

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 12-CV-00395-RPM-MEH

UNITED STATES OF AMERICA

Plaintiff,

v.

SG INTERESTS I, LTD.,  
SG INTERESTS VII, LTD., and  
GUNNISON ENERGY CORPORATION

Defendants.

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PLAINTIFF'S RESPONSE TO THE COURT'S ORDER TO SHOW CAUSE

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Plaintiff United States of America hereby files this Response to the Court's Order To Show Cause dated February 25, 2012, and, for the reasons stated herein, respectfully requests that the Court not dismiss this action.

1. The United States brought this lawsuit against the Defendants SG Interests I, Ltd., and SG Interests VII, Ltd. (collectively "SGI") and Defendant Gunnison Energy Corporation ("GEC") on February 15, 2012, alleging that they entered into an anticompetitive agreement that eliminated competitive bidding for four federal gas leases in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Concurrently with the Complaint, the United States filed the original proposed Final Judgment (the "Original PFJ") which would have required SGI and GEC to each pay \$275,000 to the United States to settle claims made in both this action (the "Antitrust Action") and a separate *qui*

*tam* action involving False Claims Act violations arising from the same facts and circumstances (the “FCA Action”).<sup>1</sup> On December 12, 2012, this Court rejected that settlement as not being in the public interest (the “12/12/12 Order”), holding, “[i]n sum, the settlement of this civil action for nothing more than the nuisance value of this litigation is not in the public interest and any settlement of [the FCA Action] must be separate and apart from this case.” 12/12/12 Order (Dkt. 20) at 11.

2. On February 25, 2013, the Court, noting that nothing had been filed in the Antitrust Action between the Court’s 12/12/12 Order and February 25<sup>th</sup>, ordered Plaintiff to show cause why this action should not be dismissed for failure to prosecute. As explained more fully below, during that period the United States was actively engaged in attempting to find the most efficient manner to bring this case to resolution, either by pursuing the matter or by resolving it. During this period, the United States engaged in extensive discussions with SGI and GEC about revised terms for settlement, which have proved fruitful. The United States regrets that it did not inform the Court that those negotiations were in progress.

3. Today, the United States is submitting new settlement agreements that have resulted from these negotiations.<sup>2</sup> The revised settlements seek to address Court’s concerns with the original settlement by (i) separating settlement of the Antitrust Action and the FCA Action;<sup>3</sup> and (ii) settling the Antitrust Action by requiring SGI and GEC

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<sup>1</sup> *United States ex rel. Anthony B. Gale v. Gunnison Energy Corp., et al.*, Civil Action No. 09-CV-02471-RBJ-KLM (D. Colo.).

<sup>2</sup> The United States has filed Stipulations and revised proposed Final Judgments for SGI and GEC, motions seeking entry of the revised proposed Final Judgments, and a memorandum in support of those motions.

<sup>3</sup> As described further below, SGI and GEC have paid, respectively, \$206,250 and \$245,000 to the United States to settle the FCA Action. Joint notices of voluntary

each (a) to pay the United States \$275,000<sup>4</sup> and (2) to provide the Department of Justice notice and, if requested, information for a period of five years relating to any joint bidding at oil and gas lease auctions conducted by the Bureau of Land Management (“BLM”).

3. In October 2009, a former GEC employee (the “Relator”) filed the FCA Action against SGI and GEC. Among other things, the Relator alleged that GEC and SGI defrauded the United States at oil and gas lease auctions conducted by the BLM in February and May 2005 when SGI certified (i) that SG’s bid was reached “independently and without collusion for the purpose of restricting competition” and (ii) that it had not violated 18 U.S.C. § 1860, which prohibits unlawful combination or intimidation of bidders.

4. On February 15, 2012, the United States filed the Complaint in the Antitrust Action alleging that SGI and GEC violated Section 1 of the Sherman Act, 15 U.S.C. § 1, by agreeing not to compete at BLM auctions held in February and May 2005. Under the terms of a Memorandum of Understanding (“MOU”) executed by SGI and GEC on February 8, 2005, only SGI would bid at the BLM auctions. SGI and GEC would jointly set a maximum price for SGI to bid for the leases. If SGI successfully acquired the leases, it would assign a fifty percent interest to GEC at cost.

5. At the same time that it filed its complaint in the Antitrust Action, the United States filed with this Court documents relating to its global settlement of the Antitrust

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dismissal of SGI and GEC have been filed in the FCA Action and the case has been closed. These settlements of the FCA Action are not contingent on the resolution of the Antitrust Action.

