

IN THE MATTER OF

ARKLA, INC.

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-3265. Complaint, Oct. 10, 1989—Decision, Oct. 10, 1989

This consent order requires, among other things, a Shreveport, La. corporation to divest the TransArk assets and also requires that the divestiture be made to a Commission-approved acquirer or acquirers. In addition, respondent is also required to obtain prior Commission approval and to apply to the Federal Energy Regulatory Commission for approval under that agency's abandonment procedures.

Appearances

For the Commission: *Marc G. Schildkraut, Ronald B. Rowe and David C. Dickey.*

For the respondent: *Ky P. Ewing, Jr., Page I. Austin, and Neil W. Imus, Vinson & Elkins, Washington, D.C.*

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent Arkla, Inc., a corporation subject to the jurisdiction of the Commission, entered into an agreement to acquire, took actions to implement the agreement to acquire, and did in fact acquire, certain assets from the TransArk Transmission Co. ("TransArk") in violation of the provisions of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and it appearing to the Commission that a proceeding by it 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 apply:
 - a. "Arkla" means Arkla, Inc., its subsidiaries, divisions and groups

controlled by Arkla, its directors, officers, employees, agents and representatives, and their successors and assigns.

b. The "*Affected Portion of the Arkoma Basin*" means the following counties in Arkansas: Sebastian, Crawford, Logan, Franklin, Johnson, Pope, Scott and Yell.

c. "*Conway-Morrilton-Russellville corridor*" means the area within the state of Arkansas located within 10 miles of the portion of the TransArk pipeline that is west of Conway, Arkansas and east of Russellville, Arkansas. [2]

d. "*The acquisition*" means the transaction described, in whole or in part, in paragraph 8 of this complaint.

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

II. ARKLA

2. Respondent Arkla is a corporation organized and doing business under the laws of the State of Delaware with its principal places of business in Shreveport, Louisiana and Little Rock, Arkansas. Arkla is involved in all sectors of the natural gas industry, including the production, purchase, gathering, storage, transmission, distribution, and sale of natural gas in Arkansas, Missouri, Louisiana, Texas, Mississippi, Tennessee, Oklahoma, and Kansas.

3. Arkla, in conducting its natural gas transmission and distribution business, operates through three divisions: Arkla Energy Resources ("AER"), Arkansas Louisiana Gas Company ("ALG"), and Entex. AER operates gathering systems and an interstate transmission system that extends through portions of Arkansas, Louisiana, Mississippi, Missouri, Kansas, Oklahoma, Tennessee, and Texas. ALG operates local distribution companies in Arkansas, Louisiana, Kansas, Oklahoma, and Texas. Entex operates local distribution companies and intrastate transmission systems in Texas, Louisiana and Mississippi. Arkla also owns Mississippi River Transmission Corporation ("MRT"), which owns an interstate transmission system that extends through Louisiana, Arkansas, Missouri and Illinois.

4. At all times relevant herein, respondent Arkla has been and is now engaged in "commerce" as 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. TRANSARK AND ITS OWNERS

5. At the time of the acquisition, TransArk was a general partnership organized and doing business under the laws of the state of Delaware with its principal place of business in Dallas, Texas. The owners of TransArk were subsidiaries of Lear Petroleum Co. ("Lear") and Esco Exploration Co. ("Esco"). Lear owned a 75 percent interest and Esco owned a 25 percent interest in TransArk.

6. Lear is a corporation organized and doing business under the laws of the state of Delaware with its principal place of business in Dallas, Texas. At the time of the acquisition, Lear was involved in the production, purchase, gathering, transmission [3] and sale of gas in several states including Texas, Louisiana, Oklahoma and Arkansas.

7. Esco is a corporation organized and doing business under the laws of the state of Delaware with its principal place of business in Tulsa, Oklahoma. At the time of the acquisition, Esco was involved in the production, purchase, gathering and sale of natural gas in several states including Oklahoma and Arkansas.

IV. THE ACQUISITION

8. During the spring of 1986, Lear and Esco initiated discussions with Arkla relating to the TransArk pipeline project, including discussions relating to the possible acquisition by Arkla of an interest in TransArk. On or about May 21, 1986, Lear and Esco proposed that Arkla and TransArk commence negotiations for the acquisition by Arkla of a 100 percent interest in the TransArk pipeline. On or about July 29, 1986, Arkla, Lear and Esco executed a definitive agreement for Arkla's acquisition from TransArk of the TransArk pipeline and certain other assets. Arkla created a separate subsidiary of AER, called AER—Arkansas Gas Transit Co., to acquire and own the TransArk pipeline and other assets obtained from TransArk. In September 1986, following expiration of the Hart-Scott-Rodino waiting period, the parties closed the transaction.

