



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,) Civil Action No. 20485-1
)
 v.) Equitable Relief Sought
)
 EMPIRE GAS CORPORATION,) Filed:
)
 Defendant.)

AMENDED COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, having brought this civil action to obtain equitable relief against the above-named defendant on August 14, 1972, hereby amends its complaint to allege violations of Section 1 of the Sherman Act, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 4 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 4), commonly known as the Sherman Act, in order to prevent and restrain the continuing violations by the defendant, as hereinafter alleged, of Sections 1 and 2 of the Sherman Act, as amended (15 U.S.C. §§ 1 and 2).

2. The defendant transacts business and is found within the Western District of Missouri.

II

DEFENDANT

3. Empire Gas Corporation (hereinafter referred to as "Empire") is hereby made the defendant herein. Empire is a

corporation organized and existing under the laws of the State of Missouri, with its principal place of business at Lebanon, Missouri. Empire, through and in conjunction with its wholly owned subsidiaries, is engaged in purchasing, transporting and selling liquefied petroleum gas, and selling or leasing liquefied petroleum gas equipment in 20 or more states. As used herein, the term "Empire" shall include Empire Gas Corporation and each of its wholly owned subsidiaries engaged in the distribution and retail sale of liquefied petroleum gas.

III

DEFINITIONS

4. As used herein:

(a) "liquefied petroleum gas" (hereinafter referred to as "LP gas") means gases of the methane series which are extracted from crude petroleum and other organic substances and compressed into a liquid state, examples of which are propane and butane;

(b) "LP gas distributor" means a person, corporation, or partnership engaged in the retail selling of LP gas to consumers; and

(c) "LP gas prices" means all prices, terms, and conditions at which LP gas is sold at retail and LP gas equipment is sold or leased by LP gas distributors.

IV

CO-CONSPIRATORS

5. Various firms, corporations and individuals not named as defendants in this complaint participated as co-conspirators in the violations hereinafter alleged and performed acts and made statements in furtherance thereof.

TRADE AND COMMERCE

6. LP gas is used as fuel for, among other things, space heating, water heating, cooking, refrigeration, clothes drying, incineration and other similar domestic, commercial, and industrial purposes. LP gas is also used to operate material handling trucks, including fork lifts, in commercial and industrial buildings and warehouses; and for a number of agricultural purposes, including the care of growing crops and livestock, the preservation of harvest produce, and the operation of farm machinery. LP gas burns virtually free from fumes, odors, and residual deposits and often is used in congested areas and where cleanliness is important. It is used primarily in geographic areas without access to natural gas.

7. LP gas is produced by crude oil refineries and by natural gas plants in many states in the United States. It is compressed into a liquid state and is regularly and continuously shipped and sold in interstate commerce to LP gas distributors located throughout the United States.

8. Because of the high transportation costs associated with the distribution of LP gas, the effective marketing area of an LP gas distributor is confined to an area within a short distance of his bulk storage plant. For this reason, LP gas distributors usually maintain one or more bulk storage plants and usually limit their LP gas sales to customers located within a radius of 20 to 30 miles of each of their plants. LP gas distributors generally also supply customers with related equipment, including tanks for the storage and use of LP gas, for which there usually is a rental charge.

9. Since its formation in 1963, Empire has acquired approximately 330 LP gas bulk storage plants. During the

period from approximately January 1, 1964 to June 30, 1971, Empire increased its annual sales from \$1,700,000 to \$25,000,000 and increased the number of its LP gas distribution subsidiaries from 14 to 225.

10. Empire, together with its subsidiaries, is one of the largest LP gas distributors in the United States. Through its wholly owned subsidiaries, Empire presently operates approximately 330 bulk storage plants from which it sells LP gas to customers located in at least 20 states, including the States of Alabama, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Mississippi, Missouri, Nebraska, Ohio, Oklahoma, Oregon, Tennessee, Utah and Wyoming. Empire purchases substantial amounts of equipment from manufacturers and other sellers located in states other than the states in which it leases and resells such equipment to its customers.

11. Empire and its subsidiaries generally enter into yearly contracts with refiners and other sellers for the purchase of LP gas to fulfill their anticipated requirements in supplying their customers and generally enter into entire requirements contracts with their customers. A substantial part of the LP gas which Empire and its subsidiaries purchase and resell, and a substantial part of the equipment which they purchase and lease or resell regularly and continuously move in interstate commerce.

VI

VIOLATIONS ALLEGED

12. Beginning in or about the year 1963 and continuing up to and including the date of the filing of this complaint, the defendant and co-conspirators have entered into contracts,

combinations, and conspiracies to unreasonably restrain, and the defendant has attempted to monopolize, the aforesaid interstate trade and commerce in the distribution and retail sale of LP gas in various local marketing areas within the State of Missouri and other states in which the defendant operates, in violation of Sections 1 and 2 of the Sherman Act. Said violations are continuing and will continue unless the relief hereinafter prayed for is granted.