<sup>4</sup> Together with the payments in the FCA Action, the United States will receive a total \$1,001,250 from Defendants, in contrast to the total of \$550,000 under the original proposed settlements.

Action and the FCA Action. In the antitrust action, the United States filed a proposed Final Judgment (the “Original PFJ”) and a Stipulation signed by the United States, SGI and GEC consenting to entry of the Original PFJ after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (“Tunney Act”). *See* Dkt. 4. The United States also filed a Competitive Impact Statement (“CIS”) explaining the Original PFJ and attaching the settlement agreements resolving the FCA Action. *See* Dkt. 5. The settlement agreements in the FCA Action were conditioned on entry of the Original PFJ in the Antitrust Action.

6. Pursuant to the Tunney Act requirements, the United States published the Original PFJ and CIS in the Federal Register on February 23, 2012 and caused to be published summaries of the terms of the Original PFJ and CIS in *The Washington Times* and *The Denver Post*. The United States received seventy-six comments. On August 3, 2012, the United States filed its response to comments. *See* Dkt. 16. On August 16, the United States filed a motion seeking entry of the Original PFJ. *See* Dkt. 18.

7. On December 12, 2012, the Court issued the 12/12/12 Order denying the United States’ motion for entry of the Original PFJ. *See* Dkt. 20.

8. Since the entry of the 12/12/12 Order, the United States and Defendants have been engaged in discussions with respect to revised settlements intended to address the concerns expressed in the Court’s 12/12/12 Order. To that end, the United States has been seeking to negotiate separate settlements of the FCA Action and the Antitrust Action.

9. The United States has reached final resolution of the FCA Action with each of the Defendants. On February 8, 2013 and February 14, 2013, the United States reached

terms of a non-binding settlement in principle with, respectively, SGI and GEC. On February 14, 2013 and on March 1, 2013, respectively, SGI and GEC executed new settlement agreements with the United States in the FCA Action.<sup>5</sup> Under the terms of those agreements, SGI paid the United States \$206,250 (of which \$41,250 has been paid to the Relator) on February 26, 2013 and a Joint Notice of Voluntary Dismissal of SGI was filed on the same day;<sup>6</sup> and GEC paid the United States \$245,000 (of which \$68,750 will be paid to the Relator) on March 4, 2013 and a Joint Notice of Voluntary Dismissal of GEC was filed the next day.<sup>7</sup> The FCA Action was closed on March 5, 2013.<sup>8</sup> As a result, the United States will retain a net \$341,240 from the settlement of the FCA Action. Additionally, SGI and GEC will each separately pay \$25,000 to the Relator for attorney's fees. Under these settlement agreements, SGI and GEC have agreed that settlement of the FCA Action does not resolve the United States' claims in the Antitrust Action. Additionally, the Relator agreed to release all claims, if any existed, that he may have under the alternate remedy provision of the FCA, 31 U.S.C. § 3730(c)(5), to any payments made to the United States resolving the Antitrust Action.

10. On February 8, 2013 and February 14, 2013, respectively, the United States also reached non-binding agreements in principle with SGI and GEC to settle the Antitrust Action. The United States executed the Stipulations and proposed Final Judgments with SGI and GEC on, respectively, March 5, 2013 and March 1, 2013. The United States has filed these revised Stipulations and proposed Final Judgments (the

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<sup>5</sup> See Attachments 1 and 2 of the United States's Memorandum In Support of Its Motions For Entry of the Revised PFJs filed with the Court today.

<sup>6</sup> See FCA Action at Dkt. 41.

<sup>7</sup> See FCA Action at Dkt. 42.

<sup>8</sup> See FCA Action at Dkt. 43.

“Revised PFJs”) with the Court today. The United States has also filed today unopposed motions for entry of the Revised PFJs as well as a memorandum in support of these motions. As explained in greater detail in that memorandum, the revised PFJs require GEC and SGI to each pay \$275,000 to the United States to settle the Antitrust Action and, in addition, to provide thirty days advance notice to the United States of any joint bidding and, if requested, provide additional information to the United States regarding any such joint bids.

11. In light of the foregoing, the United States respectfully requests that the Court not dismiss this action. To the extent that the Court has remaining concerns about the United States’s efforts to prosecute this matter since the issuance of the 12/12/12 Order, the United States respectfully requests that the Court schedule a Status Conference.

Dated: March 6, 2013

Respectfully submitted,

s/ Sarah L. Wagner

Sarah L. Wagner

U.S. Department of Justice

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 6, 2013, I filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following email addresses:

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s/ Sarah L. Wagner

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