V. RELEVANT MARKETS

9. One relevant line of commerce in which to assess the competitive effects of the acquisition is the transportation of gas out of a gas producing area. For this line of commerce, a relevant section of the country in which to assess the competitive effects of the acquisition is the Affected portion of the Arkoma Basin.

10. Another relevant line of commerce in which to assess the

competitive effects of the acquisition is the transportation of gas into a gas consuming area. For this line of commerce, a relevant section of the country in which to assess the competitive effects of the acquisition is the Conway-Morrilton-Russellville corridor.

VI. MARKET STRUCTURE

11. The market for the transportation of gas out of the Affected portion of the Arkoma Basin is highly concentrated.

12. The market for the transportation of gas into the Conway-Morrilton-Russellville corridor is highly concentrated.

13. Entry into the relevant markets is very difficult or unlikely. [4]

VII. COMPETITION

14. At the time of the acquisition, Arkla was an actual competitor in each of the relevant markets. At the time of the acquisition, TransArk was an actual potential competitor, an actual competitor and/or a perceived potential competitor in each of the relevant markets.

VIII. COUNT ONE

Lessening of Actual Potential Competition

15. The Commission repeats and realleges the allegations of paragraphs 1 through 14, inclusive, of this complaint, as if fully set forth herein.

16. The effect of the acquisition may be substantially to lessen competition or tend to create a monopoly in each of the relevant markets in the following ways among others:

a. By eliminating the most likely potential entrant or one of the most likely potential entrants into the market;

b. By eliminating actual potential competition between TransArk and Arkla and between TransArk and any other competitors;

c. By increasing market concentration, thereby facilitating collusion and dominant firm behavior;

d. By eliminating the potential for substantial market deconcentration as a result of the independent entry of TransArk, thereby facilitating collusion and dominant firm behavior.

17. The acquisition violates Section 7 of the Clayton Act, as amended, 15 U.S.C. Section 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and the acquisition agreement violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

IX. COUNT TWO

Lessening of Actual Competition

18. The Commission repeats and realleges the allegations of paragraphs 1 through 14, inclusive, of this complaint, as if fully set forth herein. [5]

19. The effect of the acquisition may be substantially to lessen competition or tend to create a monopoly in each of the relevant markets in the following ways among others:

a. By eliminating actual competition between TransArk and Arkla and between TransArk and other competitors;

b. By increasing market concentration, thereby facilitating collusion and dominant firm behavior.

20. The acquisition violates 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 the acquisition agreement violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

X. COUNT THREE

Lessening of Perceived Potential Competition.

21. The Commission repeats and realleges the allegations of paragraphs 1 through 14, inclusive, of this complaint, as if fully set forth herein.

22. The effect of the acquisition may be substantially to lessen competition or tend to create a monopoly in each of the relevant markets in the following ways among others:

a. By eliminating the most significant or one of the most significant potential entrants into the market;

b. By eliminating the perceived threat of future competition between TransArk and Arkla and between TransArk and other competitors;

c. By increasing market concentration, thereby facilitating collusion and dominant firm behavior.

23. The acquisition violates 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 the acquisition agreement violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of Arkla Inc.'s ("Arkla") acquisition of the pipeline and other assets owned by the TransArk Transmission Co. ("TransArk"), and the respondent Arkla having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation 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 Arkla, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by Arkla of all jurisdictional facts set forth in the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission 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 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, and having [2] duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Arkla is a corporation organized and existing under the laws of the State of Delaware with its executive offices located at 525 Milam Street, Shreveport, Louisiana.

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

ORDER

I.

It is hereby ordered, That, as used in this order, the following definitions shall apply:

(a) "*Acquisition*" means Arkla's acquisition of the assets of TransArk.

(b) "*Arkla*" means Arkla, Inc., its subsidiaries, divisions, groups, and affiliates controlled by Arkla and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

(c) "*TransArk*" means TransArk Transmission Company, a partnership of Producer's Gas Company and Omega Pipeline Company.

(d) The "*Affected Portion of the Arkoma Basin*" means the following counties in Arkansas: Sebastian, Crawford, Logan, Franklin, Johnson, Pope, Scott and Yell.

