UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civil Action No.
	)	
v.	)	68-213-S
	)	
CITIES SERVICE COMPANY, CITIES SERVICE OIL COMPANY, CHELSEA TERMINALS, INC., and JENNEY MANUFACTURING COMPANY,	)	Filed: SEP 25 1975
	)	
Defendants.	)	

COMPETITIVE IMPACT STATEMENT

This Statement is made pursuant to the requirements of Section 5 of the Act of Congress of October 15, 1914, as amended, (15 U.S.C. §16), commonly known as the Antitrust Procedures and Penalties Act.

I

NATURE AND PURPOSE OF THE PROCEEDING

1. This is a civil action instituted, March 8, 1968, against Cities Service Company, Cities Service Oil Company, Chelsea Terminals, Inc., and Jenney Manufacturing Company under Section 15 of the Act of Congress of October 15, 1914, as amended, (15 U.S.C. §25), commonly known as the Clayton Act.

2. The purpose of the action is to prevent and restrain the continuing violation by the defendants of Section 7 of the Clayton Act, as amended, (15 U.S.C. §18). The violation arose from a Comprehensive Agreement entered into on June 14, 1963, by Cities Service Oil Company, Chelsea Terminals, Inc., and Jenney Manufacturing Company, whereby Cities acquired a substantial interest in Jenney's gasoline marketing assets and operations.

II

THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

3. At the time of the acquisition Cities, an integrated major oil company, was the tenth ranking marketer of gasoline in the two state area of Massachusetts and New Hampshire. Cities' sales represented 4.7% of total tax-paid gasoline sales in the area. In 1962, the last full year before the acquisition, Cities marketed its brand name petroleum products through 486 service stations in the two state area with gasoline sales of approximately 77 million gallons valued at about $14 million. Jenney, an established marketer in New England, had over 600 service stations, 95% of which were in the two state area. Of these stations, 220 were owned in fee by Jenney, 62 were leased, and 324 were contract dealers. Jenney also had a deep-water terminal at Chelsea, Massachusetts, with a storage capacity of more than 15,000,000 gallons. Jenney received gasoline at its Chelsea terminal from oceangoing tankers and transported it to its stations by its own fleet of tank trucks.

Although Jenney also sold gasoline to commercial account customers, the vast bulk of its sales was through its branded service stations. Jenney's total branded gasoline sales for 1962 were over 94 million gallons having a retail value of $16 million. Jenney was the eighth ranking marketer in the two state area, accounting for 5.7% of total tax-paid gallonage.

4. Pursuant to a Comprehensive Agreement entered June 14, 1963, Cities acquired the gasoline marketing properties of Jenney. Included in the transaction which was consummated July 1, 1963, were twenty-year leases of Jenney's fee-owned stations, the assignment of all of Jenney's leased and contract service stations, and Jenney's commercial gasoline accounts, the sale of Jenney's marine terminal at Chelsea, Massachusetts, and

the sale of Jenney's gasoline marketing equipment. Jenney retained the fee interest on its own real estate. The consideration for this transaction was a cash payment of $6 million and annual rental payments of $1,372,000 for the twenty years of the lease. The lease of the fee-owned stations is renewable at Cities' option for additional periods of up to 30 years. Cities also obtained the option to purchase up to 10% of the fee-owned stations.

5. An integral part of the Comprehensive Agreement was an Agency Agreement whereby Jenney agreed to continue operating the aforesaid properties for Cities on a commission basis. With respect to the marketing of gasoline, the Agency Agreement provided:

> For the duration of this agreement, Cities hereby appoints Jenney, and Jenney shall act, in the Jenney name, as agent and representative for Cities in (a) soliciting sales, selling and delivering those grades and brands of petroleum products, other than heating oils, which Cities shall elect to market, to service stations, including without limitation, the Fee Stations, Leased Stations, and dealers and commercial consumers in substantially the same manner in which Jenney has heretofore serviced such stations and commercial consumers in its operations on its own account.

