and state hazardous waste laws and regulations.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, D.C., 20044, and should refer to *United States* v. *Rail Services, Inc.*, D.J. Ref. 90–7–1–728B.

The proposed Consent Decree may be examined at any of the following offices: (1) the Office of the United States Attorney for the Western District of Kentucky, 510 West Broadway, Louisville, Kentucky; (2) the U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia; and (3) the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (telephone (202) 624–0892).

A copy of the proposed 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. Please refer to the referenced case. There is a photocopying charge of $0.25 per page. The total cost for a copy of the proposed Decree and its attachments is $18.00. All checks should be made payable to ''Consent Decree Library.''

Joel M. Gross,

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

[FR Doc. 98–8338 Filed 3–30–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Rochester Gas & Electric Corp.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the *United States District Court for the Western District of New York in United States* v. *Rochester Gas & Electric Corporation*, 97–CV–6294T. 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 June 24, 1997, the United States filed a civil antitrust complaint under Section 4 of the Sherman Act, as amended, 15 U.S.C. 4, alleging that defendant Rochester Gas and Electric (''RG&E'') entered into a contract with the University of Rochester (''University'' or ''UR''), in which RG&E promised UR a number of benefits, including electricity at reduced rates, in exchange for the University's promise not to compete against RG&E in the sale of electricity to consumers. The complaint alleges that this agreement violated Section 1 of the Sherman Act, 15 U.S.C. 1, and seeks a judgment by the Court declaring the defendant's agreement to be an unlawful restraint of trade. The complaint also seeks an order by the Court to enjoin the defendant from other activities in the future having a similar purpose or effect.

The United States and defendant have stipulated that the proposed consent judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. The Court's entry of the proposed final judgment will terminate this civil action against RG&E, except that the Court will retain jurisdiction over the matter for possible further proceedings to construe, modify or enforce the judgment, or to punish violations of any of its provisions.

The proposed consent judgment contains three principal forms of relief. First, RG&E is enjoined from enforcing an anticompetitive agreement with the University. Second, RG&E is enjoined from entering into future agreements with the University or any other competitor or potential competitor that could have similar anticompetitive effects. Third, the proposed final judgment places affirmative obligations on RG&E to pursue an antitrust compliance program directed toward avoiding a repetition of its anticompetitive behavior.

Public comment is invited within sixty days of the publication of this notice. 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 20430 (telephone: (202) 514–2481) and at the office of the Clerk of the United States District Court Western District of New York 272 U.S. Courthouse, 100 State Street, Rockester, New York 14614–1368.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Rebecca P. Dick,

Director of Civil Non-Merger Enforcement, Antitrust Division.

Stipulation

It is stipulated by and between the undersigned partics, by 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 Western District of New York.

2. The parties consent that a Consent 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(b)–(h)), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Consent Judgment by serving notice thereof on defendant and by filing that notice with the Court.

3. Plaintiff is instructed to file and publish its competitive impact statement pursuant to 15 U.S.C. 16(b) within 30 days of the filing of this stipulation.

4. The parties shall abide by and comply with the provisions of the proposed Consent Judgment pending entry of the Consent Judgment, and from the date of the filing of this Stipulation, shall comply with all the terms and provisions of the Consent Judgment as though they were in full force and effect as an order of the Court.

5. In the event plaintiff withdraws its consent, or if the proposed Consent Judgment is not entered pursuant to this Stipulation, this Stipulation and the Consent Judgment shall be of no effect whatever and shall be without prejudice to any party in this or any other proceeding.

Dated: February 20, 1998

For Plaintiff Untied States of America

Joel I. Klein,

Acting Assistant Attorney General.

A. Douglas Melamed,

Deputy Assistant Attorney General.

Rebecca P. Dick,

Deputy Director of Operations.

Roger W. Fones,

Transportation, Energy & Agriculture Section.

Lade Alice Eaton, Nina Hale, Rebekah J. French, Janet R. Urban,

Attorneys, Department of Justice, Antitrust Division—Suite 500, 325 Seventh Street, N.W., Washington, D.C. 20004, (202) 307–6351.

Donna Kooperstein,

Assistant Chief, Transportation, Energy, & Agriculture Section.

