

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.

STATE OF MAINE,)

Plaintiff)

v.)

COUTTS BROS., INC.,)

a Maine corporation)
with a registered office in)
Gardiner, Maine;)

S/L CONSTRUCTION, INC.,)

a Maine corporation)
with a registered office in)
Augusta, Maine;)

TRACY COUTTS; and)

JERRY BURTON;)

Defendants)

COMPLAINT
(Injunctive Relief Requested)

I. INTRODUCTION

1. In this antitrust and unfair trade practice enforcement action, brought pursuant to 10 M.R.S.A. §§ 1101 & 1104 and 5 M.R.S.A. §§ 207 & 209, the Attorney General of the State of Maine seeks injunctive relief, civil penalties, restitution and costs to remedy Defendants' conduct in rigging bids and fixing prices in the market for electric transmission line construction.

II. PARTIES

2. Plaintiff the State of Maine sues, by and through the Attorney General, in its sovereign capacity. The Attorney General is charged by statute with the enforcement of the antitrust laws, including 5 M.R.S.A. §207 and 10 M.R.S.A. § 1101.

3. Defendant Coutts Bros., Inc. ("Coutts Bros.") is a Maine corporation with a principal place of business in Gardiner, Maine which engages in the business of electric transmission line construction.

4. S/L Construction, Inc. ("S/L"), is a Maine corporation with a principal place of business in Augusta, Maine which engages in the business of electric transmission line construction.

5. Defendant Tracy Coutts ("Coutts") is President, Chief Executive Officer and a principal owner of Coutts Bros.

6. Defendant Jerry Burton ("Burton") is President, Chief Executive Officer and a principal owner of S/L.

III. JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to 4 M.R.S.A. § 105, 5 M.R.S.A. § 209, 10 M.R.S.A. § 1104, and 14 M.R.S.A. § 6051 (13).

8. Venue is proper in this Court pursuant to 5 M.R.S.A. §209 and 14 M.R.S.A. §501.

IV. FACTS

9. Central Maine Power Company ("CMP") is a transmission and

distribution ("t&d") utility with a service area comprising southern and central Maine, whose rates for t&d service are regulated by the Maine Public Utilities Commission in the public interest on the basis of cost and performance.

10. In or about early August 1999, CMP issued a Request for Quotation entitled "Central Maine Power Company, Request for Quotation 99G82-AT, Miscellaneous Transmission Line Construction" ("the RFQ"). A copy of the RFQ is appended hereto as Exhibit A, and incorporated herein by this reference.

11. The RFQ solicited bids on a unit price basis for approximately \$ 1 million in transmission line construction work, to be performed over an approximate five-month period. Specifically, the RFQ solicited twenty-seven different unit price quotations for the erection of different types of energized and deenergized structures, ledge unit costs and pole transportation costs. CMP submitted the RFQ to seven general contractors with experience in transmission line construction, including Coutts Bros. and S/L.

12. The RFQ instructed that:

- (a) bids must be submitted in sealed envelopes, and must be received by CMP in hand no later than 2:00 p.m. on August 23, 1999 ;
- (b) portions of the work proposed to be subcontracted must be described in the bidder's submittal; and
- (c) work would be split among at least two contractors based upon their bid prices.

13. The RFQ was a request for competing bids designed to afford CMP the opportunity to select among bidders in order to accomplish the required work at the lowest available prices.

14. Over a period of years, Coutts Bros. and S/L, acting through or at the direction of Coutts and Burton, had participated in other competitive bid processes conducted by CMP, and were familiar with the rules and conventions governing such processes.

15. Prior to responding to the RFQ, Coutts Bros. and S/L, acting through or at the direction of Coutts and Burton, communicated with each other concerning the prices they would bid in response to the RFQ.

16. As a result of these communications, Coutts Bros. and S/L, acting through or at the direction of Coutts and Burton, agreed to bid identical prices in response to the RFQ.

17. On or about August 23, 1999, Coutts Bros. and S/L, acting through or at the direction of Coutts and Burton, submitted bid responses to the RFQ to CMP. The Coutts Bros. and S/L bids were identical across all twenty-seven unit price categories solicited in the RFQ. Copies of the Coutts Bros. and S/L bid responses are appended hereto as Exhibit B and incorporated herein by this reference.

18. Neither Coutts Bros. nor S/L informed CMP, in the context of their bid responses or otherwise, that they were collaborating as joint venturers, general contractor and subcontractor, or in any other fashion on the bid process.

19. The Coutts Bros. and S/L bids were the two lowest bids provided in response to the RFQ. Accordingly, after the bid opening, CMP entered into contracts with both Coutts Bros. and S/L to perform the work envisaged in the RFQ.

20. Coutts Bros.' and S/L's collusion on their bids in response to the RFQ

restrained trade and reduced competition in the market for transmission line construction in the State of Maine. But for their collusion, CMP might have obtained lower prices for the work put out to bid in the RFQ than those at which it contracted with Coutts Bros. and S/L.

V. VIOLATIONS OF LAW

21. Paragraphs 1 through 20 are here repeated and realleged.
22. The collusive agreement with regard to bid prices entered into by Coutts Bros. and S/L, acting through or at the direction of Coutts and Burton, constitutes a contract, combination or conspiracy in restraint of trade or commerce in the market for transmission line construction services in the State of Maine, and a per se violation of 10 M.R.S.A. §1101.
23. The collusive agreement with regard to bid prices entered into by Coutts Bros. and S/L, acting through or at the direction of Coutts and Burton, constitutes an unfair trade practice and an unfair method of competition, and an intentional violation of 5 M.R.S.A. §207.

