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*Antitrust Compliance for Public Power Utilities*  
October 9, 2006

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Background Reading Material

1. Complaint: *United States of America v. City of Stilwell, Oklahoma*
2. Competitive Impact Statement: *United States of America v. City of Stilwell, Oklahoma*
3. Final Judgment: *United States of American v. City of Stilwell, Oklahoma*

**UNITED STATES DISTRICT COURT  
FOR THE  
EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	Case No.
	)	
CITY OF STILWELL, OKLAHOMA	)	
	)	
and	)	
	)	
STILWELL AREA DEVELOPMENT	)	
AUTHORITY,	)	
	)	
<i>Defendants.</i>	)	

**COMPLAINT**

The United States of America, through its attorneys, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain equitable and other relief against the City of Stilwell, Oklahoma and the Stilwell Area Development Authority, alleging as follows:

**I.  
Nature of this Action**

1. The United States has commenced this litigation to obtain permanent injunctive relief against the “all-or-none” utility policy adopted and implemented by the defendants for the purpose and with the effect of capturing for the City all new electric service customers in growth areas — depriving those customers of their right to choose freely between competing electric service providers on the basis of price and quality of service.

2. The City sells electricity to residential, commercial and industrial customers inside City limits and in surrounding portions of Adair County through the Stilwell Utility Department. The City also provides water/sewer service to residential, commercial and industrial customers within and around the City's corporate boundaries through the Area Development Authority.

3. Since at least as early as 1985, the defendants, who are the sole suppliers of public water and sewer services to premises in the area, have adhered to an all-or-none utility policy — refusing to extend or connect water/sewer lines to premises unless the developer, owner or occupant also agreed to purchase electric service from the City's Utility Department — and otherwise unlawfully interfered with customer freedom to choose between competing suppliers of electric service. The all-or-none utility policy has caused new utility customers to purchase from the City's Utility Department significant quantities of electric service that they would have preferred to purchase elsewhere.

## **II. The Defendants**

4. The City of Stilwell is a charter municipality, organized and existing under the laws of the State of Oklahoma. Its Utility Department was established by Section 106 of the City's Charter as a business enterprise to provide electricity within and around the City's corporate boundaries. The Utility Department is governed by a Utility Board of five members appointed by the Mayor with the approval of the City Council and is subject to the Council's oversight.

5. The Area Development Authority is a public trust, organized and existing under Oklahoma law, to provide water and sewer service for compensation within and around the City's corporate boundaries. It is governed by a Board of Trustees whose membership is identical to that of the City's Utility Board and which is likewise subject to the Council's oversight.

**III.**  
**Jurisdiction, Venue and Interstate Commerce**

6. This complaint is filed and this action is instituted under Section 4 of the Sherman Act, 15 U.S.C. § 4, to prevent and restrain the continued violation by defendants, as hereinafter alleged, of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 & 2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1337.

7. Venue is proper in this judicial district under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c) because defendants transact business and are found here.

8. The City's Utility Department purchases and resells electricity at retail to more than fifteen hundred homes and businesses in the Stilwell area, many of whom are engaged in or affect interstate commerce. The City derives revenues exceeding \$2½ million annually from electricity sales. Electric generating units in Oklahoma, including those that generate electricity for the City's Utility Department, are interconnected with generating units outside the State, such that electricity regularly and continuously flows into and out of Oklahoma throughout the interconnected system. Electricity purchased and resold by the City's Utility Department is generated, or

commingled with electricity generated, outside of Oklahoma. Defendants' utility systems have been built, improved and maintained using equipment and supplies manufactured to a substantial extent outside Oklahoma, and they have obtained substantial funds from the federal government to build and expand their systems. Defendants are accordingly engaged in, and their activities substantially affect, interstate commerce.

#### IV. Utility Services in the Stilwell Area

9. At all relevant times, the Area Development Authority has operated the only municipal water/sewer system in the area. Potential new entrants face substantial regulatory and other entry barriers, and the City has not permitted any other person to provide competing water/sewer service within its corporate limits. Although rural water districts operate water distribution systems serving surrounding areas, they will not provide service in the City, and when the City annexes the areas they serve, the Area Development Authority takes over their lines and their customers. For many developers and property owners, privately-owned wells and septic systems are not practical alternatives to public water/sewer systems.

