UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: NATURAL GAS COMMODITY LITIGATION	:	Master File No. 03-CV-6186 (VM)(AJP)
THIS DOCUMENT RELATES TO ALL ACTIONS	:	Hon. Victor Marrero, USDJ

NOTICE OF PROPOSED PLAN OF ALLOCATION, RIGHT TO OBJECT THERETO, AND HEARING THEREON

TO: ALL PERSONS WHO SUBMITTED PROOFS OF CLAIM IN THIS ACTION — PLEASE READ THIS NOTICE CAREFULLY!

Part I

THE DATE OF THE HEARING AND AN OVERVIEW OF THE PLAN

PLEASE TAKE NOTICE[1] that a hearing will be held on March 15, 2010, at 1:30 p.m. before the Honorable Victor Marrero in Courtroom 20B at the United States District Courthouse for the United States District Court of the Southern District of New York (the "Court") at 500 Pearl Street, New York, New York, in order to consider plaintiffs' proposed plan of allocation of the proceeds of the settlements with the two groups of Settling Defendants.[2] This hearing may be continued or adjourned by the Court without further notice.

1. The proposed plan of allocation ("Proposed Plan") is set forth in Exhibit A hereto. Part I of the Proposed Plan provides that Class[3] members who filed eligible claims ("Claimants") shall receive the sum of their entitlement under Part III and their entitlement under Part IV. That is, Part I of the Proposed Plan provides that the different entitlements for which an eligible Claimant qualifies to receive a payment in respect of the Final Judgment and Order entered by the Court on May 30, 2006 (the "2006 Judgment") and the Final Judgments and Orders entered by the Court on June 28, 2007 (the "2007 Judgments") set forth in Parts III and IV of the Proposed Plan shall be additive and not alternative.[4] Part I of the Plan also provides that the Court may modify the Plan at the Final Approval Hearing referred to above without further notice to the Claimant.

2. Part II of the Proposed Plan sets forth defined terms relating thereto.

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[1] This is **not** a request for information and you are not being asked by this notice to provide any additional information or documents regarding your Proof of Claim.

[2] The two groups of Settling Defendants are (1) Cinergy Marketing and Trading, L.P.; CMS Field Services (n/k/a Cantera Gas Co., LLC); CMS Marketing Services & Trading Co. (n/k/a CMS Energy Resource Management Co.); Cook Inlet Energy Supply, LLC; Duke Energy Trading and Marketing, LLC; Dynegy Marketing & Trade (including West Coast Power, LLC); Enserco Energy, Inc.; Entergy-Koch Trading, LP; e-prime, Inc.; MidAmerican Energy Co.; Mieco, Inc.; ONEOK Energy Services Company, L.P. (f/k/a ONEOK Energy & Marketing Company, L.P.); ONEOK, Inc.; Reliant Energy Services, Inc.; Sempra Energy Trading Corp.; WD Energy Services, Inc.; Western Gas Resources, Inc.; Williams Companies, Inc.; and Williams Power Company (f/k/a Williams Energy Marketing and Trading Company) (the "2006 Settling Defendants"); and (2) American Electric Power Co., Inc. and AEP Energy Services, Inc.; Aquila Energy Marketing Corp. and Aquila Merchant Services, Inc.; Coral Energy Resources, LP; Dominion Resources, Inc.; and El Paso Marketing, L.P. (formerly known as El Paso Merchant Energy, L.P.)(the "2007 Settling Defendants") (collectively, "Settling Defendants").

[3] The Class consists of all persons or entities who purchased, sold, settled or otherwise traded NYMEX Natural Gas Contracts, as an opening or closing transaction or otherwise, between June 1, 1999 and December 31, 2002, inclusive (the "Class Period") (the "Class"). Excluded from the Class are the defendants herein, any parents, subsidiaries, or affiliates thereof, members of the immediate family of each of the individual defendants, any entity in which any of the defendants has a controlling interest, and the legal representatives, heirs, successors or assigns of any of the defendants.

[4] Only Claimants with approved and adequately supported proofs of claim ("valid proofs of claim") are eligible to receive distributions under the Plan, and then only based upon what the Settlement Administrator is able to document, support, and calculate.

3. Parts III and IV of the Proposed Plan recognize that, even if a timely and valid proof of claim reflects a net gain on all transactions during the Class Period, damages may have been suffered by the Claimant with regard to the artificial[5] impact loss and/or purchase-sale loss for specified portions of the Class Period.

4. Part III of the Proposed Plan provides for the distribution from the settlement fund created by the 2007 Judgments (Proposed Plan, Part II, Defined Terms, the "2007 Net Settlement Fund"). Under the Proposed Plan, the 2007 Net Settlement Fund will be distributed to Eligible 2007 Class Members as follows: 82.5% on the basis of futures contract transactions: 40% of the 2007 Net Settlement Fund shall be distributed on the basis of the futures contract net price artificially paid by Eligible 2007 Class Members; 32% of the 2007 Net Settlement Fund shall be distributed to persons who had a net loss of their futures contract transactions opened on or after June 1, 2000 and closed on or prior to March 31, 2001 and 10.5% of the 2007 Net Settlement Fund shall be distributed to Eligible 2007 Class Members who had net losses on all futures contract transactions liquidated during the Class Period. See Proposed Plan, Part III.

