

**2021CI05138**

Cause No. \_\_\_\_\_

**CPS Energy,**

Plaintiff,

v.

**Houston Pipe Line Company, LP and  
Oasis Pipeline, LP,**

Defendants.

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In the District Court of

Bexar County, Texas

407th Judicial District

**PLAINTIFF’S ORIGINAL PETITION AND  
APPLICATION FOR TEMPORARY RESTRAINING  
ORDER AND TEMPORARY INJUNCTION**

On February 12, 2021, Governor Greg Abbott declared a disaster for all 254 counties in the State of Texas due to the impending winter weather caused by a polar vortex. In the days that followed, over four million Texans lost power as temperatures plunged to the single digits. While Texans were at their most vulnerable, defendants Houston Pipe Line Company, LP (“HPL”) and Oasis Pipeline, LP (“Oasis,” and together with HPL, the “Defendants”) saw an opportunity for profit. During the declared disaster, Defendants charged plaintiff CPS Energy, the municipally owned gas and electric utility company owned by the City of San Antonio, a price for natural gas that was more than of 15,000% higher than pre-event prices. To put that in context, if Defendants had been selling gasoline, they would have been charging more than \$7,000 to fill a tank that usually costs less than \$50. Desperate for fuel to keep its natural gas power plants online and to service the critical human needs of its natural gas customers, CPS Energy had no choice but to purchase gas from Defendants at these exorbitant prices. Then, just days after the snow finally melted, Defendants doubled down on their predatory behavior and—in a transparent attempt to circumvent the dispute resolution mechanism in the relevant contracts and create a pretext for declaring a default—made a disingenuous demand for “adequate assurance” from CPS Energy.

Texas law abhors attempts to leverage a disaster for profit. Defendants’ price gouging sales are unlawful, against Texas public policy, and unconscionable. While CPS Energy will pay lawful

amounts due under its gas sales contracts, it will not pay prices that reflect unlawful and unconscionable price gouging in violation of Texas law and public policy.

CPS Energy therefore brings this suit for declaratory judgment and respectfully asks the Court to declare that the exorbitant prices are unenforceable and that Defendants lack the “reasonable grounds for insecurity” necessary to request adequate assurance. Further, because a declaration of default by Defendants—however baseless—will cause CPS Energy irreparable injury, CPS Energy requests that the Court enter a temporary restraining order and, ultimately, a temporary injunction preventing Defendants from declaring an event of default under the gas purchase contracts during the pendency of this suit.

#### **DISCOVERY CONTROL PLAN AND RULE 47(C) STATEMENT**

1. CPS Energy intends to conduct discovery in this matter under Level 3 of the Texas Rule of Civil Procedure 190.4, and affirmatively pleads that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169.

2. In accordance with Rule 47(c) of the Texas Rules of Civil Procedure, CPS Energy states that it seeks monetary relief over \$1,000,000.00. Specifically, CPS Energy seeks declaratory relief, equitable relief, injunctive relief, and attorneys’ fees and costs. Nothing in this paragraph is intended to limit the scope of the relief sought in this Petition, as it may be amended from time to time.

#### **PARTIES**

3. The City of San Antonio is the seventh-largest city in the United States and the second-most populous city in the State of Texas. CPS Energy, the municipally owned electric and gas utility, serves more than 2,000,000 residents, 820,000 electric customers, and 345,000 natural gas customers in its service territory. It is the nation’s largest municipally owned electric and gas utility company. The utility has a long history of service in the San Antonio area spanning more than 161 years. CPS Energy is guided by an independent Board of Trustees and subject to the San Antonio City Council’s reserved powers in the areas of rates, municipal utility debt, and eminent domain. Its

service area includes not only the City of San Antonio but also 31 other municipalities in and around the metropolitan area, all of Bexar County, and portions of seven adjacent counties.

4. HPL is a Delaware limited partnership doing business in Bexar County, whose principal office in the State of Texas is 8111 Westchester Drive, Suite 310, Dallas, Texas 75225. It owns and operates an intrastate natural gas pipeline system in Texas that buys, sells, and transports natural gas to utility and industrial customers across its system, and has direct physical interconnections with the facilities of CPS Energy for the delivery of natural gas supply. HPL may be served with process by serving its registered agent for service of process in Texas at Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

5. Oasis is a Texas limited partnership doing business in Bexar County, whose principal office in the State of Texas is 8111 Westchester Drive, Suite 310, Dallas, Texas 75225. Like HPL, it also owns and operates an intrastate natural gas pipeline system in Texas that buys, sells, and transports natural gas to utility and industrial customers across its system, and has direct physical interconnections with the facilities of CPS Energy for the delivery of natural gas supply. Oasis may be served with process by serving its registered agent for service of process in Texas at Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

### **JURISDICTION**

6. This Court has jurisdiction because CPS Energy brings suit for an amount in excess of the minimum jurisdictional requirements of this Court.