(e) An "*Affected Portion of the Arkoma Basin Pipeline*" means a pipeline facility other than one owned by Arkla that extends from a point within the Affected Portion of the Arkoma Basin to a point outside of such area with the capacity to transport at least twenty-five (25) million cubic feet per day of natural gas through such facilities out of the Affected Portion of the Arkoma Basin.

(f) The "*Russellville-Morrilton-Conway Corridor*" means the area within the State of Arkansas that is within 10 miles in any direction of that portion of the TransArk pipeline that is west of Conway, Arkansas and east of Russellville, Arkansas.

(g) A "*Russellville-Morrilton-Conway Corridor Pipeline*" means a pipeline facility other than one owned by Arkla that extends to a point within the Russellville-Morrilton-Conway Corridor from a point outside of such area with the capacity to deliver through such facilities at least twenty-five (25) million cubic feet per day of natural gas into the Russellville-Morrilton-Conway Corridor.

(h) The "*TransArk assets*" means the assets, including the pipeline and right of way, acquired by Arkla from TransArk pursuant to the Acquisition, except for the 2.45 miles of pipeline and other assets that were sold by Arkla to Arkansas Oklahoma Gas Co., pursuant to that certain Purchase Agreement dated September 7, 1987, as further identified in Schedule A hereof.

(i) The "*TransArk pipeline*" means the pipeline acquired by Arkla from TransArk. [4]

(j) "*Arkla Pipeline Assets*" means an undivided interest, consisting of the capacity to receive and deliver in the aggregate 75 million cubic feet of gas per day, in the portions of Arkla Energy Resources' gas pipeline transmission system and gas gathering facilities identified in Schedule B hereof.

II.

It is further ordered, That:

(A) Within twelve (12) months of the date this order becomes final, Arkla shall enter into a final agreement to divest (a) the TransArk assets, absolutely and in good faith, conditioned only on Commission approval and other regulatory approvals. *Provided, however*, Arkla may enter into a final agreement to divest, absolutely and in good faith, (b) the Arkla Pipeline Assets, if the Commission, in its sole discretion approves the substitute divestiture of the Arkla Pipeline Assets for the TransArk assets. Within eighteen (18) months of the date this order becomes final, Arkla shall divest, absolutely and in good faith, (a) the TransArk assets or (b) if the Commission in its sole discretion approves the substitute divestiture, the Arkla Pipeline Assets.

(B) Divestiture shall be made only to an acquirer or acquirers 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 TransArk assets or Arkla Pipeline Assets is to remedy the lessening of competition resulting from the acquisition as alleged in the Federal Trade Commission's complaint.

(C) Following the time that this order becomes final and no later than thirty (30) days after receiving the prior approval of the Federal Trade Commission required by paragraph II(B) hereof, Arkla shall in good faith (1) apply to the Federal Energy Regulatory Commission for abandonment of the TransArk assets or the Arkla Pipeline Assets and (2) apply for and cause the acquirer as part of the agreement to apply for approvals by the Federal Energy Regulatory Commission and any other state or federal agency from which approval must be obtained before Arkla may divest and the acquirer may acquire, own and operate the TransArk assets or acquire and own the Arkla Pipeline

Assets. Arkla shall cooperate with and shall support in good faith with all due diligence and expedition the acquirer in obtaining necessary regulatory approvals, including filing a statement that demonstrates Arkla's support for each such application. Arkla shall take no action to impede or interfere with the necessary regulatory approvals. *Provided, however,* that nothing herein shall preclude Arkla from seeking approval for the construction and operation by it of additional facilities as part of any application other than (a) the applications seeking abandonment of the TransArk assets or the [5] Arkla Pipeline Assets or (b) the applications seeking approval of divestiture of the TransArk assets or the Arkla Pipeline Assets.

(D) In the agreement to divest the TransArk assets, Arkla may include such provisions as are necessary to provide for the exchange between Arkla and the operator of the TransArk assets of up to twenty (20) million cubic feet of gas per day between (a) points on the TransArk system proximate to the areas served at retail by Arkla, and (b) points on the Arkla system in Arkansas interconnected with or proximate to other pipelines to which the TransArk facility may be connected from time to time. This exchange agreement shall be subject to the prior approval of the Federal Trade Commission to ensure that it is consistent with the purposes of this order.

(E) Arkla shall maintain the viability and marketability of the TransArk assets, until the divestiture required under paragraph II(A) hereof is completed, and shall not cause or permit the destruction, removal or impairment of any assets to be divested except in the ordinary course of business and except for ordinary wear and tear. Arkla shall ensure that, until the divestiture required under paragraph II(A) hereof is completed, the TransArk assets continue to be viable, and used in the business of transporting natural gas.

