the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), for reimbursement of costs incurred and to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Route 940 Drum Site in Tobyhanna Township, Monroe County, Pennsylvania, and a declaration of liability for further response costs to be incurred at the Site. Under the terms of the Consent Decree, the Estate of Herman Martens and Emil Wagner will pay $335,000, John Baymor will pay $40,000, and Summit Tool Corporation will pay $25,000. In addition, Emil Wagner (or his estate) will be obligated to pay to the United States the sum of $300,000 if either one of two contingencies occurs.

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 for the Environment and Natural Resources Division, Department of Justice, Washignton, D.C., 20530, and should refer to *United States* v. *J.E.M. a Partnership,* DOJ Ref. #90–11–3–1539.

The consent decree may be examined at the Office of the United States Attorney, 228 Walnut Street, Harrisburg, PA; the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA; and at the Consent Decree Library, 1120 G Street, NW 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $12.50 (25 cents per page reproduction cost), payable to the Consent Decree library.

Joel M. Gross,

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

[FR Doc. 98–16212 Filed 6–17–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Safe Drinking Water Act

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d), notice is hereby given that on May 19, 1998, the United States, on behalf of the United States Environmental Protection Agency, filed with the United States District Court for the Western District of Washington a modification to the Consent Decree that was entered on June 5, 1996, in *United States* v. *Selleck, Inc. and Robert E. Schaefer,* Civil Action No. C93–1004Z. The modification amends the June 5, 1996 Consent Decree in light of the defendants' agreement to convey the Selleck Water Supply System in its entirety to the Kangley Water Association. Accordingly, the parties agree that their June 5, 1996 Consent Decree should be modified so that only Section III.B (permanent injunction against Robert E. Schaefer) and Section XIV (retention by the district court of jurisdiction) will remain operative and in effect. This modification is expressly conditioned upon the successful completion of the defendants' conveyance to the Kangley Water Association.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed modification to the June 5, 1996 Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Selleck, Inc. and Robert E. Schaefer,* DOJ Ref. #90–5–1–1–5029.

A copy of the proposed modification to the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. In requesting copies of the consent decree, please refer to *United States* v. *Selleck, Inc. and Robert E. Schaefer.* If you are requesting a copy from the Consent Library, please enclose a check payable to the Consent Decree Library in the amount of $1.00 (25 cents per page reproduction costs).

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and natural Resources Division.

[FR Doc. 98–16213 Filed 6–17–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement; United States v. Enova Corporation

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 Columbia in *United States* v. *Enova Corporation,* Civil No. 98–CV–583 (TFH). The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h).

On March 9, 1998, the United States filed a Complaint seeking to enjoin a transaction in which Pacific Enterprises (''Pacific'') would merge with Enova Corporation (''Enova''). Pacific is a California gas utility company and Enova is a California electric utility company. Enova sells electricity from plants that use coal, gas, nuclear power, and hydropower. Pacific is virtually the sole provider of natural gas and transportation storage services to plants in southern California. The proposed merger would have created a company with both the incentive and the ability to lessen competition in the market for electricity in California. The Complaint alleged that the proposed merger would substantially lessen competition in the market for electricity in California during high demand periods in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

The proposed Final Judgment, filed contemporaneously with the Complaint, (1) orders Enova to sell certain of its generating assets to a purchaser or purchasers acceptable to the United States; and (2) limits Enova's ability to acquire similar assets. The Stipulation also imposes a hold separate agreement that, in essence, requires the defendant to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, Enova's generators subject to the divestiture will be held separate and apart from, and operated independently of, any of its other Enova assets and businesses. A competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

Public comment is invited within the statutory 60-days comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Written comments should be directed to Roger W. Fones, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, 325 Seventh Street, NW., Suite 500, Washington, DC 20530 (telephone (202) 307–6351).

Copies of the Complaint, Stipulation, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust

Division, 325 Seventh Street, NW., Washington, DC 20530 (telephone: (202) 514–2481) and at the office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue., NW., Washington, DC 20001. Copies of any of the materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations & Merger Enforcement, Antitrust Division.

United States District Court, District of Columbia

United States of America, Plaintiff, v. Enova Corporation, Defendant. Civil Action No. 1:98CV00583. Filed: March 9, 1998. Judge: Thomas Hogan.

Stipulation and Order

It is stipulated by and between the undersigned parties, through their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District of Columbia.

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, and without further notice to any party or other proceedings, provided that Plaintiff United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Defendant and by filing that notice with the Court.

3. Defendant shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, or until expiration of time for all appeals of any court ruling declining entry of the proposed Final Judgment, and shall, from the date of signing of this Stipulation, comply with all terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

5. In the event Plaintiff United States withdraws its consent, as provided in Paragraph 2, above, or if the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry to the Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. Defendant represents that the divestiture ordered in the proposed Final Judgment can and will be made, and that they will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Respectfully submitted.

For Plaintiff

United States of America

Jade Alice Eaton,

DC Bar # 939629.

Andrew K. Rosa,

HI Bar # 6366, Attorneys, Antitrust Division, U.S. Department of Justice, 325 Seventh St., NW., Washington, DC 20004, (202) 307–6316, (202) 307–0886.

For Defendant

Enova Corporation

Steven C. Sunshine,

DC Bar # 450078, Shearman & Sterling, 801 Pennsylvania Avenue, NW., Washington, DC 20004, (202) 508–8022.

Dated: March 9, 1998.

Order

It is so ordered, this _____ day of _____, 1998.

_____

United States District Court Judge

Final Judgment

Whereas Plaintiff United States of America (hereinafter ''United States''), having filed its Complaint herein on March 9, 1998, and Plaintiff and Defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trail or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And *whereas* Defendant has agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And *whereas* the essence of this Final Judgment is divestiture of assets to ensure that competition, as alleged in the Complaint, is not substantially lessened;

And *whereas* Plaintiff requires Defendant to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas Defendant has represented to Plaintiff that as to the divestiture ordered herein Defendant will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before the taking of any testimony, and without trail or adjudication or admission of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby Ordered, Adjudged, and Decreed as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and the subject matter of this action. The Complaint states a claim upon which relief may be granted against Defendant under Section 7 of the Clayton Act, as amended. 15 U.S.C.A. § 18 (West 1997).

II. Definitions

As used in this Final Judgment:

A. ''Acquire'' means obtaining any interest in any electricity generating facilities or capacity, including, but not limited to, all real property, deeded development rights to real property, capital equipment, buildings, fixtures, or contracts related to the generation facility, and including all generations, tolling, reverse tolling, and other contractual rights.

B. ''California Generation Facilities'' means (1) electricity generation facilities in California in existence in January 1, 1998, excluding such facilities that are rebuilt, repowered, of activated out of dormancy after January 1, 1998, as long as such rebuild, repower, or activation out of dormancy project, if done by Defendant, begins with one year of purchase; and (2) any contract for operation and sale of output from generating assets of the Los Angeles Department of Water and Power (''LADWP'').

C. ''California Public Power Generation Management Services Contract'' means a bona fide contract for managing for operation and sale of output from California Generation Facilities owned by a municipality, an irrigation district, other California state authority, or their agents on January 1, 1998; provided, however, that a contract for managing the operation and sale of output from generation assets of LADWP shall not be deemed a California Public Power Generation Management Services Contract.

