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Case No. 12110-VCG

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

PAUL MORRIS, Plaintiff, v. SPECTRA ENERGY PARTNERS (DE) GP, LP; SPECTRA ENERGY CORP., Defendants, -and- SPECTRA ENERGY PARTNERS, LP, Nominal Defendant.	C.A. No. _____ **PUBLIC VERSION TO BE FILED ON MARCH 21, 2016**

VERIFIED CLASS ACTION AND DERIVATIVE COMPLAINT

Plaintiff Paul Morris ("Plaintiff") brings this Verified Class Action and Derivative Complaint (the "Complaint") derivatively on behalf of nominal defendant Spectra Energy Partners, LP ("SEP" or the "Partnership"), and as a class action on behalf of SEP's Limited Partners, against the Partnership's general partner, Spectra Energy Partners (DE) GP, LP ("SEP GP") and SEP GP's parent, Spectra Energy Corp. ("SE Corp," and together with SEP GP, "Defendants"). The allegations of the Complaint are based on the knowledge of Plaintiff as to himself, and on information and belief, including the investigation of counsel, review of

publicly available information, and review of documents produced by the Partnership in response to a books-and-records request made by Plaintiff, as to all other matters.

INTRODUCTION

1. This case arises out of an unfair related-party transaction and a breach of SEP's Second Amended And Restated Agreement of Limited Partnership (the "Partnership Agreement"). Plaintiff is a unitholder of SEP, a master limited partnership controlled by SE Corp, through its control of SEP's general partner SEP GP. In the fall of 2015, - SE Corp - caused SEP to sell to SE Corp the interests held by SEP in two liquid natural gas pipeline companies (the "Transaction") for approximately $500 million less than SE Corp itself said they were worth. As detailed herein, the terms of the Transaction were unfair to SEP when compared to the benefit that SE Corp would realize through the acquisition. Because the members of SEP's conflicts committee that approved this deal (the "Conflicts Committee" or the "Committee") *knew* SE Corp had a deal to sell the assets that it was buying from SEP for $500 million more than it was paying, the Committee's approval could not have been the product of good faith. Indeed, the very resolution establishing the Committee instructed that the "aim" of the Transaction was to keep SEP "cash neutral." Thus, the Committee was expressly

precluded from considering whether the sale of the assets to SE Corp could or should have been financially accretive to the Partnership. This made it impossible for the Committee to fully vet the merits of the Transaction, rendering its approval ineffective. As a result, SEP GP breached the Partnership Agreement in connection with the self-interested Transaction and SE Corp tortiously interfered with the Partnership Agreement.

2. In September 2015, Phillips 66 and SE Corp announced that they would each contribute certain assets to DCP Midstream, LLC ("DCP"), a 50/50 joint venture between Phillips 66 and SE Corp that was struggling amid a downturn in the energy sector. Phillips 66 would contribute $1.5 billion in cash. SE Corp would contribute approximately one-third interests in two natural gas liquids ("NGL") pipeline companies owned by SEP: (1) DCP Sand Hills Pipeline, LLC ("Sand Hills") and (2) DCP Southern Hills Pipeline, LLC ("Southern Hills").

3. Given that Phillips 66 and SE Corp were equal partners in DCP and Phillips 66 was contributing $1.5 billion in cash, this necessarily implies that the interests in Sand Hills and Southern Hills that SE Corp intended to contribute to DCP were valued at $1.5 billion as well. Indeed, DCP's November 2015 investor presentation expressly represented that "$3 billion of cash and assets [were] contributed to DCP Midstream," representing "$1.5 billion of cash" from Phillips

66 and SE Corp's "1/3rd ownership interest in fee-based Sand Hills and Southern Hills NGL pipelines." Additionally, SE Corp. - CFO John Patrick Reddy described Phillips 66's contribution of $1.5 billion in cash as a "matching" contribution to SE Corp's contribution of the Sand Hills and Southern Hills assets. Further, in reviewing the deal, Fitch Ratings deemed SE Corp's contribution of the Sand Hills and Southern Hills interests as a "$1.5 billion asset contribution" to DCP.

4. Notwithstanding that SE Corp., SE Corp's CFO, Phillips 66, and Fitch Ratings all recognized that the Sand Hills and Southern Hills assets owned by SEP were worth $1.5 billion, the board of directors of SEP's general partner, SEP GP, agreed to sell those interests to SE Corp for consideration worth less than a billion dollars. The gap between the "give" and the "get" in the Transaction can only be explained by a lack of good faith on the part of SEP GP and its board of directors, which also manages SEP.

5. The Partnership Agreement requires that SEP GP undertake any related-party transaction in good faith. Having failed to do so, SEP GP breached its contractual duties under the Partnership Agreement and violated the implied covenant of good faith and fair dealing.

6. Moreover, SE Corp tortiously interfered with the agreement.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to 6 Del. C. § 17-111.

8. This Court has jurisdiction over SEP and SEP GP as Delaware limited partnerships.

9. This Court has jurisdiction over SE Corp as a Delaware corporation.

10. Venue is proper in this forum because this action involves significant issues of Delaware corporate law, and is therefore suitable for adjudication before the Delaware Court of Chancery.

THE PARTIES

11. Plaintiff Paul Morris owns common units representing limited partner interests in SEP, and has owned common units representing limited partner interests in SEP at all times relevant to this action.

12. Nominal Defendant Spectra Energy Partners, LP, is a Delaware limited partnership whose units are traded on the New York Stock Exchange under the symbol SEP. SEP was formed by SE Corp in March 2007 as a master limited partnership.