III.

It is further ordered, That:

(A) If Arkla has not received prior Commission approval of a final agreement to divest, absolutely and in good faith, the TransArk assets or the Arkla Pipeline Assets within twelve (12) months of the date this order becomes final, or has not divested, absolutely and in good faith, the TransArk assets or the Arkla Pipeline Assets within eighteen (18) months of the date this order becomes final, Arkla shall consent to the appointment by the Federal Trade Commission of a trustee to divest

the TransArk assets. In the event that the Federal Trade Commission brings an action pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, Arkla shall consent to the appointment of a trustee in such action. The appointment of a trustee shall not preclude the Federal Trade Commission from seeking civil penalties or any other relief available to it for any failure by Arkla to comply with this order. *Provided, however,* that if

(a) Arkla has, within six (6) months of the date this order becomes final, entered into and filed for approval with the Commission a final agreement to divest, absolutely and in good faith, the TransArk assets or [6]

(b) Arkla has, within three (3) months of the date this order becomes final, entered into and filed for approval with the Commission a final agreement to divest, absolutely and in good faith, the Arkla Pipeline Assets or

(c) In the event that the Commission disapproves of a substitute divestiture of the Arkla Pipeline Assets, Arkla has, within six (6) months of the date of such disapproval, entered into and filed for approval with the Commission a final agreement to divest, absolutely and in good faith, the TransArk assets and

(d) Arkla has applied for all necessary regulatory approvals required for the consummation of the approved divestiture within thirty (30) days after receiving the Commission's approval of the divestiture,

the Commission shall not appoint a trustee or seek civil penalties or other relief until six (6) months after the Commission, Federal Energy Regulatory Commission or any other state or federal agency denies approval of the divestiture or acquisition, unless the Commission determines that Arkla has not in good faith, with all due diligence and expedition, supported obtaining the necessary regulatory approval required for the consummation of the divestiture of such assets to the acquirer approved by the Commission. *Provided, further,* that if following any such denial by the Commission, Federal Energy Regulatory Commission or any other state or federal agency

(i) Arkla has, within six (6) months thereafter, entered into and filed for approval with the Commission a substitute final agreement to divest, absolutely and in good faith, the TransArk assets or the Arkla Pipeline Assets or

(ii) In the event that the Commission disapproves of the substitute

divestiture of the Arkla Pipeline Assets, Arkla has, within three (3) months of the date of such disapproval, entered into and filed for approval with the Commission a final agreement to divest, absolutely and in good faith, the TransArk assets and in either event

(iii) Arkla has applied for all necessary regulatory approvals required for the consummation of such divestiture within thirty (30) days after receiving the Commission's approval of the divestiture, [7] the Commission shall not appoint a trustee or seek civil penalties or other relief until the Commission, Federal Energy Regulatory Commission or any other state or federal agency denies approval of the divestiture or acquisition, unless the Commission determines that Arkla has not in good faith, with all due diligence and expedition, supported obtaining the necessary regulatory approvals required for the consummation of its divestiture of such assets to the acquirer approved by the Commission.

(B) If a trustee is appointed by the Federal Trade Commission or a court pursuant to paragraph III(A) of this order, Arkla shall consent to the following terms and conditions regarding the trustee's duties and responsibilities:

(1) The Federal Trade Commission shall select the trustee, subject to the consent of Arkla, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

(2) The trustee shall have the power and authority to divest the TransArk assets required to be divested by paragraph II(A) of this order.

(3) The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Federal Trade Commission and, if the trustee is appointed by a court, subject also to the prior approval of the court. 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 divestiture period may be extended by the Federal Trade Commission, or by the court for a court-appointed trustee. *Provided, however,* that the Federal Trade Commission, or court may only extend the divestiture period two (2) times.

(4) No later than thirty (30) days after receiving the prior approval of the Federal Trade Commission, and if the trustee is appointed by a court, following also the prior approval of the court, of the divestiture

proposed by the trustee, Arkla shall in good faith (1) apply to the Federal Energy Regulatory Commission for abandonment of the TransArk assets; and (2) apply for (and cause the acquirer as part of the agreement to apply for) approvals by the Federal Energy Regulatory Commission and any other state or federal agency from which approval must be obtained before Arkla may divest and the acquirer may acquire, own and [8] operate the TransArk assets. Arkla shall cooperate with and shall support in good faith with all due diligence and expedition the acquirer in obtaining necessary regulatory approvals, including filing a statement that demonstrates Arkla's support for each such application. Arkla shall take no action to impede or interfere with the necessary regulatory approvals. *Provided, however,* that nothing herein shall preclude Arkla from seeking approval for the construction and operation by it of additional facilities as part of any application other than the applications seeking abandonment of the TransArk assets or the applications seeking approval of divestiture of the TransArk assets.

