under CERCLA section 107(a) as well as damages for injury to, destruction of, or loss of natural resources related to the Sulphur Bank Site and the costs of any natural resource damage assessments under CERCLA section 107(a)(4)(c). Finally, the Consent Decree resolves counterclaims against the United States brought by BMC and Bradley Trust in the Sulphur Bank case and by BMC in the Stibnite Mine case.

Financial information provided by the Settling Defendants indicated an inability to pay. However, pursuant to the proposed Consent Decree, the United States will receive a payment of $505,000 from BMC's insurer, a percentage of future insurance recoveries and future income, and the proceeds from the future sale of parcels of land. In addition, Defendant Bradley Trust will transfer property to the Elem Tribe. In exchange, the proposed Consent Decree provides Bradley Trust with a covenant not to sue and contribution protection for the Sulphur Bank Site, and provides BMC with a covenant not to sue and contribution protection for the Sulphur Bank Site, the Stibnite Mine Site, and five additional mining sites: the Mt. Diablo Mercury Mine in Contra Costa County, California; the Springfield Scheelite Mine in Valley County, Idaho; the IMA Mine in Lemhi County, Idaho; the Bretz Mine in Malheur County, Oregon; and the Opalite Mine in Malheur County, Oregon. Finally, settling federal agencies will pay $7.2 million for EPA's response costs at the Sulphur Bank Site and will receive a covenant not to sue and contribution protection for the Sulphur Bank Site and the Stibnite Mine Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Bradley Mining Company, et al.,* D.J. Ref. 90–11–3–07593.

The Consent Decree may be examined at U.S. EPA Region IX at 75 Hawthorne Street, San Francisco, California 94105. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $17.75 (without appendices) or $32.50 (with appendices) (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Henry Friedman,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2012–4114 Filed 2–22–12; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### United States v. SG Interests I LTD., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Colorado in *United States of America* v. *SG Interests I, Ltd. et al.,* Civil Action No. 12–CV–00395–RPM–MEH. On February 15, 2012, the United States filed a civil antitrust Complaint alleging that the SG Interests I Ltd. and SG Interests VII Ltd. (SGI) and Gunnison Energy Corporation (GEC) agreed to jointly bid for natural gas leases in the Ragged Mountain Area of Western Colorado, which were auctioned by the United States Department of the Interior's Bureau of Land Management in February and May 2005, thereby violating Section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment, filed the same day as the Complaint, requires SGI and GEC to each pay $275,000 to the United States to settle the antitrust action and a related *qui tam* case also filed in United States District Court for the District of Colorado, *United States of America ex rel. Anthony B. Gale* v. *Gunnison Energy Corporation,* Civil Action No. 09–CV–02471–RBJ–KLM.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Colorado. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to William H. Stallings, Chief, Transportation, Energy and Agriculture Section, Antitrust Division, Department of Justice, 450 Fifth Street NW., Suite 8000, Washington, DC 20530, (telephone: 202–514–9323).

**Patricia A. Brink,**

*Director of Civil Enforcement.*

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

Civil Action No. No. 12–cv–00395–RPM–MEH

*UNITED STATES OF AMERICA, U.S. Department of Justice, Antitrust Division, 450 5th Street NW., Suite 8000, Washington, DC 20530,* Plaintiff, v. *SG INTERESTS I, LTD., SG INTERESTS VII, LTD., 2 Houston Center, 909 Fannin, Suite 2600, Houston, TX 77010,* and *GUNNISON ENERGY CORPORATION, 1801 Broadway, Suite 1200, Denver, CO 80202,* Defendants.

**COMPLAINT**

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action under Section 4 of the Sherman Act, as amended, 15 U.S.C. 4, and Section 4A of the Clayton Act, as amended, 15 U.S.C. 15a, to obtain equitable and legal remedies against Defendants Gunnison Energy Corporation (''GEC''), and SG Interests I, Ltd. and SG Interests VII, Ltd. (collectively, ''SGI'') for their violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. 1.

