

IN THE MATTER OF
PANHANDLE EASTERN CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 7 OF
THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3260. Complaint, July 17, 1989—Decision, July 17, 1989

This consent order allows, among other things, the respondent to acquire Texas Eastern Transmission Corp. The order requires respondent to divest its ownership of Truckline Offshore Co. and, for ten years, to obtain FTC approval before acquiring any natural gas pipelines in the affected offshore area.

Appearances

For the Commission: *Anthony Low Joseph and Ronald B. Rowe.*

For the respondent: *Ky P. Ewing, Jr., Vinson & Elkins, Washington, D.C. and Stuart Meiklejohn, Sullivan & Cromwell, New York City.*

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent Panhandle Eastern Corporation, a corporation subject to the jurisdiction of the Federal Trade Commission, intends to acquire, or has acquired the stock or assets of Texas Eastern Corporation, in violation of Section 7 of the Clayton Act, as amended (15 U.S.C. 18), and Section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, pursuant to Section 11 of the Clayton Act (15 U.S.C. 21) and Section 5(b) of the Federal Trade Commission Act (15 U.S.C. 45(b)), stating its charges as follows:

I. DEFINITIONS

1. For purposes of this complaint, the following definitions shall apply:

a. "*Panhandle*" means Panhandle Eastern Corporation, its subsidiaries, divisions, groups, affiliate entities, and each of their directors, officers, employees, agents and representatives; and each partnership, joint venture, joint stock company or concession in which Panhandle is a participant.

b. "*Texas Eastern*" means Texas Eastern Corporation, its subsidiaries, divisions, groups, affiliate entities, and each of their directors, officers, employees, agents and representatives; and each partnership, joint venture, joint stock company or concession in which Texas Eastern is a participant.

c. "*The acquisition*" means the transaction described, in whole or in part, in paragraph 14 of this Complaint.

d. "*Transportation*" means transportation of natural gas for one's own account as well as for others.

II. RESPONDENT AND ACQUIRED COMPANY

A. *Panhandle*

2. Respondent Panhandle is a corporation organized and doing business under the laws of the state of Delaware with its executive offices at 5400 Westheimer Court, Houston, Texas.

3. Respondent Panhandle owns businesses that operate at several levels in the natural gas transportation industry.

4. Respondent had 1987 net income of \$108.2 million on operating revenues of \$1,563.4 million.

5. As of April 25, 1989, respondent Panhandle owns and operates two interstate natural gas pipeline systems consisting of over 17,000 miles of pipeline and 32 mainline compressor stations in the United States.

6. Respondent Panhandle wholly or partially owns (or owns interests in companies that wholly or partially own) the following natural gas pipelines in the United States: Panhandle Eastern Pipe Line Company; Trunkline Gas Company; Stingray Pipeline Company; Northern Border Pipeline Company.

7. At all times relevant herein, respondent Panhandle has been and is now engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

B. *Texas Eastern*

8. Texas Eastern is a corporation organized and doing business under the laws of the state of Delaware with its executive offices at 1221 McKinney Street, Houston, Texas.

9. Texas Eastern is engaged in the transmission and sale of natural gas, and in the exploration for and production of oil and gas.

10. Texas Eastern had 1987 net income of \$96.1 million on operation revenues of \$3,572.5 million.

11. As of April 25, 1989, Texas Eastern owns and operates a natural gas pipeline system in the United States consisting of approximately 10,495 miles of pipeline.

12. Texas Eastern wholly or partially owns (or owns interests in companies that wholly or partially own) the following pipelines: Texas Eastern Transmission Company; Algonquin Gas Transmission Company.

13. At all times relevant herein, Texas Eastern, has been and is now engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

III. THE ACQUISITION

14. On or about February 21, 1989, Panhandle commenced a cash tender offer for up to 80 percent of the outstanding shares of the Texas Eastern common stock at \$53 per share with the intent of effecting a merger of Pan Acquisition Company, a Delaware corporation wholly-owned by Panhandle, into Texas Eastern, pursuant to which Texas Eastern would become a wholly-owned subsidiary of Panhandle, all as contemplated in that certain Agreement and Plan of Reorganization entered into among Panhandle, its subsidiary, and Texas Eastern on February 20, 1989. Texas Eastern's Board of Directors has approved the tender offer and recommended its acceptance by Texas Eastern shareholders. If the acquisition is consummated as presently contemplated, the total value of the transaction will be about \$3.22 billion.

IV. EFFECTS

15. One relevant line of commerce is the transportation of natural gas from producing fields and basins.

16. One relevant section of the country is the area of the Gulf of Mexico off the coast of the states of Louisiana and Texas that contains portions of the areas known as the High Island East Addition Area, High Island East Addition South Extension Area, West

Cameron Area, West Cameron South Addition Area, East Cameron Area, East Cameron South Addition Area and the Garden Banks Area, and any submarkets thereof.

17. Consumption of natural gas in the relevant section of the country is substantially below production, with the result that most production in each of these sections of the country is transported by pipelines to consuming areas along the Gulf Coast and elsewhere in the United States.

18. The business of transporting natural gas by pipeline out of the relevant section of the country is concentrated.

19. It is difficult to enter into the business of transporting natural gas by pipeline in the relevant section of the country.

