to allow testimony to be offered for a very limited purpose if he deems it necessary:

It is ordered, That respondents' application for the initiation of proceedings for the establishment of Trade Practice Rules be placed on suspense pending the conclusion of the instant matter.

It is further ordered, That respondents' request for placing the instant matter on suspense is denied.

RUSSELL-WARD CO., INC.

Docket 8207. Order, June 24, 1963

DECISION AND ORDER DENYING PETITION TO REOPEN

This matter is before the Commission upon the petition of respondent Russell-Ward Co., Inc., filed May 7, 1963, requesting the reopening of this proceeding and complaint counsel's answer in opposition to such petition filed June 6, 1963.

The complaint charged respondent with violation of Section 2(c) of the Robinson-Patman Act in connection with the purchase of citrus fruit. Respondent subsequently entered into an agreement containing a consent order to cease and desist, in connection with the purchase of citrus fruit or other food products, from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of citrus fruit or other food products for respondent's own account, or where respondent is the agent, representative, or other intermediary acting for or in behalf, or is subject to the direct or indirect control, of any buyer.

This agreement was accepted by the examiner, and the Commission's final order was issued on May 17, 1961 [58 F.T.C. 792].

Respondent's petition to reopen this proceeding is based upon the contention that its operations in the purchase of citrus fruit were the same as the operations of *Hruby Distributing Company*, (D. 8068, Dec. 26, 1962) [61 F.T.C. 1437] which were found not to violate Section 2(c). Complaint counsel, in opposing respondent's petition, dispute this contention. Since the order to cease and desist was based upon consent agreement, and no evidence was taken or findings of fact made, the Commission does not have before it a record on which the merits of respondent's present contention may be determined. In any event, it is immaterial for present purposes whether,

had the matter been fully litigated and a record been made, the evidence would have supported findings of violation of Section 2(c). Any issue in that regard was obviated by respondent's consent to the entry of the order which, as is customary in such cases, is framed in the language of Section 2(c) and broadly prohibits respondent from violating that provision in connection with its purchase of citrus fruit or other food products.

If, as respondent contends, its present and future practices are not in violation of Section 2(c) as that section is construed by the Commission and the courts, the order poses no obstacle to its lawful activities. A respondent seeking in good faith to comply with an order to cease and desist need not proceed at its peril. Under the Commission's practice, the Commission reviews reports of compliance and will advise a respondent whether the actions set forth therein constitute compliance with the order. Further, a respondent subject to a Commission order may request advice from the Commission as to whether a proposed course of action, if pursued by it, will constitute compliance with such order. See *Vanity Fair Paper Mills, Inc.* v. *FTC*, 311 F. 2d 480, 488 (2d Cir. 1962) [7 S.&D. 583, 592]; *Giant Food, Inc.* v. *FTC*, decided by the Court of Appeals for the District of Columbia Circuit, June 13, 1963, slip opinion pp. 19–20 [7 S.&D. 710]; *Foremost Dairies, Inc.*, Docket 7475, May 23, 1963 [p. 1344 herein]. Accordingly,

It is ordered, That respondent's petition to reopen be, and it hereby is, denied.

THE ATLANTIC REFINING COMPANY

Docket 7471. Order, June 28, 1963

Order denying respondent's motion for a rehearing by the Commission *en banc*.