District Court, Osage County, Okla.
FILED

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JENNIFER BURD, Court Clerk
By_______________ Deputy

IN THE DISTRICT COURT OF OSAGE COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA *ex rel.* GENTNER DRUMMOND,
ATTORNEY GENERAL OF OKLAHOMA,

Plaintiff,

v.

ET GATHERING & PROCESSING LLC, *successor by merger to* ENABLE MIDSTREAM PARTNERS, LP, ENABLE OKLAHOMA INTRASTATE TRANSMISSION, LLC, ENABLE GAS TRANSMISSION, LLC, and ENABLE ENERGY RESOURCES, LLC,

Defendants.

Case No. CJ-24-77

PETITION

Plaintiff, State of Oklahoma *ex rel.* Gentner Drummond, Attorney General of Oklahoma, commences this action on behalf of Grand River Dam Authority against Defendants ET Gathering & Processing, LLC, *successor by merger to* Enable Midstream Partners, LP, Enable Oklahoma Intrastate Transmission, LLC, Enable Gas Transmission, LLC, and Enable Energy Resources, LLC (hereinafter collectively referred to as "Defendants") and alleges as follows:

1. Grand River Dam Authority ("GRDA") brings this action to remedy violations of Oklahoma laws in connection with Defendants' bad-faith, unfair, deceptive, negligent, and anti-competitive business practices.

PARTIES

2. GRDA, a state agency, is represented by the State of Oklahoma, *ex rel.* Gentner Drummond, Attorney General of the State of Oklahoma. The Attorney General is the chief law officer for the State and is authorized to commence this action pursuant to 74 O.S. § 18 *et seq.* and 79 O.S. §§ 203-205, as GRDA is a direct purchaser of commodities as outlined herein.

3. GRDA is Oklahoma's largest public power utility. It produces electricity, using mainly natural gas as fuel, and transmits and delivers the generated electricity across its 24-county service area in Northeast Oklahoma. GRDA transmits and sells electricity to municipalities, electric cooperatives, and various services and industries.

4. Defendant ET Gathering & Processing, LLC ("ETGP") is a Texas limited liability company and the successor by merger to Enable Midstream Partners, LP, Enable Gathering & Processing, LLC, Enable Gas Gathering, LLC and other Enable related entities, which at all relevant times were registered to do and were doing business in the State of Oklahoma as natural gas gatherers, processors, marketers, and owners/operators of interstate and intrastate natural gas pipelines.

5. Defendant Enable Oklahoma Intrastate Transmission, LLC ("EOIT"), is a Delaware limited liability company with its principal place of business in Oklahoma. At all relevant times, EOIT was registered to do and was doing business in the State of Oklahoma as a natural gas marketer and owner of intrastate natural gas pipelines.

6. Defendant Enable Gas Transmission, LLC ("EGT") is a Delaware limited liability company with its principal office in Dallas, Texas. At all relevant times, EGT was registered to do and was doing business in the State of Oklahoma as a natural gas marketer and owner of interstate natural gas pipelines.

7. Defendant Enable Energy Resources, LLC ("EER") is an Oklahoma limited liability company. At all relevant times, EER was registered to do and was doing business in the State of Oklahoma as a natural gas marketer.

8. ETGP, EOIT, EGT, and EER may sometimes be referred to collectively as the "Enable Defendants."

JURISDICTION AND VENUE

9. The State of Oklahoma is a sovereign state with the Attorney General enforcing public rights under Oklahoma statute and common law.

10. This Court has personal jurisdiction over Defendants as Defendants conduct business in Osage County and throughout Oklahoma and have deliberately engaged in significant acts and omissions within Oklahoma that have injured GRDA. Defendants purposefully directed their activities in Oklahoma and its citizens, and the claims arise out of those activities.

11. Jurisdiction is proper as the State of Oklahoma is a sovereign state under the United States Constitution, Article 11.

12. Venue is proper as a substantial part of the allegations stated herein occurred in Osage County, and Defendants own assets in Osage County. 12 O.S. § 137.

