

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

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**U.S. COMMODITY FUTURES  
TRADING COMMISSION,**

**Case No. 2:05-cv-849**

**Plaintiff,**

**Judge Smith**

**vs.**

**Magistrate Judge King**

**JOSEPH P. FOLEY**

**Defendant.**

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**CONSENT ORDER OF PERMANENT INJUNCTION, CIVIL MONETARY PENALTY  
AND OTHER EQUITABLE RELIEF AGAINST JOSEPH FOLEY**

On September 14, 2005, Plaintiff U.S. Commodity Futures Trading Commission ("CFTC" or "Commission") filed a two count Complaint against Defendant Joseph P. Foley ("Defendant" or "Foley") alleging that he knowingly delivered false, misleading or knowingly inaccurate information concerning natural gas trades, and that he 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.* (2002). On February 3, 2006, Defendant filed an Answer to the Complaint.

**I.**

**CONSENT AND AGREEMENT**

To effect settlement of the matters alleged in the Complaint against Defendant without a trial on the merits or further judicial proceedings, Defendant:

1. Consents to the entry of this Consent Order of Permanent Injunction, Civil Monetary Penalty and Other Equitable Relief ("Order").

2. Acknowledges having been served with the Complaint in this action.
3. Admits the Court's jurisdiction over the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1.
4. Admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1.
5. Affirms that he has agreed to this Order voluntarily, and that no threats, or promises other than as contained herein, have been made to induce Defendant's consent to this order.
6. Waives:
  - i. all claims which he 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 relief;
  - iii. the right, if any, to a jury trial; and
  - iv. all rights of appeal from this Order.
7. Agrees that neither he nor any of his agents under his 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 Defendant's (i) testimonial obligations; or (ii) right to take legal positions in other proceedings to which the Commission is not a party. Defendant shall take all steps necessary to ensure his agents under his control comply with this provision.
8. By consenting to the entry of this Order, Defendant neither admits nor denies the allegations of the Complaint or any of the Findings of Fact and Conclusions of Law contained in Part II of this Order.

9. The Court, being fully advised in the premises, finds that there is good cause for the entry of this Order and that there is no just reason for delay. The Court therefore directs the entry of findings of fact, conclusions of law and a permanent injunction, a civil monetary penalty and ancillary equitable relief pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), as set forth herein.

## II.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

#### A. FINDINGS OF FACT

10. 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.

11. 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.

12. 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.*

13. Foley resides in Monticello, Illinois.

14. 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.

15. 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 from November 2002 through March 2004.

16. From at least November 2000 through September 2002 (the "Relevant Period"), natural gas was a commodity that was typically transported in interstate commerce through a network of pipelines across the United States.

17. 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").

18. 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.

19. Foley was the head of AEP's Gulf Desk and supervisor of the desk's natural gas traders from approximately November 1999 through October 2002.

20. 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.

21. 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.

22. The price index compilers use price and volume information collected from market participants, including AEP's Gulf Desk that was supervised by Defendant, in calculating indexes of natural gas prices for various hubs throughout the United States.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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. To date, Foley has actually received 10% of his participation interest in the Phantom Equity Plan.

28. During the Relevant Period, Defendant violated the Act by (i) knowingly 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) attempting to manipulate the price of natural gas, a commodity in interstate commerce, by knowingly directing those he supervised to deliver such false or misleading or knowingly inaccurate information.

29. 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.

30. 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.

31. 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.

32. From approximately November 2000 until in or about 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.

33. 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.

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

35. Such false or misleading or knowingly inaccurate reports concerned market information or conditions that affect or tend to affect the price of natural gas, a commodity in interstate commerce.

36. 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.

#### **B. CONCLUSIONS OF LAW**

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 that Defendant knew to be false or misleading or knowingly inaccurate, including price and volume information for purported natural gas trades. Such false or misleading or knowingly inaccurate reports concerned market information or conditions that affected or tended to affect the price of natural gas, a commodity in interstate commerce.

38. Defendant violated Sections 6(c), 6(d), and 9(a)(2) of the Act by attempting 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.