The term of the Agency Agreement was for five years and for annual periods after June 30, 1968 subject to termination on the written notice by either party. The agreement also provided for the maintenance of the "Jenney" brand name at least until May 1966. After that time Cities could elect to have the products marketed under Cities's name or a combination of the Cities and Jenney names. The Agency Agreement also provided that upon its expiration Cities would purchase all of Jenney's delivery and handling equipment.

No public announcement of the acquisition or of the agency relationship was made either by Jenney or by Cities. Jenney did not advise any of its dealers or customers but informed only its stockholders who were members of the Jenney family. The first public disclosure came in April 1967, when the conversion to the "Citgo" brand was announced by Cities. The brand name changeover announcement made no mention of the 1963 acquisition or of the existing agency arrangement. Shortly thereafter Cities notified Jenney of its election to terminate the Agency Agreement effective July 1, 1968.

The complaint in this action was filed on March 8, 1968 and included in its prayer for relief is the request for an order requiring Cities to divest itself of the stations acquired from Jenney. The government originally sought to restrain the termination of the Agency Agreement upon the filing of the complaint. However, by a Stipulation and Order dated May 1, 1968 defendants were permitted to terminate it, but Cities has been required to preserve the acquired properties and to retain the Jenney name on those stations which had not already been converted to its own brand.

III

THE PROPOSED CONSENT JUDGMENT AND ITS ANTICIPATED EFFECTS ON COMPETITION

6. The proposed Final Judgment would require Cities to divest within three years retail outlets in the two state area of Massachusetts and New Hampshire which collectively accounted for an annual volume of gasoline in the amount of 15,275,000 gallons in 1974. The divestiture must be made to a purchaser or purchasers and under terms and conditions of sale acceptable to the Antitrust Division. The Decree would permit Cities, in order to effect this divestiture, to sell either acquired former

Jenney stations or its own Citgo stations as part of the divestiture package and it would require Jenney to make available up to a total of 60 of its fee-owned stations for divestiture. Under this plan, Jenney would be required to sell such fee-owned stations to Cities either for resale to third parties or for use as replacements for Citgo stations sold by Cities to a third party. Jenney would retain certain powers to exclude some of its fee-owned stations from this arrangement and its obligations to sell stations to Cities for the completion of divestiture would also be limited in terms of the rental income and gasoline sales volume derived from the designated outlets. In order to further facilitate the proposed divestiture, the Decree would permit Cities to assign or sublet its leasehold rights originally acquired from Jenney.

The Decree also would require Cities to offer to the purchasers of the retail outlets to be divested contracts to supply them with gasoline for up to four years in volumes equal to that sold at the outlets during the year preceding the entry of the Decree, and that proportionate increases in such volumes be offered to the purchasers in the event Cities' production of gasoline increases during the period of the supply contracts.

Cities would be required by the Decree to make quarterly reports to the Antitrust Division setting forth the steps taken to accomplish the divestiture. In the event that Cities fails to complete the required divestiture within the three year period the Decree would provide for the appointment of a trustee to select service station properties and make the required divestiture.

The Decree also would limit for five years the acquisitions that Cities may make of gasoline marketing outlets in New England without prior approval of the Antitrust Division or of the Court.

In addition, the Decree would provide visitation rights to the government to inspect records and interview officers and employees of Cities in order to determine and secure compliance with the Decree.

7. The effect of this judgment and the divestiture under it will be to add one or more new entrants into the business of marketing gasoline in the two state area, or it may add to the market position of a small existing competitor to enable it to compete with the larger entrenched marketers. It will also serve to decrease concentration in gasoline marketing in the two state area.

IV

REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

8. Any potential private plaintiffs who might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal and equitable remedies which they would have had, were the proposed consent decree not entered. However, this judgment may not be used as prima facie evidence in private litigation pursuant to Section 5 (a) of the Clayton Act, as amended, 15 U.S.C. 16 (a).

V

PROCEDURES AVAILABLE FOR THE MODIFICATION OF THE PROPOSED JUDGMENT

9. Within the statutory period of sixty (60) days, (15 U.S.C. § 16), of the filing of the proposed Judgment with the District Court for the District of Massachusetts, Boston, Massachusetts, any person may comment regarding the proposed Judgment in writing to:

John C. Fricano
Chief, Trial Section
Antitrust Division
United States Department of Justice
Washington, D. C. 20530

Such comments and the Government's responses thereto will be filed with the Court and published in the Federal Register.