Prior to 2005, GEC and SGI were separately engaged in exploration and development of natural gas resources in the Ragged Mountain Area (or ''RMA'') of Western Colorado.[1] Recognizing that they would be the primary competitors to acquire three natural gas leases for exploration and development on federal lands in the RMA that were to be auctioned by the Bureau of Land Management (''BLM'') in February 2005, GEC and SGI executed a Memorandum of Understanding (the ''MOU'') on the eve of the

[1] For purposes of this Complaint, we define the Ragged Mountain Area as covering roughly a region encompassed by the Townships 10S through 12S and Ranges 89W through 91W, as designated by the Public Land Survey System, comprising portions of Delta, Gunnison, Mesa and Pitkin Counties.

auction pursuant to which they agreed not to compete for the leases. Instead, under the MOU, SGI would bid at the auction and, if they won, assign a fifty percent interest in the acquired leases to GEC. The parties extended the MOU to include a fourth lease auctioned by the BLM in May 2005. As a result of the MOU, the United States received substantially less revenue from the sale of leases than it would have had SGI and GEC competed at the auctions.

**I. DEFENDANTS**

1. SG Interests I, Ltd. and SG Interests VII, Ltd. are Texas limited partnerships with their headquarters in Houston, Texas. The managing partner of both of the limited partnerships is Gordy Oil Company, a Texas corporation. SGI was formed for the purpose of developing natural gas resources in the Ragged Mountain Area. SGI holds, in whole or in part, interests in federal leases on approximately 40,000 acres within the Ragged Mountain Area. It also owns, in whole or in part, interests in and is the operator for natural gas pipelines in the Ragged Mountain Area.

2. GEC is a Delaware corporation with its principal place of business in Denver, Colorado. GEC holds, in whole or in part, interests in federal leases on approximately 52,000 acres within the Ragged Mountain Area. It also owns, in whole or in part, interests in and is the operator for natural gas pipelines in the Ragged Mountain Area.

**II. JURISDICTION AND VENUE**

3. The United States files this Complaint under Section 4 of the Sherman Act, 15 U.S.C. 4, and Section 4A of the Clayton Act, 15 U.S.C. 15a, seeking equitable relief and damages from Defendants' violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

4. The Court has jurisdiction over this matter pursuant to 15 U.S.C. 4 and 15a and 28 U.S.C. 1331 and 1337.

5. Defendants waive any objection to venue and personal jurisdiction in this judicial district for the purpose of this Complaint.

6. SGI's and GEC's activities are in the flow of and substantially affect interstate commerce.

**III. FEDERAL OIL AND GAS LEASE AUCTIONS**

7. The BLM manages natural resources on federal lands, including rights to subsurface oil and natural gas. The BLM sells onshore oil and gas leases to private parties, granting leaseholders the exclusive right to explore and develop oil and gas deposits on their leases. The initial term of a BLM onshore oil and gas lease is ten years.

8. Private parties, such as oil and gas companies, typically acquire onshore oil and gas leases on federal lands at auctions which each regional BLM office conducts as often as quarterly. Auctions are conducted orally and openly, with each lease starting at a minimum bid of two dollars per acre. Bidding on a lease ends when no other person attending the auction bids a higher price than the then outstanding offer. In addition to the amount of the bid, the winning bidder must make annual rental payments during the life of the lease and, if development is successful, pay a 12.5 percent royalty on the value of production from the leases. Revenues from BLM leases flow to the United States Treasury.

9. At the conclusion of the auction, each successful bidder must submit a lease bid form, which constitutes a legally binding lease offer for the amount of the winning bid. By signing the form, the bidder also certifies that it is qualified to bid and did not engage in collusion.

10. In advance of each auction, each regional BLM office publishes a Notice of Competitive Lease Sale identifying the lease parcels to be offered at the quarterly auction. Private parties may nominate lands for BLM to consider offering at auction by submitting an ''expression of interest.''

**IV. THE UNLAWFUL AGREEMENT**

11. In 2001, SGI and GEC began independently acquiring and developing gas leases in the Ragged Mountain Area. Prior to 2003, their activities generally focused on different parts of the Ragged Mountain Area, with SGI acquiring leases on the eastern side of the area (which is now designated by BLM as the Bull Mountain Unit Area) while GEC acquired leases along the southern boundary. However, over the course of 2003 and 2004, their interests began to overlap as each sought pipelines and leases held by BDS International, LLC and affiliated entities (collectively, ''BDS'') and as the BLM leased additional parcels.