13. Defendant Spectra Energy Partners (DE) GP, LP ("SEP GP") is a Delaware limited partnership. It is the general partner of SEP, and a party to the

Limited Partnership Agreement. SEP GP is a wholly owned subsidiary of SE Corp. SEP GP is controlled by its own general partner, non-party Spectra Energy Partners GP, LLC,[1] a Delaware limited liability company. The board of directors of Spectra Energy Partners GP, LLC is responsible for the management of SEP.

14. Defendant Spectra Energy Corp is a Delaware corporation that is the ultimate parent company of SEP GP. SE Corp is a major energy infrastructure company, listed on the New York Stock Exchange, with approximately $33 billion in total assets. As of September 30, 2015, SE Corp owned an approximate 80% equity interest in SEP.

15. Nonparty Gregory L. Ebel is a director of SEP GP. He serves as the CEO and Chairman of SEP GP, and is also the Chairman, President, and CEO of SE Corp.

16. Nonparty Dorothy M. Ables is a director of SEP GP. She also has served as the Chief Administrative Officer of SE Corp since November 2008.

17. Nonparty Julie A. Dill is a director of SEP GP. She has served as the Chief Communications Officer for SE Corp since January 2014. Prior to that, she was Group Vice President of Strategy for SE Corp.

[1] For the sake of simplicity, this Complaint will refer to Spectra Energy Partners GP, LLC, and Spectra Energy Partners (DE) GP, LP, collectively as SEP GP.

18. Nonparty William T. Yardley is a director of SEP GP. He has been employed by SE Corp or one of its subsidiaries since 2000, and currently is President of SE Corp's U.S. Transmission and Storage business.

19. Nonparty Fred J. Fowler is a director of SEP GP. He was employed by an SE Corp predecessor subsidiary from November 2002 through January 2007. In January 2007, he assumed the role of President and CEO of SE Corp. Immediately upon retiring from SE Corp, Fowler was named to the SEP GP Board. He served as the Chairman of the SEP GP board from December 2008 through November 1, 2013.

20. Nonparty Nora Mead Brownell is a director of SEP GP, and was a member of the Conflicts Committee, which approved the Transaction.

21. Nonparty J.D. Woodward, III is a director of SEP GP, and was a member of the Conflicts Committee, which approved the Transaction.[2]

I. SUBSTANTIVE ALLEGATIONS

A. BACKGROUND ON SEP AND SEP GP

22. SEP is a pipeline and energy transportation company that owns interests in pipeline systems throughout the United States and western Canada.

[2] Nonparties Ebel, Fowler, Ables, Brownwell, Dill, Woodward, and Yardley are hereinafter collectively referred to as the "SEP GP Board."

According to its most recent annual report filed with the U.S. Securities and Exchange Commission on February 25, 2016, "[SEP], through its subsidiaries and equity affiliates, is engaged in the transmission, storage and gathering of natural gas, and the transportation and storage of crude oil. . . ."

23. As a limited partnership, SEP has no officers, directors or employees. Instead, it is managed by SEP GP and the SEP GP Board of Directors.

B. TERMS OF THE MASTER LIMITED PARTNERSHIP AGREEMENT

24. As noted above, SEP is organized as a master limited partnership ("MLP"), with SEP GP acting as its general partner. MLPs are publicly traded limited partnerships that combine the tax benefits of a limited partnership with the liquidity of publicly traded securities (called "units"). The IRS tax code permits only certain kinds of companies to operate as MLPs, including energy-related businesses such as petroleum and natural gas extraction and transportation companies.

25. Investors are drawn to MLPs because the contracts governing MLPs typically require them to regularly pay out to their unitholders in quarterly cash distributions, all earnings not needed for current operations and maintenance of capital assets. Accordingly, investors typically view MLP units as producing a long-term annuity-like income stream.

26. Because MLPs typically distribute a substantial portion of their cash flows to unitholders, they frequently rely on "dropdowns" - *i.e.*, asset purchases from their general partner or a related entity - to drive growth. Occasionally, instead of purchasing assets from the general partner or a related entity, an MLP may sell assets to its general partner or an affiliate (as happened here) in what is sometimes referred to as a "reverse dropdown."

27. Section 7.9 of the Partnership Agreement requires SEP GP, in its capacity as the general partner, to act in good faith with respect to related-party transactions, such as the reverse dropdown at issue here.

28. Section 7.9(a) provides that a related-party transaction will not constitute a breach of the Partnership Agreement if any of four criteria is satisfied: (i) the transaction receives "Special Approval"; (ii) the transaction is approved by a majority of non-affiliated publicly held limited partner units; (iii) the transaction is "on terms no less favorable to the Partnership than those generally being provided to or available from unrelated third parties"; or (iv) the transaction is "fair and reasonable to the Partnership, taking into account the totality of the relationships between the parties involved (including other transactions that may be particularly favorable or advantageous to the Partnership)."

29. Here, SEP purported to have received Special Approval for the reverse dropdown. Under the Partnership Agreement, Special Approval means approval by a majority of the Committee. However, Section 7.9(b) of the Partnership Agreement requires that the Committee act in good faith in approving any related-party transaction.

30. Section 7.9(b) defines "good faith" as the term is used in the Partnership Agreement. It states: "In order for a determination or other action to be in 'good faith' for purposes of this Agreement, the Person or Persons making such determination or taking or declining to take such other action must believe that the determination or other action is in the best interests of the Partnership."

C. SE CORP PAYS LESS THAN $1 BILLION FOR ASSETS OF SEP THAT SE CORP FLIPS FOR $1.5 BILLION

31. Formed in March 2000, DCP is a 50/50 joint venture between SE Corp and Phillips 66 with the purpose of developing the Sand Hills and Southern Hills pipelines. Prior to September 2015, each of DCP, Phillips 66, and SEP owned a 1/3 interest in the Sand Hills and Southern Hills pipeline companies. By early September 2015, however, DCP was struggling amid a downturn in the energy sector and needed an infusion of assets.

