

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 1/3/12

IN RE: AMARANTH NATURAL GAS
COMMODITIES LITIGATION

MASTER FILE NO.
07 CIV. 6377 (SAS)

This Document Relates To:

ECF Case

ALL ACTIONS

**ORDER PRELIMINARILY APPROVING PROPOSED SETTLEMENT,
SCHEDULING HEARING FOR FINAL APPROVAL THEREOF, AND APPROVING
THE PROPOSED FORM AND PROGRAM OF NOTICE TO THE CLASS**

The parties to the Stipulation and Agreement of Settlement entered into on December 22, 2011 (the "Settlement Agreement") between Plaintiffs and Defendant ALX Energy, Inc., Defendant James DeLucia and non-party Vincent Rufa in the consolidated class action captioned *In re: Amaranth Natural Gas Commodities Litigation*, 1:07-Civ.-6377 (SAS) (the "Manipulation Class Action"), having applied for an order approving the proposed settlement of the Manipulation Class Action in accordance with the Settlement Agreement and for dismissal of the Manipulation Class Action on the merits and with prejudice upon the terms and conditions set forth in the Settlement Agreement, and the Court having read and considered the Settlement Agreement and accompanying documents; and the parties having consented to the entry of this Order,

NOW, THEREFORE, this ^{January 2012} 3rd day of ~~December~~, 2011, upon application of the Parties,

IT IS HEREBY ORDERED that:

1. Except for the terms defined herein, the Court adopts and incorporates the definitions in the Settlement Agreement for the purposes of this Order.

2. For purposes of settlement only, the Class shall be preliminarily certified and maintained as a class action, pursuant to Rule 23 of the Federal Rule of Civil Procedure. The Class is defined as: All persons (other than Defendants, their employees, affiliates and co-conspirators), who satisfy any one of the following conditions:

(1) Purchased, between February 16, 2006 and September 28, 2006 (“Class Period”), New York Mercantile Exchange (“NYMEX”) natural gas futures contracts¹ for December 2006, January 2007, February 2007, or March 2007 either (i) to liquidate prior to September 1, 2006, a short² position in the contract, or (ii) as a long³ position in such contract which was not liquidated until after May 10, 2006;

(2) Purchased, during the Class Period, a NYMEX natural gas futures contract for March 2006, April 2006, May 2006, June 2006, July 2006, August 2006, September 2006, October 2006, or November 2006 (“the 2006 Contracts”) or April 2007 as a long position in such contract, and liquidated such position after May 10, 2006;

(3) Purchased a 2006 Contract as a long position in such contract, held such a position as of the start of or acquired such a position during any of the following time periods, and sold all or a portion of such position during or after the end of such time period and on or prior to September 28, 2006. *Time Periods:* (i) 2:00 p.m.-2:30

¹ In this class definition, the terms “NYMEX natural gas futures contracts” or “natural gas futures contracts” include the miNY Henry Hub natural gas futures contracts.

² As used in this class definition, a short position in a given contract expiration (*e.g.*, March 2006) means a position in which the class member’s open sales of that expiration exceed the class member’s open purchases of that expiration. This is so regardless of whether the short position is a standalone position or is part of a spread with a long position in a different contract expiration.

³ As used in this class definition, a long position in a given expiration (*e.g.*, April 2006) means a position in which the class member’s open purchases of that expiration exceed the class member’s open sales of that contract expiration. This is so regardless of whether the long position is a standalone position or is part of a spread with a short position in a different contract expiration (*e.g.*, March 2006).

p.m. on February 24; (ii) 2:00 p.m.-2:30 p.m. on March 29; or (iii) 2:00 p.m.-2:30 p.m. on April 26, 2006.

This preliminary certification of the Class shall supersede the certification reflected in the Order entered by the Court on September 27, 2010.

3. The Court hereby appoints Lovell Stewart Halebian Jacobson LLP, Lowey Dannenberg Cohen & Hart, P.C. and Louis F. Burke P.C. as class counsel, having determined that the requirements of Rule 23(g) of the Federal Rules of Civil Procedure are fully satisfied by this appointment.

4. Plaintiffs Roberto E. Calle Gracey, John F. Special and Gregory H. Smith are hereby appointed as representatives to the Class.