12. Conflicting efforts by SGI and GEC to acquire assets held by BDS resulted in litigation between Defendants in 2004. In September 2004, SGI submitted expressions of interest to the BLM for additional lands within the Ragged Mountain Area, including parcels adjacent to leases held by GEC.

13. In October 2004, GEC and SGI met to discuss the prospect of settling the litigation and entering into a collaboration to develop the Ragged Mountain Area. The potential collaboration contemplated joint acquisition of the BDS assets, improvements to the existing BDS pipelines, and joint development of new pipelines to serve the area. These discussions, however, quickly foundered.

14. On or about December 23, 2004, the BLM announced a Notice of Competitive Lease Sale that included three tracts in the Ragged Mountain Area, COC068350 (comprising 320 acres), COC068351 (comprising 1280 acres) and COC068352 (comprising 1404 acres). The three leases covered areas contained in SGI's September 2004 expression of interest. The auction was set to occur on February 10, 2005.

15. Both SGI and GEC were independently interested in certain of the tracts that would be auctioned and both likely would have bid—and bid against each other—at the February auction. On or about February 2, 2005, SGI and GEC embarked on discussions to forestall competing against one another for the three BLM leases to be auctioned. These discussions resulted in the drafting of the written MOU by attorneys for SGI and GEC that was executed by the parties on February 8, 2005, just two days before the February 10, 2005 auction.

16. Under the MOU, only SGI would bid at the auction for the three leases in the Ragged Mountain Area offered by the BLM at the February auction. SGI and GEC would jointly set a maximum price for SGI to bid for the three leases. If SGI successfully acquired the leases, it would assign a fifty percent interest to GEC at cost.

17. At the February auction, SGI bid for and obtained the three BLM leases covered by the MOU. GEC attended the auction, but, honoring the terms of the MOU, did not bid. SGI obtained COC068350, COC068351 and COC068352 for $72 per acre, $30 per acre and $22 per acre, respectively.

18. On or about May 10, 2005, SGI and GEC amended the MOU to include an additional lease, COC068490 (comprising 643 acres), in the Ragged Mountain Area set to be auctioned by the BLM on May 12, 2005. The parties agreed to bid as high as $300 per acre for this parcel. Though the defendants had recommenced their discussions regarding litigation settlement and a development collaboration in March 2005, they had not yet been able to reach terms of an agreement.

19. On May 12, 2005, SGI bid for and obtained COC068490 pursuant to the terms of the MOU. Again, GEC attended the auction but did not bid. SGI won the lease with a bid of only $2 per acre.

20. The MOU was not part of a procompetitive or efficiency enhancing collaboration. The defendants did not reach an agreement to engage in a broad collaboration to jointly acquire and develop leases and pipelines in the Ragged Mountain Area until the summer of 2005. The MOU was not ancillary to the latter agreement.

21. As a result of the MOU, the United States, through the BLM, received less revenue that it would have received had SGI and GEC competed for leases in the Ragged Mountain Area at the February and May 2005 auctions. Pursuant to the MOU, SGI and GEC successfully avoided bidding against one another for leases covering approximately 3650 acres. If SGI and GEC had bid against each other, the winner would have paid BLM a higher price.

**V. VIOLATION ALLEGED**

22. The United States hereby incorporates paragraphs 1 through 21.

23. The MOU between SGI and GEC unreasonably restrained competition for the acquisition of BLM leases in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

24. The United States was injured as a result of the unlawful agreement in that it received lower bid payments for leases at the BLM's February and May 2005 auctions than it would have absent the illegal agreement.

**VI. PRAYER FOR RELIEF**

*Wherefore,* Plaintiff prays:

25. That the Court adjudge and decree that the MOU constitutes an illegal restraint of trade in violation of Section 1 of the Sherman Act;

26. That the Court award Plaintiff treble damages for the losses it incurred as a result of Defendants' conduct;

27. That Plaintiff shall have such other relief, including equitable monetary relief, as the nature of this case may require and is just and proper to prevent the recurrence of the alleged violation and to dissipate the anticompetitive effects of the violation; and

28. That Plaintiff recover the costs of this action.

DATED: February 15, 2012.