32. To address DCP's financial needs, on September 8, 2015, Phillips 66 and SE Corp jointly issued a press release (the "Press Release") announcing that the two companies had entered into a non-binding letter of intent to contribute assets to DCP. The press release announced that Phillips 66 would contribute $1.5 billion to DCP, and SE Corp would contribute "its ownership interest" in Sand Hills and Southern Hills.

33. However, at the time of this announcement, SE Corp did not have any direct ownership interest in either Sand Hills or Southern Hills. Almost two years earlier, in November 2013, SE Corp transferred to SEP the 1/3rd interests in Sand Hills and Southern Hills that it previously owned, together with other assets, for aggregate consideration worth approximately $11 billion.

34. To accomplish the contribution of the Sand Hills and Southern Hills assets to DCP, SE Corp had to first obtain these assets from SEP. To facilitate this transfer, four days before the Press Release, on September 4, 2015, SE Corp sent SEP GP a letter proposing the Transaction. The letter proposed that in exchange for SEP transferring its interests in Sand Hills and Southern Hills back to SE Corp, SE Corp (through its affiliates) would (i) return 20 million SEP limited partner units to SEP for redemption (the "LP Unit Redemption"); and (ii) waive its right to

receive up to $4 million in incentive distribution rights ("IDRs") per quarter for twelve quarters (the "IDR Give Back").

35. On September 7, 2015, the SEP GP directors authorized, by written consent, the establishment of the Conflicts Committee to consider the Transaction, and appointed Woodward and Brownwell to the Committee.

36. The resolution establishing the Conflicts Committee did vest that Committee with the authority necessary to consider the merits of the Transaction in good faith and make an informed decision regarding whether the Transaction was in the best interests of SEP. Rather, the written consent establishing the Committee stated:

> WHEREAS, the Company has received a formal non-binding proposal from [SE Corp] in which Spectra Corp has proposed that the Partnership transfer its membership interests in Sand Hills and Southern Hills to [SE Corp] in exchange for certain consideration from [SE Corp] to the Partnership, ***with the aim of holding the Partnership net cash neutral*** (the 'Transaction').

(Emphasis added).

37. By providing that the "aim" of the Transaction was to "hold[] the Partnership net cash neutral" in the very definition of the "Transaction" that the Committee was charged to review, the resolution establishing the Committee *prevented* the Committee from determining, in good faith, whether the Transaction

in fact was in the best interests of SEP, rendering the "Special Approval" process ineffective.

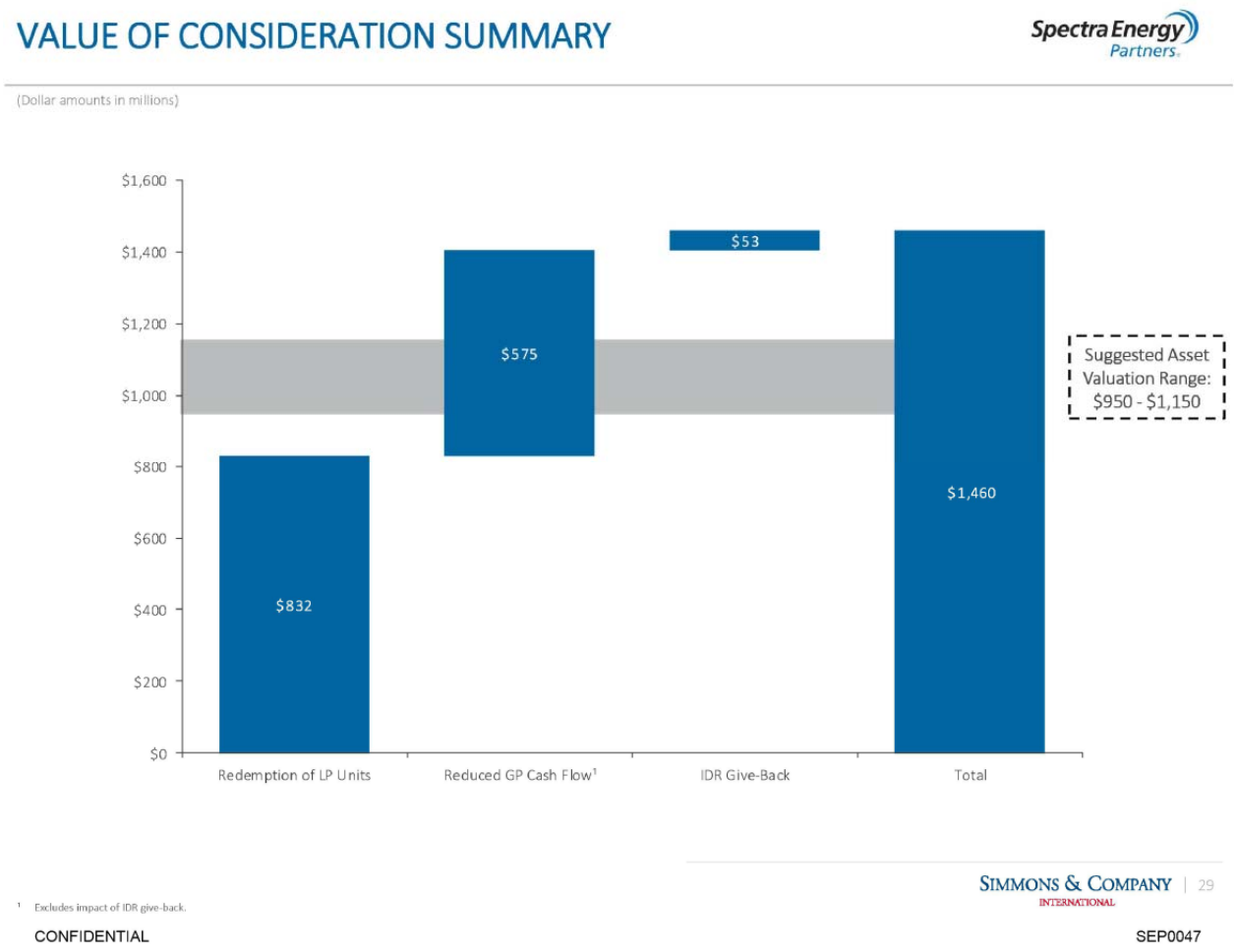
38. On September 8, 2015, the Committee met to discuss the Transaction, and to select a legal and a financial advisor. McGuireWoods LLP was selected as the Committee's legal advisor, and Simmons & Company International ("Simmons") was selected as financial advisor.

