

**ATTORNEY GENERAL
DEPARTMENT OF LEGAL AFFAIRS**

**ECONOMIC CRIMES
SUBPOENA DUCES TECUM**

CASE NO.: L-05-3-1081

**TO:
TATE OIL CO., INC.
806 Highway 90 West
Crestview, Florida 32536**

THIS INVESTIGATIVE SUBPOENA DUCES TECUM is issued pursuant to the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Parts I and II, Florida Statutes, in the course and authority of an official investigation. The general purpose and scope of this investigation, pursuant to Chapter 501, Parts I and II, Florida Statutes, extends to possible price gouging and unfair and deceptive trade practices involving the business practices of **TATE OIL CO., INC.** Your attention is directed to Sections 501.160, 501.204 and 501.206, Florida Statutes, attached hereto.

YOU ARE HEREBY COMMANDED to produce all documentary material and other tangible evidence as described herein, that is in your possession, custody or control, and to make it available for inspection and copying or reproduction before Senior Assistant Attorney General Keith Vanden Dooren or any other Assistant Attorney General, on the 25th day of July 2005, at 10:00 A.M., at the DEPARTMENT OF LEGAL AFFAIRS, OFFICE OF THE ATTORNEY GENERAL, 107 West Gaines Street, Suite 543, Tallahassee, Florida 32301, (850) 414-3600.

This subpoena may be complied with by delivering copies of all requested materials, prior to the date set forth above, to the above-stated address for the Department of Legal Affairs.

The production of material in response to this demand shall include the following:

SEE "ATTACHMENT A" (pages 4-9)

WITNESS, THE FLORIDA DEPARTMENT OF LEGAL AFFAIRS, at Tallahassee, Florida, this of 11th day of July, 2005.

**CHARLIE CRIST
ATTORNEY GENERAL**

KEITH P. VANDEN DOOREN
SENIOR ASSISTANT ATTORNEY GENERAL
Florida Bar No. 209260
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LEGAL AFFAIRS
107 West Gaines Street, Suite 543
Tallahassee, Florida 32301
(850) 414-3600

501.204 Unlawful acts and practices.-

(1) Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

(2) It is the intent of the Legislature that, in construing subsection (1), due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45 (a)(1)

501.206 Investigative powers of enforcing authority.-

(1) If, by his or her own inquiry or as a result of complaints, the enforcing authority has reason to believe that a person engaged in, or is engaging in, an act or practice that violates this part, he or she may administer oaths and affirmations, subpoena witnesses or matter, and collect evidence. Within 5 days, excluding weekends and legal holidays, after the service of a subpoena or at any time before the return date specified therein, whichever is longer, the party served may file in the circuit court in the county in which he or she resides or in which he or she transacts business and serve upon the enforcing authority a petition for an order modifying or setting aside the subpoena. The petitioner may raise any objection or privilege which would be available under this chapter or upon service of such subpoena in a civil action. The subpoena shall inform the party served of his or her rights under this subsection.

(2) If matter that the enforcing authority seeks to obtain by subpoena is located outside the state, the person subpoenaed may make it available to the enforcing authority or his or her representative to examine the matter at the place where it is located.

The enforcing authority may designate representatives, including officials of the state in which the matter is located, to inspect the matter on his or her behalf, and he or she may respond to similar requests from officials of other states.

(3) Upon failure of a person without lawful excuse to obey a subpoena and upon reasonable notice to all persons affected, the enforcing authority may apply to the circuit court for an order compelling compliance.

(4) The enforcing authority may request that an individual who refuses to comply with a subpoena on the ground that testimony or matter may incriminate him or her be ordered by the court to provide the testimony or matter. Except in a prosecution for perjury, an individual who complies with a court order to provide testimony or matter after asserting a privilege against self-incrimination to which he or she is entitled by law shall not have the testimony or matter so provided, or evidence derived therefrom, received against him in any criminal investigation or proceeding.

(5) Any person upon whom a subpoena is served pursuant to this section shall comply with the terms thereof unless otherwise provided by order of the court. Any person who fails to appear with the intent to avoid, evade, or prevent compliance in whole or in part with any investigation under this part or who removes from any place, conceals, withholds, mutilates, alters, or destroys, or by any other means falsifies any documentary materials in the possession, custody, or control of any person subject to any such subpoena, or knowingly conceals any relevant information with the intent to avoid, evade, or prevent compliance shall be liable for a civil penalty of not more than \$5,000, reasonable attorney's fees, and costs.