Respectfully submitted,

**FOR PLAINTIFF UNITED STATES**

s/Sharis A. Pozen
Sharis A. Pozen,
*Acting Assistant Attorney General.*
s/Leslie C. Overton
Leslie C. Overton,
*Deputy Assistant Attorney General.*
s/Patricia A. Brink
Patricia A. Brink,
*Director of Civil Enforcement.*
s/William H. Stallings
William H. Stallings,
*Chief, Transportation, Energy & Agriculture Section.*
s/Kathleen S. O'Neill
Kathleen S. O'Neill,
*Assistant Chief, Transportation, Energy & Agriculture Section.*
s/Sarah L. Wagner
Sarah L. Wagner,
J. Richard Doidge,
J. Chandra Mazumdar.
*U.S. Department of Justice, Antitrust Division, Transportation, Energy & Agriculture Section, 450 Fifth Street NW, Suite 8000, Washington, DC 20530.*
Telephone: (202) 305–8915.
FAX: (202) 616–2441.
E-mail: *sarah.wagner@usdoj.gov*.
Attorneys for Plaintiff United States.

*CERTIFICATE OF SERVICE*

I hereby certify that on February 15, 2012, I mailed or served a copy of the Complaint by certified mail to the following:
L. Poe Leggette,
Fulbright & Jaworksi, LLP,
Republic Plaza, 370 Seventeenth Street, Suite 2150, Denver, CO 80202.
Telephone: (303) 801–2700.
FAX: (303) 801–2777.
Email: *pleggette@fulbright.com*.
Attorney for Defendants SG Interests I, Ltd. and SG Interests VII, Ltd.
Timothy R. Beyer,
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410 Seventeenth Street, Suite 2200, Denver, CO 80202.
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Attorney for Defendant Gunnison Energy Corporation.

s/Sarah L. Wagner
Sarah L. Wagner,
*U.S. Department of Justice, Antitrust Division, Transportation, Energy & Agriculture Section, 450 Fifth Street NW., Suite 8000, Washington, DC 20530.*
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Email: *sarah.wagner@usdoj.gov*.
Attorney for Plaintiff United States.

**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.

**COMPETITIVE IMPACT STATEMENT**

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

**I. NATURE AND PURPOSE OF THE PROCEEDING**

On February 15, 2012, the United States filed a civil antitrust complaint against Defendant Gunnison Energy Corporation (''GEC'') and Defendants SG Interests I, Ltd. and SG Interests VII, Ltd. (''SGI'') alleging that GEC and SGI violated Section 1 of the Sherman Act, 15 U.S.C. 1.

Prior to 2005, GEC and SGI were separately engaged in exploration and development of natural gas resources in the Ragged Mountain Area (or ''RMA'') of Western Colorado.[2] Recognizing that they would be the primary competitors to acquire three natural gas leases for exploration and development on federal lands in the RMA that were to be auctioned by the Bureau of Land Management (''BLM'') in February 2005, GEC and SGI executed a Memorandum of Understanding (the ''MOU'') on the eve of the auction pursuant to which they agreed not to compete for the leases. Instead, under the MOU, SGI would bid at the auction and then assign a fifty percent interest in the acquired leases to GEC. The parties extended the MOU to include a fourth lease auctioned by the BLM in May 2005. As a result of the MOU, the United States received substantially less revenue from the sale of leases than it would have had SGI and GEC competed at the auctions.

At the same time the Complaint was filed, the United States also filed an agreed-upon proposed Final Judgment that would remedy the violation by having SGI and GEC each pay damages of $275,000 to the United States. The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

**II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION**

**A. Defendants**

SG Interests I, Ltd. and SG Interests VII, Ltd. are Texas limited partnerships with their headquarters in Houston, Texas. The managing partner both of the limited partnerships is Gordy Oil Company, a Texas corporation. SGI was formed for the purpose of developing natural gas resources in the Ragged Mountain Area. SGI holds, in whole or in part, interests in federal leases on approximately 40,000 acres within the Ragged Mountain Area. It also owns, in whole or in part, interests in and is the operator for natural gas pipelines in the Ragged Mountain Area.