D. ''Common Facilities'' means those facilities associated with the generation assets to be divested that are located on

or near such assets, and that are necessary to the operation of non-generating aspects of Enova's electric business, including, but not limited to, the operation of Enova's distribution, transmission, and communications systems.

E. ''Control'' means to have the ability to set the level of output of an electricity generation facility.

F. ''Divestiture Assets'' means the Encina and South Bay electricity generation facilities owned by Enova at Carlsbad and Chula Vista, California, including, but not limited to, all real property rights necessary to the operation of the facilities; buildings, generation equipment, inventory, fixed assets and fixtures, materials, supplies, on-site warehouses or storage facilities, and other tangible property to improvements used in the operation of the facilities; licenses, permits (including but not limited to environmental permits and all permits from federal or state agencies), and authorizations issued by any governmental organization relating to the facilities, and all work in progress on permits or studies undertaken in order to obtain permits; plans for design or redesign of these electricity generating assets; contracts (including but not limited to customer contracts), agreements, leases, commitments, and understandings pertaining to the facilities and their operations; customer lists, and marketing or consumer surveys relating to these electricity generating assets; contracts for firm capacity and energy of longer than three months relating to these assets; records maintained by Enova necessary to operation of these assets; and all other interests, assets or improvements customarily used in the generation of electricity at these facilities.

G. The terms ''Enova'' and ''Defendant'' mean Enova Corporation, a California corporation headquartered in San Diego, California, and includes its successors and assigns, and its parents, subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

H. The terms ''Independent System Operators'' or ''ISO'' means an entity that operates the intrastate gas transmission pipelines and related facilities of Pacific Enterprises. ''Operates'' includes full operational and pricing control over all such facilities and total authority to determine whether and how much capacity is available in the intrastate pipeline, whether curtailment of transmission service is require on any part of that system, whose service is curtailed, and the prices to be charged.

I. ''Pacific'' means Pacific Enterprises, a California corporation headquartered in Los Angeles, California, and includes its successors and assign, and its parents, subsidiaries, directors, officers, managers, agents, and employee acting for or on behalf of any of them.

J. ''Portland General Electric Contract'' means the contracts, dated November 15, 1985, for 75 MW of firm capacity and associated transmission.

K. The terms ''Auction Procedures'' and ''California Auction Procedures'' mean the auction procedures set forth in a decision addressing Enova's application under section 851 of the California Public Utilities Code to divest the Divestiture Assets.

L. The term ''Southern California'' means the counties in California currently served by Pacific's gas pipelines.

III. Applicability

A. The provisions of this Final Judgment apply to Defendant, its successors and assigns, parents, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Enova shall require, as a condition of the sale or other disposition of all or substantially all of its assets, or of a lesser business unit that includes Enova's business of intrastate transmission and retail distribution and sale of natural gas, that the transferee agree to be bound by the provisions of this Final Judgment.

IV. Divestiture

A. Defendant is hereby ordered and directed, in accordance with the terms of this Final Judgment, and specifically in accordance with the schedule in this section, to divest the Divestiture Assets to a purchaser or purchasers acceptable to the United States, in its sole discretion. Purchasers whose bids are accepted by the United States under Section IV(D)(3) will be deemed acceptable.

B. Except as provided in Section VI, these divestitures shall occur through the Auction Procedures and shall be subject to necessary approvals by the California Public Utilities Commission (''CPUC'') and other governmental authorities.

C. Defendant shall use its best efforts to accomplish the divestiture as expeditiously as possible, but in any event within the schedule set forth in Section IV(E) below. These efforts shall include, but are not limited to, making the necessary regulatory filings and applications in a timely fashion and using its reasonable best efforts to obtain such approvals as expeditiously and timely as possible.

D. Certain Conditions on the Auction Procedures.

1. Enova may reject any bid submitted by any party for all or part of the Divestiture Assets if the bid offers consideration in an amount less than the book value of such assets as reflected on the most recent regularly prepared balance sheet of Enova at the time the bid is submitted; provided, however, that nothing in this section shall prevent the CPUC from setting a minimum bid price or rejecting any bid on the basis of price or otherwise.

2. Enova may structure its requests for bids to require reasonable easements, licenses, and other arrangements for the continued operation of Common Facilities by Enova.

3. Before Enova can accept a bid by a potential purchaser received under the Autcion Procedures with respect to any of the Divestiture Assets to be divested, the bid must be screened by the United States as specified in this section. Enova shall provide to the United States copies of all bids and any other documents submitted by any potential purchaser pursuant to the Auction Procedures. The United States shall have thirty days from the date it receives a copy of a bid to notify Enova that the potential bid is unacceptable with respect to any of the Divestiture Assets specified in the bid; provided, however, the United States may extend the thirty-day review period for any such bid for one additional thirty-day period by providing written notice to Enova; provided further, in all cases the period for review of potential bids by the United States shall expire no later than the earlier of five days prior to the date set by the CPUC for submission of the proposed winning bid by Enova or the thirty-day period (with one possible thirty-day extension) described above. If the United States does not notify Enova that a proposed bid is unacceptable within the applicable time period specified above, the purchaser making such bid shall be deemed acceptable by the United States with respect to all of the Divestiture Assets specified in that bid. The United States shall base its review of all potential bids screened pursuant to this paragraph solely on the criteria identified in Section IV(I) of this Final Judgment. The United States shall take all appropriate and necessary steps to keep the information received pursuant to this section confidential.

E. Timing.

1. Enova shall submit applications for authorization and approval of the auctions specified in Paragraph IV(B) above for the Divestiture Assets no later than ninety days after notice of entry of this Final Judgment.

2. Enova shall complete the sale of the Divestiture Assets as soon as practical after the receipt of all necessary governmental approvals; provided, however, if the sale of any of the Divestiture Assets is not completed within eighteen months after the date of the entry of this Final Judgment, a trustee shall be appointed pursuant to Section VI of this Final Judgment to effect the divestiture of any unsold assets; provided further, the United States may extend the eighteen-month period by six months by servicing written notice on Enova prior to the expiration of the eighteen-month period; provided further, Enova and the United States may be mutual agreement extend further the time in which any of the Divestiture Assets shall be sold.

F. In accomplishing the divestiture ordered by this Final Judgment, Defendant promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. The California Auction Procedures shall be deemed to satisfy this requirement. Defendant shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendant shall make known to any person making an inquiry regarding a possible purchase of the Divestiture Assets that the assets defined in Section II(F) are being offered for sale. Defendant shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the Divestiture Assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Defendant shall make available such information to Plaintiff at the same time that such information is made available to any other person.

G. Defendant shall not interfere with any negotiations by any purchaser to employ any employee of the Defendant necessary to the operation of Divestiture Assets.

H. Defendant, shall, at minimum, permit prospective purchasers of the Divestiture Assets to have reasonable access to personnel and to make such inspection of the Divestiture Assets, and any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

I. Unless the United States otherwise consents in writing, the divestiture or divestitures pursuant to this section, or by the trustee appointed pursuant to Section VI of this Final Judgment, shall include the Divestiture Assets as specified in this Final Judgment (though not necessarily all to the same purchaser) and be accomplished by selling or otherwise conveying the Divestiture Assets to a purchaser or purchasers in such a way as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between any purchaser and Defendant give Defendant the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively in the provision of electricity in California; provided, however, the purchaser need not continue operation of these assets.

