

Modifying Order

117 F.T.C.

IN THE MATTER OF

ARKLA, INC.

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

Docket C-3265. Consent Order, Oct. 10, 1989--Modifying Order, Mar. 28, 1994

This order grants a petition to reopen the proceeding and modifies the Commission's 1989 consent order (112 FTC 509) by modifying the description of the assets identified in paragraph I(j) and Schedule B of the order as the Arkla Pipeline Assets. The Commission concluded that changed conditions warranted reopening and modifying the order.

ORDER

Arkla, Inc. ("Arkla"), filed a "Petition To Reopen and Modify Consent Order, Request for Approval of Divestiture by Arkla, Inc., Required by Final Order, and Request for Expeditious Consideration, Including Waiving the Public Comment Period" ("Petition"), in Docket C-3265 on March 2, 1994, pursuant to Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and Section 2.51 of the Commission's Rules of Practice, 16 CFR 2.51.¹ In its Petition, Arkla requests that the Commission reopen the consent order issued on October 23, 1989 ("order"), and modify the description of the assets identified in paragraph I(j) and Schedule B of the order as the "Arkla Pipeline Assets." Arkla bases its request to reopen and modify the order on changed conditions of fact and law and the public interest. For the reasons discussed below, the Petition is granted.

I. Background

The order was issued by the Commission to remedy the alleged anticompetitive effects of Arkla's 1986 acquisition of a pipeline and right of way of the TransArk Transmission Company ("TransArk Assets"). The complaint alleged that the acquisition eliminated the

¹ Arkla previously filed a petition to reopen the order on December 6, 1993; Arkla withdrew the December petition when the current Petition was filed.

TransArk Assets as an actual and a potential competitor in the transportation of gas to consumers in the Conway-Morrilton-Russellville, Arkansas, area and in the transportation of gas out of the Affected Portion of the Arkoma Basin, as defined in the order.

The order requires Arkla, among other things, to divest within eighteen months of the date the order becomes final, the TransArk Assets or, in the alternative, at the sole discretion of the Commission, the Arkla Pipeline Assets, as defined in the order. The purpose of the divestiture is to remedy the lessening of competition alleged in the complaint. Divestiture under the order is subject to the prior approval of the Commission.

On June 7, 1991, the Commission approved a divestiture by Arkla of the Arkla Pipeline Assets to ANR Pipeline Company ("ANR"), pursuant to an agreement between Arkla and ANR ("1989 agreement") that also was subject to approval by the Federal Energy Regulatory Commission ("FERC"). In October 1992, FERC approved the 1989 agreement, subject to certain conditions. In August 1993, Arkla and ANR entered into an "Amended and Restated Sale of Pipeline Interests Agreement" ("1993 Agreement"), which also is subject to approval by the Commission and by FERC. Arkla seeks a modification of the order to conform the description of the assets to be divested under the order with the facilities that Arkla proposes to sell to ANR under the 1993 Agreement.

II. Standards for Reopening and Modifying an Order

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition. S. Rep. No. 96-500, 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); *Louisiana-Pacific Corp.*,

Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4 (unpublished) ("Hart Letter").²

Section 5(b) also provides that the Commission may modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires. Respondents are therefore invited in petitions to reopen to show how the public interest warrants the requested modification. Hart Letter at 5; 16 CFR 2.51. In such a case, the respondent must demonstrate as a threshold matter some affirmative need to modify the order. *Damon Corp.*, Docket No. C-2916, Letter to Joel E. Hoffman, Esq. (March 29, 1983), at 2 (unpublished) ("Damon Letter"). For example, it may be in the public interest to modify an order "to relieve any impediment to effective competition that may result from the order." *Damon Corp.*, Docket No. C-2916, 101 FTC 689, 692 (1983). Once such a showing of need is made, the Commission will balance the reasons favoring the requested modification against any reasons not to make the modification. Damon Letter at 2. The Commission also will consider whether the particular modification sought is appropriate to remedy the identified harm. Damon Letter at 4.