5. Also, 12.5% of the 2007 Net Settlement Fund shall be distributed on the basis of Net Futures Volume to Eligible 2007 Class Members unable to submit transaction data sufficient to be able to track all future contract purchases and sales by date; and 5% on the basis of options transactions. See Proposed Plan, Part III.

6. In every part of the Plan, hedgers are subject to a 60% discount and swaps dealer hedgers are subject to a 92.5% discount.

7. With respect to the 5% being paid to options, 55% will be distributed on the basis of net options losses during the first five trading days of each month during the Class Period; 22.5% on the basis of net options losses during the entire Class Period; and 22.5% on the basis of net options volume during the first five trading days of each month during the Class Period. See Plan Part III.

8. Similarly, Part IV of the Proposed Plan provides for the distribution from the settlement fund created by the 2006 Judgment (see Proposed Plan, Part II, Defined Terms, the "2006 Net Settlement Fund"). The 2006 Net Settlement Fund will be distributed to Eligible 2006 Class Members as follows: 95% on the basis of futures contracts and 5% on the basis of options. See Plan Part IV. The futures payments will be 50% on the basis of net losses in futures contracts during the first five days of each month during the Class Period, 22.5% on the basis of net losses in futures contracts during the entire Class Period, and 22.5% on the basis of Net Volume of futures trades during the first five days of each month during the Class Period. See Plan Part IV.

9. The option payments will be 5% of the 2006 Net Settlement Fund and the 2007 Net Settlement Fund. Of this, 55% will be allocated on the basis of net options losses during the first five trading days of each month during the Class Period, 22.5% on the basis of net options losses during the entire Class Period, and 22.5% on the basis of net options volume during the first five trading days of each month during the Class Period. See Plan Parts III and IV.

10. In contrast, Part V of the Proposed Plan does not create an entitlement that is additional to those under Parts III and IV. Rather, Part V is a guaranteed minimum payment provision. See Plan Part V.

11. The Court preliminarily approved the Proposed Plan for purposes of sending this notice to Claimants. The Court will determine at or after the currently scheduled March 15, 2010 hearing whether to finally approve the Proposed Plan. The Hearing may be adjourned from time to time without prior notice other than by announcement at the date and time scheduled for the Hearing.

12. Again, during or after the Hearing, the Court may approve or modify the Proposed Plan without further notice to Claimants. Promptly after the Court's order becomes final, distribution will be made to the Claimants with approved claims at their addresses listed with the Settlement Administrator. Please contact the Settlement Administrator if you have any questions about the address of this mailing to you. The Court's order will be final when there are no unresolved objections to such order and/or when the time to appeal from such order has expired without a notice of appeal having been filed.

[5] "Price artificiality" refers to the amount of artificial impact on NYMEX futures contract prices as calculated and determined on a daily basis throughout the period January 1, 2000 through December 31, 2002 by plaintiffs' experts. The daily amounts of artificiality are available on the Settlement Administrator's website at www.naturalgascase.com.

Part II

YOUR RIGHTS IN RESPECT OF THE PROPOSED PLAN

13. You need take no action in connection with the Proposed Plan. If you take no action and the plan of allocation is finally approved without modification, then you will receive the amount finally determined by the Settlement Administrator.

14. If you decide to object to the Proposed Plan or otherwise wish to be heard, then you must submit a written Notice of Intention to be Heard. In order to be effective, a Notice of Intention to be Heard ("Notice of Intention") must be in writing, and the writing must include the following: it must clearly reference this Action (In re Natural Gas Commodity Litigation, No. 03 Civ. 6186 (VM)), and must include your name and address, a statement that you wish to appear and be heard at the Hearing, a list of the reasons for any objection, and a brief statement of the position you wish to assert at the Hearing regarding the Proposed Plan of Allocation.[6]

15. The Notice of Intention (including supporting documentation) or any other objection must be sent via United States mail, postage prepaid, to the Clerk of the United States District Court for the Southern District of New York, 500 Pearl Street, New York, NY 10007. An additional copy of your Notice of Intention (including supporting documentation) must be sent via United States mail, postage prepaid, to Class Counsel: Ian T. Stoll, Esq., LOVELL STEWART HALEBIAN LLP, 61 Broadway, Suite 501, New York, NY 10006 and Geoffrey Horn, Esq., LOWEY DANNENBERG COHEN & HART, P.C., White Plains Plaza, One North Broadway, White Plains, NY 10601.

16. In order to be effective, the original and all copies of your Notice of Intention (including supporting documentation) must be filed on or before February 24, 2010.

17. **If you do not transmit your Notice of Intention in the manner and by the deadline provided herein, you will be deemed to have waived any objection.**

Part III

DESCRIPTION OF CLAIMS

A. Proceedings

18. On May 26, 2006, the Court granted a motion for intervention by the Bolling Intervenors.[7] On November 28, 2006, the Court granted a motion for intervention by the South Carolina Office of Regulatory Staff. On October 20 and November 2, 2009, the Court granted motions for intervention by Mark Nordlicht.

19. Since 2006, the Settlement Administrator has extensively reviewed and input extensive trading data submitted with proofs of claim.