V. Acquisition

A. General Prohibitions.

1. Defendant is enjoined from acquiring California Generation Facilities without prior notice to and approval of the United States. Such prior approval shall be within the sole discretion of the United States.

2. Defendant is enjoined from entering into any contracts that allow Defendant to control any California Generation Facilities without prior notice to and approval of the United States. Such prior approval shall be within the sole discretion of the United States.

B. Limitations on Prohibitions.

1. Acquisition cap—Defendant may acquire or control California Generation Facilities without prior approval of the United States if Defendant does not own or control, in the aggregate, more than 500 MW of capacity of California Generation Facilities. The capacity of Defendant's existing nuclear generation assets are excluded from the calculation of whether the 500 MW cap has been reached so long as the prices Enova receives for electricity generated by the existing nuclear generation assets are fixed by law or regulation. The Portland General Electric Contract capacity (75 MW) shall be included in the calculation of whether the 500 MW cap has been reached (reducing the total available to 425 MW), unless and until the Portland General Electric Contract terminates or is divested. The capacity of the Divestiture Assets shall be included in the calculation of whether the 500 MW cap has been reached, as long as Defendant owns such assets.

2. Acquisitions above the cap—In any event, the Defendant may acquire or control, California Generation Facilities in excess of 500 MW, subject to the prior approval of the United States as provided in Paragraphs V(A)(1) and V(A)(2).

C. Exceptions.

1. Outside California—Defendant may own, operate, control, or acquire any electricity generation facilities other than California Generation Facilities.

2. Cogeneration facilities—Defendant may own, operate, or control any cogeneration or renewable generation facilities in California.

3. Tolling agreements—Defendant may enter into tolling and reverse tolling agreements with any electricity generation facilities in California, provided Defendant does not control such facilities; provided further, that all such tolling and reverse tolling agreements include the following provision: ''In accordance with the Final Judgment in *United States v. Enova Corporation*, entered on [date], Enova's successors and their affiliates shall not have any ability to set the level of output of this electricity generation facility.''

4. California Public Power Generation Management Services Contracts.—Defendant's entry into California Public Power Generation Management Services Contracts is not prohibited under Section V(A)(2) above, regardless of whether the contract allows for Defendant to exercise control of such facilities, and such contracts shall not be included in the calculation of whether the Acquisition Cap in Section V(B)(1) has been reached; provided however, Defendant may not enter into California Public Power Generation Management Services Contracts that allow the Defendant to exercise control of such facilities, without notice to the United States.

5. Notification of California Public Power Generation Management Services Contracts—Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C.A. § 18a (West 1997) (''HSR Act''), for each California Public Power Generation Management Services Contract it enters for which notice is required, Defendant shall provide notice thereof to the United States as follows:

a. Notification shall be provided within five days of acceptance of the contract, and shall include copies of all contracts, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the California Public Power Generation Management

Services Contract that was the subject of the transaction.

b. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

D. Methods of Obtaining Prior Approvals and of Providing Notice—Defendant shall obtain prior approval and provide notice by sending the required materials to Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20004.

E. Other Legal Requirements—Nothing in this section limits the Defendant's responsibility to comply with the requirements of the HSR Act, with respect to any acquisition.

VI. Appointment of Trustee

A. In the event that Defendant has not divested all of the Divestiture Assets within the time specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States to effect the divestiture of the assets.

B. At or anytime after the appointment of the trustee, if either party believes a conflict may exist between this Final Judgment and an order of the CPUC relating to the Divestiture Assets, that party may move the Court for a resolution of the conflict in light of the status of any relevant CPUC proceeding and the purpose of this Final Judgment.

C. After the appointment of the trustee becomes effective, the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections VI and VII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section VI(D) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Defendant any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States, in its sole judgment. Defendant shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Defendant must be conveyed in writing to Plaintiff and the trustee no later than ten calendar days after the trustee has provided the notice required under Section VII of this Final Judgment.

D. The trustee shall serve at the cost and expense of Defendant, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assist sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Enova and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

E. After the appointment of the trustee becomes effective, Defendant shall take no action to interfere with or impede the trustee's accomplishment of the required divestiture, and shall use its best efforts to assist the trustee in accomplishing the required divestiture, including best efforts to effect all necessary regulatory approvals. Subject to a customary confidentiality agreement, the trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities related to the Divestiture Assets, and Defendant shall develop such financial or other information relevant to the Divestiture Assets to be divested customarily provided in a due diligence process as the trustee may reasonably request. Defendant shall permit prospective purchasers of the Divestiture Assets to have access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and information as may be relevant to the divestiture required by this Final Judgment.

F. After the appointment of the trustee becomes effective, the trustee shall file monthly reports with Defendant, the United States, and the Court, setting forth the trustee's efforts to accomplish divestiture of the Divestiture Assets as contemplated under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Defendant may request that information in such reports that has been provided as confidential by the Defendant be deemed confidential by the trustee. If the trustee does not deem the information to be confidential, the information shall not be made public before Defendant has an opportunity to seek a protective order from the Court. The trustee shall maintain full records of all efforts made to divest these operations.

G. If the trustee has not accomplished the divestiture required by Section IV of this Final Judgment within six months after the appointment of the trustee becomes effective, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such reports to Defendant and the United States, who shall each have the right to be heard and to make additional recommendations. The Court shall thereafter enter such orders as it shall deem appropriate to accomplish the purposes of this Final Judgment, which shall, if necessary, include extending the term of the trustee's appointment by a period requested by the United States.

VII. Notification

Within two business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or VI of this Final Judgment, Defendant of the trustee, whichever is then responsible for effecting the divestiture, shall notify Plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify Defendant. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who

offered to, or expressed an interest in or a desire to, acquire any ownership interest in the assets that are the subject of the binding contract, together with full details of same. Within fifteen calendar days of receipt by Plaintiff of such notice, Plaintiff may request from Defendant, the proposed purchaser, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture and the proposed purchaser. Defendant and the trustee shall furnish any additional information requested within fifteen calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty calendar days after receipt of the notice or within twenty calendar days after Plaintiff has been provided the additional information requested from Defendant, the proposed purchaser, any third party, and the trustee, if there is one, whichever is later, the United States shall provide written notice to Defendant and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to Defendant and the trustee that it does not object, then the divestiture may be consummated, subject only to Defendant's limited right to object to the sale under Section VI(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed purchaser or upon objection by the United States, a divestiture proposed under Section IV or Section VI shall not be consummated. Upon objection by Defendant under the proviso in Section VI(C), a divestiture proposed under Section VI shall not be consummated. Provided, however, a proposed divestiture pursuant to the Auction Procedures approved by the United States under Section IV(D)(3) of this Final Judgment shall be deemed acceptable to the United States under this section.

VIII. Affidavits

A. Within thirty calendar days of the filing of this Final Judgment and every forty-five calendar days thereafter until the divestiture has been completed whether pursuant to Section IV or Section VI of this Final Judgment, Enova shall, with respect to Divestiture Assets, deliver to Plaintiff an affidavit as to the fact and manner of Defendant's compliance with Sections IV or VI of this Final Judgment. Each such affidavit shall include, inter alia, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Defendant has taken to solicit a buyer from the Divestiture Assets and to provide required information to prospective purchasers, including the limitations, if any, on such information.

B. For Divestiture Assets being sold using the California Auction Procedures, during such Auction Procedures, submission of bids to the United States in compliance with Section IV shall satisfy compliance with the required contents of the affidavits in Section VII(A).

