>Fairway Energy's Efforts to Interconnect with Magellan.</u>

38. Fairway Energy seeks connections at Speed Junction and Genoa Junction on the Houston Crude Oil Distribution System so that Fairway Energy's customers can deliver their crude oil from Magellan's system to Fairway Energy's Storage Facility and so that Fairway Energy can store and re-deliver customers' oil to delivery points in Houston. Fairway Energy has already constructed two 24-inch bi-directional pipelines that are capable of simultaneously receiving and delivering over 15,000 barrels per hour per pipeline to those junctions, and Fairway Energy has offered to pay Magellan the full cost of those connections. However, despite Fairway Energy's requests and Magellan's customers' repeated inquiries, Magellan has repeatedly refused to allow a connection.

39. As reflected in its permit from the Texas Railroad Commission, Fairway Energy is a crude oil common carrier pipeline. Fairway Energy seeks to serve the public and market participants through its pipelines and with its Storage Facility.

[31] *See, e.g.*, Liz Hampton, *Fairway Energy Finds an Extra 1 Mln Bbl of Crude Storage at Houston Facility*, Reuters, Feb. 5, 2016, *available at* http://af.reuters.com/article/energyOilNews/idAFL2N15K200; Sandy Fielden, *Houston Infrastructure Responds to Prospects of New Crude Oil Flows*, Feb. 6, 2017, *available at* http://www.morningstar.com; Jordan Blum, *As Permian Booms, Competition for Pipelines, Storage Picks Up*, Feb. 9, 2017, *available at*
http://fuelfix.com/blog/2017/02/09/houston-competition-picks-up-for-pipelines-crude-storage-as-the-permian-booms-to-life/?utm_content=buffer6539f&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer.

40. Fairway Energy first sought an interconnection with Magellan in June 2013. After many calls and meetings over two years, Magellan's representatives indicated in July 2015 that Magellan would decline the request to interconnect with Fairway Energy simply because it would not be sufficiently lucrative to Magellan. Additionally, Magellan told Fairway Energy leaders that it was focused on expanding its own storage capabilities and it was reluctant to allow a competing storage facility to have access to the Houston Crude Oil Distribution System because it might undermine Magellan's expansion.

41. High level negotiations continued through the fall of 2015. During those negotiations, Magellan requested – and Fairway Energy provided – detailed information regarding Fairway Energy's Storage Facility and pipeline construction plans. Fairway Energy supplied Magellan with the same detailed information that Kinder Morgan Crude & Condensate Pipeline and Enterprise Products Pipeline received when those companies entered into interconnections agreements with Fairway Energy. After it provided this information, Fairway Energy asked Magellan to identify any additional information Magellan needed to evaluate the request. Magellan did not identify any additional documents, and it did not change its position regarding an interconnection.

42. Many third party market participants have expressed interest in using Fairway Energy's Storage Facility, both to Magellan and to Fairway Energy, and many of Fairway Energy's customers and potential customers have asked Magellan to provide an interconnection with Fairway Energy or inquired about the status of the interconnections. In response to those inquiries, Magellan made misstatements of fact to the third parties or solicited those shippers to store their crude oil with Magellan instead of Fairway Energy.

43. Magellan's refusal to permit an interconnection to Magellan's system at Speed Junction and/or Genoa Junction, as well as its misstatements to and solicitation of these potential customers have prevented Fairway Energy from realizing these opportunities.

44. For more than two years, Fairway Energy sought interconnections between Fairway Energy's pipeline and Magellan's pipeline at Speed and Genoa Junctions in order to facilitate use of the Houston Crude Oil Distribution System. At all times, Fairway Energy has offered to bear the full expense of adding the interconnections. Despite Fairway Energy's offer to pay the interconnection expenses and third party shippers' repeated requests to Magellan for interconnections between Fairway Energy's Storage Facility and Magellan's Houston Crude Oil Distribution System, Magellan has refused to allow the interconnections.

45. Magellan's strategic goal in denying Fairway Energy access to its pipeline and shippers is to protect the very lucrative status quo in its operation of the Houston-area Crude Oil Distribution System. As Magellan has told its investors, it maintains its market dominance through its connections. Specifically, in its most recent annual report, Magellan expressly states that its Houston-area Crude Oil Distribution system competes with others "based primarily on tariff rates and connectivity."[32] Magellan also states that its storage facilities compete "based on a combination of connectivity, storage rates and other terms… and customer relationships."[33] Just as Magellan can enhance its own power through its connections, it has blocked Fairway Energy and other competing storage and transportation providers by refusing connections.

