



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL  
HARRISBURG, PA. 17120

ERNEST D. PREATE, JR.  
ATTORNEY GENERAL

February 11, 1994

16TH FLOOR  
STRAWBERRY SQUARE  
HARRISBURG, PA. 17120  
(717) 787-3391

Honorable Italo S. Cappabianca  
House of Representatives  
Room 30, East Wing  
Main Capitol  
Harrisburg, PA 17120-0028

Dear Representative Cappabianca:

Thank you for your January 21, 1994, letter requesting that my Office investigate high gasoline prices in the City of Erie.

I share your concern that gasoline prices in some areas, particularly in the northern tier of the state, appear to be out of line with market conditions. As you know, Pennsylvania does not have a general state antitrust statute so our review of your complaint is limited to determining whether there is a violation under the federal antitrust laws.<sup>1</sup>

You should know that my Office previously investigated high gasoline prices in the City of Erie in 1991 and conducted several similar investigations in nearby Elk, McKean and Warren Counties in 1986-87, 1991-92, and 1993. As part of these earlier investigations, my Antitrust Section conducted numerous price surveys, interviewed many retailers in the area, and received substantial price information from a number of jobbers/distributors and from United Refinery, the major gasoline supplier in this market area. In addition, for the past three years my Office has also received weekly state-wide gasoline surveys conducted by the Pennsylvania Energy Office that compares average regular unleaded gasoline prices for Pittsburgh, Philadelphia, Harrisburg and Erie.

None of these prior investigations uncovered evidence of the collusion that needs to be proven under the federal antitrust laws. Similar prices -- even similarly high prices -- do not, by themselves, provide sufficient evidence of illegal conduct. Our earlier investigations found that gasoline prices are generally higher in your section of the state because of higher transportation costs due to the distance from oil pipelines and

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<sup>1</sup>While Pennsylvania is also without a state price gouging law, such a law would not be applicable even if such a provision was on the books presently; all proposals for anti-price gouging legislation have as a condition precedent, the existence of an emergency or major supply disruption before their prohibitions would apply.

Honorable Italo S. Cappabianca  
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refineries. There also tend to be fewer competitors at the retailer, wholesaler, and supplier levels, and retailers in these markets generally have lower sales volumes than in other areas of the state, particularly Pittsburgh, Harrisburg and Philadelphia. We have found that these factors, in combination, cause gasoline prices to be about \$.05 to \$.10 cents per gallon, on average, higher in the northwestern part of the state, especially in the more rural areas such as McKean County.

Notwithstanding the above factors, gasoline prices can sometimes be significantly lower in a nearby town or city because of the presence of an aggressive, low price competitor. Our investigation in 1993 found at least one such competitor in western Pennsylvania that has driven prices down as much as five to ten cents per gallon in the towns and cities where it does business. The absence of aggressive price competitors in any particular town or city, however, does not mean that the antitrust laws have been violated.

Finally, the most recent PEO gasoline survey for the week of January 24, 1994, showed the following prices per gallon for regular unleaded gasoline:

<u>Pittsburgh</u>	<u>Harrisburg</u>	<u>Philadelphia</u>	<u>Erie</u>
99.7¢	95.3¢	104.5¢	108.6¢

These price spreads between Erie and the other cities are in line with the conclusions found in our previous investigations. We are aware, on the other hand, that these average prices have fluctuated over the last three years and that Erie's prices have even sometimes been below those found in Harrisburg or Philadelphia. Nevertheless, we are satisfied with the soundness of our earlier findings.

Based on your complaint, however, I have asked my Antitrust Section to conduct a new inquiry to ensure that the current price differences are not the result of collusive activity. We will inform you of the results of that review once it is completed.

Thank you again for bringing this matter to my attention.

Very truly yours,



Ernest D. Preate, Jr.  
Attorney General

EDPJr/CSH/dmh/RepCappbca.Ltr  
EX0940232

cc: Fran B. Cleaver  
Senior Deputy Attorney General  
Office of Legislative Affairs

ITALO S. CAPPABIANCA, MEMBER

1216 WEST 26TH STREET  
ERIE, PENNSYLVANIA 16508-1520  
PHONE: (814) 453-7639  
FAX: (814) 871-4713

ROOM 30, EAST WING  
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COMMITTEES

INTERGOVERNMENTAL AFFAIRS, CHAIRMAN

House of Representatives  
COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG

May 20, 1996

Honorable Members, Erie City Council  
Erie City Hall  
626 State Street  
Erie, PA 16501

Dear Council:

Since you have shown an interest and some concern relative to the recent increases in gas prices, I have enclosed herewith a letter I recently received from Attorney General Janet Reno's office, in response to my inquiry. As you can see, the Attorney General's office is conducting an investigation into the increase in these prices on a national level.