FACTS

The Natural Gas Market

13. The natural gas industry has three segments: the upstream segment, the midstream segment, and the downstream segment. The upstream segment includes exploration, development, drilling and completing wells, and ultimately production at the wellhead. The midstream segment involves the processes required to move the raw, produced natural gas from the wellhead to high-pressure interstate or intrastate pipelines and includes gathering, compression, dehydration, treating, and processing to transform the raw gas into pipeline quality residue gas. The downstream segment involves moving the pipeline quality residue gas on large, high-pressure pipelines to end users such as cities, local distribution companies, power plants, industrial facilities, and retail customers.

14. Local power plants like those owned by GRDA that generate power using natural gas as fuel have relatively predictable needs for natural gas. As a result, the owners of such plants often enter long-term contracts for the transportation, purchase and supply of their required volumes of residue gas. These contracts commonly contain "force majeure" clauses, which suspend the obligations of a party unable to perform due to acts of God or other specifically defined circumstances beyond the party's control.

15. Consumers with more variable demand for natural gas will often purchase gas on the secondary "spot" market where prices change daily.

Regulation of Natural Gas Market in Oklahoma

16. The Federal Energy Regulatory Commission (FERC) regulates *interstate* gas pipelines. FERC bars pipeline operators from owning the underlying commodity that they transport and sell, and their transit charge is set by the regulators. The purpose of this regulatory scheme is to keep these entities from using their market power to charge consumers extremely high prices. FERC, however, lacks jurisdiction over *intrastate* pipelines.

17. Oklahoma is the nation's fifth-largest producer of natural gas and consumes less than 23% of the natural gas it produces. As a result, Oklahoma does not rely on gas imports. This allows certain pipeline operators to confine certain activities to extensive intrastate pipelines not regulated by FERC. Such intrastate pipeline operators in Oklahoma are not prohibited from trading natural gas transported on their pipelines and there are no statutory or regulatory limits on prices they can charge consumers.

18. Many states have enacted laws mirroring those promulgated by FERC, subjecting intrastate gas pipelines and distribution companies to a legal framework aimed at preventing market

manipulation and anti-competitive behavior. Oklahoma, however, does not have such a legal framework in place.

19. As a result, Oklahoma's intrastate natural gas market is especially vulnerable to manipulation. Such manipulation causes natural gas and electricity prices to soar in comparison to interstate markets and other states where intrastate pipelines are subject to heightened legal scrutiny.

Organizational Relationship of Defendants

20. Through coordination of their ownership, control and operational activities, Enable Defendants are able to gather, process, transport, market and trade large volumes of natural gas across Oklahoma.

21. Defendants have monopoly power over the market for transmission and supply of natural gas to the GRDA plant in Mayes County, Oklahoma. EOIT owns and controls the single pipeline that delivers natural gas to the GRDA power plant for the generation of power. The other Defendants control the available supply of gas on such pipeline. Defendants have a dominant gathering, processing, transportation, and distribution system for natural gas in the relevant market for the supply of natural gas to GRDA and provide the only efficient and economically reasonable route for GRDA to transport natural gas to its power plants. Consequently, Defendants possess the power to control the supply and price of natural gas in the market serving GRDA's plants.

GRDA Contract with EOIT

22. On April 1, 2014, GRDA entered into an Intrastate Firm Transportation Service Agreement with EOIT for the transportation of its required natural gas. *See* **Exhibit 1** (Intrastate Firm Transportation Service Agreement, April 1, 2014). This contract was amended on June 1, 2016,

February 1, 2017, April 1, 2017, and September 1, 2021. *See* **Exhibit 2** (Amendments) (the Contract and Amendments will be hereinafter referred to as the "Contract").

23. Under the terms of the Contract, EOIT is obligated to transport and deliver natural gas purchased by GRDA, and to maintain sufficient capacity on its pipeline to handle such volumes. In return, GRDA is obligated to pay EOIT [redacted] in monthly installments.