For Defendant Rochester Gas and Electric Corporation

David M. Schraver,

NIXON, Hargrave, Devans & Doylellp, Clinton Square, P.O. Box 1051, Rochester, New York 14603, (716) 263–1341.

Order

It is *so ordered,* this 20th day of February, 1998.

Michael A. Telesca,

United States District Judge.

Consent Judgment

Plaintiff, United States of America, filed it Complaint on June 24, 1997. Plaintiff and defendant, by their respective attorneys, have consent to the entry of this Consent Judgment without trial or find adjudication of any issue of fact or law. This Consent Judgment shall not be evidence against or an admission by any party with respect to any issue of fact of law. Defendant has denied any wrongdoing or violation of law. Therefore, before the taking of any testimony and without trial or find adjudication of any issue of fact of law herein, and upon consent of the parties, it is hereby

Ordered, Adjudged, and Decreed, as follows:

I. Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto.

II. Background

Plaintiff's claims in this action are based primarily upon allege conduct related to a provision contained in the Individual Service Agreement between The University of Rochester and Rochester Gas and Electric Corporation, dated March 31, 1994, which provision reads:

6.3 *Study of Alternatives:* The University may, during the term of this Agreement, study alternatives to the acquisition of energy from RG&E as the University deems appropriate; provided, however, that the University shall not solicit or join with other customer of RG&E to participate in any plan designed to provide them with electric power and/or thermal energy from any source other than RG&E.

III. Definitions

As used herein, the term.

(A) ''Agreement'' means any contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons;

(B) ''Defendant'' or ''RG&E'' means Rochester Gas and Electric Corporation, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, and partnerships, and all directors, officers, employees, agents and representatives of the foregoing; the terms ''subsidiary'' and ''affiliate'' refer to any person in which the defendant holds (50 percent or more) ownership or control;

(C) ''Document'' means all ''writings and recordings'' as that phrase is defined in Rule 1001(1) of the Federal Rules of Evidence;

(D) ''Including'' means including but not limited to;

(E) ''Joint venture'' means a unified or integrated method of doing business in which the parties share substantially in the profits, losses and risks of the interprise;

(F) ''Person'' means any natural person, corporation, firm, company, sole proprietorship, partnership, association, institution, governmental unit, or other legal entity;

(G) ''Retail marketing agreement'' means any agreement pursuant to which RG&E acts as a retailer of electricity at an unregulated price or of other related products of services on behalf of a national or regional providers of such electricity, products or services, so long as the agreement does not result in the provider or RG&E being the only provider or retailer of electricity at an unregulated price or such other products or services in Monroe Country;

(H) ''The University'' means the University of Rochester in Rochester, NY.

(I) ''Unregulated price'' means a price of the sale of electricity other than (1) a price which is the result of a regulatory proceeding, order or acceptance of tariff filings, setting or approving specific uniform rates applicable to a class of classes of customers; or (2) a price set by negotiation between a supplier and a customer at a minimum floor price dictated by statute, regulation or order.

IV. Applicability

This Consent Judgment applies to the defendant and to each of its successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of the Consent Judgment by personal service or otherwise.

V. Injunction

RG&E, by this Consent Judgment, shall be enjoined from:

(A) enforcing any clause in any contract with The University of Rochester containing the language quoted in Section II, above, or from including any provision containing that language, without the reference to the University, in an any other flexible rate contract (entered into pursuant to RG&E's Service Classification No. 10 or any replacement to Service Classification No. 10) for its retail electric services;

(B) enforcing or attempting to enforce Paragraph 10 of the Memorandum of Understanding, dated October 27, 1993, between RG&E and the University;

(C) entering into or enforcing a covenant or agreement not to compete in the retail sale of electricity with any competitor or potential competitor in the retail sale of electricity; provided, however, that such an agreement not to compete that is reasonably ancillary to the following types of agreements shall not be interpreted as a violation of this Consent Judgment:

(1) employment contracts;

(2) personal service contracts;

(3) agreements regarding the sale or purchase of a business;

(4) joint ventures or partnerships;

(5) retail marketing agreements;

(6) consulting agreements; and

(7) portfolio management contracts.

