

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)	
)	
)	
Plaintiff,)	
)	97-CV-6294T
-vs-)	
)	
ROCHESTER GAS & ELECTRIC)	
CORPORATION,)	
)	
Defendant.)	

**PLAINTIFF UNITED STATES' NOTICE OF
MOTION FOR SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that, upon the affidavit of Richard W. Greene, sworn to September 2, 1997, and Plaintiff's Rule 56 Statement of Material Facts as to Which There is No Genuine Issue to be Tried, dated October 31, 1997, and all the exhibits thereto, plaintiff United States will move this Court on December 19, 1997, before the Honorable Michael A. Telesca, at the United States Courthouse, 100 State Street, Rochester, New York, for an Order pursuant to Federal Rule of Civil Procedure 56 granting plaintiff summary judgment and entering judgment on the Complaint on the grounds that: (1) the Individual Service Agreement entered into between defendant Rochester Gas & Electric Corporation and the University of Rochester, dated and effective March 31, 1994, is a restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1; and (2) the conduct of defendant Rochester Gas & Electric Corporation is not immune under the state action doctrine.

PLEASE TAKE FURTHER NOTICE that, pursuant to an Order of the Court, opposing papers, if any, must be filed and served by December 5, 1997.

PLEASE TAKE FURTHER NOTICE that plaintiff intends to file and serve reply papers.

Dated: October 31, 1997

DEPARTMENT OF JUSTICE
ANTITRUST DIVISION

By: _____
Jade Alice Eaton
Attorney
Transportation, Energy &
Agriculture Section
325 Seventh Street, N.W.
Washington, D.C. 20004
(202) 307-6316

TO: Nixon, Hargrave, Devans &
Doyle, LLP
Attorneys for Defendant
David M. Schaver
Flor M. Colon
P.O. Box 1051
Rochester, New York 14603
(716) 263-1000