[redacted] In addition, the Contract states that EOIT may charge GRDA a [redacted]

25. [redacted] EOIT charges GRDA a fee [redacted].

26. The ability to charge fees [redacted] creates an incentive for market manipulation to drive up the price.

[redacted]

28. On a given day, gas purchased by GRDA commonly enters the EOIT intrastate pipeline at distant locations called points of receipt. That same day, GRDA takes an equivalent volume of gas off the pipeline at points of delivery, such as the GRDA plant. [redacted].

29. The ability to charge a fee [redacted] creates an incentive for pipeline operators and their affiliates to manipulate the available supply of gas. [redacted] the incentive to manipulate market prices exists here as well.

30. These types of contract terms calculating fees [redacted] are prohibited on FERC regulated interstate pipelines. However, there is no such regulatory provision applicable to intrastate pipelines in Oklahoma.

31. Upon information and belief, the Defendants individually and in concert with one another took advantage of these provisions by participating in a variety of tactics to drive up prices, including reduction of supply and submitting trades to market indexes at unconscionable price levels as alleged in more detail below. This, in turn, enabled EOIT to charge GRDA exorbitant fees [redacted] and allowed other Defendants to sell gas on the spot market at elevated prices.

<u>Winter Storm Uri</u>

32. In February 2021, extreme cold winter weather hit Oklahoma in what became known as "Winter Storm Uri."

33. Extreme weather creates ideal conditions for entities like Defendants to engage in price manipulation because it provides a superficially plausible, pretextual explanation for why natural gas supplies are down and prices are up.

34. Weather is a major driver of changes in demand for natural gas, and industry members respond to its changes in the normal course of operation. Defendants' core business of trading, marketing, gathering, processing and transporting natural gas requires them to closely watch weather forecasts, a practice that also alerts them to opportunities to create and profit from artificial scarcity of supply. As a result, Defendants were aware that Winter Storm Uri was approaching more than a month before it arrived. They knew that it would bring sustained below-freezing temperatures, and that it would increase demand for natural gas.

35. Armed with this knowledge, Defendants used that time to prepare, but not in the way that was rightfully expected from them. Instead of ensuring adequate natural gas supplies to GRDA, upon information and belief Defendants spent the weeks and days before Winter Storm Uri's arrival in Oklahoma taking deliberate steps, which continued after Winter Storm Uri's arrival, to reduce the availability of natural gas in Oklahoma. They did so with the objective of driving natural gas prices—and their resulting profits—exponentially higher, to the detriment of GRDA and everyone else in Oklahoma.

36. As a result of Defendants' market manipulation during Winter Storm Uri, the price for natural gas available on EOIT's intrastate pipeline system ballooned exponentially compared to prices in states where gas transmission and transactions are subject to more stringent regulation. For instance, during Winter Storm Uri, natural gas in Oklahoma reached prices that were 40 to 100 times those in Louisiana, a state also affected by this storm but served by gas pipelines and traders that are regulated by FERC.

37. Upon information and belief, Defendants used a variety of tactics for manipulating the natural gas market in Oklahoma during Winter Storm Uri. These tactics included, but were not limited to: (1) injecting natural gas into storage and refusing to withdraw natural gas already held in storage, thereby reducing the available supply in the face of increasing demand; (2) using critical notices, force majeure notices, operating flow and system operation orders to reduce pipeline deliveries to customers, allowing Defendants to sell natural gas on the spot market at higher prices instead; (3) using their gathering and processing facilities, as well as their interstate pipelines, to reduce the supply of natural gas and/or divert available natural gas away from the intrastate pipeline serving GRDA's plant; and (4) reporting inflated trades to drive up price indexes affecting both physical and financial natural gas markets.

38. To put into context the ramifications of Defendants' actions, from 2015 to 2019, natural gas prices at the ONEOK Gas Transportation Pool ("OGT") (a common Oklahoma Benchmark) averaged approximately $2.55/MMBtu (and never exceeded $35.52/MMBtu). During Winter Storm Uri, natural gas prices at the OGT Pool rose to over $1230.65/MMBtu at unregulated nodes fed by intrastate pipelines.