20. The Settlement Administrator, in consultation with Class Counsel, advised various Class members concerning inadequacies in respect of their claim as submitted. Certain Class members cured or partially cured various documentary or other deficiencies set forth in such letters. The Settlement Administrator incorporated the results of this further information into its tentative calculations and determinations, input additional data received from Class members, made numerous sets of calculations, and had further communications, including sending further letters, informing certain Class members who timely responded to the requests of the Settlement Administrator.

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[6] In determining whether to approve plans of allocation, a legal standard that courts have considered (and the standard that Class Counsel will argue should govern the approval of the Plan here) is **not** that the Plan must be perfect or that it could not possibly be "improved" to provide more monies to one or another category of traders or class members. Rather, the standard is that the plan should be fair and reasonable or not unreasonable. In this regard, non-comprehensive studies have indicated that settlements of class actions under the securities laws or certain other laws typically average a recovery of 10-15% of the loss or claim. Here, Claimants are receiving under Part IV of the Plan a distribution in respect of their demonstrated losses (unless they are a Hedger) **plus** additional sums if they qualify under Part III of the Plan (again, unless they are a Hedger).

[7] The Court's Order granted the Bolling Intervenors' motion for "the limited purpose of consulting and conferring with, and providing information and input to be considered by Lead Class Counsel in connection with Lead Class Counsel's development of a Plan of Allocation for the distribution of the net settlement proceeds to the Class, including but not limited to the documents and records required to be submitted pursuant to the Notice of Claim; all without prejudice to the Bolling Intervenors' future right to object to Plaintiffs' final proposed Plan of Allocation." May 24, 2006 Order Granting Motion for Intervention of Eric Bolling, *et al*.

21. The Settlement Administrator and commodity futures brokerage experts then made further calculations in respect of the information contained in Class members' submissions and discovered further corrections, and further documents and other informational deficiencies and questions. Class Counsel and plaintiffs' experts reviewed and extensively analyzed these calculations and determinations.

22. Class Counsel and plaintiffs' experts analyzed possible ways of allocating the Settlement Fund fairly and equitably. They considered the relative strength or weakness of the legal claims at various times on behalf of futures or options traders during the Class Period; the effects on Class members of various allocations; proofs of claim; and multiple other considerations including those set forth in Parts I and III-V of the Plan. Class Counsel also worked extensively with the Bolling Intervenors, including but not limited to, exchanging analyses under the proposed plan of allocation and, pursuant to Court Order, providing them with the proposed plan of allocation. The Bolling Intervenors provided Class Counsel with comments regarding allocating the net settlement proceeds. After this, Class Counsel modified somewhat the plan of allocation in respect of distributions on the basis of volume.

23. On October 7, 2009, Plaintiffs filed their motion for preliminary approval of a proposed plan of allocation. See Docket Nos. 540 and 542.

24. On October 27, 2009, comments and objections to Plaintiffs' motion were filed by the Bolling Intervenors, the South Carolina Office of Regulatory Staff, and Mark Nordlicht.

25. On November 4, 2009, Plaintiffs' filed their reply to the Objectors' submissions and modified their proposed plan of allocation in two respects. See Docket No. 566.

26. On December 29, 2009, the Court preliminarily approved the plan and directed Class Counsel to send this notice and the proposed plan to Claimants that have filed proofs of claim with regard to the 2006 Judgment and 2007 Judgment.

B. <u>Description of Claims</u>

27. The claim made by the plaintiffs in these consolidated actions alleged that the defendants manipulated the prices of NYMEX natural gas cash futures and options contracts between June 1, 1999 and December 31, 2002 (again, this period is referred to as the "Class Period").

28. Plaintiffs alleged and contended that defendants reported inaccurate, misleading and false trading information to trade publications that compile and publish indices of natural gas spot prices ("Publications"). Plaintiffs alleged that as a result of defendants' foregoing conduct, the Publications' reported prices of physical natural gas transactions affected prices of NYMEX natural gas contracts.

29. Defendants allegedly concealed their scheme from regulators and the market until the December 31, 2002 end of the Class Period when at least a portion of such scheme was disclosed to and absorbed by the market.[8]

30. Plaintiffs also alleged Defendants engaged in wash trading and other manipulative devices.

Part IV

<u>THE RELIEF AVAILABLE ON THE CLAIMS AND AN EXPLANATION OF THE DISTRIBUTION UNDER THE PLAN</u>

31. In formulating a plan of allocation that is fair and equitable to all the Claimants, Class Counsel concluded that, theoretically, Class members could have at least two general arguments for relief from defendants' alleged wrongdoing summarized in the description of the Plaintiffs' claims above. Class members could argue that they are entitled to relief based upon the artificial impact of Defendants' conduct and entitled to recover their net losses on the totality of their NYMEX transactions.

[8] Discovery revealed that Defendants did not retain substantial portions of their allegedly false reports to the Publications. Plaintiffs subpoenaed the Publications to obtain the Defendants' reports to the Publications and, on April 19, 2006, the Court ordered that Plaintiffs receive this discovery from the Publications. Plaintiffs had the benefit of discovery in reaching these settlements. The Publications had maintained the monthly reports by many of the Settling Defendants but, for most of the Class Period, did not retain the daily reports. March 20, 2006 Class Notice at ¶ 15; April 23, 2007 Class Notice at ¶ 15.