### **III.**

#### **TERMS OF ORDER**

The parties consent to the entry of an order by this Court as follows:

**ORDER**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

A. Defendant is permanently restrained, enjoined, and prohibited from knowingly delivering or causing 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 market information or conditions that affect or tend to affect the price of any commodity in interstate commerce in violation of Section 9(a)(2) of the Act, 7 U.S.C. §§ 13(a)(2).

B. Defendant is permanently restrained, enjoined, and prohibited from attempting to manipulate the price of any commodity in interstate commerce in violation of Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2).

C. Defendant is permanently restrained, enjoined and prohibited from applying for registration or engaging in any activity requiring such registration, or acting as a principal (as defined by the National Futures Association Registration Rule 101) of any registered entity or person, or entity or person required to be registered.

D. Defendant shall pay and be liable for a civil monetary penalty of \$350,000.00. Defendant shall pay such civil monetary penalty within ten (10) business days of the date of the entry of this Order by electronic funds transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order, made payable to the U.S. Commodity Futures Trading Commission, and sent to Dennese Posey, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581, or her successor, under cover of a letter that identifies Defendant and the name and docket number of this proceeding. Defendant shall simultaneously transmit a copy of the cover letter and the form of payment to the Director, Division of Enforcement, U.S. Commodity Futures Trading Commission, at the



following address: 1155 21<sup>st</sup> Street, NW, Washington, D.C. 20581. In the event Defendant fails to pay the civil monetary penalty in the time limit provided in this paragraph and upon notice by Plaintiff to the Court of such failure, this Order shall be vacated and the Preliminary Pretrial Order entered January 18, 2006 shall remain in effect.

E. Defendant 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. Defendant shall 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, Defendant agrees 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;
2. 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 testify completely and truthfully in any such proceeding, trial, or investigation. Defendant would be entitled to reimbursement for the statutory allowances for attendance and travel in associated with such cooperation; and
3. comply fully, promptly, and truthfully with any inquiries or requests for information including but not limited to inquiries or requests:
  - i. for authentication of documents;
  - ii. for any documents within Defendant's possession, custody, or control, including inspection and copying of documents;
  - iii. not undertake any act that would limit his ability to fully cooperate with the Commission. Defendant designates Matthew L. Fornshell, Esq. to receive all requests for information pursuant to this undertaking. Should Defendant 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.

F. This Court shall retain jurisdiction of this action to implement and carry out the terms of this and all related orders and decrees, to entertain any suitable application or motion for additional relief within the jurisdiction of this Court, and to assure compliance with this Order.

G. Each party shall bear its own costs and attorneys' fees incurred in connection with this action.

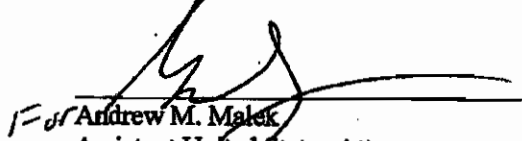
H. Nothing shall serve to amend or modify this Order in any respect whatsoever, unless: (i) reduced to writing, (ii) signed by all parties, and (iii) approved by order of the Court. If any provision of this Order or the application of any provision or circumstance is held invalid, the remainder of this Order shall not be affected by the holding.

DONE AND ORDERED THIS 27 DAY OF SEPTEMBER, 2006

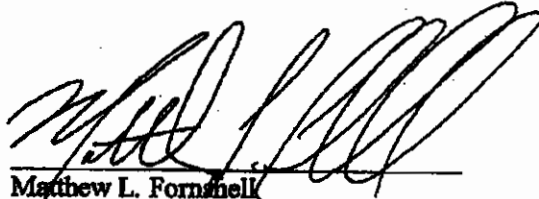
  
George C. Smith, United States District Judge

**CONSENTED TO BY:**

**Gregory G. Lockhart  
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**On behalf of Defendant**

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Richard B. Wagner  
Stephen J. Obie  
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**On behalf of Plaintiff**



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Joseph P. Foley

Dated: September 17, 2006