

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

**FILED**  
TIME: \_\_\_\_\_

JAN 25 2005

JAMES BONINI, Clerk  
COLUMBUS, OHIO

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U.S. COMMODITY FUTURES TRADING  
COMMISSION,

No. 2:03-cv-891

Plaintiff,

Judge Edmund A. Sargus, Jr.

vs.

AMERICAN ELECTRIC POWER COMPANY, INC.  
and  
AEP ENERGY SERVICES, INC.,  
Defendants.

Magistrate Judge Norah  
McCann King

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**FINAL JUDGMENT AND CONSENT ORDER**

On September 30, 2003, Plaintiff Commodity Futures Trading Commission (the "Commission") filed a two-count Complaint for attempted manipulation and false reporting ("Complaint") against American Electric Power Company, Inc. and AEP Energy Services, Inc. ("Defendants"<sup>1</sup>), alleging, in pertinent part, that Defendants had knowingly delivered false, misleading or knowingly inaccurate information concerning natural gas trades, and did so in an attempt to manipulate the price of natural gas. The Complaint seeks a civil monetary penalty, injunctive and other relief for violations of the Commodity Exchange Act (the "Act"), 7 U.S.C. §§ 1 *et seq.* (2000). Defendants filed an Answer denying certain allegations in the Complaint, including the allegations that Defendants committed violations of the above-referenced statutory provisions.

**I.**

**CONSENT AND AGREEMENT**

In order to dispose of all the allegations and issues raised in the Complaint and effect a full and final settlement of any alleged violations of the above-referenced laws without a trial on the merits or any further judicial proceedings, Defendants, without admitting the allegations of the Complaint, and the Commission:

- A. Consent to the entry of this Final Judgment and Consent Order (herein referred to as "Judgment" or "Order");

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<sup>1</sup> As used herein, "Defendants" does not include any current or former employees of the Defendants.

- B. Affirm that defendants have agreed to this Order voluntarily, and that no promise or threat to induce consent to this Order, other than as set forth specifically herein;
- C. Affirm counsel's authority to consent to this Order on their behalf;
- D. Acknowledge service of the Summons and Complaint and this Order;
- E. Admit jurisdiction of this Court over them and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1;
- F. Admit that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1;
- G. Defendants waive:
  - i. all claims which they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000) relating to, or arising from, this action;
  - ii. any claim of Double Jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and
  - iii. all rights of appeal from this Order;
- H. Defendant AEP Energy Services, Inc. ("AEPES") acknowledges and accepts, for purposes of resolving this action, responsibility for the conduct as set forth in the Statement of Facts in the Appendix; and
- I. Acknowledge that AEPES, the United States Department of Justice ("DOJ"), and the United States Attorney's Office for the Southern District of Ohio have agreed to resolve an investigation by DOJ into the possible knowing delivery of knowingly inaccurate reports by AEPES concerning the commodity market for natural gas, pursuant to which AEPES may be subject to possible additional sanction if it in the future engages in conduct of the type alleged in this action.

## II.

### TERMS OF ORDER

For purposes of settling this action only, the parties consent to the entry of an order by this Court as follows:

## ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

- A. Defendants shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement ("Division") in this proceeding, and in any investigation, civil litigation, or administrative matter related to the subject matter of this proceeding or any current or future Commission investigation related thereto. Defendants agree to cooperate fully and expeditiously with the Commission's ongoing efforts to discover documents and information related to reporting trade prices and/or volumes to energy reporting services and price indexes. As part of such cooperation, Defendants agree to:
1. preserve all records relating to the subject matter of this proceeding, including, but not limited to audio files, e-mails, and trading records; and
  2. comply fully, promptly, and truthfully with any inquiries or requests for information including but not limited to inquiries or requests:
    - a. for authentication of documents;
    - b. for any documents within Defendants' possession, custody, or control, including inspection and copying of documents;
    - c. to produce any current (as of the time of the request) officer, director, employee, or agent of Defendants, regardless of the person's location and at such location that minimizes Commission travel resources, to provide assistance at any trial, proceeding, or Commission investigation related to the subject matter of this proceeding, including but not limited to, requests for testimony, depositions, and/or interviews, and to encourage them to testify completely and truthfully in any such proceeding, trial, or investigation;
    - d. for assistance in locating and contacting any prior (as of the time of the request) officer, director, or employee of Defendants; and
    - e. not undertake any act that would limit their ability to fully cooperate with the Commission. Defendants designate D. Michael Miller of the AEP Legal Department to receive all requests for information pursuant to this undertaking. Should Defendants seek to change the designated person to

receive such requests, notice shall be given to the Division of such intention 14 days before it occurs. Any person designated to receive such request shall be located in the United States.