ANY PERSON FAILING TO APPEAR WHEN REQUESTED WILL BE SUBJECT TO LEGAL ACTION.

501.160 Rental or sale of essential commodities during a declared state of emergency; prohibition against unconscionable prices.--

(1) As used in this section:

(a) "Commodity" means any goods, services, materials, merchandise, supplies, equipment, resources, or other article of commerce, and includes, without limitation, food, water, ice, chemicals, petroleum products, and lumber necessary for consumption or use as a direct result of the emergency.

(b) It is prima facie evidence that a price is unconscionable if:

1. The amount charged represents a gross disparity between the price of the commodity or rental or lease of any dwelling unit or self-storage facility that is the subject of the offer or transaction and the average price at which that commodity or dwelling unit or self-storage facility was rented, leased, sold, or offered for rent or sale in the usual course of business during the 30 days immediately prior to a declaration of a state of emergency, and the increase in the amount charged is not attributable to additional costs incurred in connection with the rental or sale of the commodity or rental or lease of any dwelling unit or self-storage facility, or national or international market trends; or

2. The amount charged grossly exceeds the average price at which the same or similar commodity was readily obtainable in the trade area during the 30 days immediately prior to a declaration of a state of emergency, and the increase in the amount charged is not attributable to additional costs incurred in connection with the rental or sale of the commodity or rental or lease of any dwelling unit or self-storage facility, or national or international market trends.

(2) Upon a declaration of a state of emergency by the Governor, it is unlawful and a violation of s. [501.204](#) for a person or her or his agent or employee to rent or sell or offer to rent or sell at an unconscionable price within the area for which the state of emergency is declared, any essential commodity including, but not limited to,

supplies, services, provisions, or equipment that is necessary for consumption or use as a direct result of the emergency. This prohibition remains in effect until the declaration expires or is terminated.

(3) It is unlawful and a violation of s. [501.204](#) for any person to impose unconscionable prices for the rental or lease of any dwelling unit or self-storage facility during a period of declared state of emergency.

(4) A price increase approved by an appropriate government agency shall not be a violation of this section.

(5) This section shall not apply to sales by growers, producers, or processors of raw or processed food products, except for retail sales of such products to the ultimate consumer within the area of the declared state of emergency.

(6) Nothing herein shall be interpreted to preempt the powers of local government except that the evidentiary standards and defenses contained in this section shall be the only evidentiary standards and defenses used in any ordinance adopted by local government to restrict price gouging during a declared state of emergency.

(7) Section [501.211](#) notwithstanding, nothing in this section creates a private cause of action in favor of any person damaged by a violation of this section.

(8) Any violation of this section may be enforced by the Department of Agriculture and Consumer Services, the office of the state attorney, or the Department of Legal Affairs.

501.164 Civil penalties.--

In addition to all other remedies provided by the Florida Deceptive and Unfair Trade Practices Act, the court may impose a civil penalty of not more than \$1,000 per violation with an aggregate total not to exceed \$25,000 for any 24-hour period against any person who violates the provisions of s. 501.160. Any penalties so collected shall accrue to the enforcing authority to further consumer enforcement efforts.

ATTACHMENT "A"

Definitions

- A. "TATE" means Tate Oil Co., Inc., "you", "your company", "your distributors", "your jobbers", "your sellers", and any and all companies, businesses, departments, divisions, affiliates, subsidiaries, retail outlets, rental operation, stores, franchisees, successors, or predecessors, whether wholly owned or not, including, without limitation, any organization or entity in which TATE has a management or controlling interest, that has documents (as defined herein) in its possession, custody, or control regarding any business practices originating within the State of Florida or any present and former officers, directors, agents, employees, representatives or anyone else acting or purporting to act, on behalf of TATE, that has documents (as defined herein) in their possession, custody, or control regarding business practices originating from or within the State of Florida.
- B. "MOTIVA, means Motiva Enterprises, LLC, and any and all of its companies, businesses, departments, divisions, affiliates, subsidiaries, retail outlets, rental operation, stores, franchisees, successors, or predecessors, whether wholly owned or not, including, without limitation, any organization or entity in which MOTIVA has a management or controlling interest or any of its officers, directors, agents, employees, representatives or anyone else acting or purporting to act, on behalf of MOTIVA.
- C. The term "documents" as used in these requests is defined as including, but not limited to, the original and any non-identical copy or draft (which is different from the original because of notations on such copy or otherwise) of all correspondence, telegrams, teletype messages, contracts (including drafts, proposals, and any and all exhibits thereto) minutes of meetings, agendas, memoranda (including inter- and intra-office memoranda, memoranda for file, pencil jottings, diary entries, calendar entries, reported recollections, and any other written form of notation of events or intentions), transcripts and recordings of conversations, e-mail, telephone messages and telephone calls, books, written tests, manuals, records, photographs, graphs, estimates, reports, tabulations, logs, charts, books of account, ledgers, invoices, financial statements, purchase orders, receipts, canceled checks and all other documentary material of any nature whatever, together with any attachments thereto or enclosures therewith. The term "documents" shall also include data stored, maintained or organized on computer or any other way electronically or magnetically, including, but not limited to, data stored on video or audio cassette, on computer, hard disk, CD-Rom, Jaz disk, Zip disk or standard 3.5" floppy disk, or posted on the World Wide Web.
- D. "Related or Relating" means, without limitation, the concepts: refer to, concerning, discuss, describe, reflect, deal with, pertain to, analyze, evaluate, estimate, constitute, study, survey, project, assess, record, summarize, criticize, report, comment, or otherwise involve in whole or in part.

