

**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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