VI. Exception

Nothing in this Consent Judgment shall prohibit RG&E from engaging in any conduct which is exempt from or immune under the antitrust laws.

VII. Term

(A) This Consent Judgment shall expire ten years from the date of initial filing, unless earlier terminated pursuant to this Section.

(B) This Consent Judgment shall terminate upon demonstration by RG&E that less than 50% of the non-residential retail sales of electricity made at unregulated prices in Monroe County, New York, were made by RG&E. The percentage threshold in this Paragraph must be: (1) Satisfied in terms of kilowatt-hours of electricity sold; and (2) measured as an average over a consecutive six month period.

(C) The procedure for making the determination described in Paragraph B, above is as follows:

(1) Defendant RG&E shall notify the United States in writing when it

believes the threshold stated in Paragraph B has been satisfied over the requisite period, and shall submit to the United States all supporting data and information.

(2) The United States shall object to the defendant in writing within 60 days of receiving the notice and supporting data and information if the United States condluces that RG&E has not demonstrated that the condition has been satisfied.

(3) If the United States does not object within 60 days, this Consent Judgment shall terminate without further act of either party or of this Court.

(4) If the United States does object, the termination will not become effective except by order of this Court.

VIII. Compliance Program

(A) The defendant is ordered to maintain an antitrust compliance program which shall include designating, within 30 days of entry of this Consent Judgment, an Antitrust Compliance Officer with responsibility for implementing the antitrust compliance program and achieving compliance with this Consent Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of the defendant to ensure that they comply with this Consent Judgment.

(B) The Antitrust Compliance Officer shall:

(1) Distribute, within 60 days of the entry of this Consent Judgment, a copy of this Consent Judgment to all officers and employees with responsibility for making electric power and planning acquisition of electric power and generating capacity;

(2) Distribute in a timely manner a copy of this Consent Judgment to any officer or employee who succeeds to a position described in Section VIII(B)(1);

(3) Brief annually in writing or orally those persons designated in Section VIII(B)(1) on the meaning and requirements of this Consent Judgment and the antitrust laws and advise them that the defendant's legal advisers are available to confer with them regarding compliance with the Consent Judgment and the antitrust laws;

(4) Obtain from each officer or employee designated in Section VIII(B)(1) a written certification that he or she: (a) has read, understands, and agrees to abide by the terms of this Consent Judgment; and (b) has been advised and understands that his or her failure to comply with this Consent Judgment may constitute contempt of court; and

(5) Maintain a record of recipients to whom the Consent Judgment has been distributed and from whom the certification in Section VIII(B)(4) has been obtained.

(C) At any time, if the defendant's Antitrust Compliance Officer learns of any past or future violations of Section V of this Consent Judgment, the defendant shall, within 45 days after such knowledge is obtained or sooner if feasible, take appropriate action to terminate or modify the activity so as to comply with this Consent Judgment.

IX. Certification

Within 75 days after the entry of this Consent Judgment, the defendant shall certify to the plaintiff whether it has designated an Antitrust Compliance Officer and has distributed the Consent Judgment in accordance with Section VIII above.

X. Plaintiff Access

(A) To determine or secure compliance with this Consent Judgment and for no other purpose, duly authorized representatives of the plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant in accordance with Section XI(C) below, be permitted, subject to any legally recognized privilege:

(1) Reasonable access during the defendant's normal business hours to inspect and copy all non-privileged documents in the possession or under the control of the defendant, who may have counsel present, relating to actions enjoined under Section V, termination under Section VII, and the compliance program under Section VIII of this Consent Judgment; and

(2) Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, employees or agents of the defendant, who may have counsel present, regarding such matters.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, the defendant shall submit such written reports, under oath if requested, relating to any matters described in Section X(A)(1) as may be reasonably requested, subject to any legally recognized privilege.

(C) No information or documents obtained by the means provided in Section X shall be divulged by 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 United States is a party, or for the purpose of securing compliance with this Consent Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by the defendant to the plaintiff, the 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 (relating to trade secret or other confidential research, development or commercial information), and the defendant marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then 10 days' notice shall be given by the plaintiff to the defendant prior to disclosing such material in any legal proceeding (other than a grand jury proceeding).