39. The Conflicts Committee's limited mandate undermined any opinions rendered by Simmons in its capacity as the Committee's financial advisor. Any opinions rendered by Simmons on the purported fairness of the Transaction resulted not from an inquiry into whether the Transaction was in the best interests of the Partnership, but rather from the Conflicts Committee's inquiry into whether the Transaction would serve the "aim of holding the Partnership net cash neutral." As such, reliance by the Conflicts Committee upon any opinions from Simmons is irrelevant to whether SEP GP and/or the Committee acted in good faith in approving the Transaction.

40. In its initial presentation to the Committee, Simmons provided analyses of the Sand Hills and Southern Hills interests that SEP would be selling to SE Corp. Simmons's discounted cash flow ("DCF") analysis yielded a valuation range of $1 billion to $1.2 billion. Its comparable transactions analysis yielded a

valuation range of between $850 million and $1.025 billion. The comparable companies analysis yielded a range of $925 million to $1.1 billion.

41. At the same time, however, Simmons recognized (as did the Committee itself) that SE Corp would immediately flip these assets to DCP in a transaction that valued those Sand Hills and Southern Hills interests at $1.5 billion. Acknowledging this rather obvious fact, the presentation identified three "components of value" that purportedly would be "received" by SEP as "consideration" in the Transaction: (1) Redemption of LP Units (valued at $832 million); (2) IDR Give-Back (valued at $53 million); and (3) something it termed "Reduced GP Cash Flow" or "Reduced GP Distributions" (which Simmons valued at $575 million). Thus, Simmons calculated the "Value of Total Consideration" to be received by SEP as offered by SE Corp as $1.46 billion -- essentially on par with SE Corp's expected benefit from flipping the assets to DCP:



42. The problem is that "Reduced GP Cash Flow" (or "Reduced GP Distributions") is *not* an element of consideration that was to be received by SEP in exchange for transferring the Sand Hills and Southern Hills assets to SE Corp. Simmons's presentation described this "component[] of total value," which Simmons valued at $575 million as follows:

43. That SE Corp would receive lower distributions after taking assets out of SEP is not an element of consideration that is *paid* for those assets, but is simply the mathematical consequence of a reduction in SEP cashflows following removal of the Sand Hills and Southern Hills assets.[3] By valuing the surrender of 20 million LP units at $832 million, and then *adding to that* the reduction in distribution rights attributable to that same surrender, Simmons's analysis inflated the value of the consideration provided in SE Corp's offer by almost 40%.

44. The absurdity of counting the reduction in distribution rights as an element of "consideration" provided to SEP in the Transaction is revealed by the fact that, after that initial September presentation, Simmons changed tack and

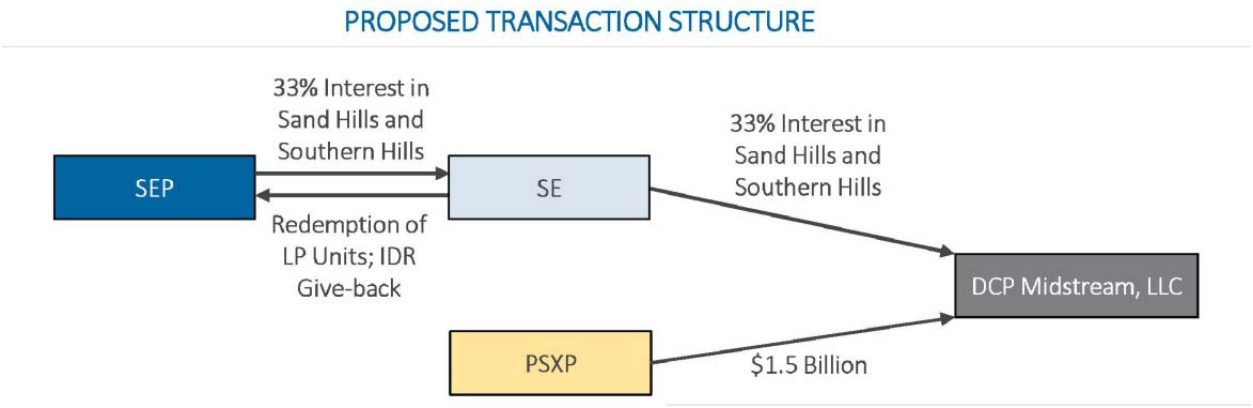
[3] In fact, Simmons's initial presentation to the Special Committee demonstrates this point. A slide in that presentation titled "Value of Reduced GP Cash Flow" shows the projected reductions of GP cashflow resulting from the Transaction for the years 2016-2020. The figures reflected on that slide correspond to a *pro forma* analysis contained in a separate slide under the heading "Transaction Financial Consequences." That *pro forma* analysis shows that the reduction in GP distributions is a consequence of projected reduction in "Distributable Cash Flow" from 2016 through 2020 resulting from removing the Sand Hills and Southern Hills assets from SEP's portfolio.

focused only on the value of the surrender of LP units and the IDR Give-Back in subsequent analyses of the consideration offered to SEP in the Transaction. But this "Reduction of GP Cash Flow" remained a focal point in the Committee's consideration and ultimate approval of the Transaction itself.