- B. Defendants shall pay a total civil monetary penalty of Thirty Million Dollars (\$30,000,000.00) within ten business days of the date of the entry of this Order. If payment is made in accordance with the requirements of this paragraph, the claims asserted in this action will be fully resolved, and no further relief beyond that set forth in this Order shall be sought or granted in any forum. If payment is not made in accordance with the requirements of this paragraph, Defendants shall be subject to further proceedings pursuant to Section 6(c) and Section 6(e)(2) of the Act, 7 U.S.C. §§ 9 and 9a(e)(2) (2001), for violating a Commission Order.
- C. AMENDMENTS AND SEVERABILITY. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (i) reduced to writing, (ii) signed by all parties, (iii) approved by order of the Court. If any provision of this Order or the application of any provision or circumstance is held invalid, the remainder of this Order shall not be affected by the holding.
- D. PUBLIC STATEMENTS. By consenting to the entry of this Order, Defendants agree that neither they nor any of their agents or employees under their authority and control shall take any action or make any public statement denying, directly or indirectly, or creating, or tending to create the impression that this Order is without a factual basis; provided, however, that nothing in this provision shall affect Defendants': (i) testimonial obligations; or (ii) right to take positions in other proceedings to which the Commission is not a party. Defendants shall take all steps necessary to ensure their agents and employees comply with this provision.
- E. SUCCESSORS AND ASSIGNS. This Order shall be binding on Defendants and on their successors, assigns, beneficiaries and administrators.
- F. JURISDICTION. This Court shall retain jurisdiction of this matter to ensure compliance with this Order and for all other purposes related to this action.
- G. INADMISSIBLE IN OTHER PROCEEDINGS. Except with respect to a proceeding brought by the Commission, this Order is issued for purposes of this proceeding only and shall not be admissible as evidence in any form or for any purpose in any judicial or administrative proceeding other than to enforce its terms. Defendants do not consent to the use of this Order as the sole basis for any proceeding brought by the Commission other than a proceeding brought to enforce the terms of this Order and

provided further that, nothing in this Order shall be construed to confer any rights on any third parties or inure to the benefit of any third parties.


ENTRY OF JUDGMENT FORTHWITH. There being no just cause for delay, the Clerk of the Court shall enter this Final Judgment forthwith and without further notice. No further proceedings are required in this action.

DONE AND ORDERED THIS 26th DAY OF January, 2005.

  
1-26-2005  
Edmund A. Sargus, Jr., United States District Judge

CONSENTED TO BY:

Gregory G. Lockhart  
United States Attorney  
Southern District of Ohio

  
Andrew M. Malek - Local Counsel  
Assistant United States Attorney  
Southern District of Ohio, Eastern  
Division  
Bar No. 0061442  
303 Marconi Blvd.  
Suite 200  
Columbus, Ohio 43215  
(614) 469-5715  
(614) 469-5240 (facsimile)  
e-mail: [Andrew.Malek@usdoj.gov](mailto:Andrew.Malek@usdoj.gov)

  
Gregory G. Mocek, Director *antimony/2/2/05*

Vincent A. McGonagle  
Stephen J. Obie  
Lenel Hickson, Jr.  
David W. MacGregor  
Gregory Compa  
Division of Enforcement  
U.S. Commodity Futures  
Trading Commission  
140 Broadway  
New York, NY 10005  
(646) 746-9733

On behalf of Plaintiff

  
Alvin J. McKenna, Trial Attorney  
(0023145)  
Porter Wright Morris & Arthur LLP  
41 South High Street  
Columbus, Ohio 43215  
(614) 227-2000  
(614) 227-2100 (facsimile)  
E-mail: [amckenna@porterwright.com](mailto:amckenna@porterwright.com)

Steven J. Routh  
Hogan & Hartson LLP  
555 Thirteenth Street, NW  
Washington, DC 20004-1109  
(202) 637-5600