13. Pursuant to and in furtherance of the aforesaid contracts, combinations, and conspiracies and the aforesaid attempt to monopolize, the defendant has done, among other things, the following:

- (a) acquired and attempted to acquire the assets or stock of a substantial number of LP gas distributor competitors and potential competitors of Empire;
- (b) entered into and attempted to enter into agreements and understandings whereby Empire agreed with LP gas distributor competitors that they would not compete for or accept orders from each other's customers;
- (c) entered into or attempted to enter into agreements and understandings whereby Empire and LP gas distributor competitors agreed not to sell in each other's marketing areas;
- (d) sold and threatened to sell LP gas at prices which were below cost, or at prices which were substantially reduced or lower than prices charged by Empire in other areas, for the purpose of coercing and inducing LP gas distributors competing

with Empire to (1) increase their LP gas prices, (2) stop soliciting the customers of Empire, and (3) sell out to, or cease or refrain from doing business in competition with, Empire;

(e) attempted to injure or destroy and threatened to injure or destroy the business or property of LP gas distributors where said distributors solicited customers of Empire or refused Empire's request that they raise their LP gas prices;

(f) entered into and attempted to enter into price fixing agreements with LP gas distributors to increase LP gas prices;

(g) entered into covenants not to compete with a substantial number of individuals, companies, and corporations who were actual or potential LP gas distributor competitors of Empire; and

(h) utilized purchases or potential purchases by Empire and its employees to coerce and attempt to coerce, induce or persuade certain of Empire's suppliers and potential suppliers of goods and services to stop buying LP gas from other LP gas distributors and agree to buy their requirements of LP gas from Empire.

VII

EFFECTS

14. The aforesaid violations by the defendant have had the following effects, among others:

(a) LP gas prices to the consumer have been raised, fixed, stabilized, and maintained;

(b) competition between LP gas distributors in

the sale of LP gas to consumers has been suppressed and eliminated;

(c) LP gas distributors have been excluded from, or impeded, injured, obstructed and harassed in, the business of selling LP gas;

(d) the freedom of LP distributors to solicit customers, set their own prices, and conduct their businesses has been curtailed and destroyed; and

(e) customers for LP gas have been deprived of the benefit of free and open competition in the purchasing of such gas.

PRAYER

WHEREFORE, the plaintiff prays:

1. That the aforesaid contracts, combinations, and conspiracies entered into by the defendant to restrain the aforesaid interstate trade and commerce in the distribution and retail sale of LP gas be adjudged and decreed to be in violation of Section 1 of the Sherman Act.

2. That the aforesaid attempt to monopolize the aforesaid interstate trade and commerce in the distribution and retail sale of LP gas be adjudged and decreed to be in violation of Section 2 of the Sherman Act.

3. That the defendant and its successors, officers, agents, employees, transferees, and assigns, and all persons acting or claiming to act on its behalf, or on behalf of any of its subsidiaries, be perpetually enjoined and restrained from, in any way, conspiring, contracting, agreeing, or otherwise acting unilaterally or with others to carry out any of the acts or practices alleged in paragraph 13 of this complaint, or any similar acts or practices having the effects described in paragraph 14 of this complaint.

4. That the defendant, its subsidiaries, and their officers, directors, and agents be enjoined from communicating with other LP gas distributors or their agents for the purpose of urging, influencing, discussing or suggesting retail LP gas prices, or other terms or conditions for the retail sale of LP gas, to such distributors or their agents.

5. That the defendant and its subsidiaries be required to dispose of all assets and stock acquired from any companies where Empire or one or more of its subsidiaries at the time of said acquisitions were substantial competitors of the companies whose assets or stock were acquired.

6. That the Court require the defendant and its subsidiaries to eliminate from their contracts and agreements with their competitors or potential competitors all provisions which restrict or curtail, directly or indirectly, any person, firm, or corporation from going into business in competition with Empire or any of its subsidiaries.

7. That the defendant, its subsidiaries, and their officers and directors be enjoined from acquiring, either directly or indirectly, any stock, assets, or other financial interests in any LP gas distributor doing business in any marketing area in which the defendant or its subsidiaries are selling LP gas at retail.

8. That the defendant, its subsidiaries, and their officers and directors be enjoined from making any further acquisition of LP gas distributors not prohibited by paragraph 7 of this prayer without prior approval of the plaintiff or this Court upon a proper showing that such acquisition may not substantially lessen competition.

9. That the plaintiff have such other and further relief as may be just and proper.

10. That the plaintiff recover the costs of this action.

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