5. A hearing will be held on April 9th, 2012 at 4:30 [a.m./p.m.] [approximately 95 days after entry of this Order] in Courtroom 15C of this Courthouse before the undersigned, to consider the fairness, reasonableness, and adequacy of the Settlement Agreement (the "Settlement Hearing"). The foregoing date, time, and place of the Settlement Hearing shall be set forth in the notice and publication notice which is ordered herein, but shall be subject to adjournment or change by the Court without further notice to the Members of the Class other than that which may be posted at the Court and on the Court's website.

6. The Court reserves the right to approve the Settlement at or after the Settlement Hearing with such modifications as may be consented to by the Parties and without further notice to the Class.

7. Notice of the instant Settlement shall be combined and consolidated with notice of the settlement with the Amaranth Defendants, which was preliminarily approved by the Court on December 16, 2011. Docket No. 368. Lead Counsel shall cause copies of the combined class notice, substantially in the form attached as Exhibit A to Plaintiffs' Motion For Preliminary

Approval of Class Action Settlement dated December 27, 2011, to begin to be mailed by United States first class mail, postage prepaid, to (a) all large traders in New York Mercantile Exchange (“NYMEX”) natural gas futures contracts during the Class Period whose names and addresses have been obtained by Plaintiffs pursuant to a subpoena to the NYMEX earlier in the litigation; (b) all clearing brokers on the NYMEX during the Class Period whose names and addresses have been obtained by Plaintiffs pursuant to a subpoena to the NYMEX earlier in the litigation (who should forward the Class Notice to their customers who transacted in NYMEX natural gas futures contracts during the Class Period or provide the names and addresses of such customers to Lead Counsel); and (c) any additional reasonably identifiable members of the Class. The foregoing mailings shall be completed no later than 15 days after the date of entry of this Order.

8. As soon as practicable after the mailing of the class notice commences, Lead Counsel shall cause to be published a combined publication notice substantially in the form of Exhibit B to Plaintiffs’ Motion For Preliminary Approval of Class Action Settlement dated December 27, 2011 as follows: (a) for two consecutive months in Futures Magazine; (b) on the Futures Magazine website for one month; (c) for two consecutive months in Stock and Commodities Magazine; and (d) on the Stock and Commodities Magazine website for one month.

9. Lead Counsel shall also cause the combined class notice to be published on a website established for this Settlement, www.amaranthcommoditieslitigation.com, within 10 days after the entry of this Order. Both the combined class notice and the combined summary notice will direct members of the Class to the website, www.amaranthcommoditieslitigation.com, where they can access the Settlement Agreement, this Order, the motion for preliminary approval, answers to anticipated questions about class action settlements and other information.

10. The Court approves, in form and substance, the combined class notice. The form and method of notice specified herein is the best notice practicable and shall constitute due and sufficient notice of the Settlement Hearing and the pendency of the action to all persons entitled to receive such notice, and fully satisfies the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and applicable law.

11. The terms of the Settlement Agreement are hereby preliminarily approved. The Court finds that the Settlement Agreement was entered into at arm's-length by experienced counsel and is sufficiently within the range of reasonableness that notice of the Settlement Agreement should be given as provided in this Order.

12. All proceedings in the Manipulation Class Action, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement, are hereby stayed and suspended until further order of this Court.

13. Any member of the Class who objects to any aspect of the Settlement or the Order and Final Judgment, or who otherwise wishes to be heard, may appear in person or by his or her attorney at the Settlement Hearing and present evidence or argument that may be proper and relevant; provided, however, that, except for good cause shown, no person other than Lead Counsel and counsel for the Defendants ALX Energy Inc. and James DeLucia shall be heard and no papers, briefs, pleadings, or other documents submitted by any member of the Class shall be considered by the Court unless, not later than 23 days prior to the Settlement Hearing directed herein the objecting member of the Class files the following with the Court and serves the same on or before such filing by hand or overnight mail on the Lead Counsel and all counsel of record for the Defendants ALX Energy Inc. and James DeLucia:

(i) a written notice of intention to appear;

(ii) proof of membership in the Class;

(iii) a detailed statement of the objections to any matters before the Court;

(iv) a statement advising of any court proceeding in which said objector has made an objection to a proposed class action settlement within the past three years, including case name, docket number, and court;

(v) the grounds or reasons why the member of the Class desires to appear and be heard;

and

(vi) all documents or writings the member of the Class desires the Court to consider.