C. Within twenty calendar days of the filing of this Final Judgment, Defendant shall deliver to Plaintiff an affidavit which describes in detail all actions Defendant has taken and all steps Defendant has implemented on an on-going basis to preserve the Divestiture Assets pursuant to Section X of this Final Judgment and describes the functions, duties and actions taken by or undertaken at the supervision of the individuals described at Section X(J) of this Final Judgment with respect to Defendant's efforts to preserve the Divestiture Assets. Defendant shall deliver to Plaintiff an affidavit describing any changes to the efforts and actions outlined in Defendant's earlier affidavits filed pursuant to this section within thirty calendar days after the change is implemented. The United States shall take all necessary steps to keep the information received pursuant to this section confidential.

D. Defendant shall preserve all records of all efforts made to preserve and divest the Divestiture Assets.

IX. Financing

Defendant shall not finance all or any part of any divestiture made pursuant to Sections IV or VI of this Final Judgment.

X. Preservation of Assets

Until the divestiture required by the Final Judgment has been accomplished:

A. Defendant shall take all steps necessary to ensure that the Divestiture Assets will be maintained and operated as an ongoing, economically viable and active competitor in the provision of electricity; and that, except as necessary to comply with Sections X (B) to X (K) of this Final Judgment, the management of any electricity generating facilities shall be kept separate and apart from the management of Defendant's other businesses and will not be influenced by Defendant, and the books, records, and competitively sensitive sales, marketing and pricing information associated with electricity generating facilities will be kept separate and apart from that of Defendant's other businesses.

B. Defendant shall use all reasonable efforts to maintain and increase sales of electricity by the Divestiture Assets, and Defendant shall use reasonable efforts to maintain and increase promotional, advertising, sales, marketing, and merchandising support for wholesale electricity sold in California.

C. Defendant shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition and shall maintain and adhere to normal maintenance schedules for the Divestiture Assets.

D. Defendant shall provide and maintain sufficient lines of sources of credit to maintain the Divestiture Assets as viable, ongoing businesses.

E. Defendant shall provide and maintain sufficient working capital to maintain the Divestiture Assets as viable ongoing businesses.

F. Defendant shall not, except as part of a divestiture approved by the United States, remove, sell, or transfer any of the Divestiture Assets, other than sales in the ordinary course of business.

G. Unless it has obtained the prior approval of the United States, Defendant shall not terminate or reduce the current employment, salary, or benefit arrangements for any personnel employed by Defendant who work at, or have managerial responsibility for, electricity generating facilities, except in the ordinary course of business.

H. Defendant shall continue all efforts in progress to obtain or maintain all permits necessary for operating their electricity generating capacity.

I. Defendant shall take no action that would jeopardize its ability to divest the Divestiture Assets as viable, ongoing businesses.

J. Defendant shall appoint a person or persons to oversee the Divestiture Assets, and who will responsible for Defendant's compliance with Section X of this Final Judgment.

K. Prior to the sale of Divestiture Assets, Enova shall not transfer any of the Divestiture Assets to any affiliate not regulated as a public utility by the CPUC.

XI. Compliance Inspection

Only for the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Plaintiff, including consultants and other persons retained by the United

States, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendant made to their principal offices, shall be permitted:

1. Access during office hours of Defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Defendant, who may have counsel present, relating to enforcement of this Final Judgment; and

2. Subject to the reasonable convenience of Defendant and without restraint or interference from it, to interview, either informally or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to Defendant's principal offices, Defendant shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment.

C. No information or documents obtained by the means provided in Section VIII or Section XI of this Final Judgment shall be divulged by a representative of the Plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the Plaintiff is a party, including grant jury proceedings, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendant to Plaintiff, Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendant marks each pertinent page of such material, ''Subject to claim of protection under Rules 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten calendar days notice shall be given by Plaintiff to Defendant prior to divulging such material in any legal proceeding, other than a grant jury proceeding.

XII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and direction as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIII. Termination and Modification

A. This Final Judgment will expire on the tenth anniversary of the date of its entry unless the Final Judgment is terminated pursuant to Section XIII(B); provided, however, the Final Judgment will terminate when the United States notifies Enova and the Court that Enova has provided to the United States documentation sufficient to prove (1) that the merger between Enova and Pacific identified in the Complaint has been terminated; or (2) that an Independent System Operator has assumed control of Pacific's gas pipelines within California in a manner satisfactory to the United States. The United States shall, in its sole discretion, determine whether the documentation proffered by Enova is sufficient.

B. After five years from the date it is entered, this Final Judgment shall terminate if Defendant demonstrates to the Court that (1) it no longer owns any of its existing nuclear assets, or (2) such assets are no long in operation, or (3) the output of those nuclear assets is required by law or regulation to be sold at a fixed price.

C. Enova's obligation to divest an asset shall terminate if any governmental authority permanently revokes any license or permit necessary for the operation of such asset, properly exercises power or eminent domain with respect to such asset, or enters into settlement agreement with Enova regarding he disposition of such asset to a third party.

D. Modification of Section V.

1. In the event that Defendant divests all of its existing nuclear generation assets, the total ownership capacity limit in Section V(B)(1) of this Final Judgment will increase to 800 MW; however, in no event shall the total ownership capacity limit in Section V(B)(1) exceed the greater of 500 MW or 10% of Defendant's total electricity retail sales.

2. In the event that Defendant's total retail electricity sales at any point exceed 8,000 MW capacity, the total capacity ownership limit in Section V(B)(1) of this Final Judgment will be increased up to 10% of such retail electricity sales.

XIV. Effect of Regulatory Approvals

The approvals by the United States required by his Final Judgment for sale of Divestiture Assets are in addition to the necessary approvals by the CPUC or any other governmental authorities for the sale of such assets.

XV. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

_____

United States District Judge

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 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

The United States filed a civil antitrust Complaint on March 9, 1998, alleging that the proposed merger of Pacific Enterprises (''Pacific'') and Enova Corporation (''Enova'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that Pacific is a California gas utility company and Enova is a California electric utility company, and that this transaction would give the combined company (''PE/Enova'') both the incentive and the ability to lessen competition in the market for electricity in California. In particular, this acquisition would give PE/Enova the incentive and ability to limit the supply of natural gas to California electric power plants, raising their costs and the price California consumers pay for electricity. The acquisition is thus likely to lessen competition substantially among providers of electricity, and so violate Section 7 of the Clayton Act. The prayer for relief in the Complaint seeks (1) a judgment that the proposed acquisition would violate Section 7 of the Clayton Act; (2) a preliminary and permanent injunction preventing consummation of the proposed merger; (3) an award to the United States of the costs of this action; and (4) such other relief as is proper.

At the same time the Complaint was filed, the United States also filed a proposed settlement that would permit Pacific Enova to merge, but requires a divestiture that would preserve competition in the market for electricity in California. This settlement consists of a Stipulation and Order (''Stipulation'') and a proposed Final Judgment (''Final Judgment'').

The proposed Final Judgment orders Enova to sell all of its rights, titles, and interests in Encina and South Bay electricity generation facilities located at Carlsbad and Chula Vista, California (the ''Divestiture Assets''), to a

purchaser or purchasers acceptable to the United States in its sole discretion.[1] Enova must submit required applications to divest the assets no later than ninety days after entry of the Final Judgment, and complete the divestiture as soon as practicable after receipt of all necessary government approvals, in accordance with the procedures specified in the proposed Final Judgment. The Stipulation and Final Judgment also require Enova to ensure that until the divestiture mandated by the Final Judgment has been accomplished, the management of any electricity generating facilities will be kept separate and apart from the management of Enova's other businesses.