10. After the entry of the proposed Judgment, jurisdiction is retained by the United States District Court for the District of Massachusetts, Boston, Massachusetts, to enable the parties to the Judgment to apply to the Court for modifications of any of the provisions thereof.

VI

ALTERNATIVES TO THE PROPOSED JUDGMENT CONSIDERED BY THE UNITED STATES

11. An alternative to the proposed consent decree considered by the Antitrust Division of the Department of Justice was a full trial on the merits in order to attempt to obtain full divestiture by Cities of Jenney's marketing operations. The Antitrust Division determined that additional relief which might be obtained at trial did not justify the additional delay in obtaining relief especially in view of the changed market conditions. In 1962 the two companies had a combined market share of 10.4%, by 1972 their share had dropped to approximately 5.2% in the states of New Hampshire and Massachusetts. In addition to the decline in market share during the ten year period, Cities also experienced a decrease in absolute volume sold through the outlets from approximately 170 million gallons to 100 million gallons. During this same time period there was a substantial growth of the independent private brand segment of the gasoline market, growing from about 7% to over 15% of the market. Under these circumstances, it was decided not to insist upon full divestiture as a condition of settlement. Aside from the uncertainty of outcome normally associated with the litigation of a case of this nature, there was no assurance in light of post-complaint market developments that the Court

would require full divestiture relief even if the government were successful in establishing the liability of the defendants under Section 7 of the Clayton Act. The 15,275,000 gallons to be divested pursuant to the Judgment represents 15% of the present combined Cities-Jenney volume and approximately 25% of the volume of the remaining former Jenney outlets. Due to the decline of Cities' share and the growth of the independents it was felt the amount of gallonage required to be divested pursuant to the Judgment could serve to increase new entrants or strengthen the position of existing small independents and was an acceptable compromise under the circumstances of this case.

Consideration was also given to requiring specified stations to be divested. It was decided that this would not be feasible and that the more realistic approach would be to allow Cities and Jenney to negotiate stations to be divested with a prospective purchaser. Although Cities did not acquire a fee-interest in any of the Jenney stations, Jenney assented to making such an interest available in up to 60 of its stations which will serve to widen the selection of outlets for divestiture and increase the likelihood that relief will be effectively accomplished.

12. The Department also considered requiring the divestiture of the Chelsea terminal facility; however, it was determined that such relief was not appropriate in that it would be inconsistent with the theory of the case which was concerned only with the elimination of horizontal competition in retail gasoline marketing. In addition, the capacity of the terminal exceeds the amount of gallonage to be divested and Cities was willing to provide prospective purchasers with a four-year supply commitment up to the amount of gallonage accounted for by the stations divested.

VII

OTHER MATERIALS RELATING TO THE PROPOSED JUDGMENT

13. The United States is submitting the following documents which it considered determinative in formulating the proposal pursuant to Section (b) of the Antitrust Procedures and Penalties Act 15 U.S.C. 16 (b):

(a) October 30, 1974 submission of Bronson H. Fargo, Sure Oil and Chemical Corporation to the Honorable Walter J. Skinner

(b) Letter of reply by Rodney O. Thorson to the Honorable Walter J. Skinner dated November 8, 1974

(c) Letter by Darrel A. Kelsey to Jill Devitt Radek dated April 1, 1975.

RODNEY O. THORSON

Jill Devitt Radek
JILL DEVITT RADEK

Attorneys, Department of Justice

SURE OIL AND CHEMICAL CORPORATION
ONE SURE OFFICE PARK
WORCESTER, MASS. 01604
617-755-8634

October 30, 1974

Honorable Walter Jay Skinner
United States District Court
1525 Post Office and Court House Building
Boston, Massachusetts 02109

Dear Judge Skinner:

This letter refers to the proposed Final Judgement in the case of the United States versus Cities Service/Jenney/et al. (Civil Action No. 68-213-S)

SURE Oil and Chemical Corporation is an independent gasoline marketer in the same territory involved in the subject case. SURE has been in this business for the past fifteen years and is a responsible and viable business entity.

