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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

CMS Energy Scores Preliminary OK On \$15M Price-Fixing Deal

By **Nadia Dreid**

Law360 (April 17, 2020, 5:27 PM EDT) -- CMS Energy has received the preliminary rubber stamp on its \$15 million settlement to resolve claims brought by a class of Wisconsin businesses that the company plotted with others in the energy industry to inflate the price of natural gas.

U.S. District Judge William M. Conley gave the settlement the initial go-ahead Thursday, roughly one month after he was first asked to approve the deal that would see a collection of CMS companies end claims they had been working to fend off for more than a decade.

The court said it would reserve its final judgment on the matter for a fairness hearing slated for later this year, but initially it seemed that the terms of the deal were fair and reached as the result of good faith negotiations.

If granted final approval, the \$15 million settlement would release CMS from the consolidated suit that wound its way back to Wisconsin federal court after spending years in multidistrict litigation in Nevada, from which it was remanded in 2019.

The sprawling litigation got its boots on back in the early 2000s after accusations were laid in California federal court that more than a dozen companies tied to the natural gas industry had taken part in a plot to jack up prices.

Suits began rolling in after a Federal Energy Regulatory Commission probe into the industry found that the price of gas futures was being manipulated at the New York Mercantile Exchange between 2000 and 2002.

The commission found that brokers were falsifying sales reports and participating in wash trading, when a broker buys and sells the same item over and over again to create an illusion of activity, as well as churning, when brokers intentionally make excessive trades in order to generate commissions.

Massive fines and civil litigation followed, and for the next decade and a half, claims from natural gas buyers that say they were duped by the price-fixing worked their way through district and appellate courts and were eventually consolidated into the MDL.

The case even made a pit stop at the U.S. Supreme Court, which in 2015 breathed new life into state law claims from the MDL. The court ruled 7-2 that Congress hadn't given FERC oversight over first or retail sales of natural gas, rejecting the argument that the state claims were preempted by the Natural Gas Act.

Representatives for the parties did not immediately respond to a request for comment.

The class is represented by Robert L. Gegios, Ryan M. Billings, Melinda A. Bialzik and Lance E. Duroni of Kohner Mann & Kailas SC; John S. Skilton, Christopher G. Hanewicz, Autumn N. Nero, Brian H. Potts and Sopen B. Shah of Perkins Coie LLP; and Russell S. Jones Jr. and Andrew J. Ennis of Polsinelli PC.

CMS is represented by Sean A Commons, Theodore Robert Scarborough, Jr. and Sherry A. Knutson of Sidley Austin LLP.

The suit is NewPage Wisconsin System Inc. v. CMS Energy Resource Management Co. et al., case number 3:09-cv-00240, in the U.S. District Court for the Western District of Wisconsin.

--Editing by Abbie Sarfo.

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