20. Respondent Panhandle is a 50 percent owner and operator of Stingray Pipeline Company, which operates a large natural gas gathering system extending more than 100 miles into the Gulf of Mexico off the coast of Louisiana. It is primarily in the West Cameron and East Cameron areas.

21. Texas Eastern owns and operates Texas Eastern Gas Pipeline Cameron System, which starts from shore a few miles to the east of Stingray. The Cameron System gathers gas from the West Cameron, East Cameron and Vermilion areas and delivers it onshore.

22. Respondent Panhandle and Texas Eastern, through their ownership interests in the Stingray Pipeline Company and the Texas Eastern Gas Pipeline Cameron System, and in other ways, are direct and substantial competitors in the business of transporting natural gas out of producing fields and basins in the relevant section of the country set out in complaint paragraph 16.

23. The effect of the acquisition may be substantially to lessen competition or tend to create a monopoly in the transportation of natural gas out of producing fields and basins in the relevant section of the country set out in complaint paragraph 16, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the following ways among others:

- a. The acquisition will eliminate actual and potential competition between Panhandle and Texas Eastern;
- b. The acquisition will eliminate actual and potential competition among competitors generally; and
- c. The acquisition will increase concentration in the transportation of natural gas out of producing fields and basins in the relevant

section of the country set out in complaint paragraph 16, therefore increasing the likelihood of collusion.

V. VIOLATION CHARGED

24. The proposed acquisition of the stock or assets of Texas Eastern by Panhandle, as set forth in paragraph 14 herein, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission ("the Commission"), having initiated an investigation of the proposed acquisition of the common stock of Texas Eastern Corporation ("Texas Eastern") by Panhandle Eastern Corporation ("Panhandle Eastern") and Panhandle Eastern having been furnished with a copy of a draft complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge Panhandle Eastern with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that respondent has violated Section 5 and Section 7, and that the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Panhandle Eastern is a corporation organized under

the laws of Delaware, with its executive offices at 5400 Westheimer Court, Houston, Texas.

2. Texas Eastern is a corporation organized under the laws of Delaware, with its executive offices at 1221 McKinney Street, P.O. Box 2521, Houston, Texas.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of respondent, and the proceeding is in the public interest.

ORDER

I.

As used in this order, the following definitions shall apply:

a. "*Acquisition*" means Panhandle Eastern's acquisition of shares of the common stock of Texas Eastern.

b. "*Panhandle Eastern*" means Panhandle Eastern Corporation, its predecessors, subsidiaries, divisions, groups and affiliates controlled by Panhandle Eastern and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

c. "*Texas Eastern*" means Texas Eastern Corporation as it was constituted prior to the acquisition, its predecessors, subsidiaries, divisions, groups and affiliates controlled by Texas Eastern and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

d. "*Schedule A Properties*" means the assets and businesses listed in Schedule A of this order.

e. "*Trustee*" means a trustee designated as such pursuant to the Voting and Selling Trust Agreement that is Amendment A to the Agreement to Establish a Voting and Selling Trust attached hereto and made part hereof as Appendix I to this order.

f. "*Voting and Selling Trust Agreement*" means the Voting and Selling Trust Agreement that is Attachment A to the Agreement to Establish a Voting and Selling Trust.

II

It is ordered, That:

(A) Panhandle Eastern shall divest, absolutely and in good faith, the

Schedule A Properties, as well as any additional assets and businesses relating to the transportation of natural gas that Panhandle Eastern may at its discretion include as a part of the assets to be divested and are acceptable to the acquiring entity or entities and the Federal Trade Commission. Provided, however, this obligation to divest shall be satisfied by the divestiture of the Schedule A Properties pursuant to the Agreement to Establish a Voting and Selling Trust. Provided, further, Panhandle Eastern may divest absolutely and in good faith and subject to this order, Texas Eastern Transmission Company if the Federal Trade Commission, in its sole discretion, approves the substitute divestiture of Texas Eastern Transmission Company.

(B) At the earliest opportunity, but no later than 15 days after the appointment of the Trustee, Panhandle Eastern shall resign as the operator of Stingray Pipeline Company.

(C) Panhandle Eastern shall provide the acquiring entity or entities of the Schedule A Properties gas transportation and exchange arrangements to the extent necessary to ensure divestiture of the properties as ongoing viable businesses engaged in the same business in which the Schedule A Properties are presently employed.

(D) The Agreement to Establish a Voting and Selling Trust shall continue in effect until such time as the Federal Trade Commission has approved Panhandle Eastern's divestitures of the Schedule A Properties or until such other time as that agreement provides, and Panhandle Eastern shall comply with all terms of that agreement.

(E) Divestiture of the Schedule A Properties shall be made only to an acquiring entity or entities that receive the prior approval of the Federal Trade Commission and only in a manner that receives the prior approval of the Federal Trade Commission. The purpose of the divestiture of the Schedule A Properties is to ensure the continuation of the assets as ongoing, viable businesses engaged in the same businesses in which the Properties are presently employed and to remedy the lessening of competition resulting from the Acquisition as alleged in the Federal Trade Commission's complaint.

