FEDERAL REGISTER

VOLUME 4 NUMBER 96

Washington, Thursday, May 18, 1939

Rules, Regulations, Orders

TITLE 25—INDIANS

OFFICE OF INDIAN AFFAIRS

PART 130—ORDER FIXING OPERATION AND MAINTENANCE CHARGES FOR TRIBAL AND TRUST PATENT INDIAN LANDS, SAN CARLOS PROJECT, ARIZONA, CALENDAR YEAR 1938 AND UNTIL FURTHER ORDER

MARCH 17, 1939.

§ 130.110 *Basic charge.* Pursuant to the provisions of Section 10 of the Act of March 3, 1905 (33 Stat., 1081), as amended and supplemented by the Acts of August 24, 1912 (37 Stat., 522), August 1, 1914 (38 Stat., 583, Title 25 U.S.C. 385), Section 5 of the Act of June 7, 1924 (43 Stat., 476), March 7, 1928 (45 Stat., 210, Title 25 U.S.C. 387), and the Act of August 9, 1937 (50 Stat., 577), as amended by the Act of May 9, 1938 (52 Stat., 291–305), and in accordance with the public notice issued on December 1, 1932, operation and maintenance charges are assessable against the 50,000 acres of tribal lands and trust patent Indian lands of the San Carlos irrigation project within the boundaries of the Pima Indian Reservation, Arizona, and the basic rate assessed for the calendar year 1938 and subsequent years unless changed by further order, is hereby fixed at $1.65 per acre. Such rate shall entitle each acre of land to have delivered for use thereon two (2) acre-feet of water per acre or its proportionate share of the available water supply.

§ 130.111 *Excess water charge.* For water delivered in excess of two (2) acre-feet per acre there shall be charged 50 cents per acre-foot per acre for the first acre-foot of excess water or fraction thereof delivered, and $1 per acre-foot or fraction thereof per acre for water delivered in excess of three (3) acre-feet per acre; provided there shall be no charge for free water delivered in accordance with existing regulations and no discrimination in the delivery of free water to Indian and non-Indian lands.

§ 130.112 *Time and place of payment.* Basic charges shall become due on January 1 of each year and shall be payable on or before May 15; provided no water shall be delivered prior to the payment of said basic charge unless pursuant to law proper arrangements have been made for such payment. Payment for excess water as herein provided shall be made at the time of request for delivery thereof or previous to the time of delivery. Payment of these assessments and charges shall be made at the office of the Superintendent of the Gila River Reservation at Sacaton, Arizona.

§ 130.113 *Alternate method of payment.* Payment of charges may be made from revenue derived from farming operations on tribal lands conducted by the Pima Agency as provided by the Act of August 9, 1937 (50 Stat., 577), as amended by the Act of May 9, 1938 (52 Stat., 291–305). Should the subjugation and cropping operations not produce sufficient revenues to meet the aforesaid charges, the deficit shall be paid or otherwise satisfactorily provided for by the Indians, or from such other funds as may be made available therefor by law; provided, in such event where the allottee or assignee is required to pay the charges such allottee or assignee shall be entitled to the benefit of the 3-year exemption period from the payment of operation and maintenance charges as provided for in Office letter of June 20, 1933, as confirmed by departmental order of November 18, 1936. The 3-year exemption period shall begin to run from the date the land is placed under cultivation by the individual Indian, or in the case of assignment of tribal land or release of allotted land which has been operated under the subjugation and cropping program the exemption period shall begin with the date of the assignment or release to the individual Indian for his individual operation: *Provided*, That this order shall be subject to the power of the Gila River Pima-Maricopa Indian Community, through its Community Council or through referendum vote, as provided in its Constitution and By-laws, to pre-

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FEDERAL REGISTER

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vent the use of revenue derived from farming operations on tribal lands within the project or any other tribal funds in payment of any charges established by this order. Failure by the Community to consent within a reasonable time to the use of such revenue or funds for the calendar year 1939 shall result in immediate termination of water service to tribal lands within the project.

§ 130.114 *Application for water service.* Before the first delivery of water is made an application for water service shall be made to the Superintendent on an approved form provided by him and signed by the applicant, or an oral request may be made by the Indian to the Superintendent, which application or request, when approved by the Superintendent, will be furnished the Project Engineer of the Irrigation Service which will be his authority for delivery of irrigation water to the land described therein. For all subsequent deliveries of water the water users will notify the Watermaster or Ditchrider when delivery is desired.

§ 130.115 *Distribution and apportionment of water.* The stored and pumped water of the project is deemed a common project water supply in which all lands of the entire project are entitled to share equally and all such waters shall be distributed to the lands of the project as equitably as physical conditions permit. The portion of the common supply available for the Indian lands will be distributed in equal amounts per acre to each acre under cultivation and irrigation, in so far as is possible, and subject to beneficial use. Water users will be notified at the beginning of the season of the amount of stored and pumped water available and at later dates of additional apportionments as they are made. Waste of water by users must be avoided as far as is physically possible in order that the supply shall be sufficient for the entire area in crop. When floods produce a supply of water in excess of demands or available storage facilities, free water shall be declared available and all water users will be promptly notified thereof. Such water shall not be counted as a part of the apportioned share to the lands on which it is used.

§ 130.116 *Care of farm ditches.* Water users will be required to keep their farm ditches in suitable condition to take water from project laterals and to carry it to the lands being irrigated. Failure to do this may result in refusal of delivery of water to lands on which the farm ditches are not in condition to take the water ordered if this condition prevents proper operation of project laterals and structures and causes waste of water.

OSCAR L. CHAPMAN,
Assistant Secretary of the Interior.

[F. R. Doc. 39-1706; Filed, May 17, 1939; 9:44 a. m.]

TITLE 50—WILDLIFE

BUREAU OF BIOLOGICAL SURVEY

PART 26—INDIVIDUAL NATIONAL WILDLIFE REFUGES—EAST CENTRAL REGION

ORDER PERMITTING FISHING WITHIN THE KENTUCKY WOODLANDS WILDLIFE REFUGE, KENTUCKY

Pursuant to regulations 2 and 3 of the regulations of the Secretary of Agriculture, dated November 23, 1937,[1] for the administration of national wildlife refuges under the jurisdiction of the Bureau of Biological Survey, it is hereby ordered that until further notice, in accordance with the provisions of said regulations, fishes may be taken for noncommercial purposes when and as permitted by the laws and regulations of the State of Kentucky, from certain waters within the Kentucky Woodlands Wildlife Refuge, Kentucky, subject to the following conditions and restrictions:

§ 26.503 (a) *Waters open to fishing.* Only the small artificial pond situated east of the refuge headquarters within the refuge shall be open to noncommercial fishing when and as permitted by State laws and regulations, except that no fishing of any kind will be permitted within the waters of the refuge during the migratory-waterfowl hunting season. No other waters of the refuge are open to fishing.

