

GENERAL NATURAL GAS CORPORATION ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
SEC. 2(a) OF THE CLAYTON ACT

Docket 7782. Complaint, Feb. 15, 1960—Decision, July 6, 1960

Consent order requiring a holding company and its subsidiary—through which it controlled some 12 wholesale and retail sellers of “Sungas” bottled liquefied petroleum gas in Pennsylvania, New Jersey, and New York—to

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cease discriminating in price between different purchasers in violation of sec. 2(a) of the Clayton Act, through such practices as selling bottled gas at substantially lower prices to their Hazleton, Pa., subsidiary to eliminate competition in the Hazleton area, than to their other retail outlets, and selling at \$4.95 per 100-pound cylinder or bottle to some customers while charging prices ranging from \$10.00 to \$12.00 to their competitors.

COMPLAINT

The Federal Trade Commission having reason to believe that the respondents named in the caption hereof, and more particularly designated and described hereinafter, have violated and are now violating the provisions of Section 2(a) of the Clayton Act (U.S.C., Title 15, Section 13), as amended, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent General Natural Gas Corporation, sometimes hereinafter referred to as respondent General, is a corporation organized and existing under the laws of the State of New York, with its office and principal place of business located at Monticello, N.Y.

Respondent Sungas Products of Penna., Inc., sometimes hereinafter referred to as respondent Sungas, is a corporation organized and existing under the laws of the State of Pennsylvania, with its office and principal place of business located at 901 Providence Road, Scranton, Pa.

Respondent Benjamin Cosor is an individual and an officer, director and stockholder of respondent General, and an officer and director of respondent Sungas, with his office and principal place of business located c/o General Natural Gas Corporation, Monticello, N.Y.

Respondent Harold C. Fisher is an individual and an officer, director and stockholder of respondent General and an officer and director of respondent Sungas, with his office and principal place of business located c/o General Natural Gas Corporation, Monticello, N.Y.

Respondent William Schlanger is an individual and an officer, director and stockholder of respondent Sungas, with his office and principal place of business located at 901 Providence Road, Scranton, Pa.

Respondent Eugene J. Schlanger is an individual who is sales manager of respondent Sungas and is an officer in one or more corporations, the capital stock of which is owned in whole or in part by respondent Sungas. His office and principal place of business is located at 901 Providence Road, Scranton, Pa.

PAR. 2. Respondent General has been and is now engaged, directly or indirectly, in the purchase of liquefied petroleum gas, commonly referred to as "bottled gas", and in the sale thereof to its various

subsidiary or affiliated companies including respondent Sungas, and through said companies, distributes such products to purchasers in various states in the United States. Said respondent is also a holding company, having control of a majority of the capital stock of various subsidiary corporations engaged in the sale and distribution of bottled gas and appliances in the several states principally along the Atlantic coast. Said respondent General owns approximately two-thirds of the total outstanding capital stock of respondent Sungas and exercises control over the operations and policies of respondent Sungas.

Respondent Sungas has been and is now engaged, directly or indirectly, in the sale and distribution of liquefied petroleum gas, commonly referred to as "bottled gas", at wholesale and retail, in the States of Pennsylvania, New Jersey and New York. Said respondent uses the trade name "Sungas" to describe the bottled gas sold and distributed by it.

Said respondent is also engaged, directly or indirectly, in the sale and distribution of gas and electric appliances at wholesale and retail in the States of Pennsylvania, New Jersey and New York.

Respondent General, through respondent Sungas owns or controls, in whole or in part, certain other corporations, approximately twelve in number, all engaged in the sale and distribution of bottled gas under the trade name of "Sungas" at either wholesale or retail, and all being incorporated in the State of Pennsylvania. Among such other corporations are Sungas Service Company, Inc., and Laurel Lake Gas Company, both of which are engaged in the sale and distribution at retail of bottled gas obtained from respondent Sungas and marketed under the trade name of "Sungas".

Respondent General, through respondent Sungas also owns and controls Sungas Hazleton, Inc., a corporation which was organized in January 1959, to sell and distribute at retail "Sungas" bottled gas and appliances in the area surrounding Hazleton, Pa.

PAR. 3. The corporations owned or controlled by respondents General and Sungas, including Sungas-Hazleton, Inc., Sungas Service Company, Inc., and Laurel Lake Gas Company, serve as agencies or instrumentalities through which respondents General and Sungas sell their products, including bottled gas. The operations of such corporations are controlled and directed by respondent Sungas, which in turn is controlled by respondent General.