It is our hope that you will give serious consideration to the contents of this letter and the enclosed Memorandum of Observations. This letter and its enclosure are submitted to you with respect for your Court and your responsibilities.

In an attempt to be helpful and to stress the importance of time in our request, we have set forth the first part of this letter in sequential form by date.

10/ 9/74 Stipulation and Final Judgement filed at Court. 30 day period begins.

10/16/74 SURE received 10/15/74 Oil Daily which reported proposed Consent Decree. We called court in Boston inquiring about the availability of Final Judgement. The clerk said that the files were available to the public.

10/17/74 Went to Boston to examine files. The Final Judgement was not in the files. The clerk reported that it was not docketed yet. The Stipulation was not available either.

10/21/74 Called clerk who now said that there was a third file that we had not been given.

10/22/74 Went to Boston again and looked at all of the files, including #3. The Stipulation was included, but the Final Judgement was not attached. The Clerk stated that the Final Judgement had not been signed by the Judge, that the Judge had removed it from the file, and that we could not see it. We called Attorney Rodney O. Thorson at the Justice Department in Washington, D. C. Mr. Thorson was concerned because he said, it was supposed to be available to the public for their examination. He said this was the purpose of the 30 day period. The Public could make comments to the Justice Department during this period. Mr. Thorson then called the clerk in Boston who finally produced the Final Judgement.

We earnestly request a 90 day extension during which the Justice Department may withdraw its consent to the Stipulation. This amount of time is needed for documentation of our objections mentioned in the enclosed Memorandum of Observations, and for further study of the files. The trouble that we experienced in seeing the files indicates that no one else has seen them either. The extended period would make it possible for public study of the files and subsequent comment to the Justice Department.

Thank you for reading this letter and its enclosure. Please forgive any inaccurracies or mistakes in legal terminology. It is our understanding that the 30 day period is for the scrutiny and consideration of the proposed Final Judgement by responsible, concerned, and affected individuals, companies, or groups. We definitely feel that we are affected and have a valid right to communicate our feelings. This is a businessman's attempt to correct serious omissions in a document that is the result of six years litigation and argument.

Respectfully yours,

Bronson H. Fargo

Bronson H. Fargo,
President

Enc.

To: United States District Court

For the District of Massachusetts

From: SURE Oil and Chemical Corporation

Bronson H. Fargo, President

31 Southwest Cutoff

Worcester, Massachusetts 01604

Telephone 617 755-8686

Re: Final Judgement-Civil Action No. 68-213-S

United States of America, Plaintiff

v.

Cities Service Company,

Cities Service Oil Company,

Jenney Manufacturing Company, and

Chelsea Terminals, Inc., Defendants

Subject: Memorandum of Observations Regarding the Proposed Final Judgement

Date: October 30, 1974

SURE Oil and Chemical Corporation is the largest unaligned[1] gasoline marketing company in New England. SURE has been in business for 15 years under the same private ownership and management.

SURE feels that it, and companies like it, as well as the consumer, are within the class of individuals and businesses which the Justice Department was seeking to protect in this suit. SURE feels that it has been hurt badly by the takeover of Jenney by Citgo. The Final Judgement, in SURE's opinion, does nothing to protect the stated purposes of the Justice Department in this matter, but is merely a "token" or "facesaving" settlement, and actually hurts the independent market more than a "carte blanche" dismissal.

Some of the problems, and shortcomings, of the Final Judgement are summarized below:

1. Chelsea Terminal's 381,000 barrel deep-water terminal was not made a part of the token divestment. This is a very serious error of omission.

   Prior to its acquisition by Citgo, Jenney was not only the largest private brand gasoline marketer in this region, but it was also, indirectly, the largest supplier of unbranded gasoline to small independents and medium size chain operators. All of this business was put through the Chelsea terminal, one of the very few terminals that allowed independents to buy at their racks. The gallonage was all sold by Jenney, to a long established broker/agent by the name of Oil Service Company of New England. When Jenney was acquired, the sale of gasoline to independents was immediately cut off at the Chelsea terminal. At that time, SURE's prime supplier was Oil Service and it remembers the situation well.