45. Over the course of one month, from September 8 to October 7, 2015, the Committee met a total of six times to consider the Transaction. Ultimately, on October 7, 2015, the Committee resolved to recommend approval of the Transaction to the full SEP GP Board. On October 8, 2015, the SEP GP Board, upon the recommendation of the Committee, approved the Transaction.

46. Under the final terms of the Transaction, SEP agreed to transfer its 33.335% interests in Sand Hills and Southern Hills to subsidiaries of SE Corp in exchange for (i) 21.56 million limited partner units and 440,000 general partner units, and (ii) a reduction in incentive distribution rights payable to the SEP GP of $4 million per quarter through September 30, 2018.

47. Simmons's final presentation to the Committee readily acknowledged that SE Corp.- intended to transfer the Sand Hills and Southern Hills assets to DCP in order to match a $1.5 billion cash contribution by Phillips 66, visually depicting the Transaction as follows:



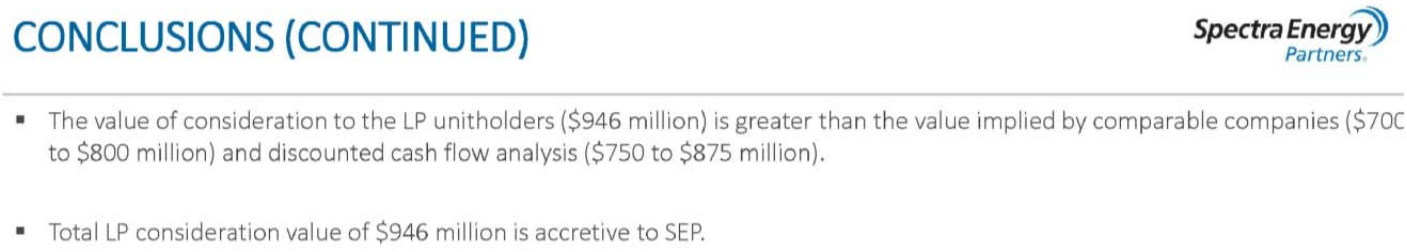
48. The Committee was well aware that the Sand Hills and Southern Hills assets were to be valued at $1.5 billion when immediately transferred by SE Corp to DCP.

49. Nonetheless, for purposes of providing a fairness opinion, Simmons's presentation estimated the value of SEP's interests in the Sand Hills and Southern Hills companies to be significantly lower – between $950 million and $1,150 million.

50. Against this valuation, Simmons compared the value of the consideration provided by SE Corp in the Transaction. Specifically, Simmons calculated the value of the redemption of 21.56 million LP units at $41.95 per unit (the market price of SEP LP units as of October 6, 2015), to be $904 million. Simmons calculated the value of the cancellation of quarterly distribution rights

through September 18, 2018 at $42 million (quarterly payments totaling $48 million through September 2018 discounted at SEP LP Return Rate of 8.9%). Simmons did not ascribe any value to the cancellation of 440,000 SEP GP Units as required in the Transaction. Simmons estimated the "Total LP Consideration Value" in the Transaction to be $946 million.

51. In evaluating the fairness of the Transaction, therefore, Simmons specifically *ignored* the fact that SE Corp valued the Sand Hills and Southern Hills assets at $1.5 billion as its contribution to the joint venture, and opined instead that :



D. THE COMMITTEE AND SEP GP DID NOT ACT IN GOOD FAITH IN APPROVING THE TRANSACTION

52. As discussed above, the Partnership Agreement requires that SEP GP and the Committee act in good faith in approving related-party transactions, and

that acting in good faith requires SEP GP and the Committee to act in the best interests of SEP.

53. Specifically, Section 7.9(a) of the Partnership Agreement provides that when considering a transaction that involves a potential conflict "between the General Partner or any of its Affiliates" (*i.e.*, SEP GP and SE Corp), SEP GP may elect to seek "Special Approval" by a majority of members of the Conflicts Committee, and that *if* "Special Approval" is sought, "then it shall be presumed that, in making its decision, the Conflicts Committee acted in ***good faith***." (Emphasis added).

54. Thus, although Section 7.9(a) gives SEP GP the authority to delegate to the Conflicts Committee the ability to "approve" a conflicted transaction, that delegation necessarily must enable the Conflicts Committee to exercise independent judgment regarding the overall merits of the transaction itself. If the Conflicts Committee's authority is restricted, its review is necessarily compromised and the "Special Approval" process is ineffective and void.

55. Such was the case here. The written consent that charged the Committee to review the Transaction *defined* the Transaction to be reviewed as having the primary goal of being "cash neutral" to SEP. This necessarily restricted the Committee's ability to consider, in good faith, whether the Transaction was

actually in the "best interest" of SEP where SEP, by design, was being precluded from realizing any financial gain in the deal.

56. Even though Simmons valued SEP's interests in Sand Hills and Southern Hills between $925 million and $1.2 billion in its DCF, comparable companies, and comparable transactions analyses, SEP GP could not, acting in good faith, ignore that there was a buyer in the marketplace that apparently valued these assets $500 million above what SE Corp paid SEP for them.

57. Indeed, roughly one month *prior* to SEP GP's approval of the Transaction, Fitch Ratings valued the one-third interests in Sand Hills and Southern Hills that SEP would contribute pursuant to the Transaction at $1.5 billion. A September 9, 2015 Fitch Ratings article reported that SE Corp and Phillips 66 had "announced that they have agreed to make a $3 billion asset contribution to their 50/50 JV DCP," and described SE Corp's "$1.5 billion asset contribution" and Phillips 66's corresponding agreement to "contribute $1.5 billion in cash" to DCP.