10. For many years the City's Utility Department has operated the only municipal electric system providing electric service in Stilwell, and the City has not granted any other person permission to provide competing electric service within City limits. Ozarks Rural Electric Cooperative Corporation has distributed electricity to residential, commercial and industrial consumers in portions of Adair County

surrounding Stilwell's 1961 boundaries. The City's Utility Department competes with Ozarks for new customers in areas of Adair County annexed or proposed for annexation into the City after 1961 (the "affected area"). Under Oklahoma law, Ozarks may continue to construct and operate electric transmission lines and sell electricity in the affected area without City approval, even after Stilwell annexes the area.

11. In the 1990s, the City intensified its annexation program, incorporating areas undergoing rapid growth and development. As a result the City's boundaries now include significant parts of Ozarks' retail service territory. Both the City's Utility Department and Ozarks have actively solicited the business of developers and new commercial and industrial accounts in the affected area — affording such customers the economic benefits of choice between competing price and service packages. This is the consumers' only chance to benefit from competition because Oklahoma law prohibits them from later switching suppliers without their current supplier's consent.

## **V. Violations Alleged**

12. For more than a decade (from at least as early as 1985 and continuing at least until August 22, 1995), the defendants adhered to an all-or-none utility policy — refusing to provide water and sewer service in the affected area unless the customer also agreed to purchase City-supplied electric service. To enforce that policy, the defendants denied water/sewer service connections, closed off and locked supply taps already connected to customer water lines, withheld building permits and otherwise discriminated against persons who wanted to obtain electric service from Ozarks,

relenting only after they agreed to purchase their electric service from defendants. The City communicated the policy to building permit applicants for the purpose and with the effect of deterring them from considering any electric service supplier other than the City's Utility Department. Defendants pursued this course of conduct with the specific intent to capture all new retail electric service customers in the affected area for the City's Utility Department. There was a dangerous probability that the City's Utility Department would succeed in establishing a monopoly over electric service in the affected area.

13. At regular meetings of their governing boards held April 12, 1994, the Area Development Authority and the City's Utility Department formalized their all-or-none utility policy. The formalized policy is set forth in the attached Exhibit A (Item 10) and Exhibit B (Item 11), which are true copies of materials presented at the governing board meetings.

14. At the April 12, 1994 meeting, their governing boards also recommended the denial of building permits to customers buying electric service elsewhere "to give some teeth" to the all-or-none utility policy. Thereafter, at its regular meeting held May 2, 1994, the City Council adopted a resolution formally approving the all-or-none utility policy.

15. On August 22, 1995, faced with an ongoing antitrust investigation by the United States, the City's Utility Department and the Area Development Authority rescinded their all-or-none utility policy and adopted a policy of notifying prospective customers that they would neither be required to purchase electric service from

defendants as a condition of receiving municipal water or sewer service nor discriminated against if they purchased electric service elsewhere. The City Council has not formally rescinded its prior approval of the all-or-none utility policy. Unless restrained and enjoined by this Court, defendants remain free to reinstate their all-or-none utility policy and otherwise return to their unlawful course of conduct.

16. Full and open competition in the market for electric service to the consuming public in the affected area has been foreclosed by the defendants' all-or-none utility policy and their implementing practices. Developers and property owners have been denied the opportunity to freely choose between competing electric suppliers. Those who would have selected or considered Ozarks on the basis of price or quality of service have instead been forced to purchase electric service from the City's Utility Department on terms they viewed as inferior.

17. Electric service is a relevant product separate and distinct from water/sewer service. Electric service and water/sewer services are not substitutes for one another from the perspective of consumers or suppliers.

18. The defendants have accordingly tied one product (water/sewer service in the affected area) to another product (electric service in the affected area). Since the Area Development Authority has maintained monopoly power in the tying product (water/sewer service) and a substantial volume of commerce in the tied product (electric service in the affected area) has been affected by the policy and practices here alleged, these tying arrangements unreasonably restrain trade and are *per se* unlawful under Section 1 of the Sherman Act, 15 U.S.C. §1.