1 No supply contracts, ownership, terminaling, or marketing arrangement with any of the major or minimajor companies.

The major oil companies and the large independents have done everything in their power to make it impossible for independents without terminals to acquire, lease, or even make thruput arrangements in the existing terminals in Boston Harbor. Building new terminals is virtually impossible for a small independent like SURE for economic, environmental, and local political reasons.

SURE has been refused terminaling and/or thruput arrangements at practically all of the existing terminals in the Harbor. SURE tried several years ago (1972) to buy, lease, or rent terminal space from Citgo at the old Jenney plant. SURE was told that Citgo could do nothing until the final decision of their case with the Justice Department. In August 1974 SURE made a request to Citgo's Supply and Distribution Department to thruput gasoline for SURE at Citgo's Braintree terminal. The Supply and Distribution people were working out the thruput arrangements when the whole plan was vetoed by their marketing section. When news of the pending Final Judgement was reported in the trade press, SURE again called Citgo to ask if it would be interested in selling the Chelsea terminal. SURE was told that they hadn't decided what they were going to do with the plant. They indicated that the most likely possibility was to put the terminal into a package that they would design, made up of Citgo fee and leased stations, Jenney fee and leased stations, and mixed dealer accounts. They would then offer the entire package for sale.

The package described would eliminate a small independent marketer like SURE and make the only potential buyers the other majors or minimajors. These other large oil companies could then either buy the package or say that because of the old obsolete plant they didn't want to buy the package. Tying the plant and the gallons together gives Citgo the opportunity to stall a sale

indefinitely. People wanting the plant might not want, or be able to buy, the gallonage or vice versa. Citgo might argue the reverse, but from a practical point of view, the two do not necessarily go together. This "package" gives Citgo the opportunity to eliminate "undesirable" customers if they choose, but if a "desireable" customer comes along, the package could be adjusted. It is entirely possible that the customer could be a major that would swap gallons and stations in another market for the New England package. Keeping this terminal off of the market hurts the independent greatly at a time when the lack of storage space is the excuse given by all existing terminal operators for failing to allow independents a chance to buy low price gasoline, store it in the existing terminals belonging to others, and then market it through their own independent stations. The net result is restrictive to the independents, profitable for the majors, and costly to the consumer.

The terminal has been allowed to deteriorate to a marked degree. The tanks have been used for storing heating oil but they badly need work and paint. The buildings have been leased on a tenant-at-will basis and show a real lack of care or concern. These things all added together indicate a desire on the part of Citgo to allow the terminal to pass out of existence by default and lack of use. Eliminating this terminal from the market by any of the above means, would strike a severe blow to the independents in the Boston area.

2. The amount of the divestment is, in SURE's opinion, an absurdly small amount that will do nothing more than to give Citgo a legal "excuse" to get away from all of the unprofitable business that it has on its books. Many a major and other marketer would jump at the chance to legally get rid of unprofitable business in a time when this is virtually impossible due to pressure

from the FTC, Justice Department, Public Opinion, and their own legal departments, to say nothing of the FEA.

Whenever anyone acquires a large number of gallons there is bound to be a percentage of these that are unprofitable or undesirable. This could easily be in the range of from 10% to 30% in an acquisition the size of Jenney. The result of this divestment merely requires Citgo to drop out 10% of the acquired gallons, in other words, the undesirable gallons. Further, Citgo may include any of its own undesirable gallons in the amount to be divested.

There is nothing in the Final Judgement that says they have to sell these divested gallons--merely that they be divested. This could be done by the simple expedient of cancelling, or not renewing, certain unprofitable accounts. The order says "retail outlets", which includes "dealer agreement stations" which have little, if any tenure. Any prospective buyer would not have much to buy in the remaining stations inasmuch as Jenney retained the fee interest in all of their stations. All that could be bought would be leasehold interests that are more than 1/2 used up. It is to be noted that Citgo could comply with the order by not selling any assets, but merely by dropping unprofitable contract business.