GEC is a Delaware corporation with its principal place of business in Denver, Colorado. GEC holds, in whole or in part, interests in federal leases on approximately 52,000 acres within the Ragged Mountain Area. It also owns, in whole or in part, interests in and is the operator for natural gas pipelines in the Ragged Mountain Area.

**B. Oil and Gas Interests on Federal Lands**

The federal government owns hundreds of millions of acres of land in the United States. The BLM manages natural resources on federal lands, including rights to subsurface oil and natural gas. The BLM sells onshore oil and gas leases to private parties, granting leaseholders the exclusive right to explore and develop oil and gas deposits found on their leased land. The initial term of a BLM onshore oil and gas lease is ten years.

Private parties, such as oil and gas companies, typically acquire onshore oil and gas leases on federal lands at auctions which each regional BLM office conducts as often as quarterly. In advance of each auction, the regional BLM office publishes a Notice of Competitive Lease Sale identifying the lease parcels to be offered at the quarterly auction. Private parties may nominate lands for BLM to consider offering at auction by submitting an ''expression of interest.'' Auctions are conducted orally and openly, with each

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lease starting at a minimum bid of two dollars per acre. Bidding on a lease ends when no other person attending the auction bids a higher price than the then outstanding offer. In addition to the amount of the bid, the winning bidder must make annual rental payments during the life of the lease and, if development is successful, pay a royalty on the value of production from the leases. Revenues from BLM leases flow to the United States Treasury.

At the conclusion of an auction, each successful bidder must submit a lease bid form, which constitutes a legally binding lease offer for the amount of the winning bid. By signing the form, the bidder also certifies that it is qualified to bid and that the bid was ''arrived at independently'' and ''tendered without collusion with any other bidder for the purpose of restricting competition.''

A lease grants the leaseholder the exclusive right for ten years to drill for, extract, remove and dispose of the oil and gas on the leased land. A lessee may assign a lease, or a portion of a lease, to another party with approval from the BLM. Oil and natural gas leases expire at the end of their ten-year term, but may be extended for as long as the lease has at least one well capable of producing oil or natural gas.

**C. The Alleged Violation**

In 2001, SGI and GEC began independently acquiring and developing gas leases in the Ragged Mountain Area. Prior to 2003, their activities generally focused on different parts of the Ragged Mountain Area, with SGI acquiring leases on the eastern side of the area (which BLM has designated as the Bull Mountain Unit Area) while GEC acquired leases along the southern boundary. However, over the course of 2003 and 2004, their interests began to overlap as each sought pipelines and leases held by BDS International, LLC and affiliated entities (collectively, ''BDS'') and as the BLM leased additional parcels. Conflicting efforts by SGI and GEC to acquire assets held by BDS resulted in litigation between Defendants in 2004.

In September 2004, SGI submitted expressions of interest to the BLM for additional lands within the Ragged Mountain Area, including parcels adjacent to leases held by GEC.

In October 2004, GEC and SGI met to discuss the prospect of settling the litigation and entering into a collaboration to develop the Ragged Mountain Area. The potential collaboration contemplated joint acquisition of the BDS assets, improvements to the existing BDS pipelines, and joint development of new pipelines to serve the area. These discussions, however, quickly foundered.

On or about December 23, 2004, BLM announced a Notice of Competitive Lease Sale that included three tracts in the Ragged Mountain Area, COC068350 (comprising 320 acres), COC068351 (comprising 1280 acres) and COC068352 (comprising 1404 acres). The three leases covered areas contained in SGI's September 2004 expression of interest. The auction was set to occur on February 10, 2005.

Both SGI and GEC were independently interested in certain of the tracts that would be auctioned and both likely would have bid—and bid against each other—at the February auction. On or about February 2, 2005, SGI and GEC embarked on discussions to forestall competing against one another for the three BLM leases to be auctioned. These discussions resulted in the drafting of the written MOU by attorneys for SGI and GEC that was executed by the parties on February 8, 2005, just two days before the February 10, 2005 auction. The MOU was not part of a procompetitive or efficiency enhancing collaboration. The Defendants did not reach an agreement to engage in a broad collaboration to jointly acquire and develop leases and pipelines in the Ragged Mountain Area until the summer of 2005. The MOU was not ancillary to the latter agreement.