The language of Section 5(b) plainly anticipates that the burden is on the petitioner to make a "satisfactory showing" of changed conditions to obtain reopening of the order. The legislative history also makes clear that the petitioner has the burden of showing, other than by conclusory statements, why an order should be modified. The Commission "may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order." S. Rep. No. 96-500, 96th Cong., 1st Sess. 9-10 (1979); *see also* Rule 2.51(b) (requiring affidavits in support of petitions to reopen and modify). If the Commission determines that the petitioner has made the necessary showing, the Commission must reopen the order to consider whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the petitioner fails to meet its burden of making the satisfactory showing required by the statute.

² *See also United States v. Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376-77 (9th Cir. 1992) ("A decision to reopen does not necessarily entail a decision to modify the order. Reopening may occur even where the petition itself does not plead facts requiring modification.").

The petitioner's burden is not a light one in view of the public interest in repose and the finality of Commission orders. *See Federated Department Stores, Inc. v. Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

III. Arkla's Petition To Reopen

Arkla in its Petition states that reopening and modifying the order is warranted by changes in fact and law and by public interest considerations. In the Petition, Arkla requests that the definition of the Arkla Pipeline Assets be modified to exclude an interest in Arkla's gathering facilities in ten counties in Arkansas and Oklahoma and to alter the specific pipeline segments in which Arkla must divest an interest.

As changed conditions, Arkla identifies the issuance in 1992 by the Federal Energy Regulatory Commission ("FERC") of order No. 636 and the conditions placed by FERC, in October 1992, on its approval of the 1989 agreement between Arkla and ANR with respect to the Arkla Pipeline Assets.³ Arkla states that the conditions imposed by FERC, in the context of FERC order No. 636, "significantly altered the contract which the FTC had approved." Petition at 8. Arkla also states that the conditions imposed by FERC fundamentally altered the bargain struck by Arkla and ANR in the 1989 agreement,⁴ causing the parties to consider whether to renegotiate or abandon their proposed transaction.⁵

Arkla states that FERC order No. 636 has brought sweeping changes in the interstate pipeline industry. Order No. 636 requires pipelines to separate (or "unbundle") each element of services

³ FERC issued an order concerning the 1989 agreement on October 1, 1992. After rehearing, FERC issued a modified order on May 20, 1993. Petition at 8.

⁴ FERC conditioned its approval of the 1989 agreement on ANR's having the right to access all gas receipt and delivery points in portions of the Arkla Pipeline in which ANR was to receive an interest. Petition at 13-14. FERC also required Arkla and ANR to designate specific pipeline segments in which ANR would acquire an interest. The 1989 agreement approved by the Commission provided limited receipt and delivery points to ANR and designated several alternative pipeline transportation routes instead of specific pipeline segments.

⁵ Arkla appealed the FERC order placing conditions on the 1989 agreement and, on August 5, 1993, Arkla and ANR agreed to the 1993 Agreement. The 1993 Agreement, like the 1989 agreement, is subject to approval by both the Commission and FERC.

previously provided as a package to customers,⁶ such as gathering,⁷ storage, transportation and sales. The purpose of FERC order No. 636, according to Arkla, "was to develop competition at the wellhead for the sale of natural gas by allowing users of the gas to contract directly with the sellers of the gas." ANR Statement at 19.⁸ Before FERC order No. 636 was issued, an acquirer of the Arkla Pipeline Assets would need capacity on Arkla's gathering system to obtain gas supply from the producing fields. "In the new order No. 636 environment," an acquirer of the Arkla Pipeline Assets no longer requires an interest in the gathering system, because "shippers [can] contract for gathering services directly with third party gatherers in the Arkoma Basin and have their gas delivered to [an acquirer's] interest in the Arkla system."⁹ ANR Statement at 17.