46. Fairway Energy has learned that Magellan has used its market dominance to block at least four other companies, including Oiltanking in Texas City and Vopak Moda Houston, LLC on the Houston Ship Channel, from competing with Magellan in the transportation or

[32] *See* Magellan's 2015 Annual Report at p. 10.
[33] *Id.*

storage of crude oil in the Houston Gulf Coast market through exclusionary conduct such as blocking interconnections and/or tying service in the market to extraordinary fees that make potential competitors' service uneconomical.[34]

47. Magellan's manipulation of connectivity to enhance its own crude oil distribution and storage business lines – while barring competitors such as Fairway Energy from accessing its common carrier system – is a hallmark of a monopolistic and anticompetitive behavior that Texas law is intended to prevent.

48. Magellan's conduct harms shippers in the Houston market and, ultimately, consumers in the Houston area and any consumers of refined products generated by Houston area refineries. As reflected by Fairway Energy's Storage Facility and Magellan's own storage expansion projects, there is a need for additional crude oil storage capacity in the area, and direct access to Fairway Energy's Storage Facility from the Houston Crude Oil Distribution System would benefit market participants and increase the amount of crude oil transactions in the Houston market. Increased transactions and competition improve price discovery and transparency and serve the public interest. Providing optionality to shippers, traders, and others (i.e. by proving access to Fairway Energy's Storage Facility) encourages competition, resulting in lower prices to market participants and consumers.

E. <u>**Fairway Energy's Complaint with the Texas Railroad Commission and Subsequent Developments.**</u>

49. In March 2016, Fairway Energy filed a Complaint with the Texas Railroad Commission seeking an order requiring Magellan to interconnect its common carrier system with

[34] *See Complaint of Vopak Moda Houston, LLC against Magellan Pipeline Company, L.P.*, Docket No. 10597 in the Railroad Commission of Texas; *see also* Sandy Fielden, *Houston Infrastructure Responds to Prospects of New Crude Oil Flows*, Feb. 6, 2017, *available at* http://www.morningstar.com (discussing Magellan's "dominant role in Houston's crude oil distribution" and two pending actions against Magellan).

Fairway Energy's common carrier pipelines. *See Fairway Energy Partners, LLC v. Magellan Pipeline Company, L.P.*, Gas Utilities Docket No. 10507, Railroad Commission of Texas.

50. This separate proceeding was necessary because the Texas Railroad Commission lacks authority to adjudicate antitrust issues. *See, e.g.*, *Woods Expl. & Producing Co. v. Aluminum Co. of Am.*, 382 S.W.2d 343, 347 (Tex. Civ. App.—Corpus Christi 1964, writ ref'd n.r.e.) ("the Railroad Commission is not a court and does not have jurisdiction to entertain and determine many matters which are within the jurisdiction of district courts, including a suit for damages brought under the antitrust laws of Texas").

51. After Fairway Energy filed its Railroad Commission action, Magellan and Fairway Energy had various negotiations. Although Fairway Energy offered to pay for the cost of the interconnections at Speed Junction and Genoa Junction and although Magellan already has tariffs in place for the delivery of crude oil to those junctions at set prices, Magellan stated that it would add those interconnections only if Fairway Energy would agree to exorbitant fees. Magellan's demand is a reflection of its market dominance and its awareness that it can use its market power as a gatekeeper to bar competitors from accessing its ostensibly public-use facilities. Magellan has also contacted Fairway Energy's customers and potential customers and offered to match Fairway Energy's storage offers as a *quid pro quo* for customers to keep customers from requesting the interconnect. Magellan has requested payments, volume commitments, financial commitments, and long term transportation commitments in exchange for permitting an interconnection with its common carrier system (even though Fairway Energy has offered to reimburse Magellan for the cost of those facilities). Magellan has also repeatedly misrepresented to shippers that Fairway Energy's interconnect may cause capacity shortages, quality problems, and/or result in shippers being denied full service. Magellan is liable for the damages caused by its misconduct.