58. A November 2015 investor presentation prepared by DCP confirmed that "$3 billion of cash and assets [were] contributed to DCP Midstream" by SE Corp and Phillips, consisting of "1.5 billion of cash" from Phillips 66, and SE Corp's "1/3rd ownership interest in fee-based Sand Hills and Southern NGL

pipelines." And during a November 4, 2015 analyst conference call, SE Corp CFO John Patrick Reddy described the contribution of the Sand Hills and Southern Hills assets as "matching" Phillips 66's $1.5 billion cash contribution.

59. Ultimately, Simmons opined the Transaction was "fair" because it determined that the "Total LP consideration [was] accretive to SEP."[4] But "[a]ccretion to common unitholders is a separate inquiry from whether a transaction is in the best interests of [an MLP]." *In re El Paso Pipeline Partners, L.P. Deriv. Litig.*, 2015 WL 1815846, at *1 (Del. Ch. Apr. 20. 2015).

60. Here, because the Committee *knew* that the Sand Hills and Southern Hills assets were valued at $1.5 billion in a true third-party transaction negotiated between SE Corp and Phillips 66, neither the Committee nor SEP GP could have acted in good faith by agreeing to sell those assets to SE Corp for consideration that its own financial consultant valued at less than $1 billion.

[4] To the extent that any opinion rendered by Simmons might otherwise alter the relevant standard (or any presumption relating thereto) for purposes of evaluating SEP GP and the Conflicts Committee's conduct in connection with the Transaction, it fails to do so because (i) the opinion derived from the Conflicts Committee's improperly constrained inquiry into whether the Transaction would "hold[] the Partnership net cash neutral"; (ii) for all the reasons set forth in this Complaint, any such opinion was so flawed and inadequate that it failed to fulfill its basic function; and (iii) SEP GP and the Conflicts Committee could not have relied in good faith on any such opinion.

61. The fact that Simmons did not purport to value the 440,000 GP units surrendered by SE Corp in the Transaction does not change this analysis.

62. First, because neither Simmons nor the Committee itself ever attempted to determine the value of the 440,000 GP units as an element of the consideration provided to SEP, the Committee and SEP GP cannot claim that they relied on any such value "in good faith" when approving the Transaction.

63. Second, documents produced in response to Plaintiff's books and records investigation confirm that the 440,000 GP units cancelled as part of the Transaction was simply a product of keeping SE Corp's 2% GP interest constant when reducing the number of outstanding LP units. Thus, the GP units were implicitly valued on par with the LP units. In fact, SEP historically has allowed SE Corp to acquire additional GP units at the *same price* as LP units as necessary in order to maintain a 2% general partnership interest in SEP.[5] Simmons valued the LP units cancelled in the Transaction at $41.95 per unit. This implies a valuation for the corresponding 440,000 GP units of $18,458,000.

[5] For example, SEP's 2015 Form 10-K states the following: "We issued 12 million common units to the public in 2015 under our at-the-market program, and approximately 245,000 general partner units to Spectra Energy. Total net proceeds were $557 million, including approximately $11 million of proceeds from Spectra Energy." Mathematically, this suggests that GP units were valued at approximately $45 per unit ($11M ÷ 245K).

II. CLASS ACTION ALLEGATIONS

64. Plaintiff brings this action individually and as a class action on behalf of a class consisting of all public holders of SEP units during the period of September 4, 2015 through the present (the "Class"). Excluded from the Class are Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any of the Defendants.

65. This action is properly maintainable as a class action because:

a. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. There are more than 285 million SEP limited partnership units outstanding, and thousands of beneficial owners;

b. There are questions of law and fact that are common to members of the Class, including, *inter alia*, the following, which predominate over any questions affecting only individual class members:

- Whether SEP GP breached the Partnership Agreement in connection with the Transaction;
- Whether SEP GP breached the implied covenant of good faith and fair dealing in connection with the Transaction;

- Whether SE Corp is liable for tortious interference with the Partnership Agreement; and
- The proper measure of damages for (i) SEP GP's breach of the Partnership Agreement, (ii) SEP GP's breach of the implied covenant of good faith and fair dealing; and (iii) SE Corp's tortious interference with the Partnership Agreement.

c. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. The claims of Plaintiff are typical of the claims of the other members of the Class, and Plaintiff has the same interests as the other members of the Class. Accordingly, Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class;

d. No difficulties are likely to be encountered in the management of this action as a class action; and

e. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

III. DERIVATIVE ALLEGATIONS

66. If the Court determines that Plaintiff's claims are not direct, then, in the alternative, Plaintiff brings this action derivatively to redress injuries suffered

by SEP as a result of the breach of contract by SEP GP and the tortious conduct by SE Corp.

67. Plaintiff has owned limited partnership units in SEP continuously during the wrongful course of conduct perpetuated by SE Corp and SEP GP alleged herein, and continues to hold SEP Limited Partnership units.

68. Plaintiff will adequately and fairly represent the interests of SEP and its Limited Partners in enforcing and prosecuting their rights, and has retained counsel competent and experienced in shareholder derivative litigation.

IV. DEMAND ON SEP GP'S BOARD IS EXCUSED AS FUTILE

69. Plaintiff primarily raises a direct claim that SEP GP has breached its contractual obligations to Plaintiff and SEP's other Limited Partners. To the extent that any equitable remedy may include disgorgement of SE Corp's undue profits from the Transaction, with that money returning to SEP, Plaintiff also alleges derivative claims on behalf of Nominal Defendant SEP.

70. Plaintiff has not made a demand on SEP GP, as SEP's General Partner, to bring suit asserting the claims set forth herein because pre-suit demand was excused as a matter of law. It would be futile to require Plaintiff to issue a demand to SEP GP requesting that it take action against itself for its conduct as alleged herein. Not only would this require SEP GP to investigate and bring

claims against itself for its own misconduct, but SEP GP's actions to date also prove conclusively that it will not take action.