(5) The trustee shall have full and complete access to the personnel, books, records, and facilities of any assets that the trustee has the duty to divest. Arkla shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Arkla shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

(6) The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Federal Trade Commission, subject to Arkla's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in paragraph II(B) of this order. If the trustee receives bona fide offers from more than one prospective purchaser, the Commission shall determine whether to approve each such purchaser, and the trustee shall divest to the purchaser, selected by Arkla from among those approved by the Commission.

(7) The trustee shall serve at the cost and expense of Arkla, on such reasonable and customary terms and conditions as the Federal Trade Commission or a court may set, including the employment of accountants, attorneys or other persons reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies and properties derived from the sale and all expenses incurred. Following accomplishment of the divestiture and after approval by the Federal Trade Commission and, in the case of a court-

appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of [9] Arkla and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the TransArk assets.

(8) Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Federal Trade Commission and, in the case of a court-appointed trustee, of the court, Arkla shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture.

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

(10) The trustee shall report in writing to Arkla and the Federal Trade Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV.

It is further ordered, That, within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Arkla has fully complied with the provisions of paragraphs II and III of this order, Arkla 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. Arkla shall include in its compliance reports, among other things that are required from time to time, a full description of contacts or negotiations for the divestiture of assets specified in paragraph II of this order, including the identity of all parties contacted. Arkla 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.

V.

It is further ordered, That, for a period commencing on the date this order becomes final and continuing for ten (10) years from and after the date of this order becoming final, Arkla shall cease and

desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through [10] 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 Affected Portion of the Arkoma Basin Pipeline, of any Russellville-Morrilton-Conway Corridor Pipeline or of any entity that owns any assets, interest or stock or share capital in any such Pipeline. *Provided, however,* that these prohibitions shall not relate to (1) the construction of new facilities or (2) the continuation of the lease by Arkla from Arkansas Western Gas Company of those facilities described in that certain lease between those companies dated October 25, 1951. *Provided further,* if, and only if, Arkla has provided the Federal Trade Commission with thirty (30) days prior notice of either the reservation or acquisition set out in this proviso, these prohibitions shall not relate to (1) the reservation in the ordinary course of business of not more than twenty (20) percent of the firm capacity of any pipeline or (2) the acquisition by Arkla of any entity which, at the time of such acquisition, directly or indirectly owns any assets, interest, or stock or share capital in any such Pipeline, the fair market value of which assets, interest, or stock or share capital is in the aggregate no greater than twelve (12) million dollars. One year from the date this order becomes final and annually for nine years thereafter Arkla shall file with the Federal Trade Commission a verified written report of its compliance with this paragraph.

VI.

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 Arkla made to its principal office, Arkla 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 Arkla relating to any matters contained in this order; and

(B) Upon five days notice to Arkla and without restraint or interference from Arkla, to interview officers or employees of Arkla who may have counsel present, regarding such matters. [11]

VII.

It is further ordered, That Arkla shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporation 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

The easements and line pipe in place and the records and equipment used in connection therewith beginning at Sun Milepost 216 + 4592' (1' east of ML Block Valve at State Hwy. 45 at Fort Smith, Sebastian County, Arkansas) and ending at Sun Milepost 371 + 4960' (at McRae, White County, Arkansas) as acquired by Arkla from the TransArk partnership (designated by Arkla as its AER Line No. BT-14 and the western most portion of its MRT Line No. A-294), together with the easements and line pipe in place and equipment used in connection therewith constructed by Arkla in conjunction with the foregoing as follows:

- (i) The taps on such facilities necessary to connect them with Arkla's meter run at the interconnection between such facilities and (a) Arkla's AER Line No. BT-16 in Franklin County, Arkansas and (b) Arkla's AER Line No. JM-30 in Faulkner County, Arkansas;
- (ii) The relocations of such facilities constructed by Arkla as follows:
 - (a) Approximately 5,360' of 12-inch pipe between old station numbers 5109 + 34' and 5141 + 48';
 - (b) Approximately 7,204' of 12-inch pipe between old station numbers 3799 + 36' and 3832 + 54';
 - (c) Approximately 23,369' of 12-inch pipe between old station numbers 5299 + 51' and 5406 + 64';
 - (d) Approximately 1,400' of 12-inch pipe between old station numbers 4375 + 63' and 4389 + 63';
 - (e) Approximately 1,731' of 12-inch pipe between old station numbers 5052 + 44' and 5069 + 75';
 - (f) Approximately 1,500' of 12-inch pipe between old station numbers 5670 + 61' and 5685 + 61';
 - (g) Approximately 300' of 12-inch pipe between old station numbers 6873 + 31' and 6870 + 31';