3. The order says that Citgo must offer to supply any person acquiring one, or more, of the divested stations with gasoline for up to four years upon "reasonable" terms and conditions. It could take five to ten years of litigation and discussion with Citgo, the Justice Department and the Court to determine what is "reasonable". Some of the things that are crucial to such a supply contract, other than price, which is the most important, are: no lead price differential, points of pickup, percentages of no lead gasoline, the fact that

Citgo does not offer premium gasoline, credit terms, tax free purchases, acceptable truckers, that Citgo Braintree terminal requires bottom-loading trucks, market price level determination, plus scores of others.

4. The Justice Department is apparently not really concerned about the anti-trust aspects of this case as shown by the Final Judgement to which they have conceded. There is, therefore, very little reason to include all of the language giving the plaintiff the right to object to a particular buyer, or to particular terms of an acquisition. It would appear that the Justice Department would like to forget the whole case. It is difficult for SURE to imagine that they will have any real interest in who offers to buy the divested gallonage, if in fact, any should be offered.

5. The Final Judgement says that Citgo has three years to complete the divestment, during which time they may continue to profit by the gallons, should they be profitable gallons, until they are in fact divested. If after three years they have not divested the gallons, a Trustee will start to accomplish the same task. There is no time limit on the Trustee's performance. If the gallons are profitable then Citgo can set an unrealistic price on the gallons to be divested and enjoy the profits during the three years. Once the Trustee has been established, and this could be a very time consuming process, with the Trustee experiencing many delays in trying to obtain information from the monolithic major, Citgo can continue to operate the stations and enjoy the gallons and the profits. This will continue while the Trustee tries to sell the stations to a shopworn market. Remember, that it is now 3 to 4 years later, and the leasehold interests have been diminished by 3 to 4 more years and very few now remain. During this long period there has to be loss of

business through normal attrition caused by death, road changes, bankruptcy, etc. Any business so lost will naturally be included in the list of gallons "divested".

6. The order sets a "control" on the progress by requiring a written "progress report" every three months. This is a waste of time. If Citgo does not wish to divest profitable gallons these reports could all be drafted in the first month, dated ahead, and then mailed on a regular three months basis. By definition, the Justice Department and the Court have to rely on information from Citgo alone as to the progress, the results, and the attitude of the market. Citgo has been fighting this divestment for years so it is easy to imagine that they will not work at a breakneck speed to accomplish the divestment and the contents of the "progress reports" can be imagined well in advance. "Progress", or lack of it, are subjective determinations until the three years are up and then we learn objectively that there has been "no progress". A Trustee is then set up and the long stalling practice continues.

7. A restriction is put on Citgo for five years that they cannot acquire any retail outlets in a package that exceeds $1,000,000. This means that they could lease, for example, SURE's chain of service stations for a 10, 20 or 30 year period, so long as the "consideration" does not exceed $1,000,000. It would be very easy for us to structure an acceptable lease takeover by Citgo in which the consideration was less than $1,000,000. The restriction allows Citgo to buy, or lease, as many individual stations as it wants. The restriction also allows Citgo to take over any, or all, of its branded distributors without being in violation. Some of these disbributors are very large and Citgo could force them to sell out and this would be acceptable, even condoned under this

Judgement. As you see, the restriction does nothing to prevent Citgo from taking over the largest unaligned independent, or several very large branded distributors. The take-over of Jenney, who Citgo had supplied for 19 years, was very similar to taking over a closely aligned distributor, the only difference being the color of the pumps, buildings, and flag.

It is hoped that the Court and the Justice Department will look long and hard at the subject proposed Final Judgement to make sure that the result is not merely face saving tokenism. There has been too much of this to the detriment of the independents and the consumer. We feel that the amount of gallons to be divested should be a meaningful number and not a mere token as set forth in the proposed Final Judgement.

It is further hoped that the Court and the Justice Department will require that Citgo divest itself of its Chelsea terminal, separately from any gallons to be divested, and that the resulting sale will enable a true independent to enter the terminal market place with the ability to compete at all levels including buying, terminaling, wholesaling, and retailing. The world of terminal operators has been a closed book for many years and this is a chance to open the cover a little.