Background

32. In prior cases alleging manipulation in violation of the Commodity Exchange Act, as amended ("CEA"), class action settlements have been distributed in one of two ways. The first way is based on the artificial impact caused by the manipulation of prices. This has typically been expressed on a daily basis, *i.e.*, the amount of price artificiality for each trading day.

33. However, where the defendants' conduct renders the determination of the amount of artificial impact impracticable, another recognized measure of damages is the net profit-loss on the transactions made in the market during the manipulated period.[9] CEA manipulation claims have apparently been allocated solely on the basis of a rescissory net profit-loss calculation over the class period.

34. Also, futures manipulation class action settlements have been allocated on the basis of a blend between the prior two methods.

35. Defendants herein did not keep records that would permit calculation of the degree of the falsity of their reports. Defendants did not retain and produce to Plaintiffs sufficient records to enable Plaintiffs to do the following: (a) determine what Defendants' false reports were; (b) compare those false reports to the actual transactions; (c) calculate the net amount of the "lie" to the market contained in each published index contained in each Publication.

36. Defendants' failure to keep records makes it very difficult to determine how much economic harm their manipulation, through their allegedly systematic lies to the market, caused Class members by means of the daily artificial impact analyses used in prior cases.

A. Part III of the Plan: Settlements Subject to the 2007 Judgments

37. But Plaintiffs were able, through subpoenas to the Publications, to obtain such records --- albeit **for only four groups** of Settling Defendants in the settlements subject to the 2007 Judgments. (These four Settling Defendants comprised 96.97% of the total amount of this second group of settlements, that is, $27,237,500 compared to $28,087,500.[10]) Those four groups of Settling Defendants all would have been included in the same trial had it not been for the settlements creating the 2007 Judgments.

38. Based thereon, Plaintiffs' artificial impact expert estimated the net artificial impact of **those four Defendants' lies** on NYMEX futures prices on a daily basis. Plaintiffs were able to submit an artificial impact expert's report concerning, among other things, artificial prices and Plaintiffs' damages to be proved at such trial. In this report, the artificial impact expert used the amounts of the "lie" for each month to perform a regression analysis. This analysis estimated the daily amount of price artificiality caused by Defendants in the futures contracts.

39. The artificial impact expert's regression analysis determined that the overwhelming majority of the artificial impact occurred during the first five days of each month. Thus, with respect to the allocation of the settlement proceeds from the 2007 Judgments, Class Counsel are able to use the expert's impact analysis to allocate the settlement monies, based on the daily transaction records submitted by Claimants, according to the net price artificiality that each Claimant paid and received.

40. The proposed plan distributes sufficient monies from the 2007 Judgments on the basis of net artificial impact to pay 170% of the total net artificial impact damages.

41. With respect to the settlements subject to the 2007 Judgments, therefore, Plaintiffs did succeed in developing the general type of impact analysis that has been used in prior manipulation cases. Class Counsel concluded that it would be appropriate to

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[9] Courts in this Circuit have held that, where the defendants' conduct makes it difficult to determine the amount of manipulative impact on prices, a rescissory measure of impact based on the victim's profit and loss differential is appropriate. Therefore, as in prior commodity manipulation cases and many securities fraud class action distributions, Class Counsel concluded that it is appropriate to distribute some of the settlement funds here based on the profit-loss differential. However, it must be recognized that profits and losses may occur due to many factors, rather than just manipulative impact, and that even persons with gains may be negatively impacted by the causation of artificial prices.

[10] A fifth Settling Defendant in the 2007 Judgments was Dominion Resources, Inc. The settlement with Dominion Resources, Inc. was the smallest (3%) of the settlements subject to the 2007 Judgments.

distribute the monies from the settlements subject to the 2007 Judgment based in part on this traditional net artificial impact methodology. Class Counsel have proposed that the remainder be allowed as set forth above.

B. Part IV of the Plan: Settlements Subject to the 2006 Judgment

42. However, with respect to the settlements subject to the 2006 Judgment, the 2006 Settling Defendants' failure to retain their records made impractical the determination of the net amount of artificial impact that they had on prices. Moreover, the attempts to obtain through subpoena the records from the Publications that would have been necessary to calculate the net effect on price, were unsuccessful.

43. In this circumstance, had the settlements in the 2006 Judgment not been made, Plaintiffs would have argued that the entire net loss suffered by each Class member should be attributed to Defendants as actual damages. The outcome of any such legal argument is uncertain, at best. It must be recognized that profits and losses may occur due to many factors, rather than just manipulative impact, and that even persons with gains may be negatively impacted by the causation of artificial prices. But there was an argument that could have been made that, in this particular case, Defendants should be responsible for each Class member's net losses.

44. Class Counsel consulted with a leading economist on futures price manipulation who opined that 75% of the 2006 Judgment should be paid to persons who suffered losses from futures trading during the first five trading days of each month during the Class Period. This was the period when Plaintiffs' artificial impact expert's report showed that the overwhelming majority of the artificial impact occurred. This was also the time immediately following Defendants' false reports for which Plaintiffs had sufficient evidence.

