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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

U.S. COMMODITY FUTURES TRADING COMMISSION, Plaintiff, v. JOSEPH P. FOLEY Defendant.	)	CIVIL ACTION No. 05 cv 849 Complaint For Injunctive And Other Equitable Relief And Civil Monetary Penalties Under The Commodity Exchange Act JUDGE SMITH MAGISTRATE JUDGE KING

The United States Commodity Futures Trading Commission ("Commission"), by its attorneys, alleges as follows:

I. Summary

1. As is more fully alleged below, Defendant Joseph P. Foley ("Defendant" or "Foley") has engaged in acts and practices which constitute violations of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 1 *et seq.* (2001).

2. Specifically, from at least November 2000 through September 2002 (the "Relevant Period"), Defendant violated Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b and 13(a)(2), by directing those he supervised to deliver through the mails or in interstate commerce by telegraph, telephone, wireless, or other means of communication, false or misleading or knowingly inaccurate information concerning market information or conditions that affected or tended to affect the price of natural gas, and by directing those he supervised to

deliver such false or misleading or knowingly inaccurate market information in an attempt to manipulate the price of natural gas, a commodity in interstate commerce.

3. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, the Commission brings this action to enjoin such acts and practices, and compel compliance with the provisions of the Act. In addition, the Commission seeks civil penalties and such other ancillary relief as the Court deems necessary or appropriate in the circumstances.

II. Jurisdiction And Venue

4. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

5. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), in that Defendant's acts and practices in violation of the Act occurred, are occurring, or are about to occur within this District.

6. Unless restrained and enjoined by this Court, Defendant is likely to continue to engage in the acts and practices alleged in this Complaint or in similar acts and practices, as more fully described below.

III. The Parties

7. Plaintiff Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, 7 U.S.C. §§ 1 *et seq.*, and the regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.*

8. Defendant Joseph P. Foley ("Foley") resides, upon information and belief, in

Monticello, Illinois.

9. Foley was employed by American Electric Power Company, Inc. and its subsidiary and trading arm, AEP Energy Services, Inc. (collectively "AEP"), located in Columbus, Ohio, from September 1998 until October 2002.

10. Foley traded in the natural gas markets and supervised other natural gas traders, as the head of AEP's Gulf Desk, from approximately November 1999 until the termination of his employment at AEP in October 2002. Foley was registered with the National Futures Association as a Commodity Trading Advisor (NFA #325087) from November 2002 through March 2004.

IV. Facts

A. The Natural Gas Price Indexes and Foley's Natural Gas Trading

11. During the Relevant Period, natural gas was a commodity that was typically transported in interstate commerce through a network of pipelines across the United States.

12. During the Relevant Period, AEP sought to buy and sell natural gas for profit. To that end, AEP's traders, including Foley, entered into transactions involving the actual physical delivery of natural gas ("physical trades") and traded financial derivatives, such as basis trades, involving natural gas ("financial trades").

13. Physical trades were typically priced with either a fixed price set at the time of the transaction or based on an index to be set at a later date. Financial trades were also typically priced based on an index value set after the trades were executed.

14. Foley was the head of AEP's Gulf Desk and supervisor of the desk's natural gas traders.

15. Foley, and the traders assigned to his Gulf Desk, traded a variety of instruments,

including physical natural gas and financial natural gas derivatives. Many of Foley's natural gas trades were priced based on index values.

16. During the Relevant Period, natural gas price indexes were compiled and issued by firms such as Platts, a division of The McGraw-Hill Companies. The indexes, which were widely used by the natural gas industry during the Relevant Period, include Platts' *Gas Daily* and *Inside FERC Gas Market Report ("IFERC")*. *Gas Daily* is a daily index that provides natural gas market information and price indexes for various natural gas hubs. *IFERC* issues a monthly index for various natural gas hubs.

17. During the Relevant Period, natural gas traders and trading companies reported natural gas market information to companies that calculated natural gas price indexes. The reported market information typically included price and volume information for natural gas transactions entered into for delivery at a specific pricing/delivery location or hub.

18. The price index compilers use price and volume information collected from market participants, including the Defendant, in calculating indexes of natural gas prices for various hubs throughout the United States.

19. During the Relevant Period, participants in the natural gas markets used the *Gas Daily* and *IFERC* price indexes for various purposes, including the pricing and settlement of index trades. Moreover, natural gas traders referred to indexes for price discovery and for assessing price risks.

20. The price and volume information reported to the index compilers was market information that affects or tends to affect the price of natural gas, a commodity in interstate commerce.

21. During the Relevant Period, Foley participated in and received compensation

under a bonus compensation plan called the "Phantom Equity Plan' that was based on the income of AEP. To the extent that AEP's income, including income from natural gas trades, rose, Foley was eligible to receive greater compensation under the Phantom Equity Plan.

22. In 2002, AEP distributed over $200 million to the Phantom Equity Plan participants. Foley's participation interest under the Phantom Equity Plan was over $2 million.

B. Foley Caused The Submission of False or Misleading or Knowingly Inaccurate Trades To Compilers of Natural Gas Price Indexes

23. During the Relevant Period, upon information and belief, Defendant engaged in a pervasive and widespread scheme to violate the Act by (i) directing those he supervised to deliver to firms such as Platts, by facsimile and via the Internet, false or misleading or knowingly inaccurate reports concerning market information about purported natural gas trades that affects or tends to affect the price of natural gas, and (ii) by attempting to manipulate the price of natural gas, a commodity in interstate commerce, by directing those he supervised to deliver such false or misleading or knowingly inaccurate information.