XI. Further Elements of the Consent Judgment

(A) Whenever notice must be provided to a party pursuant to the terms of this Consent Judgment, such notice shall be made by first class mail, return receipt requested, addressed to the following:

To RG&F; Michael T. Tomanino, Esq., Senior Vice President and General Counsel, Rochester Gas and Electric Corporation, 89 East Avenue, Rochester, New York 14649.

To the United States: Joel I. Klein, Assistant Attorney General, Antitrust Division, United States Department of Justice, 10th Street and Pennsylvania Avenue, N.W., Washington, D.C., Washington, D.C. 20530.

or to such other person whom the parties may designate from time to time.

(B) Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Consent Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

(C) Entry of this Consent Judgment is in the public interest.

Dated: _____, 1998.

Hon. Michael A. Telesca,
United States District Judge.

Competitive Impact Statement

Pursuant to Section 2 of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b), the United States files this Competitive Impact Statement

relating to the proposed consent judgment in *United States* v. *Rochester Gas and Electric Corporation*, submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceedings

On June 24, 1997, the United States filed a civil antitrust complaint under Section 4 of the Sherman Act, as amended, 15 U.S.C. 4, alleging that defendant Rochester Gas and Electric (''RG&E'') entered into a contract with the University of Rochester (''University'' or ''UR''), in which RG&E promised UR a number of benefits, including electricity at reduced rates, in exchange for the University's promise not to compete against RG&E in the sale of electricity to consumers. The complaint alleges that this agreement violated Section 1 of the Sherman Act, 15 U.S.C. 1, and seeks a judgment by the Court declaring the defendant's agreement to be an unlawful restraint of trade. The complaint also seeks an order by the Court to enjoin the defendant from other activities in the future having a similar purpose or effect.

The United States and defendant have stipulated that the proposed consent judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. The Court's entry of the proposed judgment will terminate this civil action against RG&E, except that the Court will retain jurisdiction over the matter for possible further proceedings to construe, modify or enforce the judgment, or to punish violations of any of its provisions.

II. Description of the Practices Giving Rise to the Alleged violations of the Antitrust Laws

By the early 1990's regulated electricity rates in New York state had become so high that industrial customers were beginning to look for alternatives to high-priced power, either by relocating to other states or by generating their own electricity.[1] In 1993, the New York Public Service Commission (''PSC'') adopted new regulations that permitted utilities to negotiate individual prices with certain customers (''flexible rate contracts'') rather than charge a uniform tariff. The PSC intended to afford utilities the flexibility to compete with their largest customers' other supply options.

In the meantime, the University of Rochester, a major customer of RG&E, learned that by building a modern, efficient plant to replace the decades-old steam plant used to heat and cool its buildings, it could produce the steam it needed and also produce—or cogenerate—electricity as a byproduct at a negligible cost. The University formed a study group to analyze and evaluate the cogeneration option, and concluded that a 23 Megawatt (MW) plant would be the optimal size for the University's steam and electricity needs. Such a plant would generate up to one-third more electricity that the University needed, but under New York law, the University could sell the excess electricity to other retail customers in competion with RG&E. PSL section 2(13). In addition, such a plant would be cost effective even if the University continued to buy its electric power form RG&E and sold all the power produced by the congeneration plant to others. Thus, the University was a potential competitor from RG&E in the retail electricity market. On July 20, 1993, the University's Board of Trustees authorized construction of a 23 MW plant and allocated $1.3 million to begin the project.

The cogeneration project came to a halt in October 1993, when RG&E induced the University to enter into a Memorandum of Understanding (''MOU''). In part, the MOU resembles an ordinary—and legal— requirements contract between buyer and seller: RG&E agreed to supply the University with electricity at discounted rates, and the University agreed to purchase of all of its power needs from RG&E for seven years.

But the MOU did not stop there—RG&E obtained the University's commitment not to compete for RG&E customers. The bar on competition is unrelated to the electric requirements contract and prohibits the University for seven years for even studying any ''alternative sources of electric power and gas supply'' unless the ''studies and the activities associated with them shall be confined to the service of the University's own needs.'' This provision was intended to and did prevent the University from meeting its steam requirements—which were wholly separate from its demand for electricity—in a manner that would bring it into competition with RG&E.