(h) Approximately 160' of 12-inch pipe between old station numbers 1349 + 07' and 1350 + 67';

(j) Approximately 121' of 12-inch pipe between Mileposts 364 + 2569' and 364 + 2690';

(iii) The additional facilities constructed by Arkla appurtenant to such facilities as follows:

(a) A pigging receiver, composed of a 12-inch valve, a 10 foot barrel made of heavywall 16-inch pipe and a 4-inch blowdown valve, located between old station numbers 6873 + 31' and 6870 + 31';

(b) A 12-inch main line valve located between old station numbers 1349 + 07' and 1350 + 67'; and

(c) A 12-inch main line valve and 4-inch blowdown valve located at Milepost 346 + 4723'.

(iv) The tap to be constructed on such facilities necessary to connect them with Arkla's MRT meter run located at Milepost 371 + 4960' (at McRae, White County, Arkansas);

less that portion of the foregoing previously sold by Arkla to Arkansas Oklahoma Gas Company pursuant to that certain Purchase Agreement dated September 7, 1987.

Arkla hereby represents and warrants that the above includes all of the assets acquired by it from TransArk, together with all of the improvements and changes made thereto by Arkla from the date of such acquisition and as of March 7, 1989.

SCHEDULE B

Arkla Pipeline Assets

(1) *Transmission.* The easements and line pipe in place and equipment in place associated with that portion of Arkla Energy Resources' transmission facilities as the same may exist as of March 1, 1989, and designated O, O-1-O, J, T, B (north of the intersection between line B and J in Pope County, Arkansas), BT-1, BT-1-A, B-106, BM-15, BM-10, BT-1-B, BT-16 and BT-14 commencing at the outlet side of Arkla's Chandler Compressor Station located in Latimer County, Oklahoma and extending easterly through Latimer and Le Flore Counties, Oklahoma and Sebastian, Crawford, Franklin, Logan, Johnson, Yell, Perry, Garland, Hot Spring, Pope, Conway, Faulkner, White, Grant, and Jefferson Counties, Arkansas to the points at which the lines designated J, BT-14, and T interconnect with the gas pipeline

transmission system owned and operated by Mississippi River Transmission Corporation.

(2) *Gathering*. The easements and line pipe in place and equipment in place associated with that portion of Arkla Energy Resources' gathering facilities as the same may exist as of March 1, 1989, located in Haskell, Latimer and Le Flore Counties, Oklahoma, and Crawford, Pope, Yell, Franklin, Johnson, Logan and Sebastian Counties, Arkansas.

Complaint

112 F.T.C.

IN THE MATTER OF

ROBERT LEWIS WILKS, D/B/A/ BARBER FUNERAL HOME

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3267. Complaint, Oct. 13, 1989—Decision, Oct. 13, 1989*

This consent order prohibits, among other things, a Springfield, Tenn. funeral home director from doing business as a funeral service provider, or from having any business relationship with any entity selling or offering to sell funeral goods or services to the public.

Appearances

For the Commission: *Mamie Kresses* and *Lydia Parnes*.

For the respondent: *Robert M. Crawford*, Springfield, Tn.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. 45 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondent Robert Lewis Wilks, individually and doing business as Barber Funeral Home, hereinafter referred to as respondent, has violated the provisions of said Act, and it appearing to the Commission that proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Robert Lewis Wilks was the owner and operator of the Barber Funeral Home, a sole proprietorship, in Springfield, Tennessee. He is currently incarcerated at the Robertson County Jail, 500 Willow Street, Springfield, Tennessee. At all times relevant to this complaint, respondent, a licensed funeral director and embalmer in the states of Tennessee and Kentucky, has directed and controlled the business acts and practices of the Barber Funeral Home.

PAR. 2. Since at least 1968, respondent has been engaged in the business of selling caskets, vaults, and other funeral goods to customers making funeral arrangements.

PAR. 3. Since at least 1968, respondent has been engaged in the