

THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

EL PASO NATURAL GAS COMPANY,

Defendant.

CASE NUMBER 1:95CV00067

JUDGE: Harold H. Greene

DECK TYPE: Antitrust

DATE STAMP: 01/12/95

COMPLAINT

The United States of America, through its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief against the defendant named herein and alleges as follows:

I.

NATURE OF THIS ACTION

1. The United States brings this civil antitrust action to obtain injunctive relief against an anticompetitive tying arrangement of the defendant El Paso Natural Gas Company ("El Paso") that violates Section 1 of the Sherman Act, 15 U.S.C. § 1.

2. El Paso owns and operates a natural gas gathering system located in the San Juan Basin of the United States, which it uses to transport natural gas produced in the basin to points of connection with mainline interstate pipelines. El Paso's San Juan gathering system has market power for gas gathering for wells in the San Juan Basin. Many San Juan Basin producers have no alternative to El Paso for gas gathering. El Paso requires persons

operating gas wells in the San Juan Basin to purchase meter installation service from it as a condition of connecting a well or wells to its gathering system.

3. El Paso's practice of tying meter installation to its gas gathering service has caused many well operators seeking to connect a well to El Paso's gathering system to purchase meter installation service at a cost higher than they otherwise would have paid, to wait longer for installation than otherwise necessary, or both.

4. The United States seeks an injunction, pursuant to Sherman Act § 4, 15 U.S.C. § 4, prohibiting El Paso from conditioning the connection of a well to its San Juan gathering system upon a well operator agreeing to purchase meter installation from El Paso.

II.

JURISDICTION, VENUE AND INTERSTATE COMMERCE

5. This complaint is filed and this action is instituted under Section 4 of the Sherman Act, 15 U.S.C. § 4, to prevent and restrain the continuing violation by El Paso, as hereinafter alleged, of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1337.

6. Venue is proper in this district under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c), because El Paso transacts business and is found within this district.

7. El Paso is a Delaware corporation with its principal place of business in El Paso, Texas. El Paso's total revenues for 1993 were \$908 million.

8. El Paso owns and operates one of the nation's largest natural gas transmission systems, which it uses to transport natural gas from supply regions in New Mexico, Colorado, Texas and Oklahoma to end-users located throughout the southwestern United States. El Paso's interstate natural gas pipeline system provides 48 percent of the total interstate pipeline capacity serving California. El Paso is also the principal interstate natural gas pipeline system serving Arizona, southern Nevada, New Mexico, and El Paso, Texas. Thus, El Paso is engaged in, and its activities substantially affect, interstate commerce.

III.

EL PASO'S NATURAL GAS GATHERING SYSTEM IN THE SAN JUAN BASIN

9. In addition to its mainline, interstate natural gas transmission services, El Paso provides natural gas gathering services in various gas producing basins in the United States, including the San Juan Basin. The San Juan Basin is located primarily in northwestern New Mexico and southern Colorado.

10. Gathering services include collecting natural gas at the well-head and transporting the gas to locations where the gas can enter mainline interstate transmission pipelines. "Gathering system" refers to the facilities used to provide gathering service.

11. El Paso's San Juan gathering system is spread throughout the basin and includes thousands of miles of pipeline and over 9,500 meter stations. Approximately 200 new wells are connected to El Paso's gathering system each year. El Paso gathers over 855 million cubic feet per day of gas per year in the San Juan Basin.

12. Although there are other gas gathering companies that provide gathering in the San Juan Basin, most wells are able to connect to only one of these systems. Many well operators have no practicable alternative to using El Paso's gathering system to get their gas out of the San Juan Basin.

IV.

EL PASO'S METER INSTALLATION PRACTICE

13. A meter measures the volume of natural gas flowing from a well or wells into a gathering system. The volume measurements provided by the meters are necessary to calculate charges to well operators for gas gathering services.

14. El Paso has required or otherwise coerced its gathering customers to purchase meter installation from it along with gathering services. The term "meter installation" as used in this Complaint means the provision of certain service necessary to connect a well to El Paso's gathering system, including the construction and installation of the metering equipment and the well-tie line. A well-tie line is the pipe that connects the metering equipment to the gathering system.

15. When a well operator contacts El Paso seeking to connect a well to El Paso's San Juan gathering system, it is El Paso's practice to inform the operator that El Paso will provide the necessary meter installation. The well operator generally must agree to pay El Paso a flat fee for the construction and installation of the meter equipment necessary to connect the well to El Paso's system. El Paso will not begin to install the meter until the operator has prepaid the installation charge.

16. As an interstate pipeline, El Paso's gathering services and rates are regulated by the Federal Energy Regulatory Commission ("FERC") in accordance with the Natural Gas Act ("NGA"), 15 U.S.C. §§ 717-717W, and the Natural Gas Policy Act ("NGPA"), 15 U.S.C. §§ 3302-3432. Under the NGA, all rates and charges for any transportation or production area service subject to FERC jurisdiction must be "just and reasonable" and shown on tariff schedules filed with the FERC. The tariffs filed by El Paso at the FERC set forth the minimum and maximum rates that El Paso may charge for mainline transportation and production area services, including gathering.