Arkla also states that reopening and modifying the order is warranted in the public interest to ensure that divestiture of the Arkla Pipeline Assets, as modified, will occur. According to Arkla, FERC so altered the contractual bargain between Arkla and ANR that the transaction approved by the Commission was uneconomic. Because Arkla and ANR would not have consummated the transaction as reformed by the FERC conditions, Arkla states that its only option would be to divest the TransArk Assets. Divestiture of the TransArk Assets would be unsatisfactory, according to Arkla, because substantially less capacity for the transportation of gas would be divested, as compared to the Arkla Pipelines Assets, and because divestiture would be delayed by the need to go through FERC abandonment proceedings.

⁶ According to Arkla, FERC order No. 636, among other things, requires pipelines to offer separate prices for each element of service, to assign their pipeline capacity to former customers, and to allow customers to use all points "within their path" for the receipt and delivery of gas. Petition at 13.

⁷ "Gathering" includes transporting natural gas from producing wells to transmission pipelines for delivery to customers.

⁸ On February 28, 1994, ANR filed a Statement in Support of Arkla Inc.'s Petition To Reopen and Modify Consent Order and for Expedited Treatment ("ANR Statement"). The ANR Statement is incorporated by reference in Arkla's Petition.

⁹ FERC order No. 636, by requiring that pipelines offer and price each component of transportation service separately, enables shippers to contract with one firm for gathering services and with another for transportation services. Under order No. 636, a pipeline company can participate in the transportation market without also owning a gathering system. Petition at 14-15; ANR Statement at 16-17.

IV. The Petition Is Granted

Arkla has shown changed conditions that warrant reopening the order to consider whether the description of the assets to be divested, the Arkla Pipeline Assets, should be modified as requested. Arkla also has shown that the requested modification should be granted.

Arkla in its Petition states that the divestiture that the Commission approved in 1991 was not completed, because subsequent action by FERC, in light of FERC order No. 636, changed the terms of the divestiture that had been approved by the Commission. Arkla also claims that the conditions imposed by FERC on the 1989 agreement "were inconsistent with the FTC approval" of the agreement. Petition at 8.

After FERC imposed conditions on the 1989 agreement, several alternative courses may have been open to Arkla,¹⁰ but completion of the divestiture approved by the Commission was not one of them.¹¹ The order modifications that Arkla requests would accommodate the revised transaction that Arkla and ANR now propose in an attempt to satisfy three different, but not necessarily inconsistent interests: (1) the requirement under the order of the Commission that Arkla divest certain assets to remedy alleged anticompetitive effects, (2) the interests of FERC in carrying out its mission under federal law to regulate gas pipeline systems, and (3) the business interests of Arkla and ANR "in an economic environment that has been fundamentally altered by the issuance of order No. 636."¹² See Petition at 9. We agree that Arkla has made a sufficient showing of changed circumstances to warrant reopening the order.¹³

We also have determined that the modifications to the order that Arkla has requested are consistent with the remedial purpose of the

¹⁰ One alternative, an appeal from the FERC order imposing conditions on the 1989 agreement, has been "held in abeyance by the Court and the record returned to the FERC to allow it to consider" the renegotiated agreement between Arkla and ANR. Petition at 8. Arkla might have sought the Commission's approval of the agreement as revised by FERC, but this possibility assumes ANR's acquiescence. The reduced purchase price and ANR's expanded access to receipt and delivery points under the 1993 Agreement may imply that ANR declined, in light of actions by FERC, to go forward with the 1989 agreement.

¹¹ The saga is not over: The 1993 Agreement still must be approved by FERC.

¹² The interests of ANR (or another acquirer proposed by Arkla) also must be accommodated, because there cannot be a proposed divestiture without a proposed acquirer.

¹³ Because the Commission is granting Arkla's petition to reopen the order on the ground of changed conditions, the Commission need not and does not address Arkla's public interest arguments.

order and should be made. The modifications will change the definition of "Arkla Pipeline Assets" by (1) excluding the gas gathering facilities identified in Schedule B to the order, and (2) altering the description in Schedule B of the Arkla Pipeline Assets (*See Exhibit A, attached*).