VI. PRAAYER

WHEREFORE, Plaintiff the State of Maine respectfully requests that this Court:

- A. Declare that the Defendants' conduct as set forth in this Complaint violates 10 M.R.S.A. §1101 and 5 M.R.S.A. §207;
- B. Permanently enjoin the Defendants, their officers, agents, servants, employees, and all other persons in active concert or participation with them (i) from entering into any contract, combination or conspiracy in restraint of trade; and (ii) from engaging in any unfair trade practices or unfair methods of competition;

C. Permanently enjoin Defendants from (i) entering into or giving effect to any agreement with any competitor to rig bids or fix prices for any good or service; (ii) communicating with any competitor concerning their prices for any good or service;

D. Assess against each Defendant a civil penalty pursuant to 10 M.R.S.A. §1104 and pursuant to 5 M.R.S.A. § 209 for each course of conduct constituting a violation of law;

E. Assess against Defendants pursuant to 5 M.R.S.A. §209 the costs of investigation incurred by the Attorney General, the costs of suit and a reasonable attorney's fee; and

F. Order Defendants to pay to CMP the amount of its ascertainable monetary loss resulting from their conduct;

G. Grant such other and further relief as the Court deems just and proper.

Dated: 5/5/00

ANDREW KETTERER
Attorney General



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STATE OF MAINE
KENNEBEC, SS.

RECEIVED
KENNEBEC COUNTY COURT

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-00-088

STATE OF MAINE,

Plaintiff

v.

COUTTS BROS., INC.,
a Maine corporation
with a registered office in
Gardiner, Maine;

S/L CONSTRUCTION, INC.,
a Maine corporation
with a registered office in
Augusta, Maine;

TRACY COUTTS; and

JERRY BURTON;

Defendants

ORDER

This cause came on for trial on June 19-20, 2001 before the Superior Court for Kennebec County, Atwood, J. Following a trial on the merits, for the reasons enumerated on the record, the Court found Defendants Coutts Bros., Inc., S/L Construction, Inc., Tracy Coutts and Jerry Burton, liable for violations of 10 M.R.S.A. § 1101 and 5 M.R.S.A. § 207, as charged in the Plaintiff's Complaint. Accordingly, following a further telephonic conference with counsel concerning appropriate relief, and upon consideration of matters drawn to the Court's attention in that context, it is now further **ORDERED, ADJUDGED and DECREED:**

I. **DEFINITIONS**

- (a) "Coutts Bros." as used herein refers to Defendant Coutts Bros., Inc.
- (b) "S/L Construction" as used herein refers to Defendant S/L Construction, Inc.
- (c) "Coutts" as used herein refers to Defendant Tracy Coutts.
- (d) "Burton" as used herein refers to Defendant Jerry Burton.
- (e) "CMP" as used herein refers to Central Maine Power Company.

II. **RELIEF**

1. Defendants, their officers, agents, servants, employees and attorneys, and all persons in active concert and participation with them who receive actual notice of this Order by personal service or otherwise are hereby permanently enjoined from engaging in any conduct which constitutes a contract, combination or conspiracy in restraint of trade under 10 M.R.S.A. § 1101, or an unfair trade practice under 5 M.R.S.A. § 207, including, without limitation, any conduct to solicit or accept an agreement to collude with a competitor with regard to price, or to rig bids with a competitor.

2. Defendants, their officers, agents, servants, employees and attorneys, and all persons in active concert and participation with them who receive actual notice of this Order by personal service or otherwise are further permanently enjoined from communicating with any competitor with regard to price, except with regard to prospective subcontract prices or *bona fide* joint ventures; provided that in any case of communication concerning subcontract prices, Defendants shall not communicate with

regard to general contract prices, and, in the event a subcontract or *bona fide* joint venture is entered, shall fully inform the party procuring the general contract thereof.

3. Defendants Coutts Bros. and S/L Construction each shall pay to the Department of the Attorney General the sum of ten thousand dollars (\$10,000) in civil penalties pursuant to 5 M.R.S.A. § 209 and 10 M.R.S.A. § 1104. Coutts and Burton each shall pay to the Department of the Attorney General the sum of five thousand dollars (\$5,000) pursuant to 5 M.R.S.A. § 209 and 10 M.R.S.A. § 1104.

4. Defendants Coutts Bros. and S/L Construction each shall pay to the Department of the Attorney General the sum of five thousand dollars (\$5,000) in investigative costs and attorney fees pursuant to 5 M.R.S.A. § 209 and 10 M.R.S.A. § 1104.

5. Defendants Coutts and Burton shall, within six months of the date of this Order, complete at least two hours of antitrust compliance training to be provided by an agency approved by the Department of the Attorney General.

III. RETENTION OF JURISDICTION

Jurisdiction is retained by the Court for the purpose of enabling any of the parties to this lawsuit to apply to the Court at any time for such further orders or directions as may be necessary or appropriate for the interpretation or implementation of this Order, for the modification of or relief from any of the provisions hereof, and for the enforcement of compliance herewith.

Dated: June 28, 2001


JUSTICE, SUPERIOR COURT