RG&E and the University formalized the agreement set forth in the MOU by entering a flexible rate contract (the ''Individual Service Agreement'' or ''ISA'') about six months later. Like the MOU, the ISA includes provisions that are not necessary for the respective commitments by the University and RG&E to buy and sell electricity for the University's needs but rather simply prevent UR from competing with RG&E.

- The University may not solicit RG&E customers or seek to supply them with electricity;
- The University may not join in any plan intended to supply electricity to RG&E customers;
- The University may not participate in any plan to provide any RG&E customers with thermal energy; and
- The University may not work with a developer to provide steam to UR and sell electricity to RG&E customers.[2]

As a result of the agreement not to compete, the University abandoned its plans to build the cogeneration plant and enter the retail electric market, depriving RG&E's customers of a competitive alternative. By in effect ''paying'' the University—a potential competitor—not to build the new cogeneration plant, RG&E was free to demand higher prices from the customers the University's plant otherwise could have served.

III. Explanation of the Proposed Consent Judgment

The United States and the defendants have stipulated that a consent judgment, in the form filed with the Court, may be entered by the Court at any time after compliance with the APPA, 15 U.S.C. 16(b)–(h). The proposed judgment provides that the entry of the judgment does not constitute any evidence against or an admission by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the APPA, entry of the proposed judgment is conditioned upon the Court finding that its entry will be in the public interest.

The proposed judgment contains three principal forms of relief. First, RG&E is enjoined from enforcing its anticompetitive agreement with the University. Second, RG&E is enjoined from entering into future agreements with the University or any other competitor or potential competitor that could have similar anticompetive effects. Third, the proposed judgment places affirmative obligations on RG&E to pursue an antitrust compliance program directed toward avoiding a repetition of its anticompetitive behavior.

[1] Re Competitive Opportunities Available to Customers of Electric and Gas Service, 93–M–0229, Order Instituting Proceeding (March 19, 1993) (''March 19 Order'').

[2] These restrictions are set forth in Section 6.3 of the ISA, which reads as follows:

''*Study of Alternatives:* The University may, during the term of this Agreement, study alternatives to the acquisition of energy from RG&E as the University deems appropriate; provided, however, that the University shall not solicit or join with other customers of RG&E to participate in any plan designed to provide them with electric power and/or thermal energy from any source other than RG&E.''

A. Prohibited Conduct

Section V(A) of the proposed judgment prohibits RG&E from enforcing the non-compete language in the ISA and enjoins RG&E from including that language in any flexible rate contract with any other customer. Section V(B) prevents RG&E from enforcing Paragraph 10 of its Memorandum of Understanding with the University, which confines the University's study of alternative energy sources to the service of the University's own needs. Section V(C) broadly enjoins RG&E from entering into or enforcing any agreement not to compete in the retail sale of electricity with any competitor or potential competitor, except where the agreement not to compete is reasonably necessary to achieve the legitimate purposes of certain, specified, common contractual arrangements.

B. Defendant's Affirmative Obligations

Section VIII requires that within thirty (30) days of entry of the judgment, the defendant adopt an affirmative compliance program directed toward ensuring that its employees comply with the antitrust laws. The program must include the designation of an Antitrust Compliance Officer responsible for compliance with the judgment and reporting any violations of its terms. Section VIII further requires that each defendant furnish a copy of the judgment, within sixty (60) days of the date of its entry, to all officers and employees with responsibility for marketing electric power and planning acquisition of electric power and generating capacity. Section IX requires RG&E to certify within seventy-five (75) days that it has distributed those copies and designated an Antitrust Compliance Officer. Copies of the judgment also must be distributed to anyone who succeeds to a position described above.

Furthermore, Section VIII requires RG&E to brief all officers and employees with responsibility for marketing electric power and planning acquisition of electric power and generating capacity as to the defendant's policy regarding compliance with the Sherman Act and with the judgment, including the advice that his or her violation of the judgment could constitute contempt of court.