45. Plaintiffs' economist also opined that 20% of the Net Settlement Fund from the 2006 Judgment should be distributed on the basis of the net futures volume (that is, purchases minus sales or sales minus purchases) of each Class member during the first five trading days of each month of the Class Period. Finally, Plaintiffs' economist also opined that 5% of the Net Settlement Fund for the 2006 Judgment should be allocated as follows: (a) 55% on the basis of the Eligible 2006 Settlement Class Members' Net Options Losses during the first five trading days of each month of the Class Period, (b) 22.5% on the basis of the Eligible 2006 Settlement Class Members' Net Options Losses during the entire Class Period, and (c) 22.5% on the basis of the Eligible 2006 Settlement Class Members' Net Options Volume during the first five trading days of each month, all as determined in the same manner as under the Options provisions of the 2007 Net Settlement Fund.

46. Thus, 95% of the 2006 Net Settlement Fund to futures traders based on their transactions during the first five trading days of each month during the Class Period under the Proposed Plan.

47. Plaintiffs' economist acknowledged that Plaintiffs do not have the information as to artificial impact and opined that, although it is not certain that any proxy would be the best one, the net loss and volume proxies were the best available.

48. Class Counsel have determined that, while no one knows what the best proxy would be, it is appropriate in this case to make two adjustments to Plaintiffs' economist's opinions. First, Class Counsel determined to increase the amount being distributed to net futures volume from 20% to 22.5% of the Net Settlement Fund for the 2006 Judgment. See Plan Part IV(2).

49. Further, Class Counsel have determined that 22.5% of the Net Settlement Fund for the 2006 Judgment should be allocated on the basis of net futures losses during the entire Class Period.

50. Class Counsel's judgment is that allocating settlement funds according to total net futures losses over the Class Period will avoid the arguably harsh result of very low payouts to persons who did have large losses during the Class Period but may not have net losses during the first five trading days of each month during the Class Period.

51. Also, Defendants' alleged manipulative conduct in this case also extended to their daily reports and to some activities other than false reporting. It is highly likely, in Class Counsel's judgment, that they would have encountered great difficulty in proving the daily reports case. But Class Counsel believe that there was some chance of success in proving such claim and some chance of success in proving the non-reporting alleged manipulative conduct.

52. In all these circumstances, Class counsel have determined that it would be fair also to allocate 22.5% of the Net Settlement Fund for the 2006 Judgment on the basis of Net Futures Losses throughout the Class Period. See Plan of Allocation.

53. Therefore, Class Counsel have reduced the payout in respect of losses during the first five trading days of each month during the Class Period to 50% of the 2006 Net Settlement Fund.

Hedgers

54. Hedgers will receive a 60% reduction and swap dealers (who are also hedgers) will receive a 92.5% reduction in their foregoing entitlements. These hedger deductions are greater than the hedger deductions that have been made in allocations of prior CEA manipulation settlements.

55. The types of wrongdoing here (including a fraud on the index) did not begin in the futures market. Plaintiffs' artificial impact expert did not compute artificiality on the basis of the separation of the futures price from other prices. Rather, Plaintiffs' artificial impact expert's report solely based artificiality upon the amount of change in the futures price that would result from the alleged false reports. Further, hedgers and swaps dealers, if they are conducting their businesses according to the norm, may have partial offsetting gains from their losses that they suffered in the futures markets or from any net volume exposure during the five-day windows.

C. Part V of the Plan: Guaranteed Minimum Payments

56. Part V of the Plan provides for a guaranteed minimum payment to all Eligible 2006 Settlement Class Members and all Eligible 2007 Settlement Class Members. These Class Members shall be guaranteed to receive a minimum payment of $500.00 or the actual amount of their total claimed and accepted futures or options losses, whichever is less.

INCENTIVE AWARDS

57. Notice was earlier given and no Class member timely objected to the payment to the three named Plaintiff Class representatives for reimbursement of expenses and compensation for their time in an aggregate amount not to exceed $105,000.

REQUEST FOR MORE INFORMATION OR CHANGE OF ADDRESS

58. If you have not retained a copy of the March 20, 2006 Class Notice and/or the April 23, 2006 Class Notice, and wish to obtain a copy thereof or other information you may do so by any of the following means: (1) accessing the Internet website at http://www.naturalgascase.com; (2) mailing your request to: In re Natural Gas Commodity Litigation, c/o Rust Consulting, Inc., Settlement Administrator, P.O. Box 24626, West Palm Beach, Florida 33416; or (3) calling 1-877-741-1231.

59. DO NOT TELEPHONE ANY DEFENDANT OR THE OFFICE OF THE CLERK OF THE COURT. You or your attorney may, during normal business hours, visit the Office of the Clerk of the Court, 500 Pearl Street, New York, New York in order to inspect the papers maintained there in file No. 03 Civ. 6186 (VM)(AJP).

60. If notice was sent to a wrong address, or if your address changes in the future, please send prompt written notification of your correct address to: In re Natural Gas Commodity Litigation, c/o Rust Consulting, Inc., Settlement Administrator, P.O. Box 24626, West Palm Beach, Florida 33416.

Dated: January 12, 2010

CLERK OF THE COURT
UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK

EXHIBIT A — PLAN OF ALLOCATION

I. ADDITIVE, NOT ALTERNATIVE DISTRIBUTION

Promptly after the Settlement Administrator computes the entitlement of Eligible 2006 and 2007 Settlement Class Members to payments under the terms of this Plan of Allocation or any modified terms that are ordered by the Court, the 2006 and 2007 Net Settlement Funds shall be paid to Eligible Settlement Class Members in accordance with this Plan of Allocation or any Court ordered amendments of this Plan.

