

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

FILED

NOV 05 1998

WILLIAM B. GUTHRIE
Clerk, U.S. District Court

By: _____
Deputy Clerk

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

CITY OF STILWELL, OKLAHOMA, ET AL.)

Defendants.)

Case No. CIV 96-196-B

Entered: November 5, 1998

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

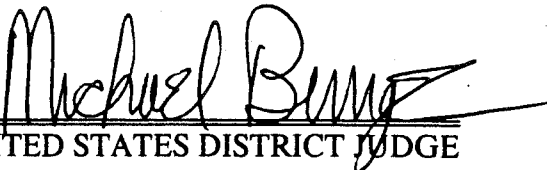
divulging such material in any legal proceeding (other than a grand jury proceeding) to which that defendant is not a party.

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.


UNITED STATES DISTRICT JUDGE