Divestiture of the gas gathering facilities in connection with the Arkla Pipeline Assets no longer appears to be necessary to restore the alleged lessening of competition. The complaint alleged that Arkla would have market power with respect to gas producers. In light of FERC order No. 636 and the conditions that FERC announced for the 1989 agreement, ANR was able to obtain under the 1993 Agreement interconnection rights that "provide shippers and producers even greater flexibility than would an acquisition of Arkla's existing gathering facilities." ANR Statement at 19.

The additional changes requested in the description of the Schedule B assets also reflect conditions that FERC imposed on the 1989 agreement. Under the 1989 agreement, Arkla was to transfer to ANR an interest in four alternative pipeline routes to deliver a certain quantity of gas from the Arkoma Basin and the Chandler station in southeast Oklahoma to ANR's pipeline interconnection at Perryville, Louisiana, but ANR could not specify a particular route or use any receipt or delivery points along the alternate routes. Under FERC order No. 636 and the FERC order concerning the 1989 agreement, Arkla and ANR were required to designate specific pipeline facilities on which ANR would have access to all receipt and delivery points. ANR Statement at 13. The proposed revised description of the Arkla Pipeline Assets identifies specific pipeline segments on which ANR will be able to transport gas from the Arkoma Basin to Perryville and eliminates the alternative routes that are not necessary under FERC's order. The proposed modifications in the description of the Arkla Pipeline Assets are outside the markets identified in the Commission's complaint and order and would not affect ANR's ability to receive and deliver gas in the relevant markets.

The Commission has considered comments that were filed in connection with Arkla's Petition.¹⁴ NOARK Pipeline System, L.P., and Transok, Inc., wrote in support of Arkla's Petition. Arkansas

¹⁴ Although the public comment period was waived on Arkla's Petition, some comments were filed. The Commission also has considered comments that were filed in connection with Arkla's December 1993 petition, which was on the public record for 30 days.

Gas Consumers and the law firm of Travis & Gooch, writing on behalf of several gas shippers, oppose granting the Petition unless approval is conditioned on a requirement that Arkla's gathering facilities remain subject to FERC jurisdiction and to "open access" requirements and nondiscriminatory rates under FERC order No. 636. The commenters are concerned in light of Arkla's request, now pending, that FERC approve a transfer of Arkla's gathering system to an affiliate and abandon jurisdiction over the gathering system affiliate.¹⁵

Although we appreciate the concern about application of FERC order No. 636 to Arkla's gathering system, other considerations suggest that we should not impose such a condition.¹⁶ The Commission's order contemplated that divestiture by Arkla of the Arkla Pipeline Assets, including the gathering facilities, would be sufficient to remedy the alleged anticompetitive effects of Arkla's acquisition of the TransArk Assets. Arkla has shown that the contract rights of access to gathering facilities that ANR will acquire under the 1993 Agreement will enable ANR to be an effective competitor without owning the gathering lines. Although continued application of FERC order No. 636 to the gathering facilities might appear likely to enhance competition in gathering markets, the order does not impose such a condition, and imposing such a condition now would appear to extend the scope of the relief beyond what was contemplated by the order.

V. Conclusion

Accordingly, *It is ordered*, That this matter be, and it hereby is, reopened, and that the order in Docket C-3265 be, and it hereby is, modified, as of the effective date of this order, as follows:

¹⁵ Although independent gathering systems are not subject to FERC jurisdiction, gathering systems owned by interstate pipeline companies have been subject to FERC jurisdiction. Since the issuance of FERC order No. 636, a number of integrated pipeline companies have opted to "spin down" their gathering systems to separate affiliates and to apply to FERC to abandon jurisdiction over the gathering system affiliate. To date, FERC has responded by imposing a modified regulation of the spin-down affiliates instead of abandoning jurisdiction. Arkla submitted its request for FERC approval of a "spin down" and of deregulation on October 21, 1993.

¹⁶ FERC is considering Arkla's proposed spin down, and the commenters have made their views concerning the proposal known to FERC.