VII. Attempted Monopolization, Monopolization, and Restraint of Trade

52. Magellan is liable to Fairway Energy for violations of the Texas Free Enterprise and Antitrust Act, Texas Business and Commerce Code § 15.01 *et seq.*

53. Under Texas law, monopoly power is a significant and durable market power that includes the ability to raise prices or exclude competitors. Texas law prohibits any person from monopolizing, attempting to monopolize, or conspiring to monopolize any part of trade or commerce. Texas law also prohibits any person from contracting or conspiring to restrain trade or commerce.

54. **Geographic Market.** As described above, Magellan has attempted to obtain and has, in fact, obtained an effective monopoly power within the geographic market consisting of the Houston Gulf Coast market. This geographic area consists of Harris County and contiguous counties (i.e. Galveston, Chambers, Liberty, Montgomery, Waller, Fort Bend, and Brazoria counties). As described above, the Houston Gulf Coast market is a key national and international center for the distribution, storage, sale, and refining of crude oil.

55. **Product Market.** The relevant product markets are the storage and transportation of crude oil within the geographic market. As discussed above and as observed by third parties, Magellan has *the* dominant transportation and distribution system for crude oil in this geographic market. As also described above, Magellan obtained its dominant position through a series of acquisitions from BP, Shell, and Occidental Petroleum, and through partnerships with entities such as Plains All American Pipeline, TransCanada, and LBC Tank Terminals, LLC. Its growth and dominance are not organic or natural, but rather demonstrate Magellan's intent to establish monopoly power in this market. Since amalgamating its acquisitions into the Houston Crude Oil Distribution System and establishing its dominant position, Magellan has used its power to benefit itself, exclude Fairway Energy (and others) from competing in the transportation and

storage of crude oil, and harmed shippers and consumers through lack of competition, higher storage rates, and added fees.

56. Further, Magellan has abused and flouted its common carrier status to take substantial benefits and expand its business, while denying market participants the ability to serve the public and increase competition.

57. In addition, Magellan restrained trade by blocking access to facilities that are essential to entry into or competition within the relevant Houston crude oil transportation and storage market. No competitor is reasonably able to duplicate Magellan's control of crude oil distribution within this geographic market and Magellan has unlawfully denied use of its common carrier facilities. As Magellan's own annual report acknowledges, connectivity is the key component for the success of crude oil pipeline and storage facility, and Magellan has denied connectivity at the essential facilities of Speed Junction and Genoa Junction. Using the supposedly publicly-accessible facilities is both reasonable and feasible.

58. Finally, although a business generally has the right to choose its business partners, Magellan's anticompetitive conduct is particularly flagrant because of Magellan's obligation to serve the public in connection with its operation of the Houston Crude Oil Distribution System. Magellan's conduct with respect to Fairway Energy (and others) and its refusal to deal with Fairway Energy based on its predatory and exclusionary strategy to maintain its monopoly – or attempted monopoly – for the benefit of its crude oil transportation and storage business lines constitutes an unlawful and anticompetitive restraint of trade. While those practices have enabled Magellan to charge "higher storage rates" for shippers and realize substantial storage profits,[35] it has harmed the competitive market and consumers.

[35] *See, supra,* Section VI(B).

59. Defendants have violated Tex. Bus. & Com. Code § 15.05(a & b) by their anticompetitive conduct.

60. As a direct and proximate result of Magellan's unlawful conduct, Fairway Energy has sustained and will continue to sustain harm to its property, being unable to accept deliveries to the Storage Facility in economic quantities unless and until it is able to interconnect with Magellan's Houston Crude Oil Distribution System.

61. Pursuant to Tex. Bus. & Com. Code § 15.21, Fairway Energy is entitled to its actual damages, treble damages and reasonable attorneys' fees, and costs of court. All Defendants are jointly and severally liable for their damages. Magellan's anticompetitive conduct was willful and/or flagrant and done with malice. Fairway Energy is entitled to treble damages from each Defendant.

VIII. TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACTS

62. Fairway Energy has agreements for the transportation and storage of crude oil, and there is a reasonable probability that Fairway Energy would have entered into additional agreements with third parties for the transportation and storage of crude oil at its Storage Facility.