Under the MOU, only SGI would bid at the auction for the three leases in the Ragged Mountain Area offered by the BLM at the February auction. SGI and GEC would jointly set a maximum price for SGI to bid for the three leases. If SGI successfully acquired the leases, it would assign a fifty percent interest to GEC at cost.

At the February auction, SGI bid for and obtained the three BLM leases covered by the MOU. GEC attended the auction, but, honoring the terms of the MOU, did not bid. SGI obtained COC068350, COC068351 and COC068352 for $72 per acre, $30 per acre and $22 per acre, respectively.

On or about May 10, 2005, SGI and GEC amended the MOU to include an additional lease, COC068490 (comprising 643 acres), in the Ragged Mountain Area set to be auctioned by the BLM on May 12, 2005. The parties agreed to bid as high as $300 per acre for this parcel. Though the Defendants had recommenced their discussions regarding litigation settlement and a development collaboration in March 2005, they had not yet been able to reach terms of an agreement.

On May 12, 2005, SGI bid for and obtained COC068490 pursuant to the terms of the MOU. Again, GEC attended the auction but did not bid. SGI won the lease with a bid of only $2 per acre.

As a result of the MOU, the United States, through the BLM, received less revenue that it would have received had SGI and GEC competed for leases in the Ragged Mountain Area at the February and May 2005 auctions. Pursuant to the MOU, SGI and GEC successfully avoided bidding against one another for leases covering approximately 3650 acres. If SGI and GEC had bid against each other, the winner would have paid BLM a higher price.

**III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT**

The proposed Final Judgment relates to a *qui tam* action captioned *United States ex rel. Anthony B. Gale v. Gunnison Energy Corporation, et al.,* Civil Action No. 09–cv–02471–RBJ–KLM (D. Colo.), and settlements with the United States Attorney's Office for the District of Colorado. Both this action and the *qui tam* action arise from common facts related to BLM auctions in February 2005 and May 2005 and the anticompetitive MOU.

For violations of Section 1 of the Sherman Act, the United States may seek equitable relief, including equitable monetary remedies. *See United States v. KeySpan Corp.,* 763 F. Supp. 2d 633, 638–641 (S.D.N.Y. 2011). Further, where the United States is an injured party by a Section 1 violation, it may seek damages. 15 U.S.C. 15a.

The proposed Final Judgment requires GEC and SGI to each pay $275,000, for a total of $550,000, to the United States within 10 days of entry of the Final Judgment pursuant to instructions provided by the United States Attorney for the District of Colorado. These payments will satisfy claims that the United States has against GEC and SGI under Section 1 of the Sherman Act, as alleged in this action, and the False Claims Act, as set forth in the separate agreements reached between GEC and SGI and the United States Attorney's Office for the District of Colorado (which are Attachments 1 and 2 to the proposed Final Judgment).[3]

As a result of the unlawful agreement in restraint of trade between GEC and SGI, the BLM received lower bid payments. The payment of damages to the United States reflects the likely

[3] The proposed Final Judgment does not preclude the United States from bringing an action against GEC or SGI for any antitrust claims arising from their acquisition and operation of the Ragged Mountain pipeline, as agreed in the Stipulation at paragraph 4.

additional bid revenue that the BLM would have received had SGI and GEC acted as independent competitors at the February and May 2005 auctions. Requiring GEC and SGI to pay damages in these circumstances will protect the public interest by deterring them and other parties from entering into similar anticompetitive agreements in the future.[4]

## IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

## V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register.**

Written comments should be submitted to: William H. Stallings, Chief, Transportation, Energy and Agriculture Section, Antitrust Division, United States Department of Justice, 450 Fifth Street NW., Suite 8000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

## VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States is satisfied, however, that the relief contained in the proposed Final Judgment remedies the violation of the Sherman Act alleged in the Complaint. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

## VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court is directed to 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)(1)(A) & (B); *see generally KeySpan Corp.,* 763 F. Supp. 2d at 637–38 (discussing Tunney Act standards); *United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing standards for public interest determination). In considering these statutory factors, the court's inquiry is necessarily a limited one as the United States is entitled to ''broad discretion to settle with the Defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995).

