IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. KEYSPAN CORPORATION, Defendant.	ECF Case Civil Action No.: 1:10-cv-01415-WHP Hon. William H. Pauley III

UNITED STATES'S MOTION AND SUPPORTING MEMORANDUM TO ENTER FINAL JUDGMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("APPA" or "Tunney Act"), plaintiff United States of America ("United States") moves for entry of the amended proposed Final Judgment filed in this civil antitrust proceeding. The amended proposed Final Judgment (attached as Exhibit A) may be entered at this time without further hearing if the Court determines that entry is in the public interest.

Plaintiff United States and defendant KeySpan Corporation ("KeySpan") have stipulated to entry of the amended proposed Final Judgment without further notice to any party or other proceedings. The Competitive Impact Statement ("CIS") and Response to Public Comments, filed by the United States on February 23, 2010 and June 11, 2010, respectively, explain why entry of the amended proposed Final Judgment is in the public interest. The United States is filing simultaneously with this motion a Certificate of Compliance setting forth the steps taken by the parties to comply with all applicable provisions of the APPA and certifying that the statutory waiting periods have expired.

I. Background and Compliance with the APPA

The United States brought this lawsuit against defendant KeySpan on February 22, 2010, to remedy a violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. On January 18, 2006, KeySpan entered into an agreement in the form of a financial derivative (the "KeySpan Swap") that essentially transferred to KeySpan, the largest supplier of electricity generating capacity in the New York City market, the capacity of its largest competitor. The KeySpan Swap ensured that KeySpan would withhold substantial output from the capacity market, a market that was created to ensure the supply of sufficient generation capacity for the millions of New York City consumers of electricity. The likely effect of this agreement was to increase capacity prices for the retail electricity suppliers who must purchase capacity, and, in turn, to increase the prices consumers pay for electricity.

Simultaneously with the filing of the Complaint, the United States filed the proposed Final Judgment and a Stipulation signed by plaintiff and defendant consenting to the entry of the proposed Final Judgment after compliance with the requirements of the APPA. Pursuant to those requirements, the United States filed a CIS in this Court on February 23, 2010; published the proposed Final Judgment and CIS in the *Federal Register* on March 4, 2010, *see United States v. KeySpan Corportation*, 75 Fed. Reg. 9946-01, 2010 WL 723203; and published summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, in *The Washington Post* for seven days beginning on March 10, 2010 and ending on March 16, 2010 and in the *New York Post* beginning on March 11, 2010 and ending on March 17, 2010.

The 60-day period for public comments ended on May 16, 2010. The United States received seven public comments on the proposed Final Judgment. Pursuant to 15 U.S.C. § 16(d), the United States's Response to Public Comments, as well as the comments received, were filed with the Court on June 11, 2010. Pursuant to 15 U.S.C. § 16(d)(2), and as approved by the Court's Order dated June 28, 2010, the United States published in the *Federal Register* on July 20 2010 its Response to Public Comments as well as (1) the comments and attachments filed by all commenters other than Mr. Nelson M. Stewart and (2) the comments of Mr. Stewart with a link to the Unites States Department of Justice website where the attachments to those comments can be viewed and downloaded. *See* 75 Fed. Reg. 42134. Complete versions of all comments and attachments, including those received from Mr. Stewart, are available at http://www.justice.gov/atr/cases/keyspan.htm.

On June 8, 2010, there was an initial conference in this matter. On June 17, 2010, the United States filed an Amended Stipulation and an amended proposed Final Judgment to incorporate modifications addressing the concerns that the Court expressed at the conference about the retention of jurisdiction provision in the proposed Final Judgment.

II. Standard of Judicial Review

Before entering the amended proposed Final Judgment, the Court is to determine whether the Judgment "is in the public interest." *See* 15 U.S.C. § 16(e). In making that determination, the Court shall consider:

> A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any

> other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e).

In its CIS filed on February 23, 2010 and its Response to Public Comments filed on June 11, 2010, the United States set forth the public interest standard under the APPA and incorporates those statements herein. The public has had the opportunity to comment on the proposed Final Judgment as required by law. As explained in the CIS and the Response to Public Comments, the amended proposed Final Judgment is within the range of settlements consistent with the public interest, and the United States therefore requests that this Court enter the amended proposed Final Judgment.

III. Conclusion

For the reasons set forth in this Motion, the CIS, and the Response to Public

Comments, the United States respectfully requests that the Court enter the amended proposed Final Judgment without further hearings.

Dated: July 20, 2010

Respectfully submitted

FOR PLAINTIFF UNITED STATES:

/s/

Jade Alice Eaton
jade.eaton@usdoj.gov

Trial Attorney
U.S. Department of Justice
Antitrust Division
Transportation, Energy &
Agriculture Section
450 Fifth Street, NW,
Suite 8000
Washington, DC 20530
Telephone: (202) 307-6316
Facsimile: (202) 307-2784