Amendments may be made to the Plan by the Court during or after the Final Approval Hearing.

The different methods of payment listed below shall be additive, not alternative. Therefore, the total amount due to each Eligible Settlement Class Member shall be the sum of all the different entitlements for which that Settlement Class Member qualifies.

II. DEFINED TERMS

"2007 Judgment"

On June 15, 2007, the Court directed entry of the final judgment and order of dismissal approving settlements totaling $28,087,500 with the five remaining defendants[1] in the action. The Settlement Class was defined as:

> All persons who purchased, sold, settled or otherwise traded NYMEX Natural Gas Contracts,[2] as an opening or closing transaction or otherwise, between June 1, 1999 and December 31, 2002, inclusive ("the Class Period"). Excluded from the Settlement Class are the defendants in the Action, their employees, any parents, subsidiaries, or affiliates of the defendants, any entity in which any of the defendants has or had a controlling interest during the Class Period, and the legal representatives, heirs, successors or assigns of any of the defendants.

"2006 Judgment"

On May 24, 2006, the Court directed entry of the final judgment and order of dismissal approving settlements totaling $72,762,500 with eighteen defendants[3] in the action. The Settlement Class is identical to the Settlement Class certified by the Court on June 15, 2007.

"Eligible 2007 Class Member" is a Class member whose proof of claim was timely submitted to participate in the 2007 Judgment Settlement Class and whose documentation has been accepted by the Settlement Administrator as adequate to compute entitlement to a payment under the 2007 Judgment.[4]

"Eligible 2006 Settlement Class Member" is a Class member whose proof of claim was timely submitted to participate in the 2006 Judgment Settlement Class and whose documentation has been accepted by the Settlement Administrator as adequate to compute entitlement to a payment under the 2006 Judgment.

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[1] The five remaining defendants were El Paso Marketing, L.P., Coral Energy Resources, L.P., American Electric Power Co. Inc. (and AEP Energy Services, Inc.), Aquila Energy Marketing Services Corp. (and Aquila Merchant Services, Inc.), and Dominion Resources, Inc.

[2] A "NYMEX Natural Gas Contract" means any commodity futures, basis, swap, or option (or any combination thereof) related to natural gas that was traded, transacted or settled on NYMEX during the Class Period.

[3] CMS Field Services (now known as Cantera Gas Company LLC), CMS Marketing Services & Trading Company (now known as CMS Energy Resource Management Company), Cook Inlet Energy Supply, LLC, Cinergy Marketing and Trading, L.P., Duke Energy Trading and Marketing, L.L.C., Dynegy Marketing and Trade, West Coast Power LLC, *e-prime*, inc., Enserco Energy, Inc., Entergy-Koch Trading, LP, MidAmerican Energy Company, Mieco, Inc., ONEOK, Inc., ONEOK Energy Services Company, L.P. (formerly ONEOK Energy & Marketing Company, L.P.), Reliant Energy Services, Inc., Sempra Energy Trading Corp., Western Gas Resources, Inc., WD Energy Services, Inc., Williams Power Company, Inc. (formerly Williams Energy Marketing & Trading Co., Inc.), and the Williams Companies, Inc.

[4] If a Class member's proof of claim was determined timely submitted for the 2006 Judgment then it automatically was timely submitted for the 2007 Judgment.

"2006 Net Settlement Fund" is the amount remaining at the time of distribution from the 2006 Judgment amount, including all interest earned thereon, and after all approved expenses and deductions.

"2007 Net Settlement Fund" is the amount remaining at the time of distribution from the 2007 Judgment amount, including all interest earned thereon, and after all approved expenses and deductions.

III. 2007 JUDGMENT

A. Distribution. The 2007 Net Settlement Fund shall be distributed to Eligible 2007 Settlement Class Members as follows:

1. 82.5% of the 2007 Net Settlement Fund shall be distributed to 2007 Eligible Class Members on the basis of their futures contract transactions. See B-E below.

2. 5% of the 2007 Net Settlement Fund shall be distributed on the basis of the Eligible 2007 Settlement Class Members' options transactions as follows: (a) 55% on the basis of net options losses during the first five trading days of each month during the Class Period, (b) 22.5% on the basis of net options losses during the entire Class Period, and (c) 22.5% on the basis of net options volume during the first five trading days of each month during the Class Period. See D-E below.

3. For Eligible 2007 Settlement Class Members who were unable to submit transaction data sufficient to be able to track all futures contract purchases and sales by date, 12.5% of the 2007 Net Settlement Fund shall be distributed according to their Net Futures Volume as defined in Section IV, below.

B. Futures Contract Net Price Artificiality. Each Eligible 2007 Settlement Class Member shall be paid an amount equal to 40% of the 2007 Net Settlement Fund multiplied by a fraction, the numerator of which is such Eligible 2007 Settlement Class Member's Recognized Impact Claim and the denominator of which is the sum total of all Eligible 2007 Settlement Class Members' Recognized Impact Claims.

