

measure of KeySpan's ill-gotten gains from the antitrust violation alleged in the Complaint. The Swap likely did not result in KeySpan obtaining higher auction revenues than it otherwise would have. Indeed, the gravamen of the Complaint is that, in the absence of the Swap, KeySpan would have adopted a competitive bidding strategy because competitive bidding offered KeySpan a substantial likelihood (but not a certainty) of obtaining more auction revenues than bidding at its cap. Although auction prices would be lower, KeySpan would be more than compensated for the lower price through higher volume sales of its capacity. If this were not a sufficiently likely outcome, the Swap would not have had the clear tendency to alter KeySpan's bidding in the auctions, as alleged in the Complaint, and KeySpan would simply have bid its cap in the but-for world. KeySpan entered the Swap to avoid the risks of competitive bidding and the revenue decline of bidding the cap. Thus, KeySpan's \$48.9 million in net Swap revenues essentially reflects the maximum ill-gotten gains from its anticompetitive scheme.

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Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

/s/

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