

Oklahoma Attorney General Backs Down from Natural Gas Price-Gouging Lawsuits

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In a remarkable sequence of events, the Oklahoma Attorney General threatened to sue a slew of natural gas companies for price-gouging relating to Winter Storm Uri gas prices—and then completely withdrew the lawsuit threat—in a span of days. The about-face represents the power of unified, quick-acting energy industry groups to respond to litigation threats.

On January 27, 2022, Oklahoma’s Attorney General set off a flurry of activity by sending identical letters to approximately 100 natural gas companies, accusing them of violating Oklahoma price-gouging and consumer protection laws during Winter Storm Uri. Oklahoma’s price-gouging statute generally prohibits an increase of more than 10% for the price of goods during a state emergency. 15 Okl. St. § 777.4(a). But the statute exempts price increases in “regional, national or international petroleum commodity markets.” *Id.* § 777.4(a)(1). The letters demanded that the recipients sign a tolling agreement by February 8, 2022 or that the Attorney General would proceed with filing suit.

Several days after the Attorney General letters were sent, the coldest weather of the 2022 winter season descended on Oklahoma, driving up natural gas prices 15%, above the 10% threshold for triggering the Oklahoma price-gouging statute. On February 2, 2022, the Petroleum Alliance of Oklahoma issued a response to the Attorney General’s litigation threat, stating that the Attorney General had put natural gas companies in the “untenable position” of complying with the Attorney General’s interpretation of the price-gouging statute or violating their contractual obligations to deliver natural gas during the cold weather event (leading to almost certain energy shortages during peak winter demand).

Within hours, the Attorney General issued a follow-up letter unequivocally withdrawing the threat of lawsuits. The Attorney General conceded that it was the industry’s general understanding that the “petroleum commodity markets” exception to the Oklahoma price-gouging statute applied to natural gas transactions. The Attorney General concluded with a conciliatory note, congratulating the energy industry for keeping “the lights on and the heaters running through Winter Storm Uri while other states faced deadly blackouts.”