71. Under Delaware law, demand is excused as futile unless "the [entity] that would be addressing the demand can impartially consider its merits without being influenced by improper considerations." *Rales v. Blasband*, 634 A.2d 927, 934 (Del. 1993).

72. As summarized below and specified herein, demand is excused because this Complaint alleges with particularity that SEP GP breached the Partnership Agreement and its duties to the Limited Partners by structuring the Transaction in an unfair manner at an unfair price. Demand is also futile because SEP GP cannot be presumed to exercise independent judgment in assessing the merits of a demand due to its parent corporation's substantial and material financial interest in the subject matter of the claims raised in this Complaint.

73. As set forth in ¶¶15-21, above, four of the seven directors are currently senior executives of SE Corp. Because the unfairness of the Transaction accrued to SE Corp, the SEP GP Board, a majority of which are current employees of SE Corp, could not impartially consider a demand.

74. Because SE Corp would control an investigation of the Transaction that Plaintiff alleges violated the Partnership Agreement, as well as SEP GP's

duties of good faith and fair dealing, SEP GP could not impartially consider a demand from Plaintiff.

75. SEP's Limited Partners have no influence over SEP's operations, and they do not have the ability to vote for SEP GP's or SE Corp's boards of directors.

76. Accordingly, demand on SEP GP is excused.

COUNT I
DIRECT CLAIM AGAINST SEP GP FOR BREACH OF CONTRACT

77. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

78. The Partnership Agreement constitutes a contract between SEP GP, the General Partner, and the Limited Partners of SEP.

79. SEP and SEP's Limited Partners are parties to the Partnership Agreement, which obligates SEP GP and the Committee to act in good faith in approving transactions between SEP and SE Corp.

80. SEP GP has allowed SE Corp to engineer the Transaction on terms that are patently unfair and unreasonable to SEP, and that could not have been approved in good faith by the Committee or the Board. Accordingly, SEP GP has breached the Partnership Agreement.

81. SEP GP further breached the Partnership Agreement by failing to act in good faith by invoking the Special Approval process but improperly constraining the Conflicts Committee's authority and mandate to determining whether the Transaction would merely "hold[] the Partnership net cash neutral."

82. As a result, SEP's limited partners have suffered damages.

COUNT II
DERIVATIVE CLAIM AGAINST SEP GP FOR BREACH OF CONTRACT

83. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

84. The Partnership Agreement constitutes a contract between SEP GP, the General Partner, and the Limited Partners of SEP.

85. SEP and SEP's Limited Partners are parties to the Partnership Agreement, which obligates SEP GP and the Committee to act in good faith in approving transactions between SEP and SE Corp.

86. SEP GP has allowed SE Corp to engineer the Transaction on terms that are patently unfair and unreasonable to SEP, and that could not have been approved in good faith by the Committee or the Board. Accordingly, SEP GP has breached the Partnership Agreement.

87. SEP GP further breached the Partnership Agreement by failing to act in good faith by invoking the Special Approval process but improperly constraining the Conflicts Committee's authority and mandate to determining whether the Transaction would merely "hold[] the Partnership net cash neutral."

88. As a result, SEP has suffered damages.

COUNT III
DIRECT CLAIM FOR RELIEF AGAINST SEP GP FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

89. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

90. The implied covenant of good faith and fair dealing applies to SEP GP's, the Board's, and the Conflicts Committee's conduct in approving the Transaction to the extent that the Court determines that either (i) SEP GP was not contractually required by the terms of the Partnership Agreement to act in good faith and in the best interests of SEP in connection with the Transaction, or (ii) that an opinion rendered by Simmons as to the Transaction alters the relevant standard of conduct (or any presumption relating thereto) for purposes of evaluating SEP GP's, the Board's, or the Conflicts Committee's conduct in approving the Transaction.

91. The implied covenant of good faith and fair dealing seeks to enforce the parties' contractual bargain by implying those terms to which the parties would have agreed during their original negotiations if they had thought to address them.

92. The reasonable expectation of SEP and SEP's Limited Partners at the time the parties entered into the Partnership Agreement was that SEP GP would act in good faith and in the best interests of the Partnership with respect to a conflicted transaction such as the Transaction. For example, SEP and SEP's Limited Partners reasonably expected that (i) SEP GP would not allow SE Corp to engineer the Transaction on terms that are patently unfair and unreasonable to SEP, and (ii) SEP GP would not ostensibly secure "Special Approval" under the Partnership Agreement through a Conflicts Committee whose authority and mandate was improperly constrained.

93. Further, the reasonable expectation of SEP and SEP's limited partners at the time the parties entered into the Partnership Agreement was that SEP GP could not and would not avoid its duty to act in good faith and in the best interests of the Partnership through improper and unwarranted purported reliance on (i) Special Approval secured through a Conflicts Committee whose authority and mandate was improperly constrained, and/or (ii) an opinion from a financial advisor that was so flawed that it failed to fulfill its basic function.

94. Therefore, to the extent that SEP GP did not breach its contractual duty of good faith under the Partnership Agreement, SEP GP violated the implied covenant of good faith and fair dealing in connection with the unfair Transaction.

95. As a result, SEP's limited partners have suffered damages.

COUNT IV
DERIVATIVE CLAIM FOR RELIEF AGAINST SEP GP FOR BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

96. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

97. The implied covenant of good faith and fair dealing applies to SEP GP's, the Board's, and the Conflicts Committee's conduct in approving the Transaction to the extent that the Court determines that either (i) SEP GP was not contractually required by the terms of the Partnership Agreement to act in good faith and in the best interests of SEP in connection with the Transaction, or (ii) that an opinion rendered by Simmons as to the Transaction alters the relevant standard of conduct (or any presumption relating thereto) for purposes of evaluating SEP GP's, the Board's, or the Conflicts Committee's conduct in approving the Transaction.