(F) Panhandle Eastern shall take such action as is necessary to maintain the viability and marketability of the Schedule A Properties, including the payment of operating expenses if necessary, and shall not cause or permit the destruction, removal or impairment of any assets or businesses to be divested except in the ordinary course of business and except for ordinary wear and tear.

III.

It is further ordered, That:

(A) Within ten (10) days of the appointment of the Trustee Panhandle Eastern shall transfer the Schedule A Properties to the Trustee whose powers and duties and terms of service are defined in the Voting and Selling Trust Agreement. Panhandle Eastern shall be bound by the terms and conditions of the Agreement to Establish a Voting and Selling Trust and by the Voting and Selling Trust Agreement. The appointment of the Trustee shall not preclude the Federal Trade Commission from seeking civil penalties or any other relief available to it for any failure by Panhandle Eastern to comply with this order.

(B) The Trustee shall have eighteen (18) months from the date the duty to sell arises under paragraph 6.c of Voting and Selling Trust Agreement to accomplish the divestiture, which shall be subject to the prior approval of the Federal Trade Commission. If, however, at the end of the eighteen-month period the Trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the Trustee's divestiture period may be extended by the Federal Trade Commission. Provided, however, that the Federal Trade Commission may extend the Trustee's divestiture period only two (2) times.

(C) No later than thirty (30) days after receiving the prior approval of the Federal Trade Commission of a divestiture of the Schedule A properties, Panhandle Eastern shall in good faith apply for (and cause the acquiring entity or entities as part of the agreement to apply for) approvals by any state or federal agency from which approval must be obtained before Panhandle Eastern may divest and the acquiring entity or entities may acquire, own and operate the Schedule A Properties. Panhandle Eastern shall cooperate with and shall support in good faith with all due diligence and expedition the acquiring entity or entities in obtaining necessary regulatory approvals, including filing a statement that demonstrates Panhandle Eastern's support for each such application. Panhandle Eastern shall take no action to impede or interfere with the necessary regulatory approvals.

(D) The Trustee shall have full and complete access to the personnel, books, records and facilities of any businesses that the Trustee has the duty to divest. Panhandle Eastern shall develop such financial or other information as such Trustee may reasonably request

and shall cooperate with the Trustee. Panhandle Eastern shall take no action to interfere with or impede the Trustee's accomplishment of the divestiture.

(E) Subject to Panhandle Eastern's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in Section II(E) of this order, the Trustee shall use his or her best efforts to negotiate the most favorable price and terms available for the divestiture of the Schedule A Properties. The divestiture shall be made in the manner set out in Section II; provided, however, if the Trustee receives bona fide offers from more than one acquiring entity or entities, the Federal Trade Commission shall determine whether to approve each such purchaser, and the Trustee shall divest to the acquiring entity or entities selected by Panhandle Eastern from among those approved by the Federal Trade Commission.

(F) The Trustee shall be compensated as provided in the Voting and Selling Trust Agreement. He or she shall serve, on such reasonable and customary terms and conditions as the Federal Trade Commission may set, including the employment of accountants, attorneys or other persons reasonably necessary to carry out the Trustee's duties and responsibilities. To the extent the trust properties do not have sufficient working capital or distributions to cover expenses and assure that the Trustee can serve on reasonable terms and conditions, Panhandle shall provide the necessary working capital. The Trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Federal Trade Commission of the account of the Trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Panhandle Eastern and the Trustee's power shall be terminated.

(G) If the Trustee ceases to act or fails to act diligently, a substitute Trustee shall be appointed in the same manner as provided in Section III(A) of this order.

(H) The Trustee shall report in writing to Panhandle Eastern and the Federal Trade Commission every sixty (60) days concerning the Trustee's efforts to accomplish divestiture.

(I) Panhandle Eastern may terminate the trust if the divestiture of Texas Eastern Transmission Company has been completed in accordance with the terms of the consent order.

IV.

Within 12 months of the termination of the Voting and Selling Trust Agreement, pursuant to paragraph 6.a.iv thereof, Panhandle Eastern shall divest, absolutely and in good faith, the Schedule A Properties, as well as any additional assets and businesses relating to the transportation of natural gas that Panhandle Eastern may at its discretion include as a part of the assets to be divested and are acceptable to the acquiring entity or entities and the Federal Trade Commission.

V.

It is further ordered, That within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Panhandle Eastern has fully complied with the provisions of Sections II and III of this order, Panhandle Eastern shall submit to the Federal Trade Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with those provisions. Panhandle Eastern shall include in its compliance reports, among other things that are required from time to time, a full description of all contacts or negotiations with prospective acquirers for the divestiture of assets or businesses specified in Section II or Section IV of this order, including the identity of all parties contacted. Panhandle Eastern also shall include in its compliance reports, copies of all written communications to and from such parties, all internal memoranda, reports and recommendations concerning divestiture, and a description of the status of all regulatory proceedings filed in accordance with this order.

VI.