14. Any member of the Class who fails to object in the manner described in Section 13 of this Order shall be deemed to have waived the right to object (including any right of appeal) and shall be forever barred from raising such objection in this or any other action or proceeding. Discovery concerning any purported objections to the Settlement shall be completed no later than three days before the Settlement Hearing.

15. Any request for exclusion from the Class by a member of the Class must be made in writing and received by the Settlement Administrator no later than the thirty-five days before the Settlement Hearing.

16. At least ten (10) days prior to the Settlement Hearing, Lead Counsel shall cause to be served and filed a sworn statement attesting to compliance with the notice provisions in Sections 7, 8, and 9 of this Order.

17. To effectuate the Settlement Agreement and the notice provisions, the Court hereby approves Rust Consulting, Inc. (the "Settlement Administrator") to be responsible for: (a) establishing a P.O. Box, information telephone line and website (to be included in the class notice and publication notice) for the purpose of communicating with members of the Class; (b)

disseminating notice to the members of the Class; and (c) accepting and maintaining documents sent from Class members.

18. The Settlement Agreement and any negotiations, statements, or proceedings in connection therewith, shall not be construed or deemed evidence of, a presumption of, concession of, or admission by, any of the Released Parties or any other person of any fault, liability, or wrongdoing as to any facts or claims alleged or asserted in the Actions or otherwise, or that Plaintiffs, the Class, or any other Person, have suffered any damage attributable in any manner to any of the Released Parties. The Settlement Agreement and any negotiations, statements, or proceedings in connection therewith, shall not be construed or deemed evidence of, a presumption of, concession of, or admission or lack of merit of any of the Releasing Parties' claims. The existence of the Settlement Agreement, its contents, and any negotiations, statements, or proceedings in connection therewith, shall not be offered or admitted into evidence or referred to, interpreted, construed, invoked, or otherwise used by any person for any purpose in the Actions or otherwise, except as may be necessary to enforce or obtain Court approval of the Settlement. Notwithstanding the foregoing, any of the Released Parties may file the Settlement Agreement, or any judgment or order of the Court related hereto, in any other action that may be brought against them, in order to support any and all defenses or counterclaims based on res judicata, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion, or similar defense or counterclaim.

19. If the Settlement is approved by the Court following the Settlement Hearing, a Final Order and Judgment will be entered as described in the Settlement Agreement.

20. If the Settlement, including any amendment made in accordance with the Settlement Agreement, is not approved by the Court or shall not become effective for any reason, the Settlement (including any modification thereof made with the consent of the Parties as provided for in the Settlement Agreement), and preliminary certifications herein and any actions taken or to be taken in connection therewith (including this Order and any judgment entered herein) shall be terminated and shall become void and of no further force and effect. In that event, neither the Settlement Agreement, nor any provision contained in the Settlement Agreement, nor any action undertaken pursuant thereto, nor the negotiation thereof by any party, shall be deemed an admission or concession, or received as evidence in this or any other action or proceeding.

21. The Court may, for good cause, extend any of the deadlines set forth in this Order without notice to Members of the Class.

22. In the event that the Settlement Agreement is terminated, the Settlement Agreement and all proceedings had in connection therewith shall be null and void, except as expressly provided to the contrary in the Settlement Agreement, and without prejudice to the *status quo ante* rights of the Parties.

23. If the Settlement Agreement is terminated or is ultimately not approved, the Court will modify any existing scheduling order to ensure that the Parties will have sufficient time to prepare for the resumption of litigation.

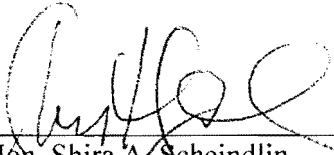
24. If any deadline imposed herein falls on a non-business day, then the deadline is extended until the next business day.

IT IS SO ORDERED.

January, 2012

Signed this 3 day of ~~December, 2011~~, at the Courthouse for the United States District

Court for the Southern District of New York.



Hon. Shira A. Scheindlin
United States District Court Judge