The United States and Enova 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 of it.

II. Description of the Events Giving Rise to the Alleged Violation

A. Enova, Pacific, and the Proposed Transaction

Enova, a California corporation headquartered in San Diego, California, owns San Diego Gas & Electric Co. (''SDG&E''), which is an electric utility that serves the San Diego area. Through SDG&E, Enova is a major provider of electricity in southern California, with approximately $1.6 billion in annual electricity sales. It sells electricity generated by plants that use coal, gas, nuclear power, and hydropower for fuel.

Pacific, through its wholly owned subsidiary Southern California Gas Company, is virtually the sole provider of natural gas transportation services to plants in southern California that use natural gas to produce electricity (''gas-fired generators'' or ''gas-fired plants''). Pacific is also the sole provider of natural gas storage services throughout all of California.

Under an Agreement and Plan of Merger and Reorganization dated October 12, 1996, Enova and Pacific will each become wholly owned subsidiaries of a common holding company parent as soon as all state and federal regulatory approvals have been obtained.

B. Trade and Commerce

The Complaint alleges that the effect of the merger of Pacific and Enova would be to lessen competition substantially in the provision of electricity in California during high demand periods.

California's electricity industry is dominated by Enova and two other regulated, investor-owned utilities. Electricity services are also provided by California public power providers such as municipalities, water districts, irrigation districts and the state of California. As a result of a legislatively mandated restructuring, the California electric power market will experience significant changes in 1998. As of March 31, 1998, most electricity generated in California is bought and sold through the California Power Exchange (''the pool''), a central, computerized bidding system that matches electricity supply and demand during every half-hour period during the day. State regulations require regulated utilities to buy and sell all their electricity through the pool during a four-year transition period.[2]

With the pool, all sellers of electricity send in bids for every half hour in which they want to sell electricity. Similarly, all buyers of electricity send in bids for every half hour in which they wish to buy. The pool allocates power until all demand is met. The price per unit of electricity for any given half hour is determined by the most expensive unit sold that half hour with all sellers receiving that price, regardless of their costs or their bids. Nuclear-powered generators, however, will continue to receive regulated rates for at least four years after the California pool began operation.

Currently, regulated electric utilities sell over 80% of all retail electricity in California. Because these utilities must buy all of their electricity from the pool, the pool prices—the price the utilities pay for the electricity they distribute—will directly affect the price most consumers in California pay for electricity.

Electricity sold in California is generated from power plants using one of four fuels—gas, coal, hydropower, and nuclear—and the costs of generating electricity from these plants differ significantly. Although certain gas-fired plants are more efficient than others, gas-fired plants are in general the most costly to operate. Because they cost the most to operate, the gas-fired plants will bid the highest prices into the pool and are the last ones to be turned on to meet consumer demand for electricity. They operate about 30% to 50% of the time, primarily during periods of high electricity demand, such as the summer when consumer use of air conditioning and other electric-powered appliances increases and less expensive hydroelectric power is unavailable. During these periods, the gas-fired plants, as the most costly to operate and thus the highest bidders into the pool, are able to set the price for all electricity sold through the pool.

Gas-fired power plants cannot and do not switch to other fuels in response to price increases in natural gas transportation or storage services, and in California Pacific controls almost all gas-fired generators' access to gas supply because the state of California has granted Pacific a monopoly on transportation of natural gas within southern California. Consequently, 96% of gas-fired generators in southern California buy gas transportation services from it. Pacific also has a monopoly on all natural gas storage services throughout California. Although regulated by the California Public Utilities Commission (''CPUC''), Pacific has the ability to restrict the availability of gas transportation and storage to consumers, including gas-fired generators, by limiting their supply or cutting them off entirely. Limiting or cutting off gas supply raises the price gas-fired plants pay for delivered natural gas and in turn raises the cost of the electricity they produce.

C. The Relevant Market

The Complaint alleges that the provision of electricity in California during high demand periods constitutes a relevant market for antitrust purposes—that is, in the language of the Clayton Act, it is a ''line of commerce'' and is in a ''section of the country.''

Consumers of electricity in California cannot and do not switch to other products in response to an increase in the price of electricity. Thus, a small but significant and nontransitory increase in prices for electricity would not cause a significant number of electricity consumers to substitute other energy sources for electricity, and electricity is a relevant product for antitrust purposes.

During periods of high demand, California consumers can only obtain electricity from local power plants. There is very limited electricity transmission capacity into California,

[1] The Final Judgment provides that the approvals by the United States required by this Final Judgment for sale of these assets are in addition to the necessary approvals by the California Public Utilities Commission (''CPUC'') or any other governmental authorities for the sale of such assets.

[2] Under these state regulations, the utility companies continue to own California's electricity transmission grid. The transmission grid, however, is under the operational control of an Independent Systems Operator (''ISO''), and distribution continues to be regulated by the CPUC.

with only two major transmission lines leading into the state, one from the hydroelectric and coal-rich northwestern United States, and one from several coal and nuclear plants in Arizona. During peak hours, the two major transmission lines are filled to capacity, and generation located within the state must supply the remaining electricity required by California consumers. Thus, in periods of high demand, consumers are unable to turn sources of electricity generated outside of California, and California is therefore a relevant geographic market for antitrust purposes.

D. Anticompetitive Consequences of the Acquisition

The Complaint alleges that, if the proposed transaction would have the following effects, among others, unless it is restrained:

1. Competition in the market for electricity in California during high demand periods may be substantially lessened; and

2. Prices for electricity to consumers in California during high demand periods are likely to increase.

By virtue of its monopoly over natural gas transportation and storage, Pacific currently has the ability to increase the price of electricity, when during high demand periods, electricity from California gas-fired generators is needed to supplement less costly electricity. Pacific can restrict gas-fired generators' access to gas, which has the effect of raising the cost of gas-fired generators in general. Alternatively, Pacific can cut off or impede the more efficient gas generators' access to gas, leaving higher-cost generators to meet consumer demand for electricity. In either case, Pacific is able to increase the cost of electricity from gas-fired plants, thereby increasing the prices they bid into the pool and ultimately the price of electricity sold through the pool. But Pacific currently owns no electricity generation plants that would benefit from an increase in the pool price for electricity.

Enova, on the other hand, controls over 2600 MW of electricity, some of which comes from lower cost plants that run most of the time, and as a consequence, would benefit from an increase of the price of electricity sold through the pool. However, Enova currently has no ability to increase the price of electricity by raising the costs of competing electric utilities because it does not control any input, such as gas.

Once Pacific's control of gas is combined with Enova's low-cost electricity generation facilities, the merged firm, PE/Enova, would have the ability to raise electricity prices by limiting gas supply to competing gas-fired generators, as well as the incentive to do so. PE/Enova's ownership of lower-cost generation would enable it to profit substantially from any increase in the price of electricity sold through the pool, and these profits would more than offset any losses from reducing its gas transportation and storage sales to competing gas-fired plants. The merged firm, PE/Enova, would thus have the incentive and ability to lessen competition in the market for electricity in California. As a result, consumers would likely pay higher prices for electricity.