### **VENUE**

7. Venue is proper because all or a substantial number of facts giving rise to the dispute occurred in Bexar County.

## FACTS

### A. The Winter Storm Disaster

8. Beginning on or about February 13, 2021, and continuing through February 19, 2021, the State of Texas experienced a statewide disaster in which more than four million Texas households lost power.

9. In anticipation of the impending freeze, Texas Governor Greg Abbott issued a disaster declaration<sup>1</sup> on February 12, 2021, under Chapter 418 of the Texas Government Code, for all 254 Texas counties.<sup>2</sup>

10. Plunging temperatures caused significant increases in energy demand across the state as Texans tried to warm their homes and businesses during the prolonged, bitterly cold weather.

11. The significant increases in energy demand at homes and businesses across Texas, in turn, resulted in significantly increased demand for the purchase of natural gas by utilities like CPS Energy to provide fuel for their gas-fired generating facilities and to service the needs of their gas customers.

12. The natural gas required by utilities like CPS Energy during this winter storm was critical to meet essential human needs for residences and businesses, to save lives, and to prevent substantial damage to property. As a result, utilities such as CPS Energy had no choice but to continue to search for and purchase natural gas at any price, no matter how high, that sellers were choosing to charge in this distressed and disrupted market.

13. Near the beginning of February, producers and other suppliers were selling natural gas to utilities at around \$2.60 per MMBtu. As the onset of the severe weather became more imminent, gas sellers began increasing natural gas prices, and by February 10, trading in the next-day gas

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<sup>1</sup> <https://gov.texas.gov/news/post/governor-abbott-issues-disaster-declaration-continues-to-deploy-resources-as-severe-winter-weather-impacts-texas>

<sup>2</sup> On February 19, 2021, President Biden would likewise declare the havoc wreaked by the severe winter storm a major disaster. <https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/20/president-joseph-r-biden-jr-approves-texas-disaster-declaration/>

market produced prices of around \$3.25 per MMBtu. On February 11, gas sellers charged prices of over \$15/MMBtu in some transactions for delivery on February 12.

14. During next-day trading on Friday, February 12, which covered the four days from Saturday, February 13, through Tuesday, February 16, prices became totally unhinged from any reality previously experienced in the Texas market. Almost immediately, Defendants' prices surged to \$150/MMBtu. According to *Gas Daily*, an energy industry trade publication and source of pricing data, prior to February 2021, the highest midpoint price experienced in the Texas intrastate gas market since October 1994 was \$24.96/MMBtu at Houston Ship Channel on February 26, 2003, which exceeded even the highest midpoint prices reported during a series of similar severe cold and polar vortex events in 2011 and 2014.

15. Over the long weekend, Defendants pushed their prices even higher, up to \$225/MMBtu in some trades. When normal day-ahead trading resumed on Tuesday, February 16,<sup>3</sup> Defendants surged their prices to unimaginable levels, between \$300 and \$500/MMBtu. For context, charging \$500/MMBtu for natural gas—which is a more than 15,000% increase from pre-event prices—is the equivalent of charging \$7,000 for a tank of gasoline that would ordinarily cost less than \$50 to fill.

16. On February 17, 2021, at the height of the declared statewide disaster, and after San Antonio had experienced 100-plus consecutive hours of below freezing temperatures, Defendants charged their highest price for natural gas of the entire disaster period: \$500/MMBtu. Temperatures in San Antonio that day were as cold as those in Anchorage, Alaska, and another round of freezing rain and snow was on the way.<sup>4</sup> Yet, on that same day, while CPS Energy desperately sought fuel to keep the power on and gas flowing to its customers, the co-chief executive of HPL's and Oasis's

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<sup>3</sup> That Tuesday, temperatures in San Antonio dipped to 12 degrees Fahrenheit, beating the previous record of 16 degrees set in 1895. <https://www.nbcnews.com/news/weather/texans-battle-relentless-drastic-freezes-power-outages-record-cold-persist-n1258044>

<sup>4</sup> <https://www.expressnews.com/projects/2021/san-antonio-snow-timeline/>

parent company, Energy Transfer, bragged to investors about his company's ability "to benefit" from the disaster based on, as he put it, "strong commodity prices."<sup>5</sup>

17. As prices skyrocketed, CPS Energy faced a Hobson's choice: Pay an exorbitant price for gas or run out of the gas supply it needed to power critical infrastructure and serve its gas customers' critical human needs. At the mercy of Defendants and with no other alternative, CPS Energy purchased natural gas from Defendants at unconscionable prices and continued to do so for the duration of the statewide disaster.

### **B. The Relevant Contracts**

18. During the February 2021 winter storm disaster, CPS Energy had in place NAESB Base Contracts for Sale and Purchase of Natural Gas ("*NAESB Contract*") with both HPL and Oasis. The NAESB Contract with HPL is dated February 1, 2012, and is attached hereto as Exhibit B. The NAESB Contract with Oasis is dated November 1, 2009, and is attached hereto as Exhibit C.<sup>6</sup>

19. The NAESB Contract is a standard form contract developed by the North American Energy Standards Board ("*NAESB*") that is widely used throughout the natural gas industry. It consists of a Base Contract that provides General Terms and Conditions, often supplemented by the parties through the addition of Special Provisions, that provide the legal framework for gas transactions entered into between the parties.