Under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States' complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, the court's function is ''not to determine whether the proposed [d]ecree results in the balance of rights and liabilities that is the one that will *best* serve society, but only to ensure that the resulting settlement is within the *reaches* of the public interest.'' *KeySpan,* 763 F. Supp. 2d at 637 (quoting *United States* v. *Alex Brown & Sons, Inc.,* 963 F. Supp. 235, 238 (S.D.N.Y. 1997) (internal quotations omitted)). In making this determination, ''[t]he [c]ourt is not permitted to reject the proposed remedies merely because the court believes other remedies are preferable. [Rather], the relevant inquiry is whether there is a factual foundation for the government's decision such that its conclusions regarding the proposed settlement are reasonable.'' *Id.* at 637–38 (quoting *United States* v. *Abitibi-Consolidated Inc.,* 584 F. Supp. 2d 162, 165 (D.D.C. 2008)).[5] The government's predictions about the efficacy of its remedies are entitled to deference.[6]

[4] In 2005, GEC and SGI paid bids totaling approximately $94,000 for the four leases they acquired pursuant to the MOU, resulting in an average per acre price of approximately $25. By paying an additional $550,000, GEC and SGI will have been required to pay approximately $175 per acre, seven times its initial bid amount.

[5] *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981) (''The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General.''). *See generally Microsoft, 56* F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

[6] *Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of

Continued

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel.* & *Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *KeySpan,* 763 F. Supp. 2d at 638 (''A court must limit its review to the issues in the complaint * * *.''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). This language effectuates what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[7]

proposed remedies, its perception of the market structure, and its views of the nature of the case).

## VIII. DETERMINATIVE DOCUMENTS

In formulating the term of the proposed Final Judgment that requires GEC and SGI to each pay $275,000 to the United States in satisfaction of claims that the United States has against each Defendant under this antitrust cause of action and the False Claims Act, the United States considered two documents to be determinative documents within the meaning of the APPA: (1) the Settlement Agreement dated December 9, 2011 between the United States Attorney's Office for the District of Colorado, SGI, and Anthony Gale. This agreement settled False Claims Act claims between the United States, SGI, and Anthony Gale in Civil Action 09–cv–02471–RBJ–KLM (D. Colo.). A copy of this document is attached hereto as Attachment 1. (2) The Settlement Agreement dated February 14, 2012 between the United States Attorney's Office for the District of Colorado, GEC, and Anthony Gale. This agreement settled False Claims Act claims between the United States, GEC, and Anthony Gale in Civil Action 09–cv–02471–RBJ–KLM (D. Colo.). A copy of this document is attached hereto as Attachment 2.

Dated: February 15, 2012

Respectfully submitted,

s/Sarah L. Wagner/
Sarah L. Wagner,
*U.S. Department of Justice, Antitrust Division, Transportation, Energy & Agriculture Section, 450 Fifth Street NW., Suite 8000, Washington, DC 20530.*
Telephone: (202) 305–8915.
FAX: (202) 616–2441.
Email: *sarah.wagner@usdoj.gov.*
Attorney for Plaintiff United States.

*CERTIFICATE OF SERVICE*

I hereby certify that on February 15, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following email addresses: L. Poe Leggette, *pleggette@fulbright.com;* Timothy R. Beyer, *tbeyer@bhfs.com.*

s/Sarah L. Wagner/
Sarah L. Wagner,
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Attorney for Plaintiff United States.

**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.

**FINAL JUDGMENT**

*Whereas* Plaintiff, United States of America, filed its Complaint alleging that Defendants Gunnison Energy Corporation (''GEC'') and SG Interests I, Ltd. and SG Interests VII, Ltd. (collectively ''SGI'') violated Section 1 of the Sherman Act, 15 U.S.C. 1, and Plaintiff and Defendants, through their respective attorneys, have consented to the entry of this Final Judgment without trial or final adjudication of any issue of fact or law, for settlement purposes only, and without this Final Judgment constituting any evidence against or an admission by GEC or SGI with respect to any allegation contained in the Complaint.

*Now, therefore,* before the taking of any testimony and without trial or final adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed:*

## I. JURISDICTION

This Court has jurisdiction of the subject matter of this action and each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted to the United States against GEC and SGI under Section 1 of the Sherman Act, 15 U.S.C. § 1.