E. Entry

Successful entry or expansion in either the market for electricity generation or the market for intrastate natural gas transportation and storage in California would not be timely, likely, or sufficient to prevent any harm to competition. Entry or expansion would be difficult, time consuming, and costly, as well as extremely unlikely. Entry into electricity generation could counteract a post-merger price increase only if the entrants provided significant generation capacity and were not dependent on natural gas to generate electricity. Entry by building new hydro-powered, coal-fired, or nuclear-powered generators is highly unlikely, however. Each of these face substantial safety, environmental, and other regulatory barriers that would make entry costly, time consuming, and uncertain. Similarly, entry by building new lines to transmit electricity from outside California requires myriad environmental, safety, and zoning approvals, which would be difficult, costly, an time consuming to obtain. Finally, California's present regulatory scheme makes it economically impossible for alternative suppliers of natural gas transportation to enter the California market. California's pipeline certification process discourages entry by intrastate firms, while its restrictions on access to intrastate gas transportation markets discourages entry by interstate pipelines.[3]

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve the competition that would have been lost in California's emerging competitive market for electricity had the PE/Enova merger gone forward as originally structured. Within eighteen months after filing the proposed Final Judgment, Defendant must sell all of Enova's rights, titles, and interests in the Divestiture Assets. The assets and interests will be sold to a purchaser or purchasers acceptable to the United States in its sole discretion. In addition, the Final Judgment limits the ability of the merged company to reacquire or control any similar assets, or to enter into contracts to manage generating plants in California.

A. Divestiture

The Final Judgment requires Defendant to sell all generation assets that would likely give PE/Enova the incentive to raise electricity prices.[4] To that end, the Final Judgment requires Defendant to divest all of its low-cost gas generators—1644 MW of generation assets in total. In particular, Defendant is required to divest South Bay plant (951 MW) in Chula Vista, California, and the Encina plant (693 MW) in Carlsbad, California. Because these generators operate in almost all hours of the year and are relatively low-cost, if PE/Enova were to own them, it could earn substantial profits (revenues exceeding its costs) by restricting the supply of natural gas which, as explained above, would increase the overall price for electricity in the pool and thus the price PE/Enova would receive for electricity.

Under the Final Judgment, Enova is required to use its best efforts to sell the Divestiture Assets under auction procedures approved by the CPUC. Enova has already requested that the CPUC begin an auction of all of the Divestiture Assets.[5] Under the Final Judgment, bid proposals will be submitted to the United States for review to determine whether the divestiture to that bidder would be acceptable.

Defendant will have eighteen months after entry of the Final Judgment to auction the Divestiture Assets.[6] The United States may extend this eighteen-month period, and both parties may jointly agree to extend the auction

[3] Entry into gas storage requires access to appropriate geologic formations, such as drained aquifers and abandoned gas fields and sale mines of a particular size and porosity, which, in California, are all owned by Pacific.

[4] The relief in the proposed Final Judgment is intended to remedy only those anticompetitive effects stemming from the PE/Enova merge. Nothing in the Proposed Final Judgment is intended to limit the United States' ability to investigate or to bring actions, where appropriate, challenging other past or future activities of Pacific or Enova.

[5] The CPUC proceeding contemplates 18 months for completion of the divestitures. *See Application of San Diego Gas & Electric Company (U 902–E) for Authority to Sell Electrical Generation Facilities and Power Contracts* before the CPUC (Dec. 19, 1997).

[6] The divestiture period, which is longer than the usual period permitted by the Division, avoids unnecessary conflict with the ongoing state regulatory process for divestiture.

period further. If any part of the Divestiture Assets are not sold within the eighteen months or any extension, Defendant must withdraw those assets from the California auction process and allow them to be sold by a trustee, under specific procedures designed to ensure expeditious sales.

Enova is not required to divest certain generation assets that are not likely to provide an incentive to raise pool prices. These are combustion turbine assets (''CTAs''), nuclear assets, cogeneration assets presently under contract (''Cogeneration Assets''), and a long-term contract with Public Service Company of New Mexico (''New Mexico Contract'').[7]

1. CTAs—The CTAs are seventeen generators scattered throughout California, none of which exceed 20 MW capacity. They are fueled primarily by natural gas, and in some cases by diesel fuel. They are very expensive to run and were built to be used only at times of the very highest peak demand. Owning CTAs gives PE/Enova little, if any, incentive to raise electricity prices—even with increased electricity prices, PE/Enova cannot count either on selling the electricity from these generators or obtaining a price that significantly exceed their costs. Further, air pollution restrictions may prevent operation of certain CTAs during peak summer hours.

2. Nuclear—Enova holds a 20% (or 430 MW) non-operating interest in the San Onofre Nuclear Generating Station (''SONGS'') and its output. PE/Enova, however, will not receive the pool price for SONGS electricity for at least the next four years, because nuclear plants will remain price regulated. If nuclear power prices become deregulated after 2001, the Final Judgment provides that (1) SONGS capacity will count towards calculation of Defendant's reacquisition cap (see discussion of cap, *infra*); and (2) the Final Judgment will remain in effect for ten years instead of five.

3. Congeneration Assets—The cogeneration assets comprise nine contracts of no more than 50 MW each, for a total of 207 MW. Their output is more costly than most of the electricity produced in California and will be sold at a regulated rate. Retention of these assets, therefore, does not provide PE/Enova with the incentive to increase the pool price for electricity.

4. The New Mexico Contract—This contract provides Enova with 100 MW. Given the other divestitures, the small amount of capacity involved, and the fact that the contract expires in less than three years, it provides little incentive to raise the pool price.

B. Limitations on Acquisition

1. *Reacquistion.* The Final Judgment limits Enova's ability to reacquire the same kind of assets that it has been ordered to divest: existing, low-cost assets inside California. These assets are referred to in the Final Judgment as ''California Generation Facilities.[8] At any time during the Final Judgment, if Defendant owns or controls more than 500 MW (total) of California Generating Facilities,[9] then it cannot acquire or gain control of additional California Generation Facilities without prior approval of the United States.[10] Because the Divestiture Assets count towards calculation of the 500 MW acquisition cap, Enova cannot acquire or gain control of any more California Generation Facilities without prior approval by the United States until Enova substantially completes the divestiture.

Prior approval of subsequent acquisitions ensures that PR/Enova does not circumvent the divestiture ordered by the Final Judgment by acquiring or controlling generating facilities that give it the same incentive to raise the pool price for electricity as the Divestiture Assets did. Because of the California electricity market restructuring (which includes CPUS orders requiring major divestiture from regulated utilities), unusual and significant amounts of generating capacity will be readily available for purchase, lease, or contractual control for the next few years.

2. *The Acquisition Cap.* The Final Judgment allows the merged company to own or control 500 MW of existing California Generation Facilities. As a California retail distributor, PE/Enova may operate more effectively if it owns or controls some local capacity. This 500 MW capacity provides PE/Enova a source of back-up electricity for its 1600 MW retail sales in case of problems with electricity supply bought on the open market. At the same time, it does not provide PE/Enova with sufficient wholesale electricity sales to give it the incentive to raise the pool price for electricity by reducing its gas sales.

3. *Limitation Applicable Only to Existing California Assets.* The Final Judgment does not impose the prior approval requirement on Enova's acquisition of assets outside of California. As noted above, Pacific has the ability to raise the price of electricity during high demand periods because significant transmission constraints limit electricity imports from outside of the state. These import constraints mean that PE/Enova cannot count on the sale in the California pool of electricity from assets outside California, and thus acquisition of such assets would not give it the incentive to raise the pool price.