63. Magellan has intentionally interfered with Fairway Energy's relationships with multiple customers by contacting Fairway Energy's potential customers and offering to match Fairway Energy's storage offers as a *quid pro quo* for customers to keep customers from requesting the interconnect, by threatening increased transportation fees for customers to deliver crude oil to Fairway Energy at Speed Junction and Genoa Junction (despite that fact that Fairway Energy has offered to reimburse Magellan for the cost of those connections and despite the fact that Magellan already has a posted transportation rate for deliveries to those junctions) and by

misrepresenting to Fairway Energy's potential customers that Fairway Energy may cause capacity shortages, quality problems, and/or result in shippers being denied full service.

64. At the time Magellan interfered and made the misrepresentations, it knew that these potential customers were considering a contractual relationship with Fairway Energy because these potential customers told them so. Indeed, most of Magellan's misconduct occurred in direct response to potential customers informing Magellan that it wanted to contract with Fairway Energy's Storage Facility and that it wanted Magellan to provide the interconnections between its system and Fairway Energy's pipelines, and Magellan's actions were targeted to ending those customers' relationships with Fairway Energy.

65. Magellan's conduct is not only unethical and unfair, but it is independently tortious and illegal. First, as discussed above, Magellan is liable for violating the Texas Free Enterprise and Antitrust Act, and Magellan's conduct with Fairway Energy's potential customers violates that Act. Second, Magellan's misrepresentations to Fairway Energy's potential customers also constitute a negligent misrepresentation under Texas law. Specifically, Magellan made representations to Fairway Energy's potential customers in the course of Magellan's business and in connection with transactions in which it had an interest. Magellan supplied false information to others – i.e. Fairway Energy's potential customers – for their "guidance," and Magellan did not exercise reasonable care with respect to the information it provided or the manner in which it was communicated to Fairway Energy's potential customers. In fact, Magellan provided false and/or misleading information for the purpose of dissuading Fairway Energy's potential customers from moving forward with their agreements with Fairway Energy. The potential customers, relying on Magellan's obligations to serve the public interest and to not discriminate in providing services, reasonably relied on Magellan's misrepresentations. *See*

McCamish, Martin, Brown & Loeffler v. F.E. Appling Interests, 991 S.W.2d 787, 791 (Tex. 1999).

66. Magellan's conduct damaged Fairway Energy. Magellan is liable to Fairway Energy for all lost benefits of the contracts with its potential customers plus disgorgement of all profits Magellan obtained from its misconduct and its use of intentional misrepresentations to take Fairway Energy's potential customers as its own plus exemplary damages for its malicious conduct in accordance with Texas Civil Practice and Remedies Code Chapter 41. In addition, Fairway Energy seeks its interest and costs of court.

67. Finally, in the event Magellan hinders the performance of Fairway Energy's existing agreements or induces Fairway Energy's customers to breach their agreements, Fairway Energy reserves the right to seek damages for tortious interference with its existing agreements.

IX. NOTICE TO THE ATTORNEY GENERAL

68. Pursuant to Texas Business and Commerce Code § 15.21(c), Fairway Energy is serving a copy of its petition on the Texas Attorney General.

X. REQUESTS FOR DISCLOSURE

69. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Fairway Energy requests that Magellan disclose the information or material described in Rule 194.2 within 50 days.

XI. JURY DEMAND

70. Fairway Energy demands a trial by jury on all claims triable to a jury, and Fairway Energy has paid the jury fee.

XII. PRAYER FOR RELIEF

71. For the reasons stated, Plaintiff Fairway Energy respectfully requests:

a. That Defendants Magellan Pipeline Company, L.P., Magellan Crude Oil Pipeline Company, L.P., and Magellan Midstream Partners, L.P. be cited to appear and answer;

b. That the court enter judgment against Defendants for violation of the Texas Free Enterprise and Antitrust Act and that the Court award Fairway Energy all actual damages to be proven in this litigation, treble damages for Magellan's willful and/or flagrant conduct, attorneys' fees, costs, and prejudgment and post-judgment interest as provided by law;

c. That the Court enter judgment against Defendants for tortious interference with prospective contracts and that the Court award Fairway Energy all actual damages, including Fairway Energy's lost profits and disgorgement of Magellan's illegal profits, exemplary damages, prejudgment and post-judgment interest, and costs; and

d. That the Court grant all other relief at law and in equity to which Fairway Energy may be entitled.

Date: February 21, 2017.

Respectfully submitted,

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