§ 26.503 (b) *State fishing laws.* Every person who fishes in any of the aforesaid waters and under the aforesaid conditions must comply with applicable fishing laws and regulations of the State of Kentucky, and in the absence of any State law or regulation in respect to the fishing season and the number and size of fishes that may be taken, the Chief of the Bureau of Biological Survey may fix such seasons and limits; and in the event he shall find that fishing in any of the aforesaid waters is unduly depleting any species of fishes therein, he may suspend the privilege of fishing in such waters pending final determination by the Secretary of Agriculture.

§ 26.503 (c) *Fishing permits.* Any person exercising the privilege of fishing within the refuge shall be in possession of a valid State fishing license issued by the State of Kentucky, if such license is required, and shall carry such license on his person while fishing, and when requested to do so shall exhibit the license to any representative of the Kentucky Department of Conservation authorized to enforce the game and fish laws of the State, or to any representative of the Bureau of Biological Survey: *Provided,* That fishing shall be done in such manner as will not interfere with the objects for which the refuge was established.

§ 26.503 (d) *Routes of travel.* Persons entering the refuge for the purpose of reaching waters thereof open to fishing shall follow such routes of travel as shall from time to time be designated by the officer in charge of the refuge and shall not enter upon any other part of the refuge other than said open waters and areas immediately adjacent thereto.

In testimony whereof I have hereunto set my hand and caused the official seal of the United States Department of Agriculture to be affixed in the City of Washington, this 16th day of May 1939.

[SEAL] H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 39-1707; Filed, May 17, 1939; 10:17 a. m.]

[1] 2 F.R. 2537.

Notices

DEPARTMENT OF AGRICULTURE.

Agricultural Adjustment Administration.

[ACP-1939-1-Thomas County, Kans.]

1939 AGRICULTURAL CONSERVATION PROGRAM FOR THOMAS COUNTY, KANSAS

SUPPLEMENT NO. 1

Pursuant to the authority vested in the Secretary of Agriculture under sections 7 to 17, inclusive, of the Soil Conservation and Domestic Allotment Act, as amended, the 1939 Agricultural Conservation Program Bulletin for Thomas County, Kansas,[1] is hereby amended as follows:

Section 7 (a) (1) is amended to read as follows:

"(1) *Wheat.* 12.7 cents per bushel of the normal yield per acre of wheat for the farm for each acre in the wheat acreage allotment."

[1] 4 F. R. 1268 DI.

Done at Washington, D. C., this 16th day of May, 1939. Witness my hand and the seal of the Department of Agriculture.

[SEAL] H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 39–1708; Filed, May 17, 1939; 10:17 a. m.]

[ACP–1938–26]

1938 AGRICULTURAL CONSERVATION PROGRAM BULLETIN

SUPPLEMENT NO. 23

Pursuant to the authority vested in the Secretary of Agriculture under sections 7 to 17 of the Soil Conservation and Domestic Allotment Act, as amended, the 1938 Agricultural Conservation Program Bulletin, as amended,[1] is hereby further amended as follows:

(1) The definition of "tenant" in section XVIII is hereby amended to read as follows:

Tenant means a person other than a sharecropper who rents land from another person (for cash, a fixed commodity payment, or a share of the proceeds of the crops) and is entitled under a written or oral lease or agreement to receive all or a share of the proceeds of the crops produced thereon, and, in the case of rice, also means a person furnishing water for a share of the rice.

(2) The definition of Class A farms in section XVIII is hereby amended by the addition of Otero County to the list of counties in the Class A area in New Mexico.

Done at Washington, D. C., this 17th day of May 1939. Witness my hand and the seal of the Department of Agriculture.

[SEAL] H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 39–1716; Filed, May 17, 1939; 12:47 p. m.]

FEDERAL TRADE COMMISSION.

United States of America—Before Federal Trade Commission

[Docket No. 3133]

IN THE MATTER OF ELIZABETH ARDEN, INCORPORATED, ELIZABETH ARDEN SALES CORPORATION, AND FLORENCE N. LEWIS

AMENDED AND SUPPLEMENTAL COMPLAINT

Count I

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, have violated the provisions of Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U.S.C., Title 15, Sec. 13), hereby issues its amended and supplemental complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Elizabeth Arden, Incorporated is a corporation organized under the laws of the State of New York with its office and principal place of business located at 681 Fifth Avenue in the City of New York, State of New York.

Respondent Elizabeth Arden Sales Corporation is a corporation organized under the laws of the State of New York with its office and principal place of business also located at 681 Fifth Avenue in the City of New York, State of New York. Said respondent is the sole distributor for the commodities manufactured by respondent Elizabeth Arden, Incorporated.

Respondent Florence N. Lewis owns and controls 90 percent of the issued outstanding capital stock of said respondent Elizabeth Arden, Incorporated and all of the issued outstanding capital stock of said respondent Elizabeth Arden Sales Corporation and is now and has been during all times herein mentioned in active direction and control of the business, business methods and business policies of the aforesaid respondent corporations, and in all things herein alleged, has been and now is acting with and through said respondent corporations. Said respondent Florence N. Lewis' office and principal place of business is likewise located at 681 Fifth Avenue in the City of New York, State of New York.

Respondents Elizabeth Arden, Incorporated, Elizabeth Arden Sales Corporation and Florence N. Lewis are engaged in the manufacture, sale and distribution of cosmetics and toilet preparations as herein described. Respondents cause said commodities when sold to be transported from their place of business in the State of New York to the purchasers thereof located in the various states of the United States and in the District of Columbia.

Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said cosmetics and toilet preparations sold and distributed by them in commerce among and between the various states of the United States and in the District of Columbia.

PAR. 2. Respondents in the course and conduct of their business as aforesaid, are in actual and substantial competition with other corporations and partnerships, firms and individuals engaged in the sale and distribution of cosmetics and toilet preparations in commerce among and between the various states of the United States and in the District of Columbia. Respondents in such course and conduct of their business in commerce as aforesaid, are in competition with other corporations and with partnerships, firms and individuals engaged in the sale and distribution of cosmetics and toilet preparations, and many purchasers of respondents' aforesaid commodities and other sellers and distributors of like commodities, are competitively engaged in the resale and distribution of such commodities.

PAR. 3. In the course and conduct of their business as aforesaid, respondents are selling and distributing their cosmetics and toilet preparations to different purchasers engaged in reselling and distributing the same within the United States and the District of Columbia.