## II. APPLICABILITY

This Final Judgment applies to GEC and SGI and to all other persons in active concert or participation with any of them who have received actual notice of this Final Judgment by personal service or otherwise.

## III. PAYMENT

GEC and SGI shall each pay to the United States within ten (10) days of the entry of this Final Judgment the amount of two hundred seventy-five thousand

[7] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone'').

dollars ($275,000), as set forth in the settlement agreements attached hereto as Attachments 1 and 2, to satisfy claims that the United States has against each defendant under both the False Claims Act and the Sherman Act. No additional payments are called for under this Final Judgment.

**IV. RETENTION OF JURISDICTION**

This Court retains jurisdiction to enable 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 of its provisions, to enforce compliance, and to punish violations of its provisions.

**V. PUBLIC INTEREST DETERMINATION**

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and Plaintiff's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

DATED: _____

_____

UNITED STATES DISTRICT JUDGE

[FR Doc. 2012–4246 Filed 2–22–12; 8:45 am]

**BILLING CODE 4410–11–P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

### Proposed Extension of Information Collection Request Submitted for Public Comment; Affordable Care Act Internal Claims and Appeals and External Review Procedures for Non-Grandfathered Plans

**AGENCY:** Employee Benefits Security Administration, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments on the revision of the information collection provisions of its interim final rule at 29 CFR Part 2590.715–2719, Internal Claims and Appeals and External Review Processes for Non-grandfathered Plans, that was published in the **Federal Register** on June 24, 2011 (76 FR 37208). A copy of the information collection request (ICR) may be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office shown in the Addresses section on or before April 23, 2012.

**ADDRESSES:** Direct all written comments regarding the information collection request and burden estimates to G. Christopher Cosby, Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers. Comments may also be submitted electronically to the following Internet email address: *ebsa.opr@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Patient Protection and Affordable Care Act, Public Law 111–148, (the Affordable Care Act) was enacted by President Obama on March 23, 2010. As part of the Act, Congress added Public Health Service Act (PHS Act) section 2719, which provides rules relating to internal claims and appeals and external review processes. The Department, in conjunction with the Departments of the Treasury and Department of Health and Human Services (collectively, the Departments), issued interim final regulations on July 23, 2010 (75 FR 43330), which set forth rules implementing PHS Act section 2719 for internal claims and appeals and external review processes. With respect to internal claims and appeals processes for group health coverage, PHS Act section 2719 and paragraph (b)(2)(i) of the interim final regulations provide that group health plans and health insurance issuers offering group health insurance coverage must comply with the internal claims and appeals processes set forth in 29 CFR 2560.503–1 (the DOL claims procedure regulation) and update such processes in accordance with standards established by the Secretary of Labor in paragraph (b)(2)(ii) of the regulations.

Also, PHS Act section 2719 and the interim final regulations provide that group health plans and issuers offering group health insurance coverage must comply either with a State external review process or a Federal review process. The regulations provide a basis for determining when plans and issuers must comply with an applicable State external review process and when they must comply with the Federal external review process.

The claims procedure regulation imposes information collection requirements as part of the reasonable procedures that an employee benefit plan must establish regarding the handling of a benefit claim. These requirements include third-party notice and disclosure requirements that the plan must satisfy by providing information to participants and beneficiaries of the plan.

On June 24, 2011, the Department amended the interim final regulations. Two amendments revised the ICR. The first amendment provides that plans no longer are required to include diagnosis and treatment codes on notices of adverse benefit determination and final internal adverse benefit determination. Instead, they must notify claimants of the opportunity to receive the codes on request and plans and issuers must provide the codes upon request. The Departments expect that this change will lower costs, because plans and issuers no longer will have to provide the codes on the notices. Plans and issuers will incur a cost to establish procedures to receive, process, and mail the codes upon request.

The second amendment also changes the method plans and issuers must use to determine who is eligible to receive a notice in a culturally and linguistically appropriate manner, and the information that must be provided to such persons. The previous rule was based on the number of employees at a firm. The new rule is based on whether a participant or beneficiary resides in a county where ten percent or more of the population residing in the county is literate only in the same non-English language.

On December 15, 2011, the Office of Management and Budget (OMB) approved the amendments to the ICR under the emergency procedures for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35) and 5 CFR 1320.13 under OMB