It is further ordered, That for a period commencing on the date this order becomes final and continuing for ten (10) years, Panhandle Eastern shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries or otherwise, assets used or previously used by (and still suitable for use by), any interest in, or the stock or share capital of any natural gas pipeline any part of which is located in a quadrilateral shaped area of the Central and Western Gulf of Mexico (as those areas are designated by the Mineral Management Service of

the United States Department of Interior) cornered by and including the following blocks: High Island East Addition Block A-221, Garden Banks Block 971, Garden Banks Block 999, and Vermilion Block 206. One year from the date this order becomes final and annually for nine years thereafter Panhandle Eastern shall file with the Federal Trade Commission a verified written report of its compliance with this paragraph. Provided nothing in this order shall require prior Federal Trade Commission approval (1) of the construction of new facilities or (2) if, and only if, Panhandle Eastern has provided the Federal Trade Commission with thirty (30) days prior notice, of the acquisition of stocks or assets if the total consideration, including assumption of liabilities of the present owner of such stock or assets, does not exceed one million dollars (\$1,000,000).

VII.

It is further ordered, That for the purposes of determining or securing compliance with this order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Panhandle Eastern made to its principal office, Panhandle Eastern shall permit any duly authorized representatives of the Federal Trade Commission:

(A) Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Panhandle Eastern relating to any matters contained in this order; and

(B) Upon five days notice to Panhandle Eastern and without restraint or interference from Panhandle Eastern, to interview officers or employees of Panhandle Eastern who may have counsel present, regarding such matters.

VIII.

It is further ordered, That Panhandle Eastern shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporation that may affect compliance with this order. Panhandle Eastern shall also notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in Trunkline Gas Company such as dissolution, assignment or sale

resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of the order.

SCHEDULE A

Assets, Interests and Businesses

- (1) Panhandle Eastern's interest in the Stingray Pipeline Company.
- (2) Trunkline Offshore Company. Provided, however, if the divestiture of Trunkline Offshore Company results in the divestiture of Panhandle Eastern's interest in the Stingray Pipeline Company, Panhandle Eastern shall divest only Trunkline Offshore Company.

APPENDIX I

AGREEMENT TO ESTABLISH A VOTING AND SELLING TRUST

This Agreement to Establish a Voting and Selling Trust (this "Agreement") is by and between Panhandle Eastern Corporation ("PEC"), a Delaware corporation, and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

PREMISES

Whereas, Pan Acquisition Co., a wholly-owned subsidiary of PEC, commenced a tender offer on February 21, 1989, as amended, for up to 48,650,000 of the outstanding shares of Texas Eastern Corporation ("TEC") with the intent of effecting a merger of Pan Acquisition Co. into TEC pursuant to which TEC would survive and become a subsidiary of PEC (the "Acquisition"), all as contemplated by and provided for in that certain Merger Agreement entered into among PEC, Pan Acquisition Co. and TEC dated as of February 20, 1989;

Whereas, the Commission is now investigating the transaction to determine if the Acquisition would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order ("Consent Order"), the Commission must place it on the public record for a period of at least sixty (60) days and

may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of certain pipeline assets and businesses of PEC's wholly-owned subsidiary, Trunkline Offshore Company ("TOC") and the associated interest as a fifty percent (50%) partner of Stingray Pipeline Company ("Stingray"), during the period prior to the final acceptance of the Consent Order by the Commission (after the 60-day public notice period), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of properties described in Schedule A to the Consent Order (the "Schedule A Properties") as a viable competitor; and

Whereas, the purpose of this Agreement and the Consent Order is to put TOC and its associated interest in Stingray in the hands of a trustee who will be charged:

(a) If the Commission accepts the Consent Order, with selling TOC in order to remedy any anticompetitive effects of the Acquisition, and

(b) In the interim, with managing TOC and its interest in Stingray, to preserve the independence, viability and marketability of TOC and its interest in Stingray; and

Whereas, PEC entering into this Agreement shall in no way be construed as an admission by PEC that the Acquisition is illegal; and

Whereas, PEC understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, Therefore, the Parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from PEC with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement, the Voting and Selling Trust Agreement that is Attachment A to this Agreement ("Voting and Selling Trust Agreement"), and the Consent Order to which this Agreement is annexed and made a part thereof:

1. PEC agrees to execute and be bound by the attached Consent Order.

2. Within thirty (30) days of the date on which the Commission accepts this Agreement, the Commission shall appoint a trustee pursuant to an agreement with PEC on the appointment of a trustee. Such trustee shall act in accordance with the Voting and Selling Trust Agreement.

3. If PEC and the Commission are unable to agree on the appointment of a trustee within thirty (30) days, the Commission shall select the trustee, subject to the consent of PEC, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

4. Within ten (10) days of appointment of the Trustee, PEC shall transfer to the Trustee, all the shares of TOC and the associated interest in Stingray. PEC shall observe all the terms and conditions of the Voting and Selling Trust Agreement once executed.

5. In the event the Commission has not finally approved and issued the Consent Order within one hundred twenty (120) days of its publication in the Federal Register, PEC, may, at its option, terminate this Agreement by delivering written notice of termination to the Commission, which termination shall be effective ten (10) days after the Commission's receipt of such notice, and the shares in TOC and the associated interest in Stingray shall then revert to PEC. If this Agreement is so terminated, the Commission may take such action as it deems appropriate, including but not limited to an action pursuant to Section 13 (b) of the Federal Trade Commission Act, 15 U.S.C. 53 (b). Termination of this Agreement shall in no way operate to terminate the Consent Order.

6. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to PEC made to its principal office, PEC shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of PEC and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of PEC relating to compliance with this Agreement;

b. Upon five (5) days notice to PEC, and without restraint or

interference from it, to interview officers or employees of PEC, who may have counsel present, regarding any such matters.

No information or documents obtained by the Commission shall be divulged by any representative of the Commission to anyone outside the Commission, except in legal proceedings, a request from Congress, a request from a Congressional Committee, to secure compliance with this Consent Order, or as otherwise permitted by law.

If at any time information or documents are furnished by PEC and PEC identifies such documents as "Confidential," then the Commission shall provide to PEC ten (10) days notice or, if ten (10) days is not possible, as many days notice as possible prior to divulging such material.

7. This agreement shall not be binding until approved by the Commission.

ATTACHMENT A

VOTING AND SELLING TRUST AGREEMENT

This Voting and Selling Trust Agreement (this "Agreement") is entered into on _____ 1989, by and between Panhandle Eastern Corporation ("PEC"), and _____ ("Trustee"). For the purposes of this Agreement, PEC means Panhandle Eastern Corporation, its subsidiaries, divisions, groups, and affiliates controlled by PEC and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

WITNESSETH

Whereas, PEC has agreed, subject only to final approval and issuance by the Federal Trade Commission (the "Commission") of a proposed Agreement Containing Consent Order ("Consent Order"), to divest all of the outstanding stock and assets of Trunkline Offshore Company ("TOC") and its associated interest as a fifty percent (50%) partner in Stingray Pipeline Company ("Stingray");

Whereas, the Commission and PEC have agreed that pending Commission deliberations about whether finally to accept the Consent Order, the voting stock of TOC and its associated interest in Stingray be placed in a voting trust to be administered by an independent Trustee to effectuate the Consent Order and in accordance with the terms and conditions of this Agreement;

Whereas, the Trustee intends to act in furtherance of assuring that TOC and the associated interest in Stingray will remain viable and competitively independent of PEC, to allow the Commission the opportunity to complete its deliberations while preserving the Commission's ability to obtain effective divestiture or other appropriate relief if it decides any is needed;

Whereas, if the Commission finally accepts the Consent Order the Trustee will undertake to sell the shares of TOC, and its associated interest in Stingray, as promptly as practicable and at the highest available price that is consistent with the Consent Order, but at no minimum price, all in accordance with this Agreement, the Consent Order, and the Agreement to Establish a Voting and Selling Trust.

Now, Therefore, in consideration of the foregoing and of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. Creation, Purpose and Term of Voting and Selling Trust.

a. Subject to the terms and conditions hereof, a voting and selling trust (the "Voting and Selling Trust") in respect of the shares of common stock of TOC owned by PEC (the "Stock") is hereby created.

b. Trustee accepts the trust created by this Agreement, and agrees to his or her appointment as trustee hereunder.

c. The Voting and Selling Trust created hereunder shall remain in effect (i) until the earlier of (A) termination of the Agreement to Establish a Voting and Selling Trust, under Section 5 of that agreement or (b) the date the Commission withdraws the acceptance of the Consent Order, if it decides to do so, or, (ii) if the Commission finally accepts the Consent Order, until the termination date defined in Section 6.a, 6.b, or 6.c, of this Agreement.

2. Solicitation, Collection, Acquisition and Ownership of Stock;
Voting Trust Certificates.

a. PEC agrees to transfer and deliver, within ten (10) days after appointment of the Trustee, certificates representing all shares of Stock endorsed or accompanied by proper instruments duly executed for transfer to the Trustee pursuant to this Agreement.

b. Such certificates shall at all times be and remain in the possession and under the control of the Trustee.

c. Each certificate representing shares of Stock shall bear a legend to the effect that it is subject to this Voting Trust Agreement. The

Trustee shall promptly file with the Secretary of TOC a duplicate of this Agreement. The Trustee shall also maintain such other records and books as are necessary or appropriate to enable him or her to carry out the terms and provisions of this Agreement.

3. Retention of Deposited Stock by Trustee.

The Trustee shall retain and hold, personally or through an agent, the certificates representing Stock only in accordance with, and subject to the terms and conditions set forth in, this Agreement. The Trustee shall not have authority to sell, transfer, assign, pledge or otherwise dispose of or encumber the Stock, except in the ordinary course of business, as necessary or appropriate to effectuate the Consent Order, or to the extent otherwise specifically provided in this Agreement.

4. Rights and Duties of the Trustee.

a. During the term of this Agreement and for so long as the Trustee shall hold the Stock pursuant to this Agreement, the Trustee shall possess, and, in his or her sole discretion, subject to the provisions of this Section, shall be entitled to and have the duty to exercise all voting rights of the Stock, including the right to vote the Stock on all matters upon which the holders of the Stock are entitled to vote, specifically including the right to appoint or elect members to the Management Committee of Stingray. PEC shall not attempt to exercise any voting power, influence, or control, directly or indirectly, over the conduct of business by TOC or Stingray. The Trustee shall use his or her best business judgment in exercising such voting trust power in a manner consistent with the purpose and requirements of this Agreement, the Consent Order and the Agreement to Establish a Voting and Selling Trust. The Trustee shall be independent of and unrelated to any current or prospective participant in the gathering or transmission of natural gas in the Outer Continental Shelf of the United States but may, consistent with this Agreement and in exercise of his or her discretion, seek to obtain from any such participant, including PEC, information deemed by the Trustee to be helpful to the conduct of the business of TOC.