In the course of such sale and distribution of their cosmetics and toilet preparations, respondents are differentiating in price between such different purchasers of their said commodities of like grade and quality sold to such purchasers for resale as aforesaid, by giving and allowing to certain of such purchasers varied price discounts more favorable than given or allowed to other of such purchasers, in manner and method among others as follows:

(a) By giving and allowing a price discount of 25% from the retail or list prices of their cosmetic and toilet preparations of like grade and quality to such purchasers as aforesaid whose total annual purchases valued at retail or list prices amount to less than $200.00, and by giving and allowing a price discount of 33⅓% from the retail or list prices of their cosmetic and toilet preparations of like grade and quality to other of such purchasers as aforesaid whose total annual purchases valued at retail or list prices amount to $200.00 or more but less than $3,000.00, and further

(b) By giving and allowing a price discount of 33⅓% plus 5% from the retail or list prices of their cosmetic and toilet preparations of like grade and quality to other of such purchasers whose total annual purchases valued at retail or list prices amount to $3,000.00 or more but less than $7,500.00, and by giving and allowing a price discount of 40% from the retail or list prices of their cosmetic and toilet preparations of like grade and quality to other of such purchasers whose total annual purchases valued at retail or list prices amount to the sum total of $7,500.00 or more.

PAR. 4. Respondents' variant price discounts as given and allowed in manner and method as hereinbefore set out, constitute discriminations in price between different purchasers of respondents' commodities of like grade and quality sold and distributed to such purchasers for resale, the effect of which may be substantially to lessen competition in such purchasers line of commerce and to injure, destroy and prevent competition with such customers of respondents as receive the benefits of said discriminatory price discounts by such other competing customers of respondents as do not receive the benefits of such greater discounts.

PAR. 5. The aforesaid methods, acts and practices of the respondents Eliza-

[1] 4 F.R. 384 DI.

beth Arden, Incorporated, Elizabeth Arden Sales Corporation and Florence N. Lewis, as herein alleged, are in violation of Paragraph (a) of Section 2 of the Clayton Act, as amended (U.S.C., Title 15, Sec. 13).

Count II

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and herein more particularly designated and described, have violated the provisions of Section 2 of the Clayton Act as amended by the Robinson-Patman Anti-Discrimination Act, approved June 19, 1936 (U.S.C., Title 15, Sec. 13), in this its amended and supplemental complaint, herewith further states its charges with respect thereto as follows:

PAR. 1. Paragraph One of Count I is hereby adopted and made a part of this Count as fully as if herein set out verbatim.

PAR. 2. In the sale and distribution of cosmetics and toilet preparations and in the course of trade as aforesaid, respondents are selling and distributing their cosmetics and toilet preparations directly to purchasers engaged in reselling and distributing the same directly to the purchasing and consuming public. In the furtherance of such sale and distribution and such resale and distribution of their cosmetics and toilet preparations as aforesaid, respondents are also contracting to furnish, are furnishing and are contributing to the furnishing to some but not all of such foregoing purchasers the services and facilities of special personnel known and described in the cosmetic and toilet preparations industry and trade as demonstrators.

Such demonstrators so furnished by respondents, in manner and method aforesaid, are installed in the places of business of certain of such foregoing purchasers of respondents' commodities to display, demonstrate, offer for sale and sell cosmetics and toilet preparations and as so furnished, installed and used, constitute substantially valuable services and facilities in connection with such purchasers' resale and distribution of the aforementioned commodities.

PAR. 3. Many of the foregoing purchasers of respondents' cosmetics and toilet preparations bought for resale are in competition with each other in the resale and distribution of said commodities, and respondents are discriminating in favor of such of said competitive purchasers who are furnished and accorded on terms the aforedescribed services and facilities in manner and method as hereinbefore set out, against all of such competitive purchasers of respondents' commodities who are not accorded the same on proportionally equal terms.

PAR. 4. The aforesaid methods, acts and practices of the respondents Elizabeth Arden, Incorporated, Elizabeth Arden Sales Corporation and Florence N. Lewis, as herein alleged, are in violation of Paragraph (e) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13).

Count III

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Elizabeth Arden, Inc., a corporation, Elizabeth Arden Sales Corporation, a corporation, and Florence N. Lewis, an individual, hereinafter referred to as respondents, have violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, in this its amended and supplemental complaint now states its charges in respect thereto as follows:

PARAGRAPH 1. Paragraphs One and Two of Count I and Paragraph Two of Count II are hereby adopted and made a part of this Count as fully as if herein set out verbatim.

PAR. 2. The confidence of the purchasing and consuming public in the merit of the merchandise carried by, and in the integrity of the personnel and the reputation for the business practices of, many of the retail stores purchasing respondents' said commodities for resale, is conducive to the ready sale by such retail stores of said commodities, and prospective purchasers and purchasers, in the selection, purchase and use of commodities as are herein described, have become accustomed to seek and accept as expert aid and advice the help and suggestions of such retail store personnel as are engaged in the sale of such commodities. Prospective purchasers and purchasers are guided largely by the aid and advice of such personnel in the selection and purchase of said commodities.

Such personnel as employed and furnished by respondents and installed in certain recipient purchasers' places of business as aforesaid, directly or impliedly are held out and appear to the prospective purchasing, the purchasing and consuming public as store sales personnel solely interested in such store sales as a whole, and the aforesaid public is not aware or informed of the true status of such personnel or of the fact that they are working directly in the interest of respondents.

Prospective purchasers and purchasers, in the selection and purchase of cosmetics and toilet preparations as above, are misled and deceived into so relying upon such personnel as furnished by respondents and installed as aforesaid, under the erroneous impression and belief that such personnel is store sales personnel working solely and only in the interests of and under the instructions and control of the respective stores concerned. Such deception of the prospective purchasing, the purchasing and the consuming public is further enhanced by the active participation of said personnel in such functions and duties as are usually expected of and performed by the sales personnel of said stores.

PAR. 3. Personnel furnished to certain purchasers by respondents, in the manner and method as hereinbefore set out, for the most part are skilled in displaying, demonstrating, offering for sale and selling cosmetics and toilet preparations and in the giving of advice, suggestions and information designed to increase and further the sales and use of said commodities.

Such personnel, when furnished said purchasers and installed in their places of business, as aforesaid, are particularly able to push and stress the merits, sales and use of respondents' commodities over and above and in opposition to the like and similar commodities of respondents' competitors.

Personnel employed by respondents and furnished to said certain purchasers and installed as aforesaid, depend solely and only for continuance in such employment upon adequate sales of respondents' commodities. In addition to the foregoing incentive toward continuing in such employment through the meeting of respondents' sales requirements, such personnel, as a further spur toward sales of respondents' commodities, are also awarded such bonuses and commissions in these connections as their services and sales records warrant in the sole determination of respondents.

Respondents' aforesaid personnel plan as used in the manner and method as hereinbefore set out is deceptive to a substantial number of the prospective purchasing, the purchasing and the consuming public in their selection of cosmetics and toilet preparations for purchase and use, and additionally has the capacity and tendency to lend itself to misrepresentation of competitors' commodities and the substitution of respondents' therefor at the point of the retail sale of such commodities. Such plan further has the capacity and tendency to deprive and prevent a substantial number of the aforesaid public in their selection of cosmetics and toilet preparations for purchase and use, of the complete exercise of their right to full access to and free choice of said commodities or such of said commodities as may be most suitable or adaptable to their particular needs and requirements.