The individual respondents Benjamin Cosor and Harold C. Fisher are responsible, either directly or indirectly, for the acts and practices of respondent General through ownership of capital stock and the exercise of control over, and formulation of, the policies and operations of said respondent General as officers and directors of said

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respondent, in the carrying out and execution of such policies and acts and practices.

The individual respondents Benjamin Cosor, Harold C. Fisher and William Schlanger, are responsible, either directly or indirectly, for the acts and practices of respondent Sungas through the ownership of capital stock and the exercise of control over, and formulation of, the policies and operations of said respondent Sungas, as officers and directors of said respondent, in the carrying out and execution of such policies and acts and practices.

Individual respondent Eugene J. Schlanger has been and is now sales manager of respondent Sungas and also manages the business of several other corporations engaged in the compressed gas business in Pennsylvania and which corporations are owned or controlled by respondent General through respondent Sungas. Respondent Eugene J. Schlanger has aided and abetted the policies and practices of respondents General and Sungas and respondents Benjamin Cosor, Harold C. Fisher and William Schlanger by formulating, executing and carrying out such policies and practices in his occupation as sales manager of respondent Sungas, and is also responsible, either directly or indirectly, for the acts and practices of respondents General and Sungas.

PAR. 4. Respondents have been and are now in the course and conduct of their said business, engaged in commerce, as "commerce" is defined in the Clayton Act, in that they, directly or indirectly, sell and distribute bottled gas and other products to purchasers thereof located in States other than the State of origin of shipment and, directly or indirectly, cause such products, when sold, to be shipped and transported from the state of origin to purchasers located in other States. There is now, and has been, a constant course and flow of trade and commerce in such products between said respondents in the state of origin and purchasers located in other States.

PAR. 5. In the course and conduct of their said business, respondents have been and are now in competition with other corporations, partnerships and individuals in the sale and distribution in commerce of bottled gas and gas and electric appliances.

Some of the customers of respondents are in competition with each other and with customers of competitors of respondents in the purchase and resale of bottled gas and appliances.

PAR. 6. Respondents in the course of such commerce, as aforesaid, have been and are now, either directly or indirectly, discriminating in price between different purchasers of bottled gas by selling such products to some purchasers at substantially higher prices than the prices at which sales are made of products of like grade and quality

to other purchasers, some of whom are engaged in competition with the less favored purchasers in the resale of such products.

For example, since January 1959, said respondents, either directly or indirectly, have charged and do now charge \$4.95 per 100 pound cylinder or bottle of liquefied petroleum gas, to some customers, and said respondents have charged and do now charge prices ranging from \$10.00 to \$12.00 to other customers, some of whom are in competition with the favored customers for the same quantity of liquefied petroleum gas of like grade and quality.

PAR. 7. The corporations owned or controlled in whole or in part by respondents General and Sungas have been organized or acquired, either directly or indirectly, by said respondents General, Sungas, Benjamin Cosor, Harold C. Fisher and William Schlanger for the purpose of expanding the scope of operations in the sale and distribution of their products, particularly bottled gas referred to as "Sungas".

Sungas Hazleton, Inc., established and financed by said respondents and owned and controlled, directly or indirectly, by them, was organized to sell bottled gas under the name "Sungas" at retail, at prices substantially lower than those at which the same product of like grade and quality was sold at the same time through other retail outlets owned or controlled by said respondents. In so doing said respondents, as well as respondent Eugene J. Schlanger, have sought to eliminate competition in the bottled gas business in the Hazleton area.

PAR. 8. The discriminations in price on the part of respondents being substantial, the effect thereof may be substantially to lessen competition or to tend to create a monopoly in the lines of commerce in which respondents and the purchasers receiving the preferential prices are engaged and to prevent, injure and destroy competition between respondents and their competitors and between and among purchasers of such products from respondents.

PAR. 9. The discriminations in price, as hereinbefore alleged, are in violation of the provisions of Section 2(a) of the Clayton Act, as amended.

Mr. Lewis F. Depro supporting the complaint.

Levine and Levine, of Liberty, N.Y., for respondents, *Mr. Lazarus I. Levine*, of Counsel.