19. Through the policy and practices alleged, the defendants have abused the Area Development Authority's water/sewer service monopoly to gain a competitive advantage and foreclose competition in electric service to consumers in the affected area, thereby monopolizing and attempting to monopolize trade and commerce in violation of Section 2 of the Sherman Act, 15 U.S.C. §2.

### **Prayer for Relief**

Wherefore, the United States prays that this Court enter judgment against defendants as follows:

A. Permanently enjoining and restraining the defendants from requiring any consumer of electric energy to purchase retail electric service from them as a condition of receiving water and/or sewer service from them;

B. Permanently enjoining and restraining the defendants from denying, withholding, or delaying any service, license or permit, or otherwise threatening, discriminating or retaliating against any person because that person purchases or may purchase electric service elsewhere;

C. Permanently mandating that the defendants give timely written notice to applicants for utility service and building permits of their right to choose to purchase electric service elsewhere without interference or discrimination, implement and maintain an antitrust compliance program to safeguard against future violations, and otherwise remedy the continuing consequences of their all-or-none utility policy;

D. Granting such other and further relief to the United States as this Court may deem just and proper;

E. Awarding the United States its costs in this action.

Dated:

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ANNE K. BINGAMAN  
Assistant Attorney General

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ROGER W. FONES  
Chief

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DAVID S. TURETSKY  
Deputy Assistant Attorney General

---

DONNA N. KOOPERSTEIN  
Assistant Chief

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REBECCA P. DICK  
Deputy Director of Operations  
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**UNITED STATES DISTRICT COURT  
FOR THE  
EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	Case No. CIV 96-196 B
	)	
CITY OF STILWELL, OKLAHOMA,	)	Filed: July 16, 1998
ET AL.,	)	
	)	
<i>Defendants.</i>	)	

**COMPETITIVE IMPACT STATEMENT**

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (“APPA”), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

**I. NATURE AND PURPOSE OF THIS PROCEEDING**

On April 25, 1996, the United States filed a Complaint alleging that the defendants City of Stilwell, Oklahoma (“City”) and Stilwell Area Development Authority (“ADA”) (collectively “Defendants”) had violated the Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2. The Complaint challenged a utility policy adopted and implemented by Defendants, the sole suppliers of public water and sewer services to customers within the Stilwell city limits, by which Defendants refused to extend or connect water or sewer lines to customers unless the customers also agreed to purchase electric service from the City’s Utility Department. The

effect of this policy, commonly referred to as the “all-or-none utility policy,” has been to restrict competition in the provision of electric services in newly annexed areas of Stilwell.

On July 15, 1998, the United States and Defendants filed a Stipulation and Order consenting to the entry of a proposed Final Judgment designed to eliminate the all-or-none utility policy and prevent Defendants from implementing any similar restriction in the future. Under the proposed Final Judgment, Defendants would be enjoined from requiring any consumer of electric energy to purchase retail electric service from Defendants as a condition of receiving water or sewer service from Defendants, and would be enjoined from taking actions to impose any similar restrictions on City residents in the future. The proposed Final Judgment also requires that any application for water or sewer service or other written materials distributed by Defendants to prospective applicants include a disclaimer stating that customers are not required to purchase City electricity as a condition of receiving water or sewer service.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

## II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

The City of Stilwell is a charter municipality, organized and existing under the laws of the State of Oklahoma. Its Utility Department was established by Section 106 of the City’s Charter as a business enterprise to provide electricity within and around the City’s corporate boundaries. The Utility Department is governed by a Utility Board of five members appointed by the Mayor with the approval of the City Council and is subject to the Council’s oversight.

The Stilwell Area Development Authority (“ADA”) is a public trust, organized and existing under Oklahoma law, to provide water and sewer service for compensation within and around the City’s corporate boundaries. It is governed by a Board of Trustees whose membership is identical to that of the City’s Utility Board and which is likewise subject to the Council’s oversight.

Defendants provide water, sewer, and electric service in Stilwell. Within the pre-1961 boundaries of Stilwell, the City’s Utility Department is the sole provider of electric service. But in areas of Stilwell annexed since that time, the City competes with Ozarks Rural Electric Cooperative (“Ozarks”) for sales to new electric service customers. In both pre-1961 Stilwell and areas subsequently annexed, Defendants have a virtual monopoly on the sale of water and sewer services.