PAR. 4. There are among respondents' competitors in commerce and other competitive sellers and distributors of cosmetics and toilet preparations, many who do not contract to furnish and who do not furnish or contribute to furnishing of sales personnel as hereinbefore described, and there are among the customers of respondents and respondents' competitors in said commerce and other competitive sellers and distributors of cosmetics and toilet preparations many engaged in the resale and distribution of said commodities who are not furnished

and who do not avail themselves of such sales personnel as aforementioned.

PAR. 5. The foregoing methods, acts and practices of respondents constitute unfair methods of competition and unfair and deceptive acts and practices in commerce in that said methods, acts and practices have the capacity and tendency to, and do, mislead and deceive a substantial portion of the prospective purchasing, the purchasing and the consuming public in the selection, purchase and use of cosmetics and toilet preparations and cause them to purchase respondents' said commodities and further place in the hands of unscrupulous dealers an instrumentality whereby fraud and deception therein may be practiced on said public. Said methods, acts and practices of respondents further have the capacity and tendency to, and do, place a restraint upon, stifle and substantially lessen competition between respondents and respondents' competitors in commerce and other sellers and distributors of cosmetics and toilet preparations, and between those customers of respondents and respondents' competitors and other sellers and distributors engaged in reselling and distributing cosmetics and toilet preparations who do not adopt, engage in or receive the benefits of the above described methods, acts and practices of respondents.

Respondents' said methods, acts and practices, as above described, place an uneconomical, unethical and unfair burden on present and potential competitors of respondents and certain of respondents' customers who are morally unwilling to engage in, adopt or enter the market and compete with the respondents and certain of respondents' customers on such basis and the burden of choice between loss of business and adoption and use of methods, acts and practices similar or equivalent to those engaged in and practiced by respondents and certain of their customers, as aforedescribed, is thus unfairly cast by respondents upon the aforesaid competitors. Such methods, acts and practices as aforesaid unduly enhance the prices of cosmetics and toilet preparations to the purchasing public without any corresponding benefit to said public in exchange. All of said methods, acts and practices of respondents as hereinabove described are deceptive to the public, opposed to good morals in trade, and contrary to public policy.

As a result of the above described methods, acts and practices of the respondents, the public has been deceived and substantial injury has been done and is now being done by the said respondents to the public and to competition in the sale and distribution and the resale and distribution of cosmetics and toilet preparations in commerce between and among the various states of the United States and in the District of Columbia.

PAR. 6. The aforesaid methods, acts and practices of the respondents Elizabeth Arden, Incorporated, Elizabeth Arden Sales Corporation and Florence N. Lewis, as herein alleged, are all to the prejudice of the public, and of respondents' competitors and other sellers and distributors of cosmetics and toilet preparations engaged in the sale and distribution and the resale and distribution of the same as aforesaid and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Wherefore, the premises considered, the Federal Trade Commission on this 9th day of May, A. D., 1939, issues its amended and supplemental complaint against said respondents.

NOTICE

Notice is hereby given you, Elizabeth Arden, Incorporated, Elizabeth Arden Sales Corporation, and Florence N. Lewis, respondents herein that the 16th day of June, A. D., 1939, at 2 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this amended and supplemental complaint, at which time and place you will have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violations of the law charged in the amended and supplemental complaint.

You are notified and required, on or before the twentieth day after service upon you of this amended and supplemental complaint, to file with the Commission an answer to the amended and supplemental complaint. If answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule VII) provide as follows:

In case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

* * * * *

Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.

If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in said complaint and to have authorized the Commission, without further evidence, or other intervening procedure, to find such facts to be true, and if in the judgment of the Commission such facts admitted constitute a violation of law or laws as charged in the complaint, to make and serve findings as to the facts and an order to cease and desist from such violations. Upon application in writing made contemporaneously with the filing of such answer, the respondent, in the discretion of the Commission, may be heard on brief, in oral argument, or both, solely on the question as to whether the facts so admitted constitute the violation or violations of law charged in the complaint.

In witness whereof, the Federal Trade Commission has caused this, its amended and supplemental complaint, to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 9th day of May, A. D. 1939.

By the Commission.

[SEAL] OTIS B. JOHNSON,
Seretary.

[F. R. Doc. 39–1710; Filed, May 17, 1939; 11:13 a. m.]

United States of America—Before Federal Trade Commission

[Docket No. 2975]

IN THE MATTER OF COTY, INC., ET AL.

AMENDED AND SUPPLEMENTAL COMPLAINT

Count I

Whereas, pursuant to the provisions of Section 2 of the Clayton Act as amended by the Robinson-Patman Act approved June 19, 1936 (U.S.C. Title 15, Sec. 13), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having heretofore issued its complaint charging Coty, Inc., Coty Corporation, Ltd. (Maryland), Coty Corporation, Ltd. (Tennessee), Coty California Corporation, and Coty New Jersey Corporation with certain violations of the aforesaid Act; and it now appearing to the Commission that the Coty Sales Corporation has been organized under the laws of the State of Delaware to perform some of the functions of the above-named corporations, and it further appearing that the aforesaid respondent, Coty, Inc., is perform-

ing some of the functions of the said Coty Sales Corporation:

Now, therefore, pursuant to the provisions of the aforesaid Act, the Federal Trade Commission, having reason to believe that Coty, Inc., Coty Products Corporation, Coty Processing Company, Inc., Coty, Inc., of New York, Coty Company, Ltd., of Maryland, Coty Company Ltd. of Tennessee, Coty California Corporation, Coty New Jersey Corporation, and Coty Sales Corporation, hereinafter referred to as respondents, have since June 19, 1936, violated the provisions of the said Act, hereby issues this its amended and supplemental complaint, now stating its charges in respect thereto as follows:

PARAGRAPH 1. Coty, Inc., a holding company, is a corporation organized under the laws of the State of Delaware, with its principal office and place of business located in the City of Wilmington, State of Delaware. Said respondent is qualified to do business in the State of New York and is a principal stockholder in, and formulates, controls and directs the practices and policies of the hereinafter described respondents.

Coty Products Corporation, a wholly owned subsidiary of Coty, Inc., is a corporation organized under the laws of the State of New York, with its principal place of business located at 423 West 55th Street, in the City of New York, State of New York.

Coty Processing Company, Inc., a wholly owned subsidiary of Coty, Inc., is a corporation organized under the laws of the State of New York with its principal office and place of business located at 423 West 55th Street, in the City of New York, State of New York.