C. Recognized Impact Claim. Each Eligible 2007 Settlement Class Member's Recognized Impact Claim shall be determined by multiplying the daily amounts of artificiality by such Eligible 2007 Settlement Class Member's purchases and sales on that day and then summing and netting the total artificiality received on all days against the total artificiality paid on all days, as set forth in "1"- "2" below, provided that, for those Eligible 2007 Settlement Class Members who are hedgers, their foregoing "net artificiality paid" total shall be multiplied by 40% and the resulting product shall be their Recognized Impact Claim and for those Eligible 2007 Settlement Class Members who are swaps dealers, their forgoing net artificiality paid total shall be multiplied by 7.5% and the resulting product shall be their Recognized Impact Claim.

1. For purposes of the calculation of the net artificiality paid in the Recognized Impact Claim in paragraph B above, the following shall apply.

a. **Positive Impact**. The absolute values of all negative artificiality purchased and all positive artificiality sold by each Eligible 2007 Settlement Class Member shall be added together without regard to their positive or negative signs. The sum total of these absolute values equals each 2007 Eligible Settlement Class Member's Positive Impact received from the 2007 Judgment Defendants' alleged manipulative conduct.

b. **Gross Injury**. Similarly, the absolute values of the positive artificiality purchased and the negative artificiality sold by each Eligible 2007 Settlement Class Member shall be added together without regard to their positive or negative signs. The sum total of these absolute values equals each 2007 Eligible Class Member's Gross Injury incurred from the 2007 Judgment Defendants' alleged manipulative conduct.

c. **Gross Injury Minus Positive Impact Equals Recognized Impact Claim**. Each Eligible 2007 Settlement Class Member's Positive Impact shall then be subtracted from his or her Gross Injury. If the remainder is positive, then this positive number is the Recognized Impact Claim (subject, in the instance of hedgers, to a 60% reduction and, in the instance of swaps dealers, to a 92.5% reduction, as described above). However, if the remainder is zero or a negative number, then such 2007 Eligible Class Member shall have a Recognized Impact Claim of zero.

2. The daily amounts of artificiality are provided at www.naturalgascase.com.

D. 32% of the 2007 Net Settlement Fund shall be distributed to persons who had a net loss on their futures contract transactions opened on or after June 1, 2000 and closed on or prior to March 31, 2001 ("Subject Transactions"). This distribution shall be paid pro rata according to the Rescissory Loss on the Subject Transactions. As used herein, Rescissory Loss shall mean 100% of the net losses on the Subject Transactions of non-hedgers, 40% of the Subject Transaction Losses of hedgers, and 7.5% of the net losses of swaps dealer hedgers.

E. 10.5% of the 2007 Net Settlement Fund shall be distributed to Eligible 2007 Class Members who had net losses on all futures contract transactions liquidated during the Class Period. This distribution shall be made pro rata on the basis of Rescissory Loss on all such liquidations. As used herein, Rescissory Loss shall mean 100% of the net loss for all non-hedgers, 40% of the net loss for hedgers, and 7.5% of the net loss for swaps dealer hedgers.

F. **<u>Options</u>**. The amount of the payment to each Eligible 2007 Settlement Class Member in respect of options shall be determined as follows. The total amount available for distribution to options claimants shall be calculated by multiplying the total amount of the 2007 Net Settlement Fund by 5% ("the 2007 Options Net Settlement Fund"). The 2007 Options Net Settlement Fund shall then be paid to each options claimant by summing the following: (1) a portion of such fund by multiplying 55% of the fund by a fraction, the numerator of which is the claimant's Net Options Losses during the first five trading days of each month and the denominator of which is the sum total of all Net Options Losses during the first five trading days of each month established by all Eligible 2007 Settlement Class Members, (2) a portion of such fund by multiplying 22.5% of the fund by a fraction, the numerator of which is the claimant's Net Options Losses during the entire Class Period and the denominator of which is the sum total of all Net Options Losses during the entire class period established by all Eligible 2007 Settlement Class Members, and (3) a portion of such fund by multiplying 22.5% of the fund by a fraction, the numerator of which is the claimant's Net Options Volume during the first five days of each month and the denominator of which is the sum total of all Net Options Volume during the entire Class Period established by all Eligible 2007 Settlement Class Members.

1. "**<u>Net Options Losses</u>**," as used above, shall be determined by the "cash-in/cash-out" accounting method. Cash paid for the purchase of an option shall be netted against cash received for the sale of that option during the first five trading days of each month during the Settlement Class Period, or during the entire Class Period, respectively. If the cash paid by an options claimant exceeds the cash received by that claimant then the claimant has a Net Option Loss for the first five days of each month or for the entire Class Period. For purposes of determining eligible Net Option Losses the following shall apply.

a. For commercial hedgers the eligible amount of Net Options Losses shall be 40% of the foregoing; for swaps dealers, the eligible amount shall be 7.5% of the foregoing; and for all other claimants the eligible amount of Net Options Losses shall be 100% of the overall Net Options Losses as determined above.

b. For purposes of determining the Net Options Loss for the first five days of each month or for the entire Class Period, by the cash-in/cash-out method, options that expire, or are assigned or exercised, shall be deemed to have no value. Where the option is converted to a futures contract through assignment or exercise, then the resulting gain/loss will be included in the calculation of gains/losses on futures contracts, provided the futures contract is closed out within the same five-day period, or within the entire Class Period. Options that remain open at the end of the entire Class Period shall be assigned their cash-in/cash-out value at the time they were opened, and no market value shall be assigned for such options as of the end of the Class Period.