39. Upon information and belief, Defendants also utilized their underground natural gas storage facilities to control the market for natural gas during this time period. Underground natural gas storage facilities that are part of a gas transportation system operate on an injection-withdrawal cycle that matches the weather-related demand for natural gas. During the warmer months, normally from April through November, when demand for natural gas is relatively low, gas is injected into the storage facilities. During the winter months, from November through March, gas is withdrawn.

40. However, both before and during Winter Storm Uri, Defendants injected natural gas into storage rather than withdrawing it to maintain an adequate supply.

41. Defendants' conduct created an artificial shortage of natural gas during a time of intense demand. Defendants that were trading natural gas used this artificial shortage to claim a force majeure event had occurred that would prevent them from fulfilling their contractual obligations to sell gas to customers at fixed prices. Defendants then sold such gas on the daily spot market, at inflated prices, driving up prices.

42. The artificial supply shortage, coupled with marketers' use of force majeure provisions, led to a feeding frenzy on the "spot" market that artificially inflated prices.

43. Defendants blamed the shortage of natural gas supplies on factors such as damage to wells and equipment, freezing of lines of pipes, and power outage. However, any consequences of a

failure to winterize facilities and equipment were fully foreseeable. Defendants were aware of this approaching cold weather event and had enough time and a duty to reasonably and prudently prepare.

44. On February 14, 2021, upon information and belief, EOIT played another part in the concerted effort to manipulate the market by issuing a System Operations Order ("SOO"). SOOs are placed to ensure customers balance what they put on a pipeline with what they take off and provide for the imposition of penalties for noncompliance. Enable's SOO directed customers, including GDRA, to refrain from taking more gas from its system than they were providing to the system.

45. Parties, such as Defendants, claiming the benefit of force majeure clauses, or SOOs, are expected to allocate remaining capacity and supply to their customers in a fair and pro rata fashion. However, that is not what Defendants did.

46. Instead, upon information and belief, Defendants utilized their force majeure declarations and SOOs as a pretext for releasing into the open market volumes that were *previously* committed to fixed price contracts with prices in the range of $2 to $3/MMBtu. Defendants then sold such gas at much higher spot prices. The submission of these ballooned trades to market indexes artificially drove up not only the price GRDA was forced to pay for gas, but also the fees charged to GRDA [redacted].

47. By artificially and fraudulently increasing and manipulating prices, Defendants attained record profits from not only trading natural gas, but also, and equally importantly, from the imposition of [redacted] charges levied against GRDA.

48. Moreover, Defendants further enhanced their ill-gotten profits by engaging in intra-company trades at lower market rates, while charging external customers prices that were 50 to 100 times higher than what it was charging affiliate companies.

49. While Defendants achieved record profits, GRDA and Oklahoma suffered losses and damage that continue today and going forward.

FIRST CAUSE OF ACTION: VIOLATIONS OF THE OKLAHOMA ANTITRUST REFORM ACT (79 O.S. § 201, *et seq.*)

50. For its First Cause of Action against Defendants, GRDA adopts and incorporates all of the preceding allegations and further alleges as follows:

51. Defendants have engaged in acts individually and in concert with each other that unreasonably restrained trade in the natural gas market in Oklahoma.

52. Defendants control the gathering, processing, and transmission of gas on the only source of natural gas supplying GRDA's plant. Defendants own and control the gathering system and processing plants that deliver gas onto the intrastate pipeline owned and controlled by EOIT, as well as interstate pipelines and storage facilities directly or indirectly connected to that pipeline. As a result of their power in this market, Defendants had the ability to control the supply of natural gas and the prices for such gas.

53. Defendants used their market power to reduce supply and drive up prices, which restrained trade and injured competition for natural gas on the EOIT intrastate pipeline hooked to the GRDA plant.

54. Defendants also used their market power to engage in anti-competitive price discrimination between their own and outside entities such as GRDA.