In addition, the Final Judgment does not prevent PE/Enova from building new capacity in California, or from acquiring capacity built in California after January 1, 1998. New capacity will only be built in California if the output is inexpensive enough to be sold in many hours. By increasing the amount of less expensive power available to meet demand, new, low-cost capacity will reduce the number of hours in which the most costly gas-fired capacity is needed. This in turn will limit PE/Enova's ability to raise the pool price since it is more costly and difficult for PE/Enova to restrict gas to more numerous low-cost plants. For the same reasons, the Final Judgment allows the merged company to acquire or gain control of plants that are rebuilt, repowered, or activated out of dormancy after January 1, 1998. Output from such plants is the equivalent of output from new-build capacity.

Finally, Enova may own, operate, and control any cogeneration or renewable resources and may enter into tolling agreements and reverse tolling agreements,[11] so long as it does not

[7] Although the Final Judgment does not place any additional obligation on the Defendant to sell any assets beyond South Bay and Enicina, the Defendant has applied to the CPUC to sell all its generation assets, including the nuclear assets, the CTAs, and the Cogeneration Assets, in the CPUC auction. *See Application of San Diego Gas & Electric Company (U 902–E) for Authority to Sell Electrical Generation Facilities and Power Contracts* before the CPUC (Dec. 19, 1997).

[8] The Final Judgment specifically defines ''California Generation Facilities'' to mean ''(1) electricity generation facilities in California in existence on January 1, 1998, excluding such facilities that are rebuilt, repowered, or activated out of dormancy after January 1, 1998, as long as such rebuilding, repowering, or activation out of dormancy project, if done by Defendant, begins within one year of purchase; and (2) any contract for operation and sale of output from generating assets of the Los Angeles Department of Water and Power.''

[9] A contract with Portland Gas & Electric for 75 MW, along with the same amount of firm transmission capacity, is included in the 500 MW cap, because it is a source of low-cost generation that can be sold in the pool. The Final Judgment allows Defendant to keep the contract, which expires Dec. 31, 2013, but reduces the cap by 75 MW until the contract is divested.

[10] The Final Judgment defines ''acquire'' to include ''obtaining any interest in any electricity generating facilities or capacity,'' and defines ''control'' to mean ''have the ability to set the level of output of an electricity generation facility.''

[11] Tolling agreements allow one company to produce electricity with its own gas at another company's generator for a set fee. Reverse tolling

Continued

control the plan's output level. None of these arrangements or facilities will provide PE/Enova significant additional ability or incentive to raise the price for electricity by reducing its gas sales.

C. Limitations on Management Contracts

The Final Judgment provides a check on Enova's ability to acquire control of California Public Power Provider (''CPPP'') owned assets through management contracts.[12] With the exception of Los Angeles Department of Water and Power's (''LADWP'') facilities, the generation facilities owned by CPPPs are primarily small, gas- and oil-fired or hydroelectric plants. Management contracts enable CPPPs to hire experts in generation management to run their plants for them. The current investor-owned utilities, including Enova, plan to compete for these contracts. Under these contracts, the manager may obtain control of the generation facilities and all or most of the profits which, if PE/Enova were the manager, could give it the incentive to raise electric prices.

The Final Judgment directs that Defendant shall provide notice to the United States of any management contract that Defendant enters, unless such management contract is reportable under the Hart-Scott-Rodino Antitrust Improvements Act. The notice provision balances the efficiencies of competition for CPPP management contracts with the possible anticompetitive effect from Defendant controlling CPPP assets. It enables the United States to monitor Defendant's level of capacity control without removing it as a viable competitor for these contracts.

If PE/Enova were to enter into a management contract with LADWP, however, it would be required to obtain prior approval from the United States. LADWP controls 3700 MW of capacity in or directly linked to California. A large part of this capacity is low cost. Absent the prior approval requirement, the merged company could regain in one transaction even more incentive to raise the pool price than it had before auctioning the Divestiture Assets. The probable competitive harm threatened by Defendant's sudden reacquisition of all or a substantial part of LADWP's 3700 MW of generation via management contacts more than offsets possible efficiencies gained by Enova bidding on a LADWP management contracts.

D. Termination or Modification of the Final Judgment

The Final Judgment—and its prior approval and notice obligations—remain in effect until the tenth anniversary of the date of its entry unless the Final Judgment is terminated earlier under specific conditions. The Final Judgment also provides that the reacquisition limitations will be modified under certain conditions.

1. *Termination of the Final Judgment.* The Final Judgment provides that it shall terminate at any time if the United States determines that the merger between Enova and Pacific identified in the Complaint has been terminated. It will also terminate if the United States determines that an Independent System Operator (''ISO'') has assumed control of Pacific's gas pipelines within California. In that event, PE/Enova will lose the ability to control access to gas transportation and storage. Without these tools, the merged company will not be able to raise the price for electricity sold through the pool by reducing its gas sales, and the basis for the Final Judgment would be removed.

In addition, the decree will terminate after five years under certain conditions. As noted above, the decree imposes continuing prior approval and notice obligations to ensure that PE/Enova does not simply reacquire assets similar to those it has divested, which it could readily do during the restructuring of California's electricity market.[13] Most of the changes in ownership in electric generation and control should occur in the next five years. Hence termination of the decree at the end of five years would be reasonable.

There would be a cause for concern, however, if PE/Enova could sell SONGS capacity at the unregulated pool price—it would be in essence be acquiring 430 MW of output without opportunity for the government to challenge. For this reason, the decree will terminate in five years only if (1) Enova no longer owns any of its existing nuclear assets; (2) its nuclear assets are no longer in operation; or (3) the output of those nuclear assets is required by law or regulation to be sold at a fixed price.

Finally, the Final Judgment will partially terminate as to any Divestiture Asset if any governmental authority permanently revokes any license or permit necessary for the operation of such asset, properly exercises power or eminent domain with respect to such asset, or enters into a settlement agreement with Enova regarding the disposition of such asset to a third party.

2. *Modification of Reacquisition Limits.* The Final Judgment provides that the 500 MW ownership cap may increase under two conditions: (1) If Enova divests all of its existing nuclear generation assets, the acquisition cap will increase to 800 MW; and (2) if defendant's total retail electricity sales at any point exceed 8,000 MW the ownership cap will be increased up to 10% of such retail electricity sales. The first condition allows an adjustment of the ownership cap in the event the SONGS is sold to replace a portion of the SONGS generation. (The 500 MW cap is a cap on acquisitions in addition to holding SONGS.) The second condition provides for the possibility that SONGS is not sold but that Enova's retail sales exceed 8,000 MW, and it allows defendant sufficient local generation to back up its expended retail sales.

E. Trustee Provisions

Until the ordered divestiture takes place, Enova must take all reasonable steps necessary to accomplish the divestiture, and cooperate with any prospective purchaser. If defendant does not accomplish the ordered divestiture within the specified time period, the proposed Final Judgment provides for procedures by which the Court shall appoint a trustee to complete the divestiture. In that case, Defendant must cooperate fully with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that Defendant will pay all costs and expenses of the trustee. The trustee's compensation will be structured so as to provide an incentive for the trustee to obtain the highest price for the assets to be divested, and to accomplish the divestiture as quickly as possible. After the effective date of his or her appointment, the trustee shall serve under such other conditions as the Court may prescribe. After his or her

agreements allow a gas supplier to stop providing natural gas to a generator at the supplier's discretion. The Final Judgment provides that Defendant may enter into tolling and reverse tolling agreements with any electricity generation facilities in California, provided Defendant does not control such facilities; provided further, that all such tolling and reverse tolling agreements include the following provision: ''In accordance with the Final Judgment in *United States* v. *Enova Corporation,* entered on [date], Enova's successors and their affiliates shall not have any ability to set the level of output of this electricity generation facility.''