TEK:RJF:ROT
60-0-37-974

November 8, 1974

AIR MAIL

Honorable Walter J. Skinner
United States District Judge
United States District Court
1525 John W. McCormack Building
Boston, Massachusetts 02109

Re: United States v. Cities Service Company, et al., Civil No. 68-213-S (D. Mass.)

Dear Judge Skinner:

At our conference on November 6 you inquired as to the position of the Department of Justice with respect to the comments made by Mr. Bronson Fargo, President of Sure Oil and Chemical Corporation, in his letter dated October 30, 1974. As I advised your Honor at that time, we had received Mr. Fargo's letter and also have had discussions with him. Basic to his criticism of the proposed decree in this case is his contention that there are not enough independent deepwater terminals. He urges that the government should insist upon the separate sale of the Chelsea terminal which Cities Service acquired from Jenney. We have studied Mr. Fargo's presentation and have concluded that it would not be appropriate to seek the separate divestiture of the Chelsea terminal because that is not a part of the theory and issues of this case.

We are pursuing with counsel for Cities the modifications we have suggested to the existing proposed decree. We believe we can resolve these matters within the 15-day time limit imposed by your Honor at the conference. To this end we have the agreement by counsel for Cities to

extend the period within which the plaintiff may withdraw its consent to the entry of the proposed Final Judgment for an additional 15 days. A formal stipulation and order to this effect is being prepared for signatures and transmittal to the Court.

Sincerely yours,

THOMAS E. KAUPER
Assistant Attorney General
Antitrust Division

By: Rodney O. Thorson
Attorney, Department of Justice

cc: Harold Hestnes, Esq.
Darrell A. Kelsey, Esq.
Robert E. Sullivan, Esq.

CITIES SERVICE OIL COMPANY
LEGAL DIVISION

Cities Service Building
Box 300
Tulsa, Oklahoma 74102

April 1, 1975

Jill Devitt Radek, Esq.
Antitrust Division
United States
Department of Justice
Washington, D. C. 20530

Re: United States v. Cities Service Company, et al., U.S.D.C., District of Massachusetts (Jenney), Civil No. 68-213-J

Dear Jill:

Confirming our discussion last week, it is appropriate for you to advise your people that there has been no significant change in the "CITGO" market shares for motor gasoline in the Two-State, Massachusetts and New Hampshire, area. Data published by the Massachusetts and New Hampshire Petroleum Councils indicate the CITGO market shares to be as follows:

1972	5.2%
1973	5.3%
1974	5.8%

As I pointed out to you, a preliminary analysis by our Tax Department has disclosed that no less than 21 million gallons of motor gasoline was "exchanged" with another marketer in Massachusetts and Cities assumed the tax liability on said volume. Although, at the present time, we do not have figures for all of 1974, based upon the data presently before us and making an adjustment for at least 21 million gallons, it would appear that the "CITGO" market share for the Two-State area for 1974 would be in the range of 4.9% to 5.1%.

Another item I had intended to mention to you when you called last week relates to Cities' disposal of a limited number of Jenney properties, in the routine course of business, where Cities has determined that said properties have lost their viability as a CITGO outlet. Please recall that at our meeting on March 1, 1974, it was agreed that Justice would have no objection to Cities' disposing of a limited number of properties under these circumstances. This was confirmed in my March 11, 1974 letter to Rod Thorson, at which time I advised of two such properties which Cities wished to dispose of at the earliest possible date. This is to advise that Cities now wishes to dispose of its interest in the following property:

Property No. 28-017-601
South Main and Linden Streets
Rochester, New Hampshire.

Unless you should advise me of the need for any additional information concerning this property, I will advise Cities' Management to proceed with negotiations with Jenney re purchase and sale of the facility. In the same manner as with the two properties I gave you notice of on March 11, 1974, Cities will include a statement as to the ultimate disposition of this New Hampshire property in the appropriate quarterly report.

Sincerely,

Darrel A. Kelsey

Darrel A. Kelsey
Senior Attorney

DAK/sp

cc: Harold Hestnes, Esq.
Hale and Dorr
28 State Street
Boston, Massachusetts 02109