2. **"<u>Net Options Volume</u>,"** as used above, shall be the sum total of all options positions traded during the first five days of each month, whether or not the position was traded long or short, or whether or not the position was closed within the five days.

IV. 2006 JUDGMENT

The 2006 Net Settlement Fund shall be distributed to Eligible 2006 Settlement Class Members on the following basis:

1. 95% of the 2006 Net Settlement Fund shall be distributed on the basis of the futures contract payments set forth in "A" below.

2. 5% of the 2006 Net Settlement Fund shall be distributed in connection with options as follows: (a) 55% on the basis of the Eligible 2006 Settlement Class Members' Net Options Losses during the first five trading days of each month, (b) 22.5% on the basis of the Eligible 2006 Settlement Class Members' Net Options Losses during the entire class period, and (c) 22.5% on the basis of the Eligible 2006 Settlement Class Members' Net Options Volume during the first five trading days of each month, all as determined in the same manner as under the Options provisions of the 2007 Settlement Fund.

A. Futures Contract Transactions

1. Net Futures Losses

a. 50% of the 2006 Net Settlement Fund shall be distributed on the basis of net losses in futures contracts ("Net Futures Losses") during the first five days of each month during the Settlement Class Period, and 22.5% of the Net Settlement Fund shall be distributed on the basis of net losses in futures contracts during the entire class period.

b. Subject to "C" below, the amount paid to each Eligible 2006 Settlement Class Member under this "Net Futures Losses" part of the Plan of Allocation shall be the sum of the amounts determined as follows: (1) multiply 50% of the 2006 Net

Settlement Fund by a fraction, the numerator of which is that Eligible 2006 Settlement Class Member's Net Futures Losses over the first five days of each month and the denominator of which is the sum of all Eligible 2006 Settlement Class Members' Net Futures Losses over the first five days of each month, and (2) multiply 22.5% of the 2006 Net Settlement Fund by a fraction, the numerator of which is that Eligible 2006 Settlement Class Member's Net Futures Losses over the entire class period and the denominator of which is the sum of all Eligible 2006 Settlement Class Members' Net Futures Losses over the entire Class Pperiod.

c. Net Futures Losses during the first five trading days of the month shall be computed as follows: The net result of all of a claimant's futures transactions liquidated in the first five trading days of each month during the Class Period. For purposes of these calculations, the determination of the Settlement Administrator shall be final.

d. Net Futures Losses during the entire Class Period shall be determined as the net result of all claimants' futures transactions liquidated during the Class Period.

e. For those Eligible 2006 Settlement Class Members who are Hedgers, their foregoing Net Futures Losses shall be multiplied by 40% and the resulting product shall be their Net Futures Loss, and for those Eligible 2006 Settlement Class Members who are swap dealers, their Net Futures Losses shall be multiplied by 7.5%.

2. Net Futures Volume During the First Five Trading Days of Each Month During the Class Period

a. 22.5% of the 2006 Net Settlement Fund shall be paid to Eligible 2006 Settlement Class Members based upon their Net Volume of futures trades during the first five days of each month during the Settlement Class Period.

b. Subject to "C" below, the amount paid to each Eligible 2006 Settlement Class Member under this "Net Volume" part of the Plan of Allocation shall be determined as follows. Multiply 22.5% of the 2006 Net Settlement Fund by a fraction, the numerator of which is that Eligible 2006 Settlement Class Member's "Net Volume" and the denominator of which is the sum of all Eligible 2006 Settlement Class Members' "Net Volume."

c. For purposes of this calculation, Net Volume during the first five trading days shall be computed by netting all buys executed during each first five-day trading period against all sales executed during each first five-day trading period. For those claimants whose trading records did not contain sufficient data to determine whether the initial transaction for a reported position liquidation occurred during the first five trading days of the month, net volume is calculated as the sum of all futures transactions liquidated during the first five trading days of each month multiplied by 5%. For purposes of these calculations, the determination of the Settlement Administrator shall be final.

B. Options

Subject to "C" below, the amount of the payment to each Eligible 2006 Settlement Class Member from the 5% of the 2006 Settlement Fund allocated to options shall be determined in precisely the same manner as under the 2007 Settlement Fund.

C. Hedgers

For Hedgers, the eligible amounts of Net Futures Losses, Net Futures Volume, Net Options Losses and Net Options Volume shall be 40% and for swaps dealers the eligible amounts shall be 7.5% of the overall amounts as determined in Parts A and B, above.

V. GUARANTEED MINIMUM PAYMENTS

A. 2007 Net Settlement Fund

The above provisions for distribution notwithstanding, all Eligible 2007 Settlement Class Members shall be guaranteed to receive from the 2007 Net Settlement Fund a minimum payment of $500.00 or the actual amount of their total claimed and accepted futures or options losses, whichever is less.

B. 2006 Net Settlement Fund

The above provisions for distribution notwithstanding, all Eligible 2006 Settlement Class Members shall be guaranteed to receive from the 2006 Net Settlement Fund a minimum payment of $500.00.

VI. MISCELLANEOUS

Again, at or after the Final Approval Hearing, the Court may approve or modify the Proposed Plan without further notice to the Class.

In re Natural Gas Commodity Litigation
c/o Rust Consulting, Inc.
Settlement Administrator
P.O. Box 24626
West Palm Beach, Florida 33416

IMPORTANT COURT DOCUMENT