Under Section X of the proposed judgment, the Justice Department will have access, upon reasonable notice, to each defendant's records and personnel in order to determine compliance with the judgment.

C. Scope of the Proposed Consent Judgment

(1) Persons Bound

The proposed judgment expressly provides in Section IV that its provisions apply to RG&E, to each of its successors and assigns, and to all other persons in active concert or participation with any of them who receive actual notice of the terms of the judgment.

(2) Duration

Section VII provides that the judgment will expire on the tenth anniversary of its entry. The judgment may be terminated earlier in the event of a substantial restructuring of the retail electricity industry in RG&E's service area. The decree terminates if RG&E demonstrates that there has been substantial entry by others into retail sales of electricity made at unregulated prices in Monroe County, New York. Section VII establishes the procedure for making this determination.

(3) Exception

The exception set forth in Section VI of the proposed judgment states that the judgment does not alter RG&E's right to engage in conduct that is exempt from or immune under the antitrust laws. The conduct alleged in the compliant, however, is not immune from the antitrust laws,[3] and the proposed judgment prohibits similar anticompetitive conduct by RG&E in the future.

D. Effect of the Proposed Judgment on Competition

The prohibitions in Section V are designed to ensure that the defendant will compete for retail electric customers and will not limit competition by agreement with competitors or potential competitors who may be able to serve RG&E customers. The eliminating of the prohibited language has had an immediate procompetitive effect. The University has issued a request for proposals to build a cogeneration plant.

The general prohibition of Section V (C) ensures that RG&E will not make future agreements in the future with UR or any other firm to pre-empt new competition before it can even occur. Because future competition will likely come from new market entrants who do not currently compete, the proposed consent judgment explicitly enjoins agreements with potential competitors, some of whom like the University may be current customers of RG&E.

Section V(C)'s prohibition on RG&E entering into any agreement not to compete contains some enumerated exceptions. The exceptions include, for example, employment contracts and contracts to sell a business, which often include agreements not to compete for a limited time period that are ancillary to a lawful purpose. Agreements not to compete in the specific types of contracts specified in Section V(C) are not prohibited by the proposed judgment, but remain subject to the antitrust laws.

RG&E continues to be a virtual monopolist for retail sales of electricity in its service area and a broad prohibition on non-compete clauses with potential competitors is particularly important so long as RG&E maintains its current market dominance. If, however, the retail electric market in RG&E's service territory became subject to effective competition, the prohibition of Section V(C) would no longer be necessary to protect consumers of electricity. In a competitive market, an arrangement between RG&E and one of its numerous competitors would not be likely to restrict output or raise price. Moreover, without market power, RG&E will have less incentive or ability to enter into anticompetitive agreements. For these reasons, Section VI provides that the judgment will terminate once RG&E has less than 50% of the retail sales subject to competitive pricing in its present service area (Monroe County). It is RG&E's burden to establish that this threshold of effective retail electric competition has been satisfied. If the threshold is met, it will mean that barriers to entry into this formerly regulated monopoly market have been removed, and that actual entry has occurred on a significant scale. Unless this substantial restructuring of the industry occurs, the judgment remains in effect.

IV. Remedies Available to Potential Private Plaintiffs

After entry of the proposed judgment, any potential plaintiff who might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal and equitable remedies which that person may have had if the proposed judgment had not been entered. The proposed judgment may not be used, however, as *prima facie* evidence in litigation, pursuant to Section 5(a) of the Clayton Act, as amended, 15 U.S.C. 16(a).

[3] *See United States* v. *Rochester Gas & Elec. Corp.*, No. 97–CV–6294T (W.D.N.Y. Feb. 17, 1998) (order denying defendant's summary judgment motion seeking state action immunity).

V. Procedures Available for Modification of the Proposed Judgment

The proposed judgment is subject to a stipulation between the government and the defendant which provides that the government may withdraw its consent to the proposed judgment any time before the Court has found that entry of the judgment is in the public interest. By it's terms, the proposed judgment provides for the Court's retention of jurisdiction of this action in order to permit any of the parties to apply to the Court for such orders as may be necessary or appropriate for the modification of the judgment, including the demonstration of retail market conditions outlined in Section VI of the decree.