[12] The Final Judgment defines a specific type of management services contract—a ''California Public Power Generation Management Services Contract''—to mean ''a bona fide contract for managing the operation and sale of output from California Generation Facilities owned by a municipality, an irrigation district, other California state authority, or their agents on January 1, 1998; provided, however, that a contract for managing the operation and sale of output from generation assets of LADWP shall not be deemed a California Public Power Generation Management Services Contract.''

[13] As discussed above in Section III(B)(1), significant amounts of generating capacity will be available for purchase, lease, or contractual control during the next few years.

appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee shall file promptly with the Court a report that sets forth (1) the trustee's efforts to accomplish the divestiture, (2) the reasons, in the trustee's judgment, why the divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee's report will be furnished to the parties and shall be filed in the public docket, except to the extent the report contains information the trustee deems confidential. The parties each will have the right to make additional recommendations to the Court. The Court shall enter such orders as it deems appropriate to accomplish the purposes of this Final Judgment.

F. Provisions for Separate Management

The Stipulation and Final Judgment require Enova to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, the management of any electricity generating facilities shall be kept separate and apart from the management of defendant's other businesses, and will not be influenced by defendant. Enova must appoint a person or persons to oversee the Divestiture Assets and to be responsible for it's compliance with these provisions.

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 attorney's 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 facies* effect in any subsequent private lawsuit that may be brought against Enova.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendant 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 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 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the responses of the United States will be filed with the Court and published in the **Federal Register.**

Written comments should be submitted to: Roger W. Fones, Chief, Transportation, Energy, & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 500, 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 of its Complaint against Defendant. The United States is satisfied, however, that the divestiture of the assets and other relief contained in the proposed Final Judgment will preserve viable competition in the market for electricity in California that otherwise would be affected adversely by the acquisition. Thus, the proposed Final Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the government's Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

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.'' In making that determination the Court *may* consider.

> (1) The competitive impact of such judgment, including termination of alleged violations, provisions of enforcement and modifications, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) the impact of entry of such judgment 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). As the United States Court of Appeals for the District of Columbia Circuit has held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the Final Judgment is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the Final Judgment may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, ''the 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.''[14] Rather,

> absent a shoring of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its response to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairyman. Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th

[14] 119 Cong. Rec. 24598 (1973), *See also United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, *see* 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

Cir.) *cert denied,* 454 U.S. 1083 (1981); *see also Microsoft,* 56 F.3d at 1460–62. Precedent requires that

> 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. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

United States v. *Bechtel,* 648 F.2d at 666 (citations omitted) (emphasis added.[15]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetition effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[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 the public interest.' '' *United States* v. *American Tel. & Tel. Co.,* 552 F. Supp. 131, 150 (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. 10Q1 (1983), *United States* v. *Alcan Aluminum. Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985).

VIII. Determinative Documents

There are no determinative materials of documents within the meaning of the APPA that were considered by the United States in formatting the proposed Final Judgment.

Dated: June 8, 1998.

Respectfully submitted,

Jade Alice Eaton*

Andrew K. Rosa

Trial Attorneys.

U.S. Department of Justice, Antitrust Division, Transportation, Energy & Agriculture Section, 325 Seventh Street, N.W., Suite 500, Washington, DC 20004, (202) 307–6316.

*Counsel of Record.

[15] *See United States* v. *BNS, Inc.* 858 F.2d at 463; *United States* v. *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.,* 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.,* 719 F.2d 558, 565 (2d Cir. 1983).

Certificate of Service

I hereby certify that I have caused a copy of the foregoing Competitive Impact Statement to be served on counsel for defendant in this manner in the manner set forth below:

By first class mail, postage prepaid:

Steven C. Sunshine,

Shearman & Sterling, 801 Pennsylvania Avenue, N.W., Washington, DC 20004.

Jade Alice Eaton,

Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530, (202) 307–6456, (202) 616–2441(Fax).

[FR Doc. 98–16218 Filed 6–17–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 96–2031]

Proposed Modified Final Judgment and Memorandum In Support of Modification

Notice is hereby given that a Modified Final Judgment, Motion to Modify Final Judgment, Memorandum in Support of the Modification of the Final Judgment, Stipulation and Order, and Hold Separate Stipulation and Order have been filed with the United States District Court in the District of Columbia, in *United States et al* v. *USA Waste Services, Inc., et al.,* Civil No. 96–2031.

The existing Final Judgment stems from a 1996 acquisition of Sanifill, Inc., by USA Waste. The Final Judgment was entered to resolve competitive concerns that the Antitrust Division had about the impact of the acquisition in Houston, Texas. Pursuant to the Final Judgment, USA Waste divested Sanifill's small container commercial hauling assets and a USA Waste disposal site in Houston and sold 2,000,000 tons of air space rights for ten years at two USA Waste landfills in the Houston area. The assets were purchased by TransAmerican Waste Industries, Inc. On January 26, 1998, TransAmerican and USA Waste entered into an agreement whereby TransAmerican would be merged into USA Waste, and the Houston assets TransAmerican purchased from USA Waste would be owned by USA Waste.

On May 5, 1998, the United States filed a proposed Modified Final Judgment to modify the Final Judgment in this case. The United States maintained that the proposed acquisition of TransAmerican's commercial hauling and disposal assets in the Houston area would violate the original Final Judgment. The proposed Modified Final Judgment requires USA Waste to divest the TransAmerican commercial small container and disposal assets in the Houston area and provide 2,000,000 tons of air space rights for ten years at two USA Waste landfills in the Houston area.

The Hold Separate Stipulation and Order and the Stipulation and Order ensure that the provisions of the proposed Modified Final Judgment will be observed and that the assets to be divested will be held separate and maintained as a viable competitive entity until the divestiture takes place.

Public comments on the proposed Modified Final Judgment should be directed to J. Robert Kramer, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530 (telephone: 202/307–0924). Such comments and responses thereto will be filed with the Court.

Constance K. Robinson,

Director of Operations & Merger Enforcement.

Stipulation and Order

To further the objectives of the Modified Final Judgment filed with the Court in this matter, it is stipulated by and between the United States of America (''United States''), the State of Texas (''Texas''), USA Waste Services, Inc. (''USA Waste''), and TransAmerican Waste Industries, Inc. (''TransAmerican''), by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over the United States, Texas, USA Waste, and TransAmerican, and venue of this action is proper in the United States District Court for the District of Columbia.

2. The parties stipulate that a Modified Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after completion of the procedures specified in the United States' Explanation of Procedures filed herewith without further notice to any party or other proceedings, provided that the United States and Texas have not withdrawn their consent, which they may do at any time before the entry of the proposed Modified Final Judgment by serving notice thereof on USA Waste and TransAmerican and by filing that notice with the Court.

3. USA Waste and TransAmerican shall abide by and comply with the provisions of the proposed Modified Final Judgment pending entry of the