

CASE STUDY

National Gas Distributors (NGD) Bankruptcy

INDUSTRY

Natural Gas

AREAS OF EXPERTISE

Bankruptcy
Fair market value
Pricing in energy markets

FOR MORE INFORMATION

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ABOUT BATES WHITE

Bates White is a consulting firm offering services in economics, finance, and business strategy to leading law firms, Fortune 500 companies, and government agencies. Bates White has offices in Washington, DC, and San Diego, California.

SUMMARY

Dr. Kathleen King filed 11 expert reports in the Chapter 11 bankruptcy case of National Gas Distributors, LLC (NGD), on behalf of a joint defense group of some of NGD's former customers. Her first ten reports, filed in January 2008, determined the fair value of contracts between NGD and defendants. Dr. King's eleventh report (May 11, 2009) discussed whether the contracts between NGD and its customers were commodity forward agreements or swap agreements and, thus, protected from avoidance by the safe harbor provision of the bankruptcy code.

BACKGROUND

The trustee for NGD filed adversary proceedings against some of NGD's customers following NGD's bankruptcy after Hurricanes Katrina and Rita. The trustee claimed that NGD had sold natural gas to the defendants for "less than reasonably equivalent value" while NGD was insolvent and, therefore, that such sales constituted avoidable "fraudulent transfer." Some defendants sought to bar the avoidance action by employing a safe harbor defense provided by the bankruptcy code applicable to "swap agreements," which are defined to include commodity forward agreements. In February 2009, the Fourth Circuit reversed the bankruptcy court (which had held that the contracts were not commodity forward agreements) and remanded the case.

ANALYSIS

Dr. King's 2008 reports determined the fair value of the contracts between NGD and some defendants. Additionally, a common issues report described the appropriate forward market prices to be used to determine the fair value of the forward contracts, including the appropriate price for the more illiquid components of the contracts. It also described the unprecedented nature of the disruptions to the oil and natural gas supplies and physical infrastructure, transportation, and trading; and the resulting impact on natural gas prices that followed Hurricanes Katrina and Rita.

Dr. King's 2009 report examined industry practices, the contracts at issue, and the contracts in *In re Borden* cited by the Fourth Circuit, which stated that "the quantity and time elements of the contracts must be fixed at the time of contracting." The NGD case has been closely watched because of its implications as to whether often-used contracting forms will be granted safe harbor protection under the bankruptcy code. The answer to this question has implications for the stability of financial and commodity markets.