20. The Base Contract and Special Provisions are not self-executing but rather are given legal effect only if and when the parties enter a Transaction Confirmation ("*Confirm*") for an actual sale or purchase of natural gas for an agreed quantity, price, term, and point of delivery. And it is pursuant to those Confirms that the sellers deliver gas. During the declared disaster, CPS Energy purchased natural gas from Defendants under a number of separate Confirms, each of which set out

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<sup>5</sup> *Fossil Fuel Executives Gloat About Profits, PR From Winter Storm Crisis*, THE INTERCEPT, Feb. 23, 2021.

<sup>6</sup> The counterparty to CPS Energy's NAESB Contract with Oasis was initially a different Energy Transfer affiliate, Texas Energy Transfer Company, Ltd. On January 17, 2011, Texas Energy Transfer Company assigned the NAESB Contract to Oasis Pipeline, L.P. The assignment is included in Exhibit C.

the volume, price, delivery point, and time period covered by the Confirm. The Confirms entered into with HPL are attached hereto as Exhibit D, the Confirms entered into with Oasis are attached hereto as Exhibit E.

21. The parties' NAESB Contracts require Defendants to invoice CPS Energy each month for all gas delivered and received in the preceding month. Payment of invoices is due on or before the 25th of the month or 10 days after receipt of the invoice, whichever is later.

22. Under Section 7.4 of the NAESB Contracts, if CPS Energy disputes, in good faith, the amount of any invoice submitted, CPS Energy has the express contractual right to pay only the amounts that CPS Energy does not dispute and to withhold payment of any disputed amounts until the parties have an opportunity to resolve the amounts in dispute (the "*NAESB Dispute Resolution Procedures*").

23. Section 10.1 of the NAESB Contracts provides a procedure by which either party can request "adequate assurance" of the other's performance of its obligations under the contract. However, a party can request adequate assurance only if it has "reasonable grounds for insecurity" regarding the other party's performance.

### **C. Texas Public Policy Against Price Gouging and Unconscionable Contracts**

24. Taking financial advantage of a statewide disaster is anathema to Texas public policy. Texas, like 35 other states, has declared it illegal for the providers of essential goods and services to charge excessive prices during a declared disaster when businesses and consumers are at the mercy of those providers.

25. Texas' public policy against price gouging during a declared disaster is reflected in its statutes. For instance, section 17.46 of the Texas Deceptive Trade Practices Act (the "DTPA") provides that it is unlawful to take advantage of a disaster declared by the Governor under Chapter 418 of the Government Code by:

- (A) selling or leasing fuel . . . or another necessity at an exorbitant or excessive price;
- or

(B) demanding an exorbitant or excessive price in connection with the sale or lease of fuel . . . or another necessity

TEX. BUS. & COM. CODE § 17.46(b)(27).

26. Section 17.46(b)(27) of the DTPA is a legislative declaration that price gouging is unlawful and against public policy in Texas. Texas courts will not enforce contract provisions that are against public policy.

27. Communications from the Texas Attorney General’s Office only further highlight that price gouging or otherwise profiteering from scarcity during a declared disaster violates Texas public policy. The Attorney General’s website, for example, declares price gouging during a statewide disaster “illegal,” and states that “if a disaster has been declared by the Governor of Texas or the President, and businesses raise the price of their products to exorbitant or excessive rates to take advantage of the disaster declaration, then it is quite likely that price gouging is taking place.”<sup>7</sup>

28. More fundamentally, unconscionable contracts have long been unenforceable under Texas law. *See In re Poly-Am., L.P.*, 262 S.W.3d 337, 349 (Tex. 2008) (“[U]nconscionability . . . has been recognized and applied by this Court for well over a century.”); TEX. BUS. & COM. CODE § 2.302. A contract term is unconscionable and, thus, unenforceable if “given the parties’ general commercial background and the commercial needs of the particular trade or case, the clause involved is so one-sided that it is unconscionable under the circumstances existing when the parties made the contract.” *In re Poly Am.*, 262 S.W.3d at 349. To determine unconscionability, courts must examine the contract or clause’s “commercial setting, purpose and effect,” TEX. BUS. & COM. CODE § 2.302, as well as the “entire atmosphere in which the agreement was made,” *Aalok Anita, Inc. v. Shell Oil Co.*, No. 14-95-00682-CV, 1996 WL 544424, at \*3 (Tex. App.—Houston [14<sup>th</sup> Dist.] Sept. 26, 1996, no writ). A contract provision is unenforceable if it is both procedurally and substantively unconscionable. Factors courts consider in determining procedural unconscionability include (i) the presence of deception, overreaching, or sharp business practices, (ii) the absence of a viable alternative, and (iii)

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<sup>7</sup> <https://www.texasattorneygeneral.gov/consumer-protection/disaster-and-emergency-scams/how-spot-and-report-price-gouging>



the non-bargaining ability of one party. Substantive unconscionability focuses on the fairness of the contract provision and asks whether it is sufficiently shocking or gross to justify court intervention.

