

Georgia Judge Nixes Dismissal of \$47M Antitrust Suit Against Utility Servicer

What You Need to Know

- Georgia-based PowerPlan provides nearly all software services for investor-owned utilities.
- Georgia-based Lucasys claimed PowerPlan used threats and coercion to keep it blocked from the market.
- A federal judge said the antitrust claims were sufficiently supported to survive a motion to dismiss.

A federal judge in Atlanta refused to throw out antitrust claims seeking at least \$47 million in trebled damages from a Georgia-based company that, according to court filings, used its virtual monopoly on software support systems for investor-owned utilities throughout the country to keep a much smaller local startup from entering the field.

“The story alleged in this antitrust case is one of David and Goliath,” wrote Judge Amy Totenberg of the U.S. District Court for the Northern District of Georgia, denying defendant PowerPlan’s motion to dismiss and ruling that the allegations are sufficient to sustain claims it unfairly sought to stifle competition.

The plaintiff, Cumming-based Lucasys Inc., is an “up-and-coming, eager-to-innovate competitor,” wrote Totenberg, and claims that PowerPlan “squashes that competition by inter alia reaching out to customers and leveraging its monopoly power to coerce customers to stop working with the competitor.”

Lucasys’ allegations include claims that PowerPlan deprives utility customers of a choice for service providers, threatened those customers to shun Lucasys and other providers and imposed a “Hobson’s Choice” that “excludes competitors and reduces output of new products and services, which in turn raises prices for customers.”

“Lucasys has supported these allegations with specific incidents,” Totenberg wrote in the Sept. 30 order, listing several instances of PowerPlan allegedly coercing client utilities into canceling contracts and threatening them with “baseless trade secret misappropriation claims.”

According to Lucasys’ complaint, PowerPlan has annual revenues of at least \$150 million and is owned by Roper Technologies, “a \$42 billion publicly traded company.”

According to court filings, in 1994 PowerPlan developed software to assist rate-regulated utilities in storing and analyzing data for operational, accounting and tax purposes.

“By the late 2000s, PowerPlan had acquired its only competitor and was thus the only company offering a full suite of utility management software,” the order said. “Today, 99 percent of utilities use PowerPlan’s

software—indeed, large utilities must use PowerPlan’s software because of the scale and complexity of their data.”

One “alleged significant problem with PowerPlan’s software is that it is built on an outdated coding language,” but “because there are no alternative products, customers are forced to continue to purchase the PowerPlan software.”

“Over time, utility customers discovered that PowerPlan’s software was not able to meet their needs,” and began hiring consultants to provide data upgrades and “other applications to accomplish tasks the PowerPlan software could not, and other band-aid solutions.”

Utilities now pay “hundreds of thousands or even millions of dollars” every few years for such services, and about 10 companies compete in the supplemental management service market including Lucasys and PowerPlan.

Lucasys was founded by three former PowerPlan employees in 2018 “to provide services and software related to deferred tax as well as long-term software and technology to replace consulting services.”

In 2019, Lucasys successfully bid on a contract to create a software tax suite for a PowerPlan customer, American Electric Power Service Corp.

“When PowerPlan discovered that AEP had awarded the contract to Lucasys, it sought to intimidate both Lucasys and AEP with threatened legal action related to trade secret violations,” the complaint said. “PowerPlan also demanded that Lucasys not only cease-and-desist efforts to design, develop, market, and sell software but also cease-and-desist consulting for all PowerPlan customers unless it stopped creating new software.”

“Moreover, PowerPlan, evidencing its anticompetitive intentions and mode of doing business, proposed an unlawful market-allocation agreement under which PowerPlan would ‘be open’ to Lucasys competing with consulting services only if Lucasys agreed to discontinue its software development,” the complaint alleged. PowerPlan has threatened other competitors with “baseless trade secret misappropriation claims,” it alleged.

“Nevertheless, in an act of good faith, Lucasys sought to reassure PowerPlan that it was not, in fact, developing software based on any PowerPlan trade secrets,” the complaints alleged, and “provided substantial information to PowerPlan showing exactly what it was doing and how.”

The complaint alleged that, lacking any “good-faith basis to embroil Lucasys in trade secret misappropriation litigation,” PowerPlan allegedly began threatening its customers not to hire Lucasys, “implicitly threatening to entangle these customers in litigation. PowerPlan wields a large stick in its threats because its software performs critical accounting functions for its customers and, lacking an alternative, the utilities must purchase PowerPlan’s software.”

PowerPlan caused two utilities to cancel contracts with Lucasys, the complaint alleged, and “coerced AEP to delay the technology component of the project by at least 12 months and narrow the scope of Lucasys’ contract to services only.”

The 12-count complaint Lucasys filed July 2020 included multiple claims for violations of the Sherman Antitrust Act state claims for deceptive trade practices, tortious and malicious interference and defamation, and seeks treble antitrust damages of not less than \$47 million.

In denying PowerPlan's motion to dismiss, Totenberg wrote that Lucasys' allegations of harm to competition "in the form of reduced output, decreased product quality, stymied innovation, and raised prices—which are supported by specific examples—sufficiently allege anticompetitive effects in these markets."

"Additionally, Lucasys' allegations that PowerPlan's anticompetitive conduct harmed competition by depriving customers of choice, and thereby prevented them from accessing lower-cost, higher-quality options, sufficiently assert harm to competition," the judge wrote.

Lucasys is represented by **Robbins Ross Alloy Belinfante Littlefield partner Jason Alloy and Richard Robbins**, and Jarod Bona, Jon Cieslak and Aaron Gott of La Jolla, California-based Bona Law.

"When I took this case, I really couldn't believe what I was reading in terms of threats to our clients, to their own customers, their arguments that 'you can't do business with other companies,'" said Robbins. "This is pretty egregious conduct. I think the judge obviously analyzed it very carefully. I think they're going to have a hard time defeating it."

PowerPlan's counsel includes Stephen Fazio, Damon Mace and Petrina McDaniel of Squire Patton Boggs. Neither they nor PowerPlan immediately responded to a query Tuesday.