A. By deleting the words "and gas gathering facilities" from the definition of "Arkla Pipeline Assets" in paragraph I(j) of the order; and

B. By deleting the existing Schedule B to the order and substituting therefor a new Schedule B, attached hereto as Exhibit A.

Commissioner Owen not participating.

EXHIBIT A

Schedule 1.3
to
Sale of Pipeline Interests Agreement

ARKLA PIPELINE INTERESTS

The following describes the portions of the Arkla System (as shown on the map at Page 8 of 8, which is inserted for purposes of description only and is not intended to affect interpretation of this Agreement) in which undivided interests are included in the Arkla Pipeline Interests pursuant to Sections 1.3(a) through 1.3(c) of the Agreement to which this Schedule is attached (all terms used herein with initial capital letters which are not otherwise defined are so used with the respective meanings ascribed to them in such Agreement):

1. The real property, line pipe in place, equipment in place and transmission and related facilities (including, without limitation, compression and measurement facilities) associated with (a) that portion of AER's main transmission lines designated AC, ACT-1, ACT-2, AD ADT-3, O, O-1-O, J (to the eastern boundary of Pope County), BT-1 (to the southeastern boundary of Tell County, Arkansas) and BT-1AN (to the southeastern boundary of Yell County, Arkansas) commencing at the point at which the ANR System interconnects with the AER System near AER's Custer Compressor Station in Section 4, Township 13N, Range 17W in Custer County, Oklahoma and extending easterly through Custer, Caddo, Coal, Atoka, Grady, McClain, Pontotoc, Hughes, Pittsburg, Latimer, Pushmataha, LeFlore and McCurtain Counties, Oklahoma and Sebastian, Crawford, Franklin, Logan, Johnson, Yell, Pope, Polk, Howard, Pike, Clark, Hot Spring, Grant, Dallas, Cleveland and Lincoln Counties, Arkansas, and (c) that portion of AER's line designated FT-18 commencing at the outlet of MRT's Perryville Compressor Station near Monroe, Louisiana and extending to the interconnections with Line FM-56 AER/ANR (that pipeline jointly owned by AER and Purchaser), but excluding any part of AER's existing ownership interest in Line FM-56 AER/ANR, and with AER's Line FM-59, and AER's Line FM-59 to the interconnection with the facilities of Texas Gas Transmission Corporation; and

2. The real property, line pipe in place, equipment in place and transmission and related facilities (including, without limitation, compression and measurement facilities) associated with that portion of AER's transmission line designated BT-14 commencing at the AER System's Survey Station Number 134 + 40 in Sebastian County, Arkansas and terminating at the AER System's Survey Station Number 8193 + 63 at McRae, White County, Arkansas, (such real property, line pipe, equipment and facilities, together with those items referred to in Item 3 of this Schedule 1.3, being collectively referred to as the "Transark Pipeline"); and

3. The real property, line pipe in place, equipment in place and transmission and related facilities (including, without limitation, compression and measurement

facilities) associated with that portion of MRT's transmission line designated A-294 commencing at the AER System's Survey Station Number 8193 + 63 at McRae, White County, Arkansas and extending easterly to the point in Section 21, Township 6N, Range 6W in White County, Arkansas at which such line interconnects with the main transmission lines of the MRT System designated 1, 2 and 3; and

4. The real property, line pipe in place, equipment in place and transmission and related facilities (including, without limitation, compression and measurement facilities) associated with the portions of AER's transmission trunklines and transmission compression facilities located in the Arkoma Basin (as defined in Section 1.3 of the Agreement) and listed on pp. 4-7 of this Schedule 1.3; and

5. The real property, line pipe in place, equipment in place and transmission and related facilities (including, without limitation, compression and measurement facilities) associated with that portion of the main lines of the MRT System designated 1, 2 and 3 commencing at the point at which said lines interconnect with MRT's Line A-294 and extending southerly from such point to the outlet of MRT's Perryville Compressor Station near Monroe, Ouachita Parish, Louisiana, and the interconnections with AER's Line FT-18 and Line FM-56 AER/ANR.