29. The circumstances here render the prices Defendants extracted from CPS Energy unenforceable as unconscionable and void as against public policy. In the midst of a declared statewide disaster, when homes and businesses were at their mercy, Defendants charged CPS Energy natural gas prices that were more than 15,000% of prevailing prices before the winter storm. A spreadsheet showing the excessive and unconscionable amounts charged by Defendants is attached hereto as Exhibit F. During the disaster, CPS Energy had no bargaining power to speak of—it had to pay Defendants’ outrageous prices in order to keep the light and heat on in homes in its service area and elsewhere, and to continue delivering natural gas to its customers. Defendants’ unconscionable natural gas prices reflect nothing more than opportunistic price gouging.

30. By any objective standard, the prices Defendants charged CPS Energy (and thereby its consumers) for the fuel necessary to heat homes and generate electricity during the February 2021 declared disaster were “excessive,” “exorbitant,” gross, and shocking, and are, therefore, unconscionable and amount to unlawful price gouging in violation of Texas public policy.

31. Based upon a review of (i) the increases in pricing of natural gas during prior natural disasters, (ii) a review of the increases in pricing for other essential products during prior natural disasters, and (iii) a review of the price gouging statutes of other states, it is clear that Defendants’ unprecedented and exorbitant natural gas prices during the disaster crossed the line between legal pricing and unlawful and unconscionable price gouging on February 13, 2021, and continued to remain across that line through February 19, 2021. CPS Energy is conducting a good-faith analysis to determine the precise point at which Defendants’ natural gas prices during the February 2021 disaster crossed the line from legitimate commercial pricing to unconscionable, unlawful price gouging (the “**Unlawful Price Threshold**”). Although CPS Energy’s analysis is ongoing, its initial analysis to date, based on historical precedent, finds that the Unlawful Price Threshold is at or near \$38.83/MMBtu (the “**Estimated Unlawful Price Threshold**”), and that any price during the Feb-

bruary 2021 disaster in excess of that amount is *prima facie* unconscionable and against Texas's declared public policy against price gouging.

32. CPS Energy disputes all amounts charged for natural gas delivered to CPS Energy in excess of the Unlawful Price Threshold (the "***Unlawful Price Amounts***"). The basis of that dispute is that Defendants charged exorbitant, excessive, and unlawful prices to profit from a declared disaster in violation of Texas public policy and the prohibition on unconscionable contracts. This Court should declare any attempt by Defendants to collect prices for natural gas sold to CPS Energy during the disaster in excess of the Unlawful Price Threshold to be unenforceable.

33. Pursuant to the NAESB Dispute Resolution Procedures in the parties' NAESB Contracts, CPS Energy affirmatively states to this Court that it intends to, and will, timely pay all undisputed amounts due to Defendants under its NAESB Contracts with Defendants (*i.e.*, all amounts that do not exceed the Unlawful Price Threshold), and during the pendency of this dispute, CPS Energy will only withhold amounts that it disputes in good faith (*i.e.*, the Unlawful Price Amounts) as expressly permitted by the NAESB Dispute Resolution Procedures. Such action, being expressly authorized by the terms of the NAESB Contracts, cannot form the basis of an alleged default under those same contracts.

34. As reflected on the spreadsheet attached as Exhibit F, Defendants' charges for the sales in February 2021 total approximately \$308,872,569—\$116,789,070 for HPL and \$192,083,499 for Oasis. Had all of the sales for which Defendants charged exorbitant and unconscionable prices been made at the Estimated Unlawful Price Threshold, the charges would total approximately \$51,950,243.92—\$19,654,610.96 for HPL and \$32,295,632.96 for Oasis. Thus, if the Unlawful Price Threshold derived from CPS Energy's final analysis conforms exactly to the Estimated Unlawful Price Threshold, the Unlawful Price Amounts will equal approximately \$256,922,325.08.

35. Paying Defendants a price equal to the Unlawful Price Threshold is no bargain. For example, the Estimated Unlawful Price Threshold, \$38.83/MMBtu, represents a more than 1,000% increase of the price of the same commodity two days before commencement of the gubernatorially declared disaster, 50% more than the highest midpoint price ever reported in 2003, and substantially

more than the midpoint prices reported for the same commodity in similar cold weather events occurring in 2011 and 2014. For these profiteers to instead insist that CPS Energy pay prices that are almost 8 times this Estimated Unlawful Price Threshold is unequivocally shocking.

36. CPS Energy must seek to protect its customers from unconscionable and unlawful prices. The only mechanism available to CPS Energy, as a municipally owned utility, to recover the costs it incurs in providing electricity and natural gas service is from the customers it serves. This includes all costs for procurement of natural gas that is used to both generate power and as a source of fuel in homes and businesses for cooking and other critical human needs. CPS Energy functions as a pass-through entity, meaning the recovery from customers must include the full cost of operations, including fuel. CPS Energy does not have a mechanism (like corporate shareholders) to spare customers from these costs. Thus, it is CPS Energy's customers who will ultimately bear the cost if Defendants are permitted to extract these unlawful and unconscionable prices from CPS Energy.