Coty, Inc., of New York, a wholly owned subsidiary of Coty, Inc., is a corporation organized under the laws of the State of New York with its principal office and place of business located at 714 Fifth Avenue, in the City of New York, State of New York.

Coty Company, Ltd., of Maryland, a wholly owned subsidiary of City, Inc., is a corporation organized under the laws of the State of Maryland with its principal place of business located at 25 East Lake Street, in the City of Chicago, State of Illinois.

Coty Company, Ltd., of Tennessee, a wholly owned subsidiary of Coty, Inc., is a corporation organized under the laws of the State of Tennessee with its principal place of business located at 99 South Second Street, in the City of Memphis, State of Tennessee.

Coty California Corporation a wholly owned subsidiary of Coty, Inc., is a corporation organized under the laws of the State of California, with its principal place of business located at 833 Market Street, in the City of San Francisco, State of California.

Coty New Jersey Corporation a wholly owned subsidiary of Coty, Inc., is a corporation organized under the laws of the State of New Jersey with its principal place of business at 46 Clinton Street, in the City of Newark, State of New Jersey.

Coty Sales Corporation a wholly owned subsidiary of Coty, Inc., is a corporation organized under the laws of the State of Delaware with its principal place of business located at 714 Fifth Avenue, in the City of New York, State of New York.

Respondents are engaged in the manufacture, sale and distribution of cosmetics and toilet preparations as herein described and have acted and cooperated together to the extent that Coty Products Corporation supplied bulk products to Coty Processing Company, Inc., which in turn packaged said products and thereafter sold said products to Coty, Inc., of New York; Coty Company, Ltd., a Maryland Corporation; Coty Company, Ltd., a Tennessee Corporation; Coty California Corporation; Coty New Jersey Corporation and Coty Sales Corporation.

In carrying on business when orders were received for such products, respondent Coty Processing Company, Inc., caused said products to be transported from its place of business in the State of New York to the places of business of respondents Coty, Inc., of New York; Coty Company, Ltd., a Maryland Corporation; Coty Company, Ltd., a Tennessee Corporation; Coty California Corporation; Coty New Jersey Corporation and Coty Sales Corporation.

Respondent, Inc. of New York, in the conduct of its business, purchased said products from Coty Processing Company, Inc. which products were shipped by Coty Processing Company, Inc. from New York to Coty, Inc. of New York, in New York and were sold and distributed by said Coty, Inc. of New York to its customers within the State of New York.

Respondent Coty Company, Ltd., of Maryland, in the conduct of its business, purchased said products from Coty Processing Company, Inc., which products were shipped by Coty Processing Company, Inc. from New York to one of the places of business of the said Coty Company, Ltd., in the State of Illinois, in which state it was qualified to do business, and were sold and distributed by said Coty Company, Ltd., of Maryland, to its customers located in the State of Illinois and other states of the United States in the Midwest part of the United States.

Respondent Coty Company, Ltd., of Tennessee, in the conduct of its business, purchased said products from Coty Processing Company, Inc., which products were shipped by Coty Processing Company, Inc. from New York to Coty Company, Ltd., of Tennessee, and were sold and distributed by said Coty Company, Ltd., of Tennessee, to its customers located in the State of Tennessee and in several other states in the Southern part of the United States.

Respondent Coty California Corporation, in the conduct of its business, purchased said products from Coty Processing Company, Inc., which products were shipped by Coty Processing Company, Inc. from New York to Coty California Corporation, and were sold and distributed by said Coty California Corporation to its customers throughout the several states of the United States located on or adjacent to the Pacific Coast.

Respondent Coty New Jersey Corporation, in the conduct of its business, purchased said products from Coty Processing Company, Inc., which products were shipped by Coty Processing Company, Inc. from New York to Coty New Jersey Corporation, and were sold and distributed by said Coty New Jersey Corporation to its customers within the State of New Jersey.

Respondent Coty Sales Corporation, for the period November 1, 1937, to June 30, 1938, received orders from its customers in all the states of the United States and in the District of Columbia, and sold and shipped said products to its said customers located in the various states of the United States and in the District of Columbia.

Respondent Coty, Inc., a Delaware corporation, from the 1st day of July, 1938, in the conduct of its business, performed and now performs the functions theretofore performed by the aforesaid Coty Processing Company, Inc., Coty, Inc. of New York, Coty Company, Ltd. of Maryland, Coty Company, Ltd. of Tennessee, Coty California Corporation, Coty New Jersey Corporation and Coty Sales Corporation.

PAR. 2. In the sale and distribution of cosmetics and toilet preparations and in the course of trade as aforesaid, respondents are selling and distributing their cosmetics and toilet preparations directly to purchasers engaged in reselling and distributing the same directly to the purchasing and consuming public. In furtherance of such sale and distribution and such resale and distribution of their cosmetics and toilet preparations as aforesaid, respondents are also contracting to furnish, are furnishing and are contributing to the furnishing to some but not all of such foregoing purchasers the services and facilities of special personnel known and described in the cosmetic and toilet preparation industry and trade as demonstrators.

Such demonstrators so furnished by respondents in the manner and method aforesaid, are installed in the places of business of certain of such foregoing purchasers of respondents' commodities to display, demonstrate, offer for sale and sell cosmetics and toilet preparations and as so furnished, installed and used, constitute substantially valuable services and facilities in connection with such purchasers' resale and distribution of the aforementioned commodities.

PAR. 3. Many of the foregoing purchasers of respondents' cosmetics and toilet preparations bought for resale are in competition with each other in the resale and distribution of said commodities, and respondents are discriminating

in favor of such of said competitive purchasers who are furnished and accorded on terms the aforedescribed services and facilities in the manner and method as hereinbefore set out, against all of such competitive purchasers of respondents' commodities who are not accorded the same on proportionally equal terms.

PAR. 4. The aforesaid methods, acts and practices of the respondents, as herein alleged, are in violation of paragraph (e) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Sec. 13).

Count II

Whereas, pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having heretofore issued its complaint charging Coty, Inc., Coty Corporation, Ltd. (Maryland), Coty Corporation, Ltd. (Tennessee), Coty California Corporation and Coty New Jersey Corporation with certain violations of the aforesaid Act; and it now appearing to the Commission that Coty Sales Corporation has been created under the laws of the State of Delaware to perform some of the functions of the above-named corporation; and it further appearing that the aforesaid respondent, Coty, Inc., is performing some of the functions of the said Coty Sales Corporation;

Now, therefore, pursuant to the provisions of the aforesaid Act, the Federal Trade Commission, having reason to believe that Coty, Inc., Coty Products Corporation, Coty Processing Company, Inc., Coty, Inc. of New York, Coty Company, Ltd. of Maryland, Coty Company, Ltd. of Tennessee, Coty California Corporation, Coty New Jersey Corporation, and Coty Sales Corporation, herein referred to as respondents, have violated the provisions of the said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, in this amended and supplemental complaint now further charges in respect thereto as follows:

PARAGRAPH 1. Paragraphs One and Two of Count I are hereby adopted and made a part of the Count as fully as if herein set out verbatim.