98. The implied covenant of good faith and fair dealing seeks to enforce the parties' contractual bargain by implying those terms to which the parties would have agreed during their original negotiations if they had thought to address them.

99. The reasonable expectation of SEP and SEP's Limited Partners at the time the parties entered into the Partnership Agreement was that SEP GP would act in good faith and in the best interests of the Partnership with respect to a conflicted transaction such as the Transaction. For example, SEP and SEP's Limited Partners reasonably expected that (i) SEP GP would not allow SE Corp to engineer the Transaction on terms that are patently unfair and unreasonable to SEP, and (ii) SEP GP would not ostensibly secure "Special Approval" under the Partnership Agreement through a Conflicts Committee whose authority and mandate was improperly constrained.

100. Further, the reasonable expectation of SEP and SEP's limited partners at the time the parties entered into the Partnership Agreement was that SEP GP could not and would not avoid its duty to act in good faith and in the best interests of the Partnership through improper and unwarranted purported reliance on (i) Special Approval secured through a Conflicts Committee whose authority and mandate was improperly constrained, and/or (ii) an opinion from a financial advisor that was so flawed that it failed to fulfill its basic function.

101. Therefore, to the extent that SEP GP did not breach its contractual duty of good faith under the Partnership Agreement, SEP GP violated the implied covenant of good faith and fair dealing in connection with the unfair Transaction.

102. As a result, SEP has suffered damages.

COUNT V
DIRECT CLAIM FOR RELIEF AGAINST SE CORP FOR TORTIOUSLY INTERFERING WITH THE PARTNERSHIP AGREEMENT

103. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

104. The Partnership Agreement is a valid contract governing the relationship between SEP GP and SEP's Limited Partners.

105. As the sole owner of SEP GP, and as the entity that effectively conducts and manages the business of SEP, SE Corp at all relevant points has known that the Partnership Agreement is a valid contract governing SEP GP's conduct.

106. As the sole owner of SEP GP, SE Corp directs SEP GP's actions and, as discussed above, has intentionally caused SEP GP to violate its obligations under the Partnership Agreement by, in bad faith, causing SEP to enter into the Transaction.

107. SEP had no justification for causing SEP GP to breach the Partnership Agreement by, in bad faith, causing SEP to enter into the Transaction.

108. As a result of SEP GP's breach of the Partnership Agreement, SEP's Limited Partners have suffered injury. SEP GP's bad faith approval of the Transaction cost SEP's Limited Partners hundreds of millions of dollars.

COUNT VI
DERIVATIVE CLAIM FOR RELIEF AGAINST SE CORP FOR TORTIOUSLY INTERFERING WITH THE PARTNERSHIP AGREEMENT

109. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

110. The Partnership Agreement is a valid contract governing the relationship between SEP GP and SEP's Limited Partners.

111. As the sole owner of SEP GP, and as the entity that effectively conducts and manages the business of SEP, SE Corp at all relevant points has known that the Partnership Agreement is a valid contract governing SEP GP's conduct.

112. As the sole owner of SEP GP, SE Corp directs SEP GP's actions and, as discussed above, has intentionally caused SEP GP to violate its obligations

under the Partnership Agreement by, in bad faith, causing SEP to enter into the Transaction.

113. SEP had no justification for causing SEP GP to breach the Partnership Agreement by, in bad faith, causing SEP to enter into the Transaction.

114. As a result of SEP GP's breach of the Partnership Agreement, SEP has suffered injury. SEP GP's bad faith approval of the Transaction cost SEP hundreds of millions of dollars.

RELIEF REQUESTED

WHEREFORE, Plaintiff demands judgment as follows:

a) Declaring that this action is properly maintainable as a class action;

b) Finding that demand on SEP GP would be futile if the Court determines that the action is a derivative action;

c) Finding that SEP GP breached its contractual duties to SEP's Limited Partners, including Plaintiff, by failing to act in good faith in causing SEP to agree to the Transaction;

d) Finding that SEP GP breached its contractual duties to SEP's Limited Partners, including Plaintiff, by failing to act in good faith in improperly constraining the authority and mandate of the Conflicts Committee;

e) Finding that SEP GP breached the implied covenant of good faith and fair dealing in causing SEP to agree to the Transaction;

f) Finding that SE Corp tortiously interfered with the Partnership Agreement by causing, without justification, SEP GP to breach the Partnership Agreement;

g) Ordering rescission of the Transaction;

h) Awarding damages, together with pre- and post-judgment interest;

i) Awarding Plaintiff the costs and disbursements of this action, including attorneys' and experts' fees; and

j) Awarding such other and further relief as is just and equitable.

Dated this 16th day of March, 2016.

GRANT & EISENHOFER P.A.

/s/ Michael J. Barry
Stuart M. Grant (DE Bar 2526)
Michael J. Barry (DE Bar 4368)
Michael T. Manuel (DE Bar 6055)
123 Justison Street
Wilmington, DE 19801
Tel: 302-622-7000
Fax: 302-622-7100

OF COUNSEL:

FRIEDMAN OSTER & TEJTEL PLLC
Jeremy Friedman
Spencer Oster
David Tejtel
240 East 79th Street, Suite A
New York, NY 10075
(888) 529-1108

ANDREWS & SPRINGER LLC

/s/ Craig J. Springer
Peter B. Andrews (DE Bar 4623)
Craig J. Springer (DE Bar 5529)
3801 Kennett Pike,
Building C, Suite 305
Wilmington, DE 19807
(302) 504-4957

Counsel for Plaintiff

Attorneys for Plaintiff