37. The aftermath of a declared statewide disaster should not be a "jackpot"<sup>8</sup> for gas sellers. Absent action by this Court to nullify Defendants' price gouging, Defendants will be incentivized to view future gubernatorially declared disasters as opportunities for profit. Further, it will render future declarations meaningless relative to their statutorily prescribed purpose of protecting Texans from predatory pricing.

#### **D. Defendants' Disingenuous Demand for Adequate Assurance**

38. Eager to collect their ill-gotten paper gains, on February 23, 2021, Energy Transfer sent an email to CPS Energy on behalf of Defendants and requested that CPS Energy provide "adequate assurance" in the form of a letter of credit or cash for the full amount of its unlawful and unconscionable charges, which it estimated to be \$317,500,000. The email reads as follows:

"Due to the unprecedented weather event over the past 10 days, the price of natural gas rose dramatically. As a result, our credit exposure to CPS Energy has risen accordingly. Therefore, Houston Pipe Line Company LP (HPL) and Oasis Pipeline, LP (Oasis) is requesting Adequate Assurance in the form of an irrevocable standby letter

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<sup>8</sup> *Fossil Fuel Executives Gloat About Profits, PR From Winter Storm Crisis*, THE INTERCEPT, Feb. 23, 2021.

of credit or cash to cover our unsecured credit exposure of approximately \$317.5MM (HPL = 124.6MM; Oasis = \$192.9MM). Please review and advise.”

39. This was clearly a bad-faith attempt by HPL and Oasis to effectively accelerate collection of the Unlawful Price Amounts from CPS Energy and to preempt the NAESB Dispute Resolution Procedures. As noted above, to request adequate assurance under Section 10 of the NAESB Contracts, HPL and Oasis must have “reasonable grounds for insecurity regarding [CPS Energy’s] performance of” their payment obligations under the NAESB Gas Contracts. HPL and Oasis’s February 23 request for adequate assurance failed to set out any basis, let alone a reasonable basis, to question CPS Energy’s financial ability to meet its obligations. Instead, HPL and Oasis’s request for adequate assurance pointed to the dramatic increase in prices HPL and Oasis had been charging CPS Energy “over the last 10 days,” and, in effect, sought immediate payment of those dramatically increased prices.

40. What HPL and Oasis were, in effect, trying to do was circumvent CPS Energy’s rights under Section 7.4 of the NAESB Contracts to withhold payment of the disputed Unlawful Price Amounts until the dispute between the parties as to the unlawful nature of such charges can be resolved. Further, by making a baseless request for adequate assurance, HPL and Oasis were also attempting to manufacture grounds to declare an Event of Default under the NAESB Contracts to use as leverage against CPS Energy.

41. HPL and Oasis have no reasonable basis for questioning CPS Energy’s financial security. CPS Energy is the largest municipally owned electric and gas utility in the nation, with \$2.5 billion in annual revenues, a credit rating from each of the major rating agencies in the “AA-” or better category, and direct access to in excess of \$1.2 billion in cash, all available for payment of a liability that, if legitimate, represents a first lien on gross revenues by operation of Texas statute and contract.

42. Following receipt of Defendants’ February 23 request for adequate assurance, CPS Energy responded with a request for justification. CPS Energy also furnished Defendants with financial information establishing CPS Energy’s ability to meet all of its obligations as they become

due. Notwithstanding that fact, after learning that CPS Energy was not willing to accede to what amounted to a baseless demand for advance payment of the Unlawful Price Amounts, HPL and Oasis retaliated by instructing its traders to no longer sell natural gas to CPS Energy. The natural gas HPL and Oasis refused to continue selling to CPS Energy was a source of supply for CPS Energy's electric generation facilities serving its customer base.

43. Since then, Defendants have continued, with increasing frequency, to contact CPS Energy—by email and phone—to demand prepayment of HPL's and Oasis's unconscionable charges. Defendants' conduct leaves no doubt that they intend to use all leverage at their disposal—including by wrongfully declaring an Event of Default based on CPS Energy's refusal to accede to their baseless demand for adequate assurance—to try to force CPS Energy to prepay the Unlawful Price Amounts.

#### **E. Defendants' Submission of Invoices in Excess of the Unlawful Price Threshold.**

44. On March 16, 2021, Oasis submitted its invoice to CPS Energy for February 2021 gas deliveries that seeks approximately \$192 million.<sup>9</sup> Payment on the invoice is due on or before Friday, March 26, 2021. CPS Energy invokes the Dispute Resolution Procedures in its NAESB Contract with Oasis and disputes all amounts charged in excess of the Unlawful Price Threshold as unconscionable and contrary to Texas public policy. As stated above, pursuant to the Dispute Resolution Procedures, CPS Energy will timely pay Oasis the undisputed amounts (which, based on the Estimated Unlawful Price Threshold, would be approximately \$32.3 million) but will withhold the amounts charged in excess of the Unlawful Price Threshold (which, based on the Estimated Unlawful Price Threshold, would total approximately \$159.8 million).