PAR. 2. Respondents, in the course and conduct of their business as aforesaid, are in actual and substantial competition with other corporations and with partnerships, firms and individuals engaged in the sale and distribution of cosmetics and toilet preparations in commerce among and between the various states of the United States and in the District of Columbia. Respondents, in the course and conduct of their business in commerce as aforesaid, are in competition with other corporations and with partnerships, firms and individuals engaged in the sale and distribution of cosmetics and toilet preparations, and many purchasers of respondents' aforesaid commodities and other sellers and distributors of like commodities are competitively engaged in the resale and distribution of such commodities.

PAR. 3. The confidence of the purchasing and consuming public in the merit of the merchandise carried by, and in the integrity of the personnel and the reputation for the business practices of, many of the retail stores purchasing respondents' said commodities for resale, is conducive to the ready sale by such retail stores of said commodities, and prospective purchasers and purchasers, in the selection, purchase and use of commodities as are herein described, have become accustomed to seek and accept as expert aid and advice the help and suggestions of such retail store personnel as are engaged in the sale of such commodities. Prospective purchasers and purchasers are guided largely by the aid and advice of such personnel in the selection and purchase of said commodities.

Such personnel as employed and furnished by respondents and installed in certain recipient purchasers' places of business as aforesaid, directly or impliedly are held out and appear to the prospective purchasing, the purchasing and consuming public as store sales personnel solely interested in such store sales as a whole and the aforesaid public is not aware or informed of the true status of such personnel or of the fact that they are working directly in the interest of respondents.

Prospective purchasers and purchasers, in the selection and purchase of cosmetics and toilet preparations as above, are misled and deceived into so relying upon such personnel as furnished by respondents and installed as aforesaid, under the erroneous impression and belief that such personnel is store sales personnel working solely and only in the interests of and under the instructions and control of the respective stores concerned. Such deception of the prospective purchasing, the purchasing and the consuming public is further enhanced by the active participation of said personnel in such functions and duties as are usually expected of and performed by the sales personnel of said stores.

PAR. 4. Personnel furnished to certain purchasers by respondents in the manner and method as hereinbefore set out, for the most part, are skilled in displaying, demonstrating, offering for sale and selling cosmetics, and toilet preparations, and in the giving of advice, suggestions and information designed to increase and further the sale and use of the said commodities.

Such personnel, when furnished said purchasers and installed in their places of business, as aforesaid, are particularly able to push and stress the merits, sales and use of respondents' commodities over and above and in opposition to the like and similar commodities of respondents' competitors.

Personnel employed by respondents and furnished to said certain purchasers and installed as aforesaid, depend solely and only for continuance in such employment upon adequate sales of respondents' commodities. In addition to the foregoing incentive toward continuing in such employment through the meeting of respondents' sales requirements, such personnel, as a further spur toward sales of respondents' commodities, are also awarded such bonuses and commissions and in these connections as their services and sales records warrant in the sole determination of respondents.

Respondents' aforesaid personnel plan as used in the manner and method as hereinbefore set out is deceptive to a substantial number of the prospective purchasing, the purchasing and the consuming public in their selection of cosmetics and toilet preparations for purchase and use, and additionally has the capacity and tendency to lend itself to misrepresentation of competitors' commodities and the substitution of respondents' therefor at the point of the retail sale of such commodities. Such plan further has the capacity and tendency to deprive and prevent a substantial number of the aforesaid public in their selection of cosmetics and toilet preparations for purchase and use, of the complete exercise of their right to full access to and free choice of said commodities or such of said commodities as may be most suitable or adaptable to their particular needs and requirements.

PAR. 5. There are among respondents' competitors in commerce and other competitive sellers and distributors of cosmetics and toilet preparations, many who do not contract to furnish and who do not furnish or contribute to furnishing of sales personnel as hereinbefore described, and there are among the customers of respondents and respondents' competitors in said commerce and other competitive sellers and distributors of cosmetics and toilet preparations, many engaged in the resale and distribution of said commodities who are not furnished and who do not avail themselves of such sales personnel as aforementioned.

PAR. 6. The foregoing methods, acts and practices of respondents constitute unfair methods of competition and unfair and deceptive acts and practices in commerce in that said methods, acts and practices have the capacity and tendency to, and do, mislead and deceive a substantial portion of the prospective purchasing, the purchasing and the consuming public in the selection, purchase and use of cosmetics and toilet preparations and cause them to purchase respondents' said commodities, and further place in the hands of unscrupulous dealers an instrumentality whereby fraud and deception therein may be practiced on said public. Said methods, acts and practices of respond-

ents further have the capacity and tendency to, and do, place a restraint upon, stifle and substantially lessen competition between respondents and respondents' competitors in commerce and other sellers and distributors of cosmetics and toilet preparations and between those customers of respondents and respondents' competitors and other sellers and distributors engaged in reselling and distributing cosmetics and toilet preparations who do not adopt, engage in or receive the benefits of the above-described methods, acts and practices of respondents.

Respondents' said methods, acts and practices as above described, place an uneconomical, unethical and unfair burden on present and potential competitors of respondents and certain of respondents' customers, who are morally unwilling to engage in, adopt or enter the market and compete with respondents and certain of respondents' customers on such basis and the burden of choice between loss of business and the adoption and use of methods, acts and practices similar or equivalent to those engaged in and practiced by respondents and certain of their customers, as aforedescribed, is thus unfairly cast by respondents upon the aforesaid competitors. Such methods, acts and practices as aforesaid unduly enhance the prices of cosmetics and toilet preparations to the purchasing public without any corresponding benefit to said public in exchange. All of said methods, acts and practices of respondents as hereinabove described are deceptive to the public, opposed to good morals in trade, and contrary to public policy.

As a result of the above-described methods, acts and practices of the respondents, the public has been deceived and substantial injury has been done and is now being done by the said respondents to the public and to competition in the sale and distribution and the resale and distribution of cosmetics and toilet preparations in commerce between and among the various states of the United States and in the District of Columbia.

PAR. 7. The aforesaid methods, acts and practices of the aforesaid respondents, as herein alleged, are all to the prejudice of the public and of respondents' competitors and other sellers and distributors of cosmetics and toilet preparations engaged in the sale and distribution and the resale and distribution of the same as aforesaid and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Wherefore, the premises considered, the Federal Trade Commission on this 15th day of May, A. D. 1939, issues its amended and supplemental complaint against said respondents.

NOTICE

Notice is hereby given you, Coty, Inc., Coty Products Corporation, Coty Processing Company, Inc., Coty, Inc., of New York, Coty Company, Ltd., of Maryland, Coty Company, Ltd., of Tennessee, Coty California Corporation, Coty New Jersey Corporation, and Coty Sales Corporation, respondents herein, that the 23rd day of June, A. D. 1939, at 2 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this amended and supplemental complaint, at which time and place you will have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violations of the law charged in the amended and supplemental complaint.