AER TRANSMISSION COMPRESSORS

<u>Station</u>	<u>Location</u>
CHAMBERS	Line BT-1-AN, Yell Co, AR
CHANDLER	Line AD, Latimer Co., OK
DUNN	Line O, Logan Co., AR
DUNN JUNCTION	Line O, Logan Co., AR
PINEY	Line J, Pope Co., AR
WALKER	Line BT-1, Franklin Co., AR
MALVERN	Line AC, Hot Spring Co., AR

MRT TRANSMISSION COMPRESSORS

<u>Station</u>	<u>Location</u>
CARLISLE	Loneoke Co., AR
SHERRILL	Jefferson Co., AR
GLENDALE	Lincoln Co., AR
FOUNTAIN HILL	Ashley Co., AR
PERRYVILLE	Ouachita Parish, LA

REPLACEMENT PAGE

SCHED. 1.3

ARKOMA BASIN TRUNKLINE COMPRESSOR

<u>Station</u>	<u>Country</u>	<u>State</u>
Clarksville	Johnson	AR
Hobbs	Sebastian	AR
North Russelville	Haskell	AR
Morrison Bluff	Logan	AR
South Aetna	Franklin	AR
South East Spiro	Le Flore	OK
Spadra	Logan	AR
Spiro	Le Flore	OK
Tates Island #1	Johnson	AR
Tates Island #2	Johnson	AR
Union City	Johnson	AR
Webb City	Franklin	AR

REPLACEMENT PAGE

ARKOMA BASIN TRANSMISSION TRUNKLINES

<u>Line No.</u>	<u>County</u>	<u>State</u>
AD-107-A	Pittsburg	OK
ADT-17	Pittsburg	OK
ADT-18	Pittsburg	OK
B	Various	
	(BM-10 to Piney)	
B-3	Johnson	AR
B-55-EXT	Crawford	AR
B-137	Johnson	AR
B-173	Johnson	AR
B-174	Johnson	AR
B-214	Johnson	AR
B-221	Johnson	AR
B-245	Johnson	AR
B-248	Johnson	AR
B-256	Johnson	AR
B-271	Johnson	AR
B-274	Sebastian	AR
B-307	Johnson	AR
B-312	Franklin	AR
B-321	Johnson	AR
B-354	Johnson	AR
B-360	Johnson	AR
B-372	Johnson	AR
B-399	Franklin	AR

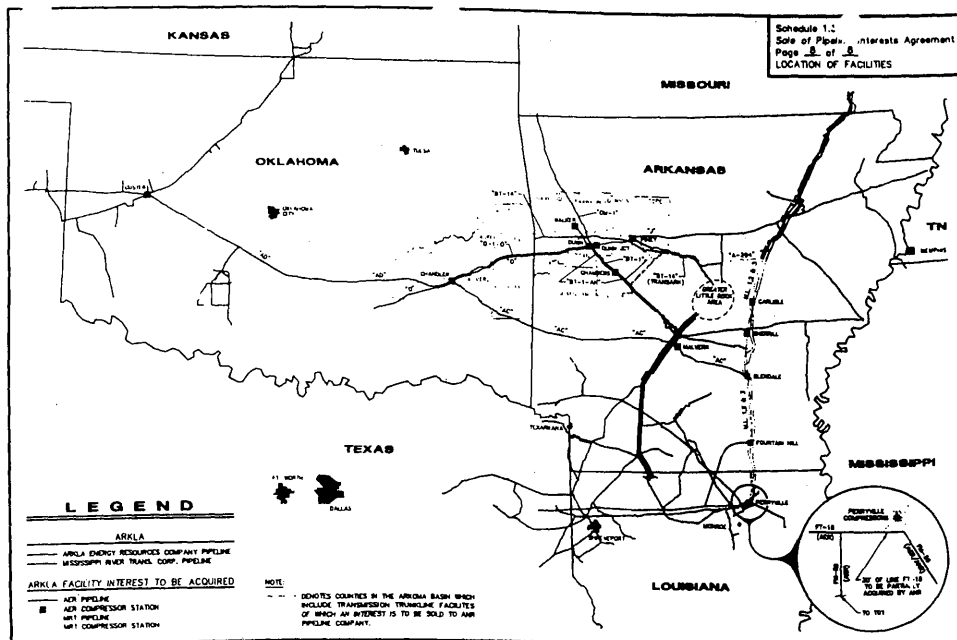
ARKOMA BASIN TRANSMISSION TRUNKLINES

(continued)