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<sup>9</sup> The total amount sought in the February invoice as initially delivered is \$192,018,904. That total amount includes sales before and after the winter weather disaster at prices below the Unlawful Price Threshold. Further, as reflected on Exhibit F, the invoice amount has been revised to \$192,083,499 due to volume corrections.

45. CPS Energy anticipates HPL will also soon submit an invoice<sup>10</sup> to CPS Energy for February 2021 gas deliveries. Based upon the relevant Confirms and meter readings, as reflected in Exhibit F, CPS Energy expects that HPL's invoice will seek approximately \$116,789,070 in charges for the sales in question, approximately \$97,134,459.04 of which will be attributable to the portion of the prices that exceed the Estimated Unlawful Price Threshold. As with the Oasis invoice, CPS Energy will invoke the NAESB Dispute Resolution Procedures with respect to HPL's forthcoming invoice, as it disputes all amounts charged in excess of the Unlawful Price Threshold as unconscionable and contrary to Texas public policy against price gouging. Again, CPS Energy will timely pay HPL all undisputed amounts (which, based on the Estimated Unlawful Price Threshold, will be approximately \$19.7 million) but will withhold the amounts charged in excess of the Unlawful Price Threshold (which, based on the Estimated Unlawful Price Threshold, will be approximately \$97.1 million).

**COUNT 1—DECLARATORY JUDGMENT  
UNENFORCEABLE PRICE**

46. CPS Energy hereby repeats and re-alleges each of the preceding paragraphs set forth herein.

47. CPS Energy seeks a declaratory judgment pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code.

48. CPS Energy seeks a declaratory judgment that (a) any amounts charged to CPS Energy by Defendants under their NAESB Contracts and related Confirms in excess of the Unlawful Price Threshold (*i.e.*, the Unlawful Price Amounts) are exorbitant, excessive, unlawful, against Texas public policy, and unconscionable, (b) CPS Energy has no liability to Defendants under its NAESB Contracts and related Confirms to pay Defendants the Unlawful Price Amounts, and (c) CPS Energy's withholding payment of the Unlawful Price Amounts as permitted by, and in accordance with,

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<sup>10</sup> While HPL had not submitted an invoice to CPS Energy at the time of filing, Energy Transfer owns both HPL and Oasis. CPS Energy has no reason to believe Energy Transfer would take a different approach with respect to HPL's invoices.

the NAESB Dispute Resolution Procedures, is in compliance with said contracts, and, pending resolution of this dispute, cannot be the basis for a declaration of a default under the NAESB Contracts.

49. Attorney Fees. CPS Energy has engaged counsel. Pursuant to the Texas Civil Practice and Remedies Code, CPS Energy is entitled to, and hereby seeks, recovery of its reasonable and necessary attorneys' fees incurred in the prosecution of its claims herein under Section 37.009 of the Texas Civil Practice and Remedies Code.

**COUNT 2—DECLARATORY JUDGMENT  
NO REASONABLE GROUNDS FOR INSECURITY**

50. CPS Energy hereby repeats and re-alleges each of the preceding paragraphs set forth herein.

51. CPS Energy seeks a declaratory judgment that (a) Defendants lack “reasonable grounds for insecurity” regarding CPS Energy’s ability to meet its financial obligations under the NAESB Contracts; (b) Defendants therefore have no reasonable basis for demanding assurance from CPS Energy; (c) CPS Energy has no obligation under the NAESB Contracts to provide Defendants with the requested adequate assurance; and (d) CPS Energy’s refusal to deliver cash or a letter of credit in payment for the Unlawful Price Amounts cannot be the basis for a declaration of a default under the NAESB Contracts.

52. Attorney Fees. CPS Energy has engaged counsel. Pursuant to the Texas Civil Practice and Remedies Code, CPS Energy is entitled to, and hereby seeks, recovery of its reasonable and necessary attorneys' fees incurred in the prosecution of its claims herein under Section 37.009 of the Texas Civil Practice and Remedies Code.

**APPLICATION FOR TEMPORARY RESTRAINING ORDER**

53. CPS Energy’s application for Temporary Restraining Order (TRO) is authorized by TEX. CIV. PRAC. & REM. CODE § 65.011 because:

- a. CPS Energy is entitled to the relief demanded and all or part of the relief requires the restraint of some act prejudicial to CPS Energy;

- b. Defendants are likely to perform an act, to wit, wrongfully declare a default relating to the subject of the pending litigation, in violation of the rights of CPS Energy to withhold payments disputed in good faith, and that act would tend to render the judgment in this litigation ineffectual; and
- c. Immediate and irreparable injury to CPS Energy's property is threatened, irrespective of any remedy at law.