b. The Trustee shall exercise his or her right to vote the Stock in the election of directors of TOC. The Trustee shall have sole discretion in choosing the identity of any directors he or she is authorized to nominate and to seek to elect. The Trustee may, but is not required to,

nominate and vote for the election of himself or herself to the Board of Directors of TOC. The Trustee shall not vote to elect to the Board of Directors of TOC or the Management Committee of Stingray any person who is an officer, employee, director, agent, representative, shareholder, or affiliate of PEC, nor, after due inquiry, any person who has a business or familial relationship with PEC or any officer, employee, director, agent, representative, shareholder or affiliate of PEC.

c. No other person shall have any voting right in respect to the Stock so long as this Agreement is in effect. The Trustee shall have no beneficial interest in the Stock in his or her capacity as trustee.

d. The Trustee shall have any and all such further powers, and shall take such further actions (including but not limited to legal action) as may be necessary to preserve the corporate assets and confidential, competitively sensitive information of TOC and to fulfill the Trustee's obligations under this Agreement.

e. The Trustee shall take or shall cause to be taken such action as is necessary or appropriate to effectuate the terms of the Consent Order.

f. The Trustee shall take all steps to ensure that TOC competes as vigorously with PEC as if there were no relationship between PEC and TOC. In furtherance of this obligation, the Trustee shall ensure there is no communication between TOC and PEC employees, except with respect to commercial arrangements made at arm's length in the ordinary course of business, in connection with the continued performance by Trunkline Gas Company of duties as Operator of Stingray (only as long as that is necessary to install a successor), and in connection with the provision of information required by PEC for financial and tax reporting purposes as set forth in the Order. The Trustee shall ensure there is no transfer or disclosure of confidential, competitively sensitive information between PEC and TOC; if any such communications or transfers or disclosures of information are made, the Trustee shall immediately notify the Commission.

5. Restrictions on PEC.

a. PEC shall not be involved, directly or indirectly, in the operation or management of TOC or Stingray, nor seek to influence directly or indirectly the operation or management of TOC. TOC shall be maintained as a separate corporate entity with an independent Board of Directors. In no event shall any director, officer, employee, agent or representative of PEC become or remain a member of TOC's Board of

Directors or become or remain an officer of TOC or serve on the Stingray Management Committee. Nor may any director, officer, employee, agent or representative of TOC become or remain a member of PEC's Board of Directors or become or remain an officer of PEC. The independent TOC Board of Directors shall maintain separate corporate books and records for TOC. Except as authorized by this Agreement, PEC and TOC shall not transfer assets between them, except for commercial arrangements made at arm's length in the ordinary course of business, nor engage in any joint activity, during the term of this Order except following reasonable notice to the Commission. PEC and TOC (or Stingray) shall not extend any existing contracts or agreements between them, or change the terms of such agreements in any way, during the term of this Agreement except following reasonable notice to the Commission. The Trustee shall provide the Commission with a full description of the proposed transaction and copies of all documents related thereto. The Commission's Bureau of Competition shall also be promptly provided with copies of TOC's and Stingray's separate quarterly and annual financial statements and capital spending reports, and other financial information upon request, during the term of this Agreement.

b. PEC shall not seek or obtain, directly, or indirectly, any of TOC's or Stingray's trade secrets, nonpublic financial and accounting books and records, or other confidential, competitively sensitive information; *provided, however*, that PEC may seek and obtain upon application to the Trustee and 30 days notice to the Commission with a copy of the application, such financial information from TOC as is necessary for PEC to prepare and file financial and tax reports to the extent required by law, provided that (i) PEC's application shall specify in detail the need for the information requested; (ii) for purposes of tax reports PEC shall not seek or obtain information at a level of detail greater than necessary to prepare and file tax reports required by law, and shall certify to the Trustee that its request for information is so limited; (iii) the Trustee shall provide only the information that it determines is necessary for the preparation of the financial and tax reports; (iv) information required for tax reports shall be provided or disclosed only to designated individuals within PEC's tax department who are responsible for the analysis of the information and preparation of the required tax reports, and information required for financial reports shall be provided or disclosed only to designated individuals within PEC's accounting department; (v) each designated individual in

the tax department and accounting department shall submit to the Trustee an affidavit in the form appended hereto as Attachment 1 or Attachment 2, whichever is applicable; and (vi) PEC shall use such information only for the preparation and filing of such required financial and tax reports and not for any other purposes whatsoever.

c. PEC shall not make available to TOC or Stingray, directly or indirectly, any of PEC's trade secrets, nonpublic financial or accounting books or records, or other confidential or competitively sensitive information.

d. Except as otherwise permitted by the Order or by any other term of this Agreement, no communications shall be made to the Trustee by PEC regarding the operation or management of TOC or Stingray. PEC may communicate to the Trustee for ministerial purposes as to the transfer of the Stock pursuant to Sections 6.a, 6.b, and 6.c of this Agreement, *provided, however*, that any such permitted communication shall be in writing.

e. Nothing in this Agreement shall prevent PEC from finding and tendering to the Trustee potential purchasers for the Stock. Any such sale would be subject to the Consent Order.

