

## Veto No. 1984-5

SB 11

October 12, 1984

To the Honorable, the Senate  
of the Commonwealth of Pennsylvania:

I have before me Senate Bill 11, Printer's No. 2046, which enacts a Petroleum Practices Regulation Act. This legislation is intended to preserve and promote competition among retail gasoline dealers.

The legislation provides a remedy in the courts of common pleas to prevent sales at retail at oil company controlled outlets for less than the wholesale cost charged to a competing noncontrolled outlet and prohibits discriminatory rental policies. The bill would also make it unlawful to fail to recover costs at a controlled outlet. Prior to the initiation of any litigation, the bill requires consultation and conciliation between the parties.

The bill has been developed in response to fundamental transition in the retail gasoline market. The problems faced by retail service station dealers have been most severe for independent operators and dealer lessees who have often found themselves in direct competition with their own suppliers of gasoline.

Established principles of Federal antitrust law are an adequate remedy to prevent predatory pricing, attempts to monopolize and actual monopolization of relevant markets. As a practical matter, however, the costs of attorneys' fees, discovery and interminable litigation often make Federal antitrust laws impractical to deal with limited local problems. As a result, I support legislation which provides a simple legal remedy for unfair competition in local courts. In addition, I would urge those approaches which encourage the mediation and arbitration of disputes prior to the initiation of litigation.

Despite such desirable features in this legislation, one crucial provision of the bill is seriously defective. It is the provision making it unlawful to fail to recover costs at a controlled retail service station. The failure to recover costs would occur whenever the actual proceeds of a controlled outlet did not exceed its imputed costs. Imputed costs are actual costs of operation but with the real estate and gasoline costs charged to noncontrolled outlets within the relevant market area substituted for the actual costs of the controlled outlet. This cost-recovery requirement is excessively complicated, potentially very harmful to Pennsylvania consumers and goes against fundamental principles of antitrust and trade regulation law. The very concept that legislation should mandate cost recovery is contrary to basic principles of free enterprise. No other state imposes such a requirement in these circumstances.

Requiring the recovery by a company-owned station of the capital costs of a noncontrolled station may subsidize inefficient operations. If a noncontrolled outlet operates inefficiently and sells a low volume of gasoline, the

market value of the property is likely to be appraised at a much lower value than a competing efficient outlet. Applying the rate of return for an inefficient outlet to the market value of the efficient outlet will produce an imputed rental cost far in excess of actual charges. The result of this procedure will be to force unfair and unjustified retail price increases for consumers.

It is also economically inappropriate to require each controlled outlet to recover costs. Start-up costs, casualty losses, bad weather and other unforeseen consequences frequently can cause businesses to legitimately operate at a loss for one or more accounting periods. Requiring retail price increases to whatever level is needed to avoid losses will harm consumers and damage vigorous competition. The failure of the legislation to designate the appropriate accounting period for cost recovery further exacerbates these difficulties.

Applying imputed rental rates to service stations with different types of property and equipment is inherently unfair. For example, because a higher rental rate must be charged for buildings and equipment than for land, applying rental rates calculated for a full-service station to a low capital gas-and-go operation is inappropriate. Because more leased stations are full-service operations than are controlled outlets, the bill could force the application of unrealistically high rental rates in determining whether controlled outlets recover costs. The result, again, would be to force up consumer prices.

Finally, as currently drafted, the cost-recovery provisions of this law are discriminatory because they apply only to manufacturers and refiners but not to other distributors of gasoline. Approximately 65% of all retail service stations (distributing about 50% of all gasoline) are either operated under contract with jobbers or are operated by manufacturers or refiners who do not have both controlled and uncontrolled outlets. Because the legislation impacts on some but not all retail service stations, the bill unreasonably discriminates against refiners and manufacturers who operate both controlled and uncontrolled outlets in Pennsylvania. This would work to the disadvantage of refiners and manufacturers who employ thousands of Pennsylvanians and offer an unfair advantage to foreign importers of refined petroleum products.

As currently drafted, this bill would lead to increased gasoline costs for consumers and tarnish this State's image as a desirable location for business growth and development. I am, therefore, returning this bill to the General Assembly without my approval.

Despite my veto, I feel that the bill represents substantial progress in developing an overall compromise on the best method for preserving competition in the retail gasoline marketplace. As I stated, I will support legislation which provides a simple and inexpensive remedy for unfair competition, which stresses mediation and conciliation and provides access to local courts.

DICK THORNBURGH