54. CPS Energy has a probable right of prevailing in this lawsuit and no adequate remedy at law. Price gouging is unlawful and against public policy in Texas, and the prices Defendants charged are procedurally and substantively unconscionable. Based upon historical precedent, there is no colorable argument that can be made by Defendants that charging prices for natural gas in excess of the Unlawful Price Threshold during the declared winter storm disaster between February 13, 2021, and February 19, 2021, was not unconscionable and unlawful price gouging.

55. Defendants' demand for adequate assurance is baseless because there are no reasonable grounds for insecurity regarding CPS Energy's ability to meet its legitimate financial obligations. This attempted coercion by HPL and Oasis demonstrates the likelihood that HPL and Oasis will further retaliate by either declaring a default based on CPS Energy's failure to deliver cash or a letter of credit in payment for the Unlawful Price Amounts or when CPS Energy exercises its lawful right to withhold payment of the Unlawful Price Amounts under the NAESB Dispute Resolution Procedures rather than pay those unlawful prices when invoices are received from HPL and Oasis.

56. The wrongful declaration of a default based upon CPS Energy's reliance on the NAESB Dispute Resolution Procedures or the disingenuous demand for adequate assurance will endanger CPS Energy's compliance with certain covenants in its debt and financing documents under which CPS Energy accesses necessary liquidity to perform operational and management duties. An erroneous declaration of default could also further jeopardize CPS Energy's capital markets credit ratings, which dictate access to and the price of capital market borrowings. These injuries would be irreparable and impossible to fully quantify in damages.



57. CPS Energy asks this Court to grant a TRO to prevent immediate, irreparable harm and to preserve the status quo by restraining Defendants, their agents, servants, employees, and board members from directly or indirectly:

- a. Declaring CPS Energy in default based upon CPS Energy's lawful exercise of its rights under the NAESB Dispute Resolution Procedures or its alleged failure to provide adequate assurance; or
- b. Taking any action against CPS Energy for non-payment of Unlawful Price Amounts or refusal to provide adequate assurance.

58. This request for injunctive relief is supported by the Declaration of \_\_\_\_, attached hereto as Exhibit "A."

59. CPS Energy requests that this Court grant the TRO *ex parte*, because it clearly appears from facts as verified in the attached affidavit that notifying the Defendants or their counsel of this petition would cause immediate and irreparable harm to CPS Energy. TEX. R. CIV. P. 680; Bexar Cty. Loc. R. 6(C)(4).

60. CPS Energy is willing to post a bond in support of this Verified Emergency Application for TRO and believes that \$1,000 will be sufficient security, as CPS Energy is a governmental entity who is currently paying all of its legitimate bills. Since the Unlawful Price Amounts to be invoiced by Defendants to CPS Energy are invalid, any attempt by Defendants to argue for a bond in the amount of these Unlawful Price Amounts is likewise invalid.

#### **APPLICATION FOR TEMPORARY INJUNCTION**

61. CPS Energy asks the Court to set its application for temporary injunction for hearing and, after the hearing, issue a temporary injunction against the Defendants on the same grounds and for the same relief as the TRO.

#### **CONDITIONS PRECEDENT**

62. All conditions precedent to CPS Energy's claim for relief have been performed or have occurred.

## **CONCLUSION AND PRAYER**

63. For these reasons, CPS Energy asks that Defendants be cited to appear and answer, and that CPS Energy be awarded the following relief against Defendants:

- a. Temporary restraining order;
- b. Temporary injunction;
- c. Declaratory judgment;
- d. Court costs;
- e. Reasonable attorneys' fees; and
- f. All other relief to which CPS Energy is entitled.

Dated: March 19, 2021

SCOTT DOUGLASS & McCONNICO LLP  
303 Colorado Street, Suite 2400  
Austin, Texas 78701  
(512) 495-6300 Telephone  
(512) 495-6399 Facsimile

By:



David D. Shank  
Texas Bar No. 24075056  
dshank@scottdoug.com  
Lauren Ditty  
Texas Bar No. 24116290  
lditty@scottdoug.com


# CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): \_\_\_\_\_ COURT (FOR CLERK USE ONLY): \_\_\_\_\_

STYLED CPS Energy v. Houston Pipe Line Company, LP and Oasis Pipeline, LP

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

<b>1. Contact information for person completing case information sheet:</b>		<b>Names of parties in case:</b>		<b>Person or entity completing sheet is:</b>	
Name: _____ David Shank		Email: _____ dshank@scottdoug.com		<input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____	
Address: _____ 303 Colorado St, Suite 2400		Telephone: _____ 512-495-6356		Additional Parties in Child Support Case:	
City/State/Zip: _____ Austin, Texas		Fax: _____ 512-495-6399		Custodial Parent: _____	
Signature: 		State Bar No: _____ 24075056		Non-Custodial Parent: _____	
		Defendant(s)/Respondent(s): _____ Houston Pipe Line Company, LP Oasis Pipeline, LP		Presumed Father: _____	
<small>[Attach additional page as necessary to list all parties]</small>					
<b>2. Indicate case type, or identify the most important issue in the case (select only 1):</b>					
<i>Civil</i>			<i>Family Law</i>		
<b>Contract</b>	<b>Injury or Damage</b>	<b>Real Property</b>	<b>Marriage Relationship</b>	<b>Post-judgment Actions (non-Title IV-D)</b>	
<input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input checked="" type="checkbox"/> Other Debt/Contract: _____  <input type="checkbox"/> Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <b>Malpractice</b> <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: _____  <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <b>Product Liability</b> <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____  <input type="checkbox"/> Other Injury or Damage: _____	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____  <b>Related to Criminal Matters</b> <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <b>Divorce</b> <input type="checkbox"/> With Children <input type="checkbox"/> No Children  <b>Other Family Law</b> <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other  <b>Title IV-D</b> <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order  <b>Parent-Child Relationship</b> <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____	
<b>Employment</b>	<b>Other Civil</b>				
<input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____	<input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property  <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____				
<b>Tax</b>	<b>Probate &amp; Mental Health</b>				
<input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	<b>Probate/Wills/Intestate Administration</b> <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings		<input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____		
<b>3. Indicate procedure or remedy, if applicable (may select more than 1):</b>					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input checked="" type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input checked="" type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover	
<b>4. Indicate damages sought (do not select if it is a family law case):</b>					
<input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input checked="" type="checkbox"/> Over \$1,000,000					

Exhibit

A

Cause No. \_\_\_\_\_

**CPS Energy,**

Plaintiff,

v.

**Houston Pipe Line Company, LP and  
Oasis Pipeline, LP,**

Defendants.

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In the District Court of

Bexar County, Texas

\_\_\_\_\_ Judicial District

**VERIFICATION DECLARATION OF FRANK ALMARAZ**

1. My name is Frank Almaraz. I am over 18 years of age, of sound mind, and capable of making this declaration.

2. I am the Chief Power, Sustainability, & Business Development Officer for CPS Energy. In that capacity, I am familiar with CPS Energy’s operations related to energy generation and natural gas service. I am also familiar with and involved in CPS Energy’s purchases of natural gas for energy generation and natural gas service.

3. I have reviewed Plaintiff’s Original Petition and Application for Temporary Restraining Order and Temporary Injunction (the “Petition”) against defendants Houston Pipe Line Company, LP and Oasis Pipeline, LP. The facts stated therein are within my personal knowledge and are true and correct.

**JURAT**

My name is Frank Almaraz. My date of birth is August 27, 1978, and my address for purposes of this declaration is 500 McCullough Ave, San Antonio, Texas 78215. I declare under penalty of perjury that the foregoing statements are true and correct.

Executed in Bexar County, Texas, on March 19, 2021.



Frank Almaraz  
Declarant

Cause No. \_\_\_\_\_

**CPS Energy,**

Plaintiff,

v.

**Houston Pipe Line Company, LP and  
Oasis Pipeline, LP,**

Defendants.

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In the District Court of

Bexar County, Texas

\_\_\_\_\_ Judicial District

**TEMPORARY RESTRAINING ORDER AND  
ORDER SETTING HEARING FOR TEMPORARY INJUNCTION**

1. After considering plaintiff CPS Energy’s application for temporary restraining order, the pleadings, the affidavits, and arguments of counsel, the Court finds that the application should be **GRANTED**.

2. The Court finds that there is evidence that harm is imminent to CPS Energy, and if the Court does not issue the temporary restraining order prohibiting defendants Houston Pipe Line Company, LP and Oasis Pipeline, LP (collectively, “Defendants”) from declaring a default under their natural gas sale contracts with CPS Energy (the “NAESB Contracts”), CPS Energy will be irreparably injured because a declaration of default will endanger CPS Energy’s compliance with covenants in its debt and financing agreements under which CPS Energy accesses necessary liquidity to perform operational and management duties.

3. The Court issues this temporary restraining order *ex parte* because it clearly appears from the verified facts in the petition that notifying Defendants of CPS Energy’s application would lead Defendants to immediately declare defaults under the NAESB Contracts and, thus, cause the very irreparable injury to CPS Energy that the application seeks to restrain.

4. Therefore, by this order, the Court does the following:

- a. Restrains Defendants their agents, servants, employees, and board members from directly or indirectly:

- i. Declaring CPS Energy in default under the NAESB Contracts based upon CPS Energy's lawful exercise of its rights under section 7.4 of the NAESB Contracts or any purported failure to provide "adequate assurance" under section 10.1; or
  - ii. Taking any action against CPS Energy for non-payment of disputed amounts under section 7.4 or refusal to provide adequate assurance under section 10.1.
- b. Orders the clerk to issue notice to Defendants that the hearing on Plaintiff's application for temporary injunction is set for \_\_\_\_\_, 2021, at \_\_\_\_\_ a.m./p.m. The purpose of the hearing will be to determine whether this temporary restraining order should be made a temporary injunction pending a full trial on the merits.
- c. Sets bond at \$\_\_\_\_\_.

This order expires on \_\_\_\_\_, 2021.

SIGNED on March \_\_, 2021, at \_\_\_\_\_ p.m..

\_\_\_\_\_  
PRESIDING JUDGE