6. Termination of the Voting Trust Agreement

a. This Agreement and the voting trust created hereby shall terminate, on the first to occur of the following:

i. The distribution of the Stock to PEC pursuant to Section 6.b of this Agreement; or

ii. The sale or other disposition of all of the Stock to a party other than PEC pursuant to Section 6.c of this Agreement; or

iii. PEC's exercise of its right to terminate as provided in Section III(I) of the Consent Order; or

iv. The expiration of the divestiture period defined by Section III(B) of the Consent Order.

b. The Trustee shall cause the certificates representing all of the Stock to be delivered to PEC, properly endorsed for transfer to PEC, and shall take all other actions appropriate to effectuate the transfer to PEC of title of the Stock and all other property held by the Trustee pursuant to this Agreement, within five (5) business days, if the Commission issues a final order rejecting the proposed Consent Order or if the Agreement to Establish a Voting and Selling Trust is terminated under Section 5 of the Agreement to Establish a Voting and Selling Trust.

c. The Trustee shall cause the certificates representing all of the Stock to be sold if the Commission finally accepts the Consent Order.

d. In disposing of the Stock pursuant to Section 6.c hereof, the Trustee shall faithfully implement the Consent Order. The Trustee's charge shall be to sell the Stock pursuant to the Consent Order as promptly as possible at the highest available price but at no minimum price. PEC shall immediately be provided access to the information (other than competitively sensitive information) submitted to the Commission for its determination of whether this charge has been fulfilled. The implementation and interpretation of this Agreement and the Consent Order shall be in the sole discretion of the Commission.

e. Upon disposing of the Stock pursuant to Section 6.c hereof, the Voting and Selling Trust shall terminate in accordance with Section III(F) of the Consent Order.

7. Concerning the Trustee.

a. Subject to the provisions of this Agreement, the voting trust created hereby shall be managed by the Trustee.

b. The Trustee shall be compensated by PEC in return for his or her services as trustee hereunder. As further provided in Section III(F) of the Consent Order, the Commission shall determine compensation when the Trustee is appointed. PEC may provide the Commission, solely as an aid to its determination in this respect, any information PEC deems appropriate, including compensation paid and other similar arrangements. The Trustee shall be compensated in the following manner. The Trustee shall receive his or her normal hourly billing rate, which shall constitute a draw against a future commission, plus reasonable expenses, if any. If the Stock is sold to a third party, the Trustee shall receive a commission, plus reasonable expenses, if any. If the Stock is returned to PEC in accordance with Section 6.b or 6.a.iii, the Trustee shall receive his or her normal hourly billing rate plus reasonable expenses.

c. The Trustee warrants that he or she is not and covenants that he or she shall not become an officer, employee, director, or shareholder of PEC, or of any of its affiliates.

d. The Trustee is expressly authorized to incur and pay from the Stingray cash contribution to TOC his or her draw, all reasonable charges and other expenses as provided in Section III(F) of the Consent Order. PEC agrees to indemnify and hold harmless the

Trustee against all claims, costs of defense of claims (including reasonable attorney's fees and disbursements), reasonable expenses and liability incurred by the Trustee in connection with the performance of his or her duties under this Agreement, except those incurred as a result of the Trustee's own intentional wrongful actions, willful misconduct, or gross negligence.

e. The Trustee shall be free from liability in acting upon any paper, document or signature believed by the Trustee to be genuine and to have been signed by the proper party. The Trustee shall not be liable for any error of judgment in any act done or omitted, nor for any mistake of fact or law, nor for anything the Trustee may do or refrain from doing in good faith. The Trustee may consult with legal counsel of his or her choice and any action under this Agreement taken or suffered in good faith by the Trustee in accordance with the opinion of the Trustee's counsel shall be conclusive on PEC and the Trustee shall be fully protected and be subject to no liability in respect thereto.

f. The rights and duties of the Trustee hereunder shall terminate upon the Trustee's incapacity to act, death, insolvency or dissolution, and no interest in any of the Stock held by the Trustee nor any of the rights and duties of the incapacitated, deceased, insolvent or dissolved Trustee may be transferred by will, devise, succession or in any manner except as provided in this Agreement. The heirs, administrators, executors or other representatives of such incapacitated, deceased, insolvent or dissolved Trustee shall, however, have the right and duty to convey the Stock held by the Trustee to one or more successor trustees.

g. The Trustee may resign by giving thirty (30) days advance written notice of his or her resignation to the Commission and PEC, provided that a successor Trustee has been appointed.

h. In the event of such resignation, incapacity to act or the death, insolvency or dissolution of the Trustee, the Trustee shall be succeeded by a successor Trustee chosen by the Commission, subject to the consent of PEC which shall not be unreasonably withheld, which successor Trustee shall be altogether independent of, and unrelated to, any current or prospective participant in the business of gathering or transmission of natural gas in the Outer Continental Shelf of the United States. Any successor Trustee appointed as herein provided shall indicate his or her acceptance of such appointment by executing a counterpart of this Agreement and thereupon such successor shall be vested with all the rights, powers, duties and

immunities herein conferred upon the Trustee as though such successor had been originally a party to this Agreement as Trustee. The term "Trustee" as used in this Agreement shall apply to and mean the original Trustee (so long as he or she is a Trustee) hereunder and his or her successors.