You are notified and required, on or before the twentieth day after service upon you of this amended and supplemental complaint, to file with the Commission an answer to the amended and supplemental complaint. If answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule VII) provide as follows:

In case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

* * * * *

Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.

If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in said complaint and to have authorized the Commission, without further evidence, or other intervening procedure, to find such facts to be true, and if in the judgment of the Commission such facts admitted constitute a violation of law or laws as charged in the complaint, to make and serve findings as to the facts and an order to cease and desist from such violations. Upon application in writing made contemporaneously with the filing of such answer, the respondent in the discretion of the Commission, may be heard on brief, in oral argument, or both, solely on the question as to whether the facts so admitted constitute the violation or violations of law charged in the complaint.

In witness whereof, the Federal Trade Commission has caused this, its amended and supplemental complaint, to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D. C., this 15th day of May, A. D. 1939.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

[F. R. Doc. 39-1709; Filed, May 17, 1939; 11:13 a. m.]

SECURITIES AND EXCHANGE COMMISSION.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 12th day of May 1939.

[File No. 43-169]

IN THE MATTER OF COMMUNITY POWER AND LIGHT COMPANY, SOUTHWESTERN ELECTRIC COMPANY, THE KANSAS UTILITIES COMPANY, MISSOURI UTILITIES COMPANY, TEXAS-NEW MEXICO UTILITIES COMPANY

ORDER RELATIVE TO EFFECTIVENESS OF DECLARATION, ETC.

Community Power and Light Company (hereinafter called Community), a registered holding company, its nonutility subsidiary Southwestern Electric Company (hereinafter called Southwestern), and its public utility subsidiaries, The Kansas Utilities Company (hereinafter called Kansas), Missouri Utilities Company (hereinafter called Missouri) and Texas-New Mexico Utilities Company (hereinafter called Texas-New Mexico) having filed a joint declaration pursuant to Section 7 of the Public Utility Holding Company Act of 1935 regarding the issue and sale of the following secured notes: (1) Notes in the maximum principal amount of $1,350,000 to be issued by Community to the Reconstruction Finance Corporation; (2) Notes in the maximum principal amount of $1,250,000 to be issued by Southwestern to Community; (3) Notes in the maximum principal amount of $300,000 (as to each issuer) to be issued by Kansas and by Missouri to Southwestern; and (4) Notes in the maximum principal amount of $800,000 to be issued by Texas-New Mexico to Southwestern;

Community and Southwestern having also filed a joint application pursuant to Section 10 (a) (1) of said Act for ap-

proval of the acquisitions of the securities so to be issued and sold to such applicants, respectively;

Applicants and declarants having also prayed that Southwestern be permitted, pursuant to Sections 13 (b) and (c) of said Act, to perform certain services and construction for, and to sell certain goods to Kansas, Missouri and Texas-New Mexico;

A public hearing on said declaration and application, as amended, having been duly held after appropriate notice,[1] the record in this matter having been examined, and the Commission having made and filed its findings herein;

It is ordered, That said declaration be and become effective forthwith; that the acquisitions for which approval is prayed in said application be, and they are hereby approved; and that the proposed performance of services and construction and sale of goods by Southwestern as set forth in the application filed herein be, and the same are hereby exempted, pursuant to Sections 13 (a) and (b) of said Act from the prohibitory provisions of said sections; provided, however, and this order is entered upon the following conditions:

(1) That the issue and sale of the several notes and the acquisitions hereby authorized shall be in accordance with the terms and conditions of, and for the purposes represented by the joint declaration and application filed in this matter;

(2) That within 10 days after the completion of the contracts identified in said declaration and application to be fulfilled by Southwestern, the issue and sale of all said notes and the consummation of the proposed acquisitions, the applicants and declarants shall file with this Commission a certificate of notification that such issue, sales and acquisitions have been performed in compliance with the terms and conditions of, and for the purposes represented by, said application and declaration;

(3) That Southwestern shall comply with Rule U–13–31 (a) and any other applicable rules of this Commission now in force or becoming effective prior to the conclusion of the above-mentioned transactions, to insure that services and construction performed and goods sold be so performed and sold at actual cost and that such cost be properly allocated among the three operating companies receiving the benefit thereof;

(4) That the exemption herein granted shall not be deemed to extend further than to the performance of the services and the construction and the sale of goods as particularly set forth in the record herein.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39–1713; Filed, May 17, 1939; 11:36 a. m.]

[1] 3 F.R. 2819 DI.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 12th day of May, A. D. 1939.

[File No. 56–11]

IN THE MATTER OF THE MIDDLE WEST CORPORATION

AMENDATORY ORDER, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, SECTION 12 (D)

The Securities and Exchange Commission having heretofore, by its order of April 4, 1939,[1] granted the application of The Middle West Corporation, a registered holding company, filed pursuant to the Public Utility Holding Company Act of 1935 and Rule U–12D–1 promulgated thereunder, approving the sale through underwriters by said The Middle West Corporation of $500,000 aggregate principal amount of First Mortgage 5% Bonds, Series A, and 3,604 shares of preferred stock, both issued by Arkansas-Missouri Power Corporation, said order being conditioned in certain respects;

Said applicant having now filed a supplemental application wherein it is represented that, between the filing of the above application and the order therein, changes in market conditions were such as to prevent the marketing of the securities at the prices as agreed upon, which changes entitled the underwriters to terminate the underwriting agreement pursuant to conditions contained therein;

It being further represented that applicant has therefore withheld tendering the securities in order that the underwriting agreement might remain in effect until sufficient improvement in market conditions justify the offering of the securities at the prices contemplated in the order;

It being further represented that applicant is now advised by the said underwriters that they are ready to take the bonds at the price specified in the order, but that for the time being they are not prepared to consummate the purchase of the preferred stock;

Applicant having requested in the supplimental application that the previous order of the Commission be amended to the extent necessary to permit the sale of the bonds and the preferred stock separately, but in each case at the prices and with the maximum spreads stated in the original application and ordered in these proceedings:

It is ordered, That Condition (1) to the Commission's order of April 4, 1939, be amended by striking said condition and substituting in lieu thereof the following:

(1) That such sale be effected in accordance with the terms and conditions of and for the purposes represented by the application, except that said bonds and said preferred stock may be sold separately, and provided further that the sale of the bonds be consummated on or before the close of business on May 31, 1939 and the sale of the preferred stock be consummated on or before the close of business on September 30, 1939.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39–1712; Filed, May 17, 1939; 11:36 a. m.]

[1] 4 F.R. 1508 DI.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 13th day of May, A. D. 1939.