INITIAL DECISION BY LEON R. GROSS, HEARING EXAMINER

On February 15, 1960, the Federal Trade Commission issued its complaint in this proceeding against all the above-named respondents, charging them with violating Section 2(a) of the Clayton Act,

as amended, by the Robinson-Patman Act. Respondents are charged in said complaint with discriminating in price between different purchasers of liquefied petroleum gas, and related products, by selling such products to some purchasers at substantially higher prices than the prices at which sales are made of products of like grade and quality to other purchasers, some of whom are engaged in competition with the less favored purchasers in the resale of such products. A true and correct copy of the complaint was served upon respondents, and each of them, as required by law. Thereafter respondents appeared by counsel and entered into an agreement dated May 4, 1960, which purports to dispose of all of this proceeding as to all of the respondents without the necessity of conducting formal hearings. The agreement has been legally executed on behalf of all the respondents. It has been signed by respondents' counsel, and by counsel supporting the complaint, and has been approved by the Director and the Associate Director of the Bureau of Litigation of the Federal Trade Commission. The May 4, 1960 agreement contains the form of a consent cease and desist order which the parties have agreed is dispositive of the issues involved in these proceedings. On May 10, 1960, the said agreement was submitted to the undersigned hearing examiner for consideration in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

In and by the said agreement of May 4, 1960, the parties:

Admit all the jurisdictional facts alleged in the complaint, and agree that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations;

Agree that the record upon which the initial decision and the decision of the Commission shall be based shall consist solely of the complaint and the agreement;

Agree that the agreement shall not become part of the official record unless and until it becomes a part of the decision of the Commission; and that the agreement is for settlement purposes only;

Agree that the cease and desist order entered pursuant to said agreement may be entered without further notice to respondents, and that, when so entered, it shall have the same force and effect as if entered after a full hearing; that such order may be altered, modified or set aside in the manner provided for other orders, and that the complaint may be used in construing the terms of the order.

Respondents, in and by said agreement waive: Any further procedural steps before the hearing examiner and the Commission; the making of findings of fact or conclusions of law; and all rights they may have to challenge or contest the order to cease and desist entered in accordance with the agreement.

The agreement specifically provides that the order to cease and desist provided for in the agreement is not intended to require uniform prices throughout the country.

This proceeding having now come on for final consideration upon the complaint and the aforesaid agreement of May 4, 1960, containing consent cease and desist order, and it appearing that the order provided for in said agreement covers all of the allegations of the complaint, and provides for an appropriate disposition of this proceeding as to all parties, the agreement of May 4, 1960, hereby is accepted, approved, and ordered filed at the time this decision becomes the decision of the Federal Trade Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings; and

The undersigned hearing examiner, having considered the agreement and proposed order, and being of the opinion that the acceptance thereof will be in the public interest, makes the following findings and issues the following order:

FINDINGS

1. The Federal Trade Commission has jurisdiction over the parties and the subject matter of this proceeding;

2. Respondent, General Natural Gas Corporation, is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located in the City of Monticello, State of New York.

Respondent, Sungas Products of Penna., Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at 901 Providence Road, in the City of Scranton, State of Pennsylvania.

Respondent Benjamin Cosor is an individual and an officer, director and stockholder of General Natural Gas Corporation and an officer and director of Sungas Products of Penna., Inc., with his office and principal place of business located in care of General Natural Gas Corporation, in the City of Monticello, State of New York.

Respondent Harold C. Fisher is an individual and an officer, director and stockholder of General Natural Gas Corporation and an officer and director of Sungas Products of Penna., Inc., with his office and principal place of business located in care of General Natural Gas Corporation, in the City of Monticello, State of New York.

Respondent William Schlanger is an individual and an officer, director and stockholder of Sungas Products of Penna., Inc., with his office and principal place of business located at 901 Providence Road, in the City of Scranton, State of Pennsylvania.

Respondent Eugene J. Schlanger is an individual and an employee of Sungas Products of Penna., Inc., with his office and principal place of business located at 901 Providence Road, in the City of Scranton, State of Pennsylvania.

3. Respondents are engaged in "commerce" as that term is defined in the Clayton Act, as amended by the Robinson-Patman Act, and in the Federal Trade Commission Act.

4. The complaint filed in this proceeding states a good cause of action against the respondents under the Clayton Act, as amended; and this proceeding is in the public interest.

Now, therefore,

It is ordered, That respondent General Natural Gas Corporation and Sungas Products of Penna., Inc., corporations, and respondents Benjamin Cosor, Harold C. Fisher, William Schlanger and Eugene J. Schlanger, individuals, and their officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the sale and distribution of liquefied petroleum gas and related products in commerce, as "commerce" is defined in the Clayton Act, do forthwith cease and desist from:

Discriminating in price by selling such products of like grade and quality to any purchaser at prices higher than those granted to other purchasers, who in fact compete with the unfavored purchaser in the resale and distribution of such products, or where respondents in the sale of such products are in competition with any other seller.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 6th day of July 1960, become the decision of the Commission; and, accordingly:

It is ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

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

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