8. Periodic Distributions, Conservation of Assets and Proceeds of Sale of Deposited Stock.

a. PEC shall be entitled to receive from time to time payments from Stingray cash distributions to TOC to whatever extent the Trustee, in his or her sole discretion, believes prudent in light of the purpose of the Voting and Selling Trust. Such payments shall be made by the Trustee as soon as practicable after the receipt of the distribution. In lieu of receiving cash distributions and paying them to PEC, the Trustee may instruct TOC in writing to pay the cash directly to PEC. In the event any such instruction is given to TOC, all liability of the Trustee with regard to payment shall cease, unless and until such instruction is revoked. The Trustee may at any time revoke such instruction by written notice to TOC and direct it to make subsequent payments to the Trustee.

b. In the event of the sale of all the Stock, the Trustee shall receive, for the benefit of PEC, the money, securities, rights or property that is or are distributed or distributable in respect of the Stock, or that is or are received in exchange for the Stock. During the term of this Agreement, the Trustee and the Board of Directors of TOC shall use their best efforts to maintain the value of TOC's assets and shall not sell, transfer, encumber or otherwise impair their marketability, other than in the normal course of business, upon reasonable notice to the Commission and PEC.

c. If at any time during the term of this Agreement the Trustee shall receive or collect any money or other property (other than voting securities of TOC) on behalf of TOC, other than as set forth in Sections 8.a or 8.b, the Trustee shall distribute such money or other property to PEC to the extent the Trustee, in his or her sole discretion, believes prudent in light of this Agreement.

9. Miscellaneous.

a. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral and written agreements, commitments or understandings with respect to the matters provided for herein.

b. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns. This Agreement shall not be assignable by any party, except in the event of the resignation, incapacity, insolvency, dissolution or death of any Trustee and the appointment of a successor Trustee in accordance with Section 7.h hereof.

c. All notices and other communications given under this Agreement shall be in writing and shall be deemed to have been duly given when delivered in person or mailed by first class, registered or certified mail, postage prepaid or transmitted by telex or telegram and addressed to:

i. If to PEC: John A. Sieger, Esquire, Panhandle Eastern Corporation, 5400 Westheimer Court, Houston, Texas

ii. If to the Trustee:

iii. If to the Commission: Anthony Low Joseph, Esquire, Federal Trade Commission, 601 Pennsylvania Avenue N.W., Washington, D.C. 20580

or to such other address as any of them designate, with copies also sent to such attorney as the Commission, PEC, or the Trustee may from time to time designate. Each notice or other communication which shall be personally delivered, mailed or transmitted in the manner described above shall be deemed sufficiently received for all purposes at such time as it is delivered to the addressee (with any return receipt or delivery receipt being deemed conclusive evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

d. If any part of any provision of this Agreement or any other agreement, document or writing given pursuant to or in connection with this Agreement shall be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining part of said provision or the remaining provisions of this Agreement.

e. The headings of the Sections of this Agreement are inserted for convenience of reference only and do not form a part or affect the meaning hereof.

f. This Agreement, the rights and obligations of the parties hereto, and any claims and disputes relating thereto, shall be governed by and construed in accordance with the laws of the State of Delaware (not including choice of law rules thereof).

g. This Agreement may be executed in any number of counterparts.

each of which shall be deemed to be an original and all of which shall be deemed to be one and the same instrument.

h. In the event of any conflict or inconsistency between the terms of this Agreement and of the Order, the terms of the Order shall govern.

In witness whereof, the parties hereto have executed this Agreement or caused this Agreement to be duly executed on their behalf as of the date and year first hereinabove set forth.

IN THE MATTER OF

AN-MAR INTERNATIONAL, LTD., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SECS.
5 & 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3261. Complaint, July 17, 1989—Decision, July 17, 1989

This consent order prohibits, among other things, a Wood Dale, Ill. maker of suntanning devices, from misrepresenting that its devices provide health benefits and that they do not pose a risk of any harmful side effects. In addition, the order requires respondents' promotional materials to contain a warning statement regarding potential eye injury, skin cancer, skin aging and photosensitive reactions.

Appearances

For the Commission: *Mark Kindt and William Brinley.*

For the respondents: *Craig M. White, Wildman, Harrold, Allen & Dixon, Chicago, Ill.*

COMPLAINT

The Federal Trade Commission, having reason to believe that An-Mar International, Ltd., Inc., a corporation, and Andrew Bobel, individually and as an officer of said corporation, and Marzenna Bobel, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated Sections 5 and 12 of the Federal Trade Commission Act, and that an action by it is in the public interest, issues this complaint and alleges that:

PARAGRAPH 1. Respondent An-Mar International, Ltd., Inc., "respondent An-Mar") is an Illinois corporation, with its office and principal place of business located at 345 Beinoris Drive, Wood Dale, Illinois.

Respondents Andrew Bobel and Marzenna Bobel are officers of respondent An-Mar and are responsible for formulating, directing and controlling the policies of respondent An-Mar. Their address is the same as that for respondent An-Mar.

PAR. 2. Respondents have manufactured, advertised, offered for sale, sold and distributed tanning devices and related products for the