17. El Paso charges well operators separately for meter installation and for its gathering service. El Paso's FERC tariff for gathering services in the San Juan Basin does not include a rate for meter installation. Although the FERC must approve the maximum rate that El Paso can charge for gathering, it does not

regulate the price El Paso may charge for meter installation. There are no FERC regulations that require El Paso to perform meter installation or that would prohibit well operators from installing their own meters.

18. The speed with which a well can be connected to the gathering system is a significant factor in determining the potential profitability of that well. Once a well operator has agreed that El Paso will perform the meter installation, the well operator must rely on El Paso to schedule that installation. In many instances, El Paso has taken a significantly longer time to complete meter installation than it would have taken if the well operator had been able to use an alternative to El Paso.

19. El Paso contracts with outside construction companies in the San Juan Basin to perform the meter installation for El Paso. These construction companies follow El Paso's specifications regarding the type of metering equipment and the manner of installation.

20. There are numerous construction companies in the San Juan Basin that can properly perform meter installation. Since 1990, El Paso has used three different outside construction companies to perform meter installation.

21. El Paso does not manufacture the meters it uses in its meter installations. Metering equipment meeting El Paso's specifications is available from national companies or their agents

to anyone seeking to purchase such equipment.

22. During the past few years, a number of well operators have requested permission from El Paso to do meter installation themselves, rather than purchase the service from El Paso, and have been told by El Paso that they had to use El Paso's meter installation service if they wanted to connect a well to El Paso's gathering system.

23. Other well operators have within the last three years requested to use someone other than El Paso to install meters when connecting a well to El Paso's San Juan gathering system. These well operators have abandoned their efforts to install their own meters because of anticipated delays and unreasonable requirements imposed by El Paso. In order to avoid these delays, these operators agreed to purchase meter installation from El Paso rather than an alternative provider.

V.

VIOLATION ALLEGED

24. El Paso's provision of meter installation to well operators for well connections in the San Juan Basin constitutes an agreement or agreements within the meaning of Section 1 of the Sherman Act.

25. Natural gas gathering and meter installation are separate products.

26. El Paso has market power for gas gathering from many

wells located in the San Juan Basin.

27. The amount of commerce affected in the market for meter installation service in the San Juan Basin is substantial.

28. El Paso forces well operators to use El Paso for meter installation when they might otherwise have preferred to purchase such installation elsewhere or on different terms.

29. El Paso's practice of tying meter installation to gas gathering in the San Juan Basin unreasonably restrains trade and is unlawful *per se* under Section 1 of the Sherman Act.

30. The effect of El Paso's unlawful tying practice has been to force well operators to pay a higher price for meter installation than they might otherwise have paid, to wait longer for meter installation than otherwise necessary, or both.

PRAYER FOR RELIEF

Wherefore, the plaintiff the United States prays that:

1. El Paso be enjoined from requiring well operators to purchase meter installation only from El Paso as a condition of receiving gathering services from El Paso in the San Juan Basin;

2. El Paso be enjoined from setting and implementing standards and procedures relating to meter installation for wells connected to its San Juan gathering system that would enable El Paso to discriminate among persons providing meter installation in favor of its own installation services;

3. the United States be granted such other relief that the

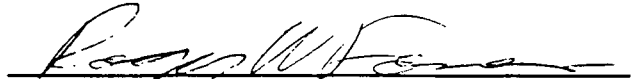
Court may deem just and proper; and

4. the United States recover costs in this action.

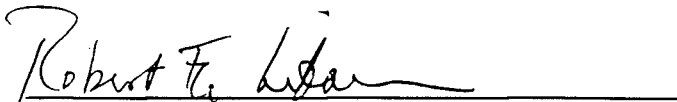
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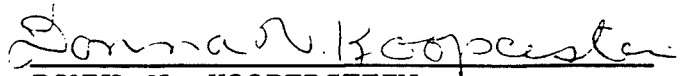
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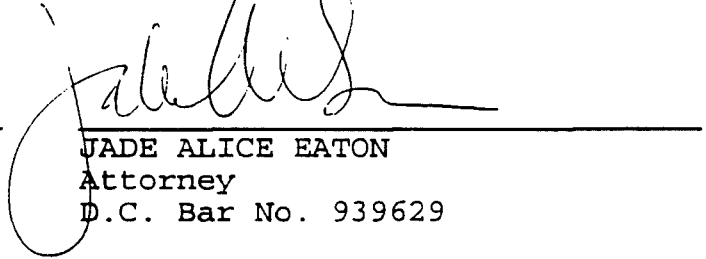
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