Beginning as early as 1985, the Defendants adopted an all-or-none utility policy, refusing water and sewer services to any customer who did not agree to purchase electric service from the City. The purpose of the policy was to prevent Ozarks from obtaining new electric customers in the annexed areas. The Utility Department and ADA formalized the all-or-none utility policy in 1994, and the Stilwell City Council subsequently approved the policy.

To enforce its all-or-none policy, the Defendants denied water and sewer connections, turned off already connected lines, and otherwise discriminated against those customers in annexed areas who tried to obtain electric service from Ozarks. Defendants’ enforcement of the policy deprived consumers of their right to choose freely among competing electric service providers on the basis of price and quality of service and eliminated competition in the provision of electric service in the annexed areas.

### III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The provisions of the proposed Final Judgment are designed to eliminate Defendants' all-or-none utility policy and to prevent future actions by Defendants to place similar restrictions on electric consumers. The proposed Final Judgment would enjoin Defendants from requiring any consumer of electricity to purchase the City's retail electric service as a condition of receiving water or sewer service from the City (Section IV(A)). In addition, the proposed Final Judgment would require defendants to include the following disclaimer in a conspicuous manner in any application for water or sewer service or in any other written materials they distribute to prospective applicants for water or sewer services:

Although we provide electric service, as well as water and sewer services, we do not require you to purchase electric service from us as a condition of receiving water or sewer service and we will not discriminate against you if you do not purchase electric service from us.

(Section IV(B)). Defendants would also be enjoined from threatening or discriminating or retaliating against any person because that person had not agreed to purchase or did not purchase electric service from Defendants (Section IV(C)).

The proposed Final Judgment would further require Defendants to establish and maintain an antitrust compliance program (Section VI) and file an annual certificate of compliance with the United States (Section VII). It would also provide that the United States may obtain information from the Defendants concerning possible violations of the Final Judgment (Section VIII).

The proposed Final Judgment would not prohibit Defendants from exercising any right under State law to expropriate facilities used by any retail electric supplier to furnish electricity within the City's corporate boundaries, or from commencing or prosecuting, in good faith,

litigation to ascertain or protect any right they might have under State law to restrict the furnishing of electricity within the City's corporate boundaries to retail electric suppliers authorized by law to do so (Section V(A) and (B)).

#### IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

#### V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments

will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comments and the responses of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to:

Roger W. Fones  
Chief, Transportation, Energy & Agriculture Section  
Antitrust Division  
United States Department of Justice  
325 Seventh Street, N.W., Suite 500  
Washington, D.C. 20004

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment. The Proposed Final Judgment would expire ten (10) years from the date of its entry.

#### VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. In the view of the Department of Justice, such a trial would involve substantial cost to the United States and is not warranted. The proposed Final Judgment provides relief that fully remedies the alleged violations of the Sherman Act set forth in the Complaint.



VII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

FOR PLAINTIFF UNITED STATES OF AMERICA:

Dated: July 15, 1998

Respectfully submitted,

\_\_\_\_\_/S/  
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**UNITED STATES DISTRICT COURT  
FOR THE  
EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,	)	
	)	
	)	<i>Plaintiff,</i>
	)	
v.	)	Case No. CIV 96-196-B
	)	
CITY OF STILWELL, OKLAHOMA, ET AL.	)	
	)	
	)	<i>Defendants.</i>
	)	

**FINAL JUDGMENT**

Plaintiff, United States of America, filed its Complaint on April 25, 1996. Plaintiff and defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence against or an admission by any party with respect to any issue of fact or law. Therefore, without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby

ORDERED, ADJUDGED, AND DECREED, as follows:

**I.  
Jurisdiction**

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. Venue is proper in the Eastern District of Oklahoma. The Complaint states a claim upon which relief may be granted against the defendants under Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 & 2.

**II.  
Definitions**

As used herein:

- (A) the term “defendants” means the City of Stilwell, Oklahoma (“City”) and the Stilwell Area Development Authority;
- (B) the term “document” means all “writings and recordings” as that phrase is defined in Rule 1001(1) of the Federal Rules of Evidence;

(C) two or more products are “unbundled” when available separately and priced such that the seller’s charge for the combination is no less than the sum of the individual product prices;

(D) the term “person” means any natural person, corporation, firm, company, sole proprietorship, partnership, association, institution, governmental unit, public trust, or other legal entity.