Charles R. Mills  
Kirkpatrick & Lockhart Nicholson  
Graham LLP  
1800 Massachusetts Avenue, N.W.  
Washington, D.C. 20036  
(202) 778-9096

D. Michael Miller  
AEP Legal Department  
1 Riverside Plaza  
Columbus, OH 43215-2373

On behalf of Defendants

## APPENDIX

### STATEMENT OF FACTS

1. AEP Energy Services, Inc. ("AEPES") is an Ohio corporation headquartered in Columbus, Ohio. It is a separately incorporated, wholly-owned subsidiary of American Electric Power Company, Inc. ("AEP"), which is one of the largest electric utilities in the country, serving approximately 5 million customers.

2. AEPES was created in 1997 to trade and market natural gas and related products and services. AEPES earned substantial profits between 1999 and 2002 from its natural gas trading operations.

3. AEPES divided its natural gas traders into groups, referred to as desks. Four of the desks corresponded with geographic regions of the United States: the West, the Gulf Coast, the Northeast, and the Mid-Continent. AEPES also established other trading desks, including a New York Mercantile Exchange ("NYMEX") desk for trading natural gas futures, options contracts, and other instruments related to the NYMEX, a primary forum for energy trading. The desks traded a variety of physical and financial instruments, including fixed-price physical natural gas, derivatives, swaps, index-based, over-the-counter, and physical contracts. Each desk was staffed by several traders and supervised by a "desk head." A "head of trading," who reported directly to the president of AEPES, oversaw the four regional trading desks.

4. Certain AEPES natural gas traders entered data regarding trades they made into a spreadsheet that in turn was delivered to trade publications that published market price indices for natural gas at various delivery points, or "hubs," based in part on information received from industry participants. Natural gas traders used the published indices to price and settle certain physical and over-the-counter financial derivative natural gas transactions.

5. *Inside FERC* ("*IFERC*") Gas Market Report, a publication of Platts, a McGraw Hill company, publishes one of the primary indices used to price certain natural gas market transactions. During the period relevant hereto, *IFERC* published indices of prices for natural gas at various hubs. *IFERC* editors exercised judgment and attempted to exclude numbers that diverged from the majority of trades at a given hub. AEPES does not contest that misreporting of either prices or volumes could alter the published *IFERC* index price.

6. From in or about November 2000, certain AEPES traders submitted a monthly spreadsheet to *IFERC* containing trade data for the natural gas hubs at which the company claimed to have traded during bid week, the last several business days of the month during which trades for gas flowing the following month were executed. From November 2000 through October 2002, AEPES traders submitted twenty-four spreadsheets to *IFERC*, reporting over 3,000 natural gas trades purportedly made during various bid weeks.

7. From 1997 to 2002, certain personnel who worked for AEP's trading operations, including a number of the desk heads for natural gas trading desks, participated in a bonus compensation plan based on the success of the trading operations. Under this plan, in 2002, a number of desk heads and AEPES managers received bonuses.

8. Many of the twenty-one spreadsheets submitted to *IFERC* between November 2000 and July 2002 from the AEPES Gulf, Northeast, and Mid-Continent desks contained knowingly inaccurate data, including incorrect volumes and/or prices, fictitious trades, or incomplete reports of actual trades, relating to one or more of the 38 delivery points or hubs for which AEPES provided information during that period. With respect to trades made by the Gulf and Mid-Continent Desks, many of the spreadsheets submitted before July 2002 contained knowingly inaccurate data for at least one delivery point. With respect to trades made by the Northeast



Desk, many of the spreadsheets submitted before March 2002 contained knowingly inaccurate data for at least one delivery point. Between November 2000 and July 2002, many of the spreadsheets submitted for the Gulf Desk contained one or more instances of false data favoring the company's financial positions.

9. In September 2002, when media reports exposed false reporting at another energy company, Dynegy, AEPES's management asked all AEPES natural gas traders to certify in writing that they had not engaged in such conduct. When five of the traders assigned to the Gulf Desk were unable to so certify and admitted to falsely reporting, AEPES's management dismissed them for their conduct, reported the conduct to federal regulatory agencies, and issued a press release discussing the dismissals. No other then-current personnel were found by AEPES's management to have engaged in false reporting.

10. There are other matters known to the parties that are not included in this Statement of Facts.