- E. The term “any” shall be construed as synonymous with “every” and shall be all inclusive.
- F. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside of its scope.
- G. “Communication” means any act, action, oral speech, written correspondence, contact, expression of words, thoughts, or ideas, or transmission or exchange of data or other information to another person or entity, whether orally, person to person, in a group, by telephone, personal delivery, inter-office mail, private or public mail carrier or courier, intercom, telex, fax, e-mail, compact or floppy disc, or any other process, electric, electronic or otherwise in any medium. All such communications in writing shall include, without limitation, printed, typed, handwritten or other readable documents.
- H. The word “person” means any individual and all entities, and, without limiting the generality of the foregoing, includes natural persons, employees, contractors, consultants, joint owners, associations, partnerships, companies, joint ventures, corporations, trusts, trustees, escrow agents and estates, agents, and all groups or associations of persons.

Instructions

- I. Each record, information, document or item produced pursuant to this Subpoena shall be:
 - (1) Numbered consecutively on its face in a color other than black and shall clearly identify the paragraph of the Subpoena to which it is responsive. Copies of originals shall be legible in their entirety;
 - (2) Identified by the request number contained in this Subpoena. The documents and information to be produced pursuant to each request should be segregated and specifically identified to indicate clearly the particular numbered request to which they are responsive. Number and mark each box to indicate the request number which corresponds to the responsive materials each contains. If documents or information is responsive to more than one request, produce it with materials for the request to which it is primarily responsive. Further, list the record control number and identify where it is filed under each other request to which it is responsive; and,
 - (3) Complete and un-redacted, submitted as found in the recipient’s files.
- J. In the event that any item is withheld, please provide the following information for each withheld:
 - (1) the name of each author, writer, sender or initiator of such document or thing, if any;

- (2) the name of each recipient, addressee, or party for whom such document or thing was intended, if any;
 - (3) the date of such document, if any, or an estimate thereof so indicated if no date appears on the document;
 - (4) the general subject-matter as described on such document, or, if no such description appears, then such other description sufficient to identify said document; and,
 - (5) the claimed grounds for withholding the document, including, but not limited to, the nature of any claimed privilege and grounds in support thereof.
- K. If you possess, control, or have custody of no documents or information responsive to any request set forth below, state this fact by so specifying in your response to said request.
- L. The use of the singular form of a word includes the plural and vice versa. In addition, the use of any tense of any verb includes all other tenses of the verb.
- M. Unless otherwise specified, original documents must be produced. If your “original” is a photocopy, then the photocopy would be and should be produced as the original. Said copy shall be legible and bound or stapled in the same manner as the original.
- N. This Subpoena is for the production of all responsive documents, items and information in your possession, custody or control regardless of whether such documents, items or information is possessed directly by its directors, officers, agents, employees, representatives, subsidiaries, managing agents, affiliates, investigators, or by its attorneys or their agents, employees, representatives or investigators. This Subpoena includes, documents, information and records of your company and any records maintained in any archival storage facility or local branch or field office.
- O. If any responsive document or information cannot be produced in full, you are to produce it to the extent possible, indicating which document, or portion of that document, is being withheld, and the reason that document is being withheld.
- P. Documents not otherwise responsive to this Subpoena shall be produced if such documents mention, discuss, refer to, or explain the documents that are called for by this Subpoena, or if such documents are attached to documents called for by the Subpoena and constitute routing slips, transmittal memoranda, or letters, comments, evaluations or similar materials.
- Q. If a document once existed and has subsequently been lost, destroyed, or is otherwise missing, please provide sufficient information to identify the document and state the details concerning its loss or destruction. Further, describe such document to the fullest

extent possible and identify anyone having knowledge of it.