55. Defendants' actions harmed GRDA as a direct receiver of natural gas from Defendants.

56. Defendants' unreasonable restraint of trade and anti-competitive conduct harmed GRDA.

57. Defendants' conduct negatively impacted the proper, fair, and just operation of the Oklahoma economy in that Defendants can artificially alter and manipulate the cost of natural gas to GRDA and others.

58. Defendants' actions caused damages to GRDA.

59. As a result of Defendants' violation of the Oklahoma Antitrust Reform Act 79 O.S. § 201 *et seq.*, GRDA has been damaged and is entitled to judgment against Defendants, plus treble damages, costs, interest, attorney fees, punitive damages, and any and all other relief deemed appropriate by the Court.

SECOND CAUSE OF ACTION: BREACH OF CONTRACT

For its Second Cause of Action against Defendants, GRDA adopts and incorporates all of the preceding allegations and further alleges as follows:

60. By virtue of the Contract attached as Ex. 1, EOIT owed GRDA a duty of good faith and fair dealing.

61. EOIT individually and in concert with other Defendants breached this duty by, among other things, reducing the supply of natural gas, issuing SOOs and force majeure declarations based on this manufactured reduction in order to sell gas at escalating spot prices rather than fixed prices under existing contracts, and charging fees [redacted], while at the same time selectively selling to affiliated or related companies for substantially lower prices.

62. As a result of Defendants' breach of the Contract, GRDA has been damaged and is entitled to specific, consequential, incidental, and indirect damages and any and all other relief deemed appropriate by the Court.

THIRD CAUSE OF ACTION: UNJUST ENRICHMENT

For its Third Cause of Action against Defendants, GRDA adopts and incorporates all of the preceding allegations and further alleges as follows:

63. Defendants' actions and inactions in anticipation and during Winter Storm Uri through manipulating the supply and price of natural gas paid for by GRDA, as well as fees and penalties paid by GRDA, were unjust and unlawful.

64. Defendants have benefitted from their unlawful and anti-competitive acts by reaping unjust profits as a result of their market manipulation.

65. It is unjust for Defendants to retain the benefits of their actions.

66. Defendants should not be allowed to retain the economic benefit derived from their improper conduct and should be ordered to disgorge their ill-gotten gains.

FOURTH CAUSE OF ACTION: FRAUD

For its Fourth Cause of Action against Defendants, GRDA adopts and incorporates all of the preceding allegations and further alleges as follows:

67. Defendants made representations to GRDA concerning the reduction in available supply of natural gas, the cause of such reduction and the cause of skyrocketing prices, which Defendants knew to be false.

68. Defendants intended for GRDA to rely upon, and GRDA did rely upon, Defendants' misrepresentations to GRDA's detriment.

69. As a result of Defendants' fraud, GRDA has been damaged and is entitled to judgment against Defendants, plus costs, interest, attorney fees, punitive damages, and any and all other relief deemed appropriate by the Court.

FIFTH CAUSE OF ACTION: CONSTRUCTIVE FRAUD

For its Fifth Cause of Action against Defendants, GRDA adopts and incorporates all of the preceding allegations and further alleges as follows:

70. Due to the relationship between EOIT and GRDA, EOIT had a duty to fully and honestly disclose the true nature of the available supply of natural gas, the reasons for any reduction in such supply, and the escalation in prices.

71. EOIT breached such duty, individually and conspiring with the other Defendants, by concealing information concerning the supply and pricing of natural gas, misleading GRDA to its detriment.

72. As a result of Defendants' constructive fraud, GRDA has been damaged and is entitled to judgment against Defendants, plus costs, interest, attorney fees, punitive damages, and any and all other relief deemed appropriate by the Court.

SIXTH CAUSE OF ACTION: BAD FAITH BREACH OF CONTRACT

For its Sixth Cause of Action against Defendants, GRDA adopts and incorporates all of the preceding allegations and further alleges as follows:

73. GRDA was in a contractual relationship with EOIT for the supply of natural gas to GRDA.

74. The trust and confidence GRDA placed in EOIT, coupled with GRDA's lack of knowledge concerning EOIT's activities and the disparity of bargaining power during the relevant time period, created a special relationship between the parties.