In addition, as you may know I have been actively involved in monitoring gas prices on a state wide level for several years. As far back as February 1994, I asked then-Attorney General Ernie Preate to investigate gas prices at that time. Subsequently, I have introduced legislation (also enclosed) calling for the Office of Consumer Advocate to collect and compare prices on a state-wide basis, and have repeatedly called for close monitoring of this valuable commodity.

Thank you for forwarding your resolution to me. Certainly this issue has grown into a national concern and I am closely following the issue on the state level. I appreciate your concern and assure you that this is something I intend to continue monitoring.

Sincerely,

  
Italo S. Cappabianca  
Representative, 2nd District

enclosures

ISC/cmr



DEPARTMENT OF JUSTICE  
Antitrust Division

ANNE K. BINGAMAN  
*Assistant Attorney General*

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10th & Constitution Ave., N.W.  
Washington, D.C. 20530  
(202) 514-2401 / (202) 616-2645 (f)  
antitrust@justice.usdoj.gov (internet)  
<http://www.usdoj.gov> (World Wide Web)*

MAY 15 1996

The Honorable Italo S. Cappabianca  
Member, Pennsylvania House of Representatives  
Room 30, East Wing  
House Box 202020  
Harrisburg, PA 17120

Dear Representative Cappabianca:

This is in reply to your letter to the Department of Justice calling for an investigation into the causes of recent increases in the price of gasoline.

On May 1, 1996, the Department of Justice announced the formation of a five-member team of attorneys and economists from the Antitrust Division to investigate possible anticompetitive practices in the gasoline industry. As you may know, the disclosure of specific information pertaining to matters under investigation by the Department of Justice is prohibited, as a matter of Department policy. However, I can confirm that the Antitrust Division's team will investigate possible causes of the recent price increases to determine whether conduct in violation of the antitrust laws was a contributing factor, and the Department will take such appropriate actions as are warranted by any facts found.

Thank you for your support of this investigation. I shall make a copy of your letter available to the investigative team.

Sincerely,

  
Anne K. Bingaman

ITALO S. CAPPABIANCA, MEMBER

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House of Representatives  
COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG

COMMITTEES

INTERGOVERNMENTAL AFFAIRS, CHAIRMAN

April 29, 1996

Attorney General Janet Reno  
United States Department of Justice  
Main Justice Building  
10th Street & Constitution Avenue, N.W.  
Washington, DC 20530

Dear General Reno,

As a Pennsylvania state legislator who has worked on the issue of gasoline pricing for the last three years, I respectfully request that your office investigate the rapid increase in gasoline prices in the last few weeks.

I realize that the factual basis needed to prove that illegal conduct was behind these price increases is difficult to prove, but I have confidence in your agency.

As this investigation develops, I would appreciate it if my office would be placed on the mailing list for information about gasoline prices. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, reading "Italo S. Cappabianca".

Italo S. Cappabianca  
State Representative, 2nd Legislative District  
Intergovernmental Affairs Committee, Chair



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

September 2, 1994

ERNEST D. PREATE, Jr.  
ATTORNEY GENERAL

Reply To:

14th Floor, Strawberry Sq.  
Harrisburg, PA 17120  
(717) 787-4530

Honorable Italo S. Cappabianca  
House of Representatives  
Room 30, East Wing  
Main Capitol Building  
Harrisburg, PA 17120-0028

Re: Erie Gasoline Price-Fixing Investigation

Dear Representative Cappabianca:

The Antitrust Section has now had the opportunity to investigate gasoline prices in the City of Erie in response to your inquiry. As you know, Pennsylvania does not have a general state antitrust statute or a state price-gouging statute. Further, high prices alone do not raise a claim under general consumer protection statutes. Our review of your complaint, therefore, was limited to determining whether there was a violation of the federal antitrust laws.

Our Office shares your concern that prices in some areas, on occasion, appear to be out of line with market conditions. For that reason, we previously investigated high gasoline prices in the City of Erie in 1991 and in nearby McKean County in 1986-87, 1991-92, and again in 1993. As part of these earlier investigations, our Office conducted numerous price surveys, interviewed many retailers in the area, and received substantial price information from a number of jobbers/distributors and from United Refinery, a major gasoline supplier in this market area.

None of those investigations, nor our current investigation, uncovered evidence of the collusion that needs to be proven under the federal antitrust laws to make such pricing illegal. Similar prices -- even similarly high prices -- do not, by themselves, provide sufficient evidence of illegal conduct.

To investigate your complaint, we conducted several gasoline price surveys in the City of Erie and nearby Meadville. We examined Meadville's prices because its prices were generally lower than Erie's and this fact was not immediately explainable by normal market conditions such as transportation, volume of product sold, etc.