<u>Line No.</u>	<u>County</u>	<u>State</u>
B-403	Johnson	AR
B-412	Johnson	AR
B-419	Johnson	AR
B-428	Johnson	AR
B-429	Johnson	AR
B-435	Johnson	AR
B-437	Johnson	AR
B-449	Franklin	AR
B-457	Franklin	AR
B-478	Franklin	AR
B-483	Johnson	AR
B-536	Johnson	AR
B-547	Johnson	AR
B-564	Johnson	AR
BM-10	Johnson	AR
BM-15	Franklin	AR
BM-20	Pope	AR
BM-25	Franklin	AR
BT-2	Johnson	AR
BT-2-A	Johnson	AR
BT-5	Franklin	AR
BT-8	Johnson	AR
BT-11	Johnson	AR
BT-11-A	Johnson	AR
BT-16	Johnson	AR
BT-17	Johnson	AR
BW-393-Z	Johnson	AR
BW-596-Z	Franklin	AR
BW-1507	Johnson	AR
BW-1705	Johnson	AR
BW-1934	Johnson	AR
BW-2003	Johnson	AR
J-13	Pope	AR
J-24	Pope	AR
JT-1	Logan	AR
JT-2	Pope	AR
JT-3	Logan	AR
JT-4	Logan	AR
O-216	Latimer	OK
O-577	Haskell	OK
O-678	Haskell	OK
OM-1	Various	AR
OT-1	Le Flore	OK

ARKOMA BASIN TRANSMISSION TRUNKLINES
(continued)

<u>Line No.</u>	<u>County</u>	<u>State</u>
OT-1-A	Le Flore	OK
OT-5	Latimer	OK
OT-6	Latimer	OK
OT-7-A	Latimer	OK
OT-7	Latimer	OK
OT-12	Pittsburg	OK
OT-13	Sebastian	AR
OT-14	Sebastian	AR
OT-15	Haskell	OK
OT-16	Pittsburg	OK
OT-18	Le Flore	OK
OT-19	Le Flore	OK
OT-20	Sebastian	OK
OT-21	Pittsburg	OK
OT-22	Sebastian	AR
OT-23	Sebastian	AR
OT-27	Sequoyah	OK
OT-28	Latimer	OK
33-	Pittsburg	OK
34-	Pittsburg	OK
34-A	Pittsburg	OK
36-	Pittsburg	OK



IN THE MATTER OF

NISSAN MOTOR CORPORATION IN U.S.A.

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

Docket C-3502. Complaint, June 29, 1994--Decision, June 29, 1994

This consent order requires, among other things, a California-based corporation to disclose clearly and prominently in each advertisement either any significant restrictions that apply to obtaining a promotional benefit in connection with a test-drive offer, or that there are significant restrictions that apply to obtaining the benefit, and prohibits the respondent from misrepresenting the existence, nature or any conditions, restrictions or limitations on any promotional benefit it offers consumers in the future.

Appearances

For the Commission: *Phillip L. Broyles, Michael Milgrom and Melissa R. Sternlicht.*

For the respondent: *William C. MacLeod, Collier, Shannon, Rill & Scott, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Nissan Motor Corporation in U.S.A., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent is a California corporation, with its office or principal place of business located at 18501 South Figueroa Street, Carson, California.

PAR. 2. Respondent has advertised, distributed, offered for sale and sold (through dealers) new automobiles including the Nissan Stanza, a four door sedan.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.