[File Nos. 32–135, 32–138]

IN THE MATTER OF MICHIGAN PUBLIC SERVICE COMPANY; LEONARD S. FLORSHEIM, TRUSTEE OF INLAND POWER & LIGHT CORPORATION; MICHIGAN PUBLIC SERVICE COMPANY

ORDER RELATIVE TO ISSUE AND SALE OF BONDS

Michigan Public Service Company, a subsidiary of Leonard S. Florsheim, Trustee of Inland Power & Light Corporation, a registered holding company, having filed an amended application pursuant to Section 6 (b) of the Public Utility Holding Company Act of 1935, regarding the issue and sale to Leonard S. Florsheim, trustee of Inland Power & Light Corporation, of $210,500 principal amount of the applicant's First Mortgage 5% Gold Bonds, Series A, due 1947;

Leonard S. Florsheim, trustee of Inland Power & Light Corporation, having filed an application pursuant to Section 10 of the Act, regarding the acquisition of the aforesaid bonds;

Michigan Public Service Company, having filed an application pursuant to Section 10 of the Act regarding the acquisition of certain utility assets and interest in another business from Leonard S. Florsheim, trustee of Inland Power & Light Corporation;

Leonard S. Florsheim, trustee of Inland Power & Light Corporation, having filed an application pursuant to Rule U–12D–1 of the General Rules and Regulations under the Act regarding the sale of the aforesaid utility assets;

Michigan Public Service Company, having filed an application pursuant to Section 6 (b) of the Act regarding the issue and sale for cash of $41,500 principal amount of the applicant's First Mortgage 5% Gold Bonds, Series A, due 1947 in the over-the-counter market;

A joint hearing having been held on said applications as amended, after appropriate notice; the applicants having waived submission to them of a trial examiner's report, proposed findings of fact by the Commission, or requests for findings of fact by counsel to the Commission, and also having waived any right

to file briefs with the Commission, or to oral argument before the Commission; and the Commission having considered the record in this matter and having made and filed its findings herein;

It is ordered, That the issue and sale of $210,500 principal amount of Michigan Public Service Company's First Mortgage 5% Gold Bonds, Series A, due 1947, be and the same hereby is exempted from the provisions of Section 6 (a) of the Act;

It is further ordered, That the acquisition of the aforesaid bonds by Leonard S. Florsheim, trustee of Inland Power & Light Corporation, be and the same is hereby approved;

It is further ordered, That the acquisition by Michigan Public Service Company of the aforesaid utility assets and interest in another business be and the same is hereby approved;

It is further ordered, That the sale of the aforesaid utility assets by Leonard S. Florsheim, trustee of Inland Power & Light Corporation, be and the same is hereby approved;

It is further ordered, That the issue and sale of $41,500 principal amount of the Michigan Public Service Company's First Mortgage 5% Gold Bonds, Series A, due 1947, be and the same is hereby exempted from the provisions of Section 6 (a) of the Act;

It is further ordered, That this order be subject to the following terms and conditions:

1. That the sale and acquisition of the aforesaid utility assets, and issuance and acquisition of the bonds and cash in consideration thereof, and the sale of bonds for cash shall be effected in accordance with the terms and conditions of, and for the purposes represented by, the applications as amended, and in compliance with the terms and conditions imposed by the order of the Michigan Public Utilities Commission;

2. That such approval shall immediately terminate without further order of this Commission in the event that the express authorization of the Michigan Public Utilities Commission shall be revoked or shall otherwise terminate;

3. That within ten days after the acquisition of the utility assets and the issuance of the bonds in consideration thereof, Michigan Public Service Company shall file with this Commission a certificate of notification showing that such acquisition and issuance have been effected in accordance with the terms and conditions of, and for the purposes represented by, said applications as amended, and in compliance with the terms and conditions imposed by the order of the Michigan Public Utilities Commission;

4. That on or before the fifth day of each month until all of the $41,500 principal amount of bonds shall have been disposed of, Michigan Public Service Company shall file with this Commission a report with respect to all sales thereof made during the preceding month, including a statement of the price obtained.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 39-1711; Filed, May 17, 1939; 11:36 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 17th day of May, A. D. 1939.

[File No. 32-141]

IN THE MATTER OF THE LITCHFIELD ELECTRIC LIGHT AND POWER COMPANY

NOTICE OF AND ORDER FOR HEARING

An application pursuant to section 6 (b) of the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by the above-named party;

It is ordered, That a hearing on such matter be held on June 2, 1939, at 10:00 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue, NW., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered, That Robert P. Reeder or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice to continue or postpone said hearing from time to time.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before May 29, 1939.

The matter concerned herewith is in regard to an application by The Litchfield Electric Light and Power Company of Litchfield, Connecticut, a subsidiary company of NY PA NJ Utilities Company, a registered holding company, for exemption from the provisions of Section 6 (a) of said Act with respect to the issue and sale at private sale by the applicant of its First Mortgage Bonds, 4% Series due 1964, in the aggregate principal amount of $450,000, at a net price of not less than par plus accrued interest; the grounds alleged for such exemption being that the issue and sale of said securities are solely for the purpose of financing the business of the applicant and have been expressly authorized by the Public Utilities Commission of the State of Connecticut, in which the applicant is organized and doing business.

By the Commission.

[SEAL] FRANCIS P. BRASSOR, *Secretary.*

[F. R. Doc. 39-1714; Filed, May 17, 1939; 11:48 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 17th day of May, A. D. 1939.

[File No. 43-199]

IN THE MATTER OF IOWA-NEBRASKA LIGHT AND POWER COMPANY

NOTICE OF AND ORDER FOR HEARING

A declaration pursuant to section 7 of the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by the above-named party;

It is ordered, That a hearing on such matter be held on June 2, 1939, at 10 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue NW., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered, That Charles S. Moore or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice to continue or postpone said hearing from time to time.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before May 27, 1939.

The matter concerned herewith is in regard to the proposed issue and/or sale by declarant, a registered holding company, of

(1) 20,000 shares of its Common Stock ($100 par value) to its parent, Continental Gas & Electric Corporation, also

a registered holding company, in consideration of the discharge of $2,000,000 of indebtedness of the declarant owing to its parent;

(2) its Secured Promissory Note, in the principal amount of $2,000,000, to The Chase National Bank of the City of New York, at par, the Note to bear interest at the rate of 2¾% per annum, to be payable in quarterly installments of $100,000 each, the last installment to mature five years after the date of issue, and the proceeds thereof to be used to discharge an equal amount of indebtedness of the declarant owing to its parent; and

(3) its First Lien and Refunding Mortgage 5% Bonds, Series C, due March 1, 1969, in the principal amount of $3,000,000, which Bonds are to be pledged as collateral for said Secured Promissory Note.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-1715; Filed, May 17, 1939; 11:48 a. m.]