### **III.**

#### **Applicability**

(A) This Final Judgment applies to the defendants, jointly and severally, and to their respective successors, assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment by personal service or otherwise.

(B) Nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

### **IV.**

#### **Prohibited and Mandated Conduct**

(A) The defendants, and each of them, are enjoined and restrained from requiring any consumer of electric energy to purchase retail electric service from a defendant as a condition of receiving water or sewer service from a defendant.

(B) Any application for water or sewer service or other written materials distributed by a defendant to prospective applicants for water or sewer service shall include, in a conspicuous manner, the following disclaimer:

Although we provide electric service, as well as water and sewer services, we do not require you to purchase electric service from us as a condition of receiving water or sewer service and we will not discriminate against you if you do not purchase electric service from us.

(C) The defendants, and each of them, are enjoined and restrained from denying, withholding, or delaying any service, license or permit, or otherwise threatening,

discriminating or retaliating against any person that has not agreed to purchase or does not purchase electric service from a defendant, unless defendants' reason for such conduct is unrelated to such person's choice of retail electric provider.

## **V.**

### **Limiting Conditions**

Nothing in this Final Judgment shall prohibit a defendant from:

- (A) exercising any valid right now or hereafter conferred by State law to expropriate facilities used by any retail electric supplier to furnish electric energy within the City's corporate boundaries;
- (B) commencing or prosecuting, in good faith, litigation to ascertain or protect any right now or hereafter conferred by State law to restrict the furnishing of electric energy within the City's corporate boundaries to retail electric suppliers authorized by law to do so; and
- (C) furnishing any premises with more than one utility service on an unbundled basis.

## **VI.**

### **Compliance Program**

(A) Defendants are ordered to maintain an antitrust compliance program which shall include the following:

- (1) Designating, within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for accomplishing the antitrust compliance program and with the purpose of achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of defendants to ensure that they comply with this Final Judgment.
- (2) The Antitrust Compliance Officer shall be responsible for accomplishing the following activities:

- (a) providing copies of this Final Judgment to individuals currently serving on the governing boards, and to non-clerical employees of the Stilwell Utility Department and the Stilwell Area Development Authority, and to each individual hereafter assuming any such position, and obtaining a written certification from such individuals that they received, read, understand to the best of their ability, and agree to abide by this Final Judgment and that they have been advised that noncompliance with the Final Judgment may result in conviction for criminal contempt of court; and
- (b) briefing annually the governing boards and the non-clerical employees of the Stilwell Utility Department and the Stilwell Area Development Authority on this Final Judgment and the antitrust laws.

**VII.  
Certification**

(A) Within 75 days after the entry of this Final Judgment, the defendants shall certify to the plaintiff that they have complied with Section IV above, designated an Antitrust Compliance Officer, and distributed the Final Judgment in accordance with Section VI(A) above.

(B) For each year of the term of this Final Judgment, the defendants shall file with the plaintiff, on or before the anniversary date of entry of this Final Judgment, a statement as to the fact and manner of their compliance with the provisions of Sections IV and VI above.

**VIII.  
Plaintiff Access**

(A) To determine or secure compliance with this Final Judgment and for no other purpose, duly authorized representatives of the plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to

a defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(1) access during such defendant's office hours to inspect and copy all documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of such defendant and without restraint or interference from it, to interview officers, employees or agents of the defendant, who may have counsel present, regarding such matters.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to a defendant's principal office, such defendant shall submit such written reports, under oath if requested, relating to any matters contained in this Final Judgment as may be reasonably requested, subject to any legally recognized privilege.

(C) No information or documents obtained by the means provided in Section VIII shall be divulged by the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to the defendant prior to

divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

**IX.**

**Further Elements of the Final Judgment**

(A) This Final Judgment shall expire ten years from the date of entry.

(B) Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any or all of its provisions, to enforce compliance, and to punish violations of its provisions.

(C) Each party shall bear their respective costs and attorneys fees.

(D) Entry of this Final Judgment is in the public interest.

DATED: November 5, 1998

\_\_\_\_\_/S/  
UNITED STATES DISTRICT  
JUDGE