Honorable Italo S. Cappabianca  
September 2, 1994  
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Our investigation found that the lower prices being charged in Meadville were the apparent result of aggressive marketing by one or more low-priced competitors in that market that were not present in the Erie market. This finding is consistent with some of our other earlier investigations which found that gasoline prices can sometimes be significantly affected by the presence of an aggressive, low-priced competitor. The absence of aggressive price competitors in any particular town or city, however, does not mean that the antitrust laws have been violated. Further, our investigation found that gasoline prices often fluctuate between regions of the State and that while Erie's prices were higher during some portion of our investigation than in the other three regions surveyed by the Energy Office; more recently, the Erie prices were virtually identical to prices surveyed in Pittsburgh and Philadelphia, and on several occasions, even lower than those experienced in those cities.

These findings would likely render futile any effort we might undertake to prove that gasoline prices in the City of Erie are the result of illegal activity. Moreover, during our investigations, we have seen that prices often rise and fall together in smaller markets with relatively few competitors when compared to larger markets, such as Pittsburgh or Philadelphia, without any unlawful agreements; evidence of this kind of "parallel" behavior, without more, does not provide evidence of illegal conduct. Without specific evidence of collusion, we have no basis which to continue this investigation or bring a lawsuit.

In summary, we found no evidence that any illegal activity was occurring in the pricing of gasoline in the City of Erie. The price discrepancies that have been found between Erie and other cities in Pennsylvania are quite common throughout the State. Perhaps the most significant reason for these discrepancies is the presence of aggressive, low-priced competitors in other markets that are lacking in Erie.

I hope this explanation is helpful to you. Again, thank you for bringing this matter to our attention.

Very truly yours,



Carl S. Hisiro  
Chief Deputy Attorney General  
Antitrust Section

CSE/dmh/CAPPA2.1tr

cc: Fran B. Cleaver  
Senior Deputy Attorney General  
Office of Legislative Affairs



OFFICE OF CONSUMER ADVOCATE  
COMMONWEALTH OF PENNSYLVANIA  
1425 STRAWBERRY SQUARE  
HARRISBURG, PENNSYLVANIA 17120

IRWIN A. POPOWSKY  
Consumer Advocate

(717) 783-5048

April 4, 1996

Hon. Italo S. Cappabianca  
House of Representatives  
Room 30, East Wing  
House Box 202020  
Harrisburg, PA 17120-2020

Dear Representative Cappabianca:

Thank you for your letter of April 1, 1996, regarding legislation which would authorize the Office of Consumer Advocate to collect and distribute information regarding gasoline and home heating oil price information.

As you know, the prices of gasoline and home heating oil are not regulated by the Pennsylvania PUC and therefore, our Office has not been involved in those issues. Nevertheless, I agree with you that the maintenance of statewide price information for these products is valuable to consumers. I would therefore be happy to work with you and other legislators and state officials to determine the most economical ways to make that information available to the public.

I look forward to reviewing your proposed legislation and pledge the services of my Office in assisting you in your efforts to provide this important public service.

Sincerely,

A handwritten signature in black ink, appearing to read "Irwin A. Popowsky", with a long, sweeping flourish extending to the right.

Irwin A. Popowsky  
Consumer Advocate

sp/36112





UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Bureau of Competition

The Honorable Italo S. Cappabianca  
House of Representatives  
Room 30, East Wing  
Harrisburg, Pennsylvania 17120-0028

Dear Representative Cappabianca:

Thank you for your letter to the Acting Director concerning higher gasoline retail prices observed in Erie in comparison with other Pennsylvania locations. Your letter was forwarded to me for appropriate consideration as my office has responsibility for analyzing claims of antitrust violations in the petroleum industry.

As indicated in your letter and attachments, and as confirmed in a discussion with your office, the price variations you note have been brought to the attention of the Pennsylvania Attorney General's office. Lisa Cobb in that office is conducting an inquiry of the reasons for the price variations, to see if higher prices in Erie were the result of collusion. I also understand that, since your complaint about price differences in Erie, those differences have lessened.

Although laws and regulations, as well as Commission policy, limit significantly the extent to which I or any other member of the Commission's staff may discuss matters that may relate to non-public FTC investigations, I want to assure you that your complaint has been given serious consideration. If you have any further information to report or if you wish to discuss the matter further, you may write or call me as follows:

Ronald B. Rowe, Assistant Director  
Bureau of Competition, Room 2602  
601 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580  
(202) 326-2610

I appreciate your interest in this matter. Please let us know whenever we can be of service.

Sincerely,

A handwritten signature in black ink, appearing to be "RR", written over a white background.

Ronald B. Rowe  
Assistant Director