As provided by the APPA (15 U.S.C. 16), any person wishing to comment upon the proposed judgment may, for a sixty-day (60) period subsequent to the publishing of this document in the Federal Register, submit written comments to the United States Department of Justice, Antitrust Division, Attention: Roger W. Fones, 325 Seventh Street, N.W., Washington, D.C. 20530. Such comments and the government's response to them will be filed with the Court and published in the Federal Register. The government will evaluate all such comments to determine whether there is any reason for withdrawal of its content to the proposed judgment.

VI. Alternative to the Proposed Judgment

The alternative to the proposed judgment considered by the Antitrust Division was a full trial of the issues on the merits and on relief. The Division considered the substantive language of the proposed judgment to be of sufficient scope and effectiveness to make litigation on the issues unnecessary, as the judgment provides all of the relief sought against the violations alleged in the compliant.

VII. Determinative Materials and Documents

No materials or documents were considered determination by the United States in formulating the proposed judgment. Therefore, none are being filed pursuant to the APPA, 15 U.S.C. 16(b).

Department of Justice Antitrust Division

By: _____

Jade Alice Eaton,

Transportation, Energy, and Agriculture Section, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530, (202) 307–6316.

[FR Doc. 98–8398 Filed 3–30–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Management Forum

Notice is hereby given that, on November 19, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Network Management Forum (''the Forum'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members to the venture are as follows: DMR TRECOM, Milford, CT; and Technology & Process Consulting, Inc., Birmingham, AL are Corporate Members. Bouygues Telecom, Velizy, Cedex, France; Call Technologies, Inc., Reston, VA; CELOGIC, Trappes Cedex, France; Clear Communications Corporation, Lincolnshire, IL; CommTech Corporation, Westerville, OH; ILOG, Inc., Mountain View, CA; Infinet Software, Inc., Boulder, CO; ITTI, Ltd., Poznan, Poland; Minacom International, Inc., Montreal, Quebec, Canada; NCR Corporation, Iselin, NJ; O.TEL.O Communications, Koln, Germany; Positron Fiber Systems, Montreal, Quebec, Canada; RTS Limited, Hemel Hempstead, Hertfordshire, England; Scopus Technology, Inc., Emeryville, CA: Spazio ZeroUno S.p.A., Vimodrone, Italy; Sprint PCS, Lenexa, KS; S.W.I.F.T., La Hulpe, Belgium; Sybase, Inc., Dallas, TX; Tellium, Inc., Edison, NJ; Unique Data Ltd. (UDI), Rishon, Letzion; Israel; Vision In Business, London, England; and Worldbridge Broadband Services, Inc., Nashville, TN are Associate Members. Cohen Communications Group, New York, NY; CRIEPI, Tokyo, Japan; DNA Enterprise, Inc., Richardson, TX; GRC International, Inc., Vienna, VA; and National Communications System, Arlington, VA are Affiliate Members.

No other changes have been made since the last notification filed with the Department in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on August 8, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 1997 (62 FR 60531).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–8337 Filed 3–30–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1910–98; AG Order No. 2146–98]

RIN 1115–AE26

Termination of Designation of Liberia Under Temporary Protected Status Program After Final 6-Month Extension

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice terminates the Attorney General's designation of Liberia under the Temporary Protected Status (TPS) program provided for in section 244 of the Immigration and Nationality Act, as amended (Act). Eligible aliens who are national of Liberia (and eligible aliens who have no nationality and last habitually resided in Liberia) may re-register for TPS and extension of employment authorization for a final 6-month period.

EFFECTIVE DATES: Termination of the Temporary Protected Status designation for Liberia is effective September 28, 1998, and the TPS designation for Liberia is extended for a final 6-month period, from March 29, 1998, to September 28, 1998. The main re-registration procedures become effective on March 31, 1998, and will remain in effect until April 29, 1998.

FOR FURTHER INFORMATION CONTACT: Ronald Chirlin, Adjudications Officer, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: Under section 244 of the Act, 8 U.S.C. 1254, the Attorney General is authorized to grant TPS to eligible aliens who are nationals of a foreign state designated by