- R. In responding to these requests you are to include documents (a) obtained from witnesses who gave information to any governmental agency or investigatory body; (b) that constitute, or refer or relate to, summaries of testimony or other statements in connection with any governmental agency or investigatory body proceedings or investigations; or (c) obtained on your behalf by counsel in preparing for testimony or interviews before any governmental agency or investigatory body.
- S. Unless a different period is specified, this Subpoena relates to the period **June 7, 2005** to the date of your complete response thereto. Responsive documents include those which were prepared, sent, dated, received, in effect, or otherwise came into existence at any time on or after June 7, 2005.

WHEREFORE YOU ARE HEREBY COMMANDED TO PRODUCE:

- 1. A listing of all fuel locations of any kind, including but not limited to, retail outlets, distributorships and storage facilities, from which TATE operated within the State of Florida during the period June 7, 2005 to present. This list should include the full name of the business, if different, any utilized location number, street address, city, state, zip code, telephone number and manager, if applicable.
- 2. A listing of all suppliers, wholesalers, vendors, or other entities from which TATE acquires fuel for later resale.
- 3. Copies of any and all invoices, estimates, bills, or other requests for payment received by TATE, as to each of the fuel locations identified in your response to Item 1, for the delivery of any fuel during the period June 7, 2005 to present, including but not limited to, any fuel delivered by MOTIVA,.
- 4. Copies of any and all documents reflecting any amounts of money paid or payable by TATE for each delivery of fuel to each of the fuel locations identified in your response to Item 1 during the period June 7, 2005 to present, including but not limited to, any amounts paid or payable by TATE to MOTIVA.
- 5. Copies of any and all invoices, estimates, bills, or other requests for payment delivered, issued or otherwise provided by TATE, as to each of the fuel locations identified in your response to Item 1, to any distributor, retail outlet, storage facility or other Person for the delivery of any fuel during the period June 7, 2005 to present.
- 6. Copies of any and all documents reflecting any amounts of money received or receivable by TATE for each delivery of fuel by each of the fuel locations identified in your response to Item 1 to any distributor, retail outlet, storage facility or other Person during the period

June 7, 2005 to present.

7. Copies of any and all licenses issued by any state or federal governmental entity for any type of fuel or fuel related services provided by TATE, which licenses were in effect at any time during the period June 7, 2005 to present.
8. Copies of any and all complaints or inquiries, and all related Communications thereto, received, issued, or provided by TATE concerning prices charged for fuel or fuel related services, including but not limited to, the marketing, distribution, sale, delivery and storage of fuel, during the period June 7, 2005 to present.
9. Copies of any and all Communications received, issued, or provided by TATE concerning pricing procedures, practices, changes, issues, matters, pertaining to fuel or fuel related services, including but not limited to, the marketing, distribution, sale, delivery and storage of fuel, during the period June 7, 2005 to present.
10. Copies of any and all Communications received, issued, or provided by TATE to or from any state or federal governmental entity concerning inappropriate or unreasonable pricing, excessive pricing, price gouging or similar allegations pertaining to fuel or fuel related services during the period June 7, 2005 to present.
11. Copies of any and all financial reports reflecting fuel received and delivered by TATE during the period June 7, 2005 to present, including but not limited to, dates of each receipt and delivery of fuel, identification of all parties to each fuel transaction by address, telephone number and owner/manager for any business entity, the type of fuel purchased or delivered and the amounts paid/payable and received/receivable for each.
12. A listing of all your current and former employees employed during the period January 1, 2005, to present. The listing should include the individuals full name; home street address, including the city, state, and zip code; home telephone number; position; dates of employment; status (current or former) and if a former employee, the reason that individual is no longer employed by you.
13. If you claim the attorney-client privilege or any other privilege or work product protection for any document, please provide a detailed privilege log that contains at least the following information for each document that you have withheld:
 - a. the name of each author, writer, sender or initiator of such document or thing, if any;
 - b. the name of each recipient, addressee, or party for whom such document or thing was intended, if any;
 - c. the date of such document, if any, or an estimate thereof so indicated if no date appears on the document;

- d. the general subject-matter as described on such document, or, if no such description appears, then such other description sufficient to identify said document; and,
- e. the claimed grounds for withholding the document, including, but not limited to, the nature of any claimed privilege and grounds in support thereof.