75. As a result of this special relationship, EOIT owed GRDA a duty of good faith and fair dealing.

76. EOIT, individually and in conspiracy with the other Defendants, breached this duty of good faith and fair dealing and, instead, acted in bad faith toward GRDA, damaging GRDA and for which GRDA is entitled to judgment against Defendants, including punitive damages, and any and all other relief deemed appropriate by the Court.

SEVENTH CAUSE OF ACTION: CIVIL CONSPIRACY

For its Seventh Cause of Action against Defendants, GRDA adopts and incorporates all of the preceding allegations and further alleges as follows:

77. Defendants and their subsidiaries, affiliates, and agents acted in concert, cooperated with each other and conspired to maximize their profits through their unlawful and unjust course of action in the time period leading to and during Winter Storm Uri.

78. Defendants' actions were unlawful, and they used unlawful means to achieve their unlawful purpose of extracting exorbitant fees and penalties from GRDA.

79. As the direct and proximate result of Defendants' actions, GRDA has been damaged and is entitled to judgment against Defendants, including punitive damages, and all other relief deemed appropriate by the Court.

EIGHTH CAUSE OF ACTION: NEGLIGENCE

For its Eighth Cause of Action against Defendants, GRDA adopts and incorporates all of the preceding allegations and further alleges as follows:

80. Defendants owed a duty to GRDA to adequately winterize their equipment, facilities, and pipelines.

81. With the approaching of Winter Storm Uri, it was foreseeable that failure to do so would lead to interruption of the natural gas supply to GRDA.

82. Defendants breached this duty by failing to adequately winterize their equipment, facilities and pipelines.

83. In addition, EOIT had a duty to ensure a consistent and adequate supply of natural gas to GRDA.

84. EOIT, individually and in conspiracy with other Defendants, breached this duty by not only taking steps to artificially reduce the available supply, but also engaging in conduct creating circumstances leaving GRDA with no alternative but to purchase gas at unconscionable prices and pay exorbitant fees.

85. GRDA sustained injury and damage as a result, entitling GRDA to judgment against Defendants, including punitive damages, and all other relief deemed appropriate by the Court.

NINTH CAUSE OF ACTION: NEGLIGENCE PER SE, VIOLATION OF THE OKLAHOMA COMMON CARRIER STAUTE (13 O.S. § 62)

For its Ninth Cause of Action against Defendants, GRDA adopts and incorporates all of the preceding allegations and further alleges as follows:

86. Defendants, as transporters of natural gas, are considered a "common carriers" per Title 52 of the Oklahoma Statutes. *See* 52 O.S. § 24 (2022).

87. Pursuant to Title 13 of the Oklahoma Statutes, as a common carrier, Defendants owed a statutory duty of care and diligence to GRDA. *See* 13 O.S. § 62 (2022).

88. Defendants breached their duty of care to GRDA during the Winter Storm Uri.

89. Defendants' conduct during Winter Storm Uri was a violation of Title 13 of the Oklahoma Statutes. *See* 13 O.S. § 62 (2022).

90. The negligent conduct of Defendants during the Winter Storm Uri caused injury to GRDA. As a result, GRDA is entitled to judgment against Defendants, including punitive damages, and all other relief deemed just and equitable by the Court.

PRAYER FOR RELIEF

WHEREFORE, GRDA prays for judgment against Defendants in an amount in excess of $75,000.00, plus treble damages, disgorgement, punitive damages, attorney fees, costs, and any other relief deemed just and equitable by the Court.

GENTNER DRUMMOND
ATTORNEY GENERAL OF OKLAHOMA

By:____________________________

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Exhibit 1

Intrastate Firm Transportation Service Agreement, dated April 1, 2014
(redacted)

Exhibit 2

Contract Amendments
(redacted)