24. During the Relevant Period, Defendant executed index-based natural gas trades, the profitability of which was dependent upon the *Gas Daily* and *IFERC* price indexes. Defendant routinely knowingly caused traders that he supervised to deliver false or misleading or knowingly inaccurate reports of transaction information to *Gas Daily* and *IFERC* regarding natural gas pricing/delivery locations at which he had entered into such index-based trades. Defendant did so with the intent to manipulate the indexes to increase the profitability of his index-based trades.

25. As part of Defendant's scheme, the Gulf Desk, at Defendant's direction, maintained computer spreadsheets named "IFERC Bogus" and "Joe Mama" to record

Defendant's index-based trades for the purpose of preparing reports to *Gas Daily* and *IFERC* containing false or misleading or knowingly inaccurate transaction information.

26. During the Relevant Period, *Gas Daily* gathered from market participants, including AEP's traders, transaction information concerning physical, fixed-price natural gas transactions and calculated a volume weighted average price index for natural gas pricing/delivery locations.

27. Defendant knowingly directed traders he supervised to deliver reports concerning purported trades to *Gas Daily* during the Relevant Period, knowing that a substantial portion of which were false or misleading or knowingly inaccurate.

28. During the Relevant Period *IFERC* sought transaction information regarding natural gas trades, specifically reports of a company's fixed-price baseload deals negotiated during bidweek. A baseload deal is a trade requiring the delivery of a specific quantity of natural gas on each day of the following month. Bidweek refers to the last five trading days of each month.

29. From at least November 2000 through October 2002, at the Defendant's direction Defendant's Gulf Desk submitted twenty-two spreadsheets to *IFERC* reporting thousands of natural gas trades purportedly made during bidweek.

30. Each spreadsheet submitted to *IFERC* contained data for purported trades at the natural gas hubs that the Gulf Desk traded, including the Henry Hub, which Defendant knew to be false or misleading or knowingly inaccurate. The Henry Hub is the delivery point for the natural gas futures contract traded on the New York Mercantile Exchange.

31. During the Relevant Period, the Gulf Desk, at Defendant's direction, knowingly reported thousands of purported trades to *IFERC*, most of which, as Defendant knew, were false

or misleading or knowingly inaccurate.

32. Such false or misleading or knowingly inaccurate reports concerning market information or conditions affects or tends to affect the market price of natural gas, a commodity in interstate commerce.

33. Defendant's attempted manipulation of the price of natural gas, if successful, could have affected the price of natural gas futures contracts.

34. In October 2002, Defendant was fired for false reporting when AEP publicly admitted that certain of its employees, including the Defendant, engaged in inaccurate reporting of natural gas trades to firms that compile natural gas price indexes.

V. Violations Of The Commodity Exchange Act

Count I: Causing The Delivery Of False or Misleading or Knowingly Inaccurate Information

35. Paragraphs 1 through 34 are realleged and incorporated herein by reference.

36. It is a violation of Section 9(a)(2) of the Act, 7 U.S.C § 13(a)(2), for any person, *inter alia*, "knowingly to deliver or cause to be delivered for transmission through the mails or interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce . . ."

37. Defendant violated Section 9(a)(2) of the Act when he knowingly directed those he supervised to deliver by facsimile and via the Internet reports to *Gas Daily* and *IFERC* containing market information which Defendant knew to be false or misleading or knowingly inaccurate, including price and volume information for purported natural gas trades.

38. Such false or misleading or knowingly inaccurate reports concerning market

information or conditions affected or tended to affect the market price of natural gas, a commodity in interstate commerce.

39. Each and every act or transaction engaged in by Defendant, as described above, is alleged herein as a separate and distinct violation of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2).

Count II: Attempted Manipulation Of The Natural Gas Price Indexes

40. Paragraphs 1 through 39 are realleged and incorporated herein by reference.

41. Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b and 13(a)(2), make it illegal for any person to attempt to manipulate the market price of any commodity in interstate commerce.

42. Defendant had the intent to manipulate natural gas index prices and overtly acted in furtherance of that intent.

43. Defendant attempted to manipulate natural gas price indexes by knowingly directing those he supervised to deliver false or misleading or knowingly inaccurate reports of natural gas trades to firms that compile natural gas price indexes.

44. Each and every act or transaction engaged in by the Defendant in furtherance of the manipulative scheme, as described above, is alleged herein as a separate and distinct violation of Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2).

VI. Relief Requested

WHEREFORE, Plaintiff Commission respectfully requests that this Court enter an order of permanent injunction:

A. restraining and enjoining the Defendant from violating Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2);

B. directing the Defendant to pay a civil monetary penalty, to be assessed by the Court, in an amount not to exceed the higher of $110,000 before October 23, 2000 and $120,000 for each violation occurring on or after October 23, 2000, or triple the monetary gain to the Defendant for each violation of the Act, as described herein;

C. directing the Defendant to make full restitution of funds received by him as a result of acts and practices which constituted violations of the Act and Regulations, as described herein, and interest thereon from the date of such violations;

D. permanently prohibiting Defendant from trading on or subject to the rules of any entity registered with the U.S. Commodity Futures Trading Commission;

E. directing the Defendant to disgorge, pursuant to such procedure as the Court may order, all benefits received, directly or indirectly, from acts or practices which constitute violations of the Act as described herein, including pre-judgment interest thereon from the date of such violations; and

F. providing for all costs, attorney's fees incurred by Plaintiff, and such other and further remedial and ancillary relief as this Court may deem necessary and appropriate.

Dated: September 14, 2005

Respectfully submitted,

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