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Clerk, U. S. Dist. Court
W. Dist. of N. C.

UNITED STATES DISTRICT COURT
For the
WESTERN DISTRICT OF NORTH CAROLINA
(Charlotte Division)

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U.S. DISTRICT COURT
W. DIST. OF N.C.

SECURITIES AND EXCHANGE COMMISSION,	:
	:
Plaintiff,	:
	:
v.	:
	:
NATIONAL GAS & POWER COMPANY, INC.,	:
et. al.	:
	:
Defendants.	:

CIVIL ACTION NO.
89-207-M

FINAL JUDGMENT OF
PERMANENT INJUNCTION
AND OTHER EQUITABLE
RELIEF AGAINST
NATIONAL GAS & POWER
COMPANY, INC. AND
JOSEPH A. DIBRUNO

The Court having considered this matter pursuant to a motion for partial summary judgment filed by plaintiff, Securities and Exchange Commission ("Commission"), pursuant to Rule 56 of the Federal Rules of Civil Procedure against defendants National Gas & Power Company, Inc. ("National Gas") and Joseph A. DiBruno ("DiBruno"); the Court having determined that it has in personam jurisdiction over them and jurisdiction over the subject matter of the action, and having made findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure and the Court being fully advised in the premises;

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I. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendants National Gas and DiBruno, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Final Judgment of Permanent Injunction, by personal service or otherwise, and each of them, whether as principals or as aiders and abettors, be and hereby are permanently enjoined from, directly or indirectly:

1. making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise the common stock of National Gas or any other security unless and until a registration statement has been filed with the Securities and Exchange Commission as to such securities, or while a registration statement filed with the Securities and Exchange Commission as to such securities is the subject of a refusal order or stop order of the Securities and Exchange Commission, or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act of 1933, as amended [15 U.S.C. 77h];
2. making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell the common stock

of National Gas or any other security through the use or medium of any prospectus or otherwise unless and until a registration statement is in effect with the Securities and Exchange Commission as to such securities; or

3. carrying the common stock of National Gas or any other security or causing them to be carried through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or for delivery after sale, unless a registration statement is in effect with the Securities and Exchange Commission as to such securities;

provided, however, that nothing in the foregoing paragraphs (1), (2), and (3) shall apply to any security or transaction which is exempt from the provisions of Section 5 of the Securities Act of 1933, as amended [15 U.S.C. 77e].

II. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants National Gas and DiBruno, their agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Final Judgment of Permanent Injunction, by personal service or otherwise, and each of them, whether as principals or as aiders and abettors, in the offer or sale of common stock of National Gas or any other security by the use of any means or instruments of transportation or communication

in interstate commerce or by the use of the mails be and hereby are permanently enjoined from, directly or indirectly:

1. employing any device, scheme, or artifice to defraud;
2. obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
3. engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any purchasers of such securities;

concerning, but not limited to:

- a. the use of proceeds;
- b. the financial condition of an issuer;
- c. the cost of the securities;
- d. the business of an issuer;
- e. the assets, liabilities or net worth of an issuer;
- f. the prospective increases in the price of an issuer's securities; or
- g. misrepresentations or omissions of facts of similar purport and object.

III. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants National Gas and DiBruno, their officers, agents, servants, employees, attorneys, and those persons in active concert or

participation with them who receive actual notice of this Final Judgment of Permanent Injunction, by personal service or otherwise, and each of them, whether as principals or as aiders and abettors, in connection with the purchase or sale of common stock of National Gas or any other security by the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange be and hereby are permanently enjoined from, directly or indirectly:

1. employing any device, scheme, or artifice to defraud;
2. making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
3. engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

concerning, but not limited to, the matters stated in paragraph II, above.

IV. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendants National Gas and DiBruno, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this Final Judgment of Permanent Injunction, by personal service or otherwise, and each of them, whether as principals or as aiders and abettors, in connection with the reports of National Gas or any other issuer

required to file reports with the Securities and Exchange Commission, be and hereby are permanently enjoined from, directly or indirectly:

1. filing materially false annual, quarterly or current reports required to be filed with the Commission; or
2. failing to file with the Commission, annual, quarterly, or current reports within the time prescribed for filing such reports; or
3. failing to file with the Commission timely notification of its inability to file annual or quarterly reports and the reasons therefor within the time prescribed for such notification.

V. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant National Gas shall within 60 days from the date of this order, unless otherwise extended, file all delinquent quarterly and annual reports with the Commission or if it is unable to file such reports and the Commission deems it necessary and appropriate for the protection of investors to suspend or revoke the registration of National Gas pursuant to Section 12(j) of the Exchange Act, National Gas shall consent to such order of suspension or revocation deemed by the staff of the Commission as necessary and appropriate for the protection of investors.

VI. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant DiBruno, his agents, servants, employees, attorneys, and those persons in active concert or participation with him who receive actual notice of this Final Judgment of Permanent Injunction, by

personal service or otherwise, and each of them, whether as principals or as aiders and abettors, be and hereby are permanently enjoined from, directly or indirectly, failing to file with the Commission a statement disclosing the beneficial ownership of more than five percent (5%) of the equity securities of National Gas or any other issuer which is registered pursuant to Section 12 of the Exchange Act, within ten (10) days after such acquisition, and containing the information required by Schedule 13D or other information as the Commission deems necessary.

VII. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that defendant DiBruno, his agents, servants, employees, attorneys, and those persons in active concert or participation with him who receive actual notice of this Final Judgment of Permanent Injunction, by personal service or otherwise, and each of them, whether as principals or as aiders and abettors, be and hereby are permanently enjoined from, directly or indirectly, with respect to the common stock of National Gas, or any other issuer which has a class of equity securities (other than an exempted security) which is registered pursuant to Section 12 of the Securities Exchange Act of 1934, of which they beneficially own more than ten percent (10%) of such class of securities or of which they serve as an officer or director, from failing to file with the Securities and Exchange Commission on the date the security is registered on a national securities exchange or by the effective date of a registration statement filed pursuant to Section 12(g) of the Exchange Act or within ten (10) days after they become such beneficial owner, officer or director, a statement indicating their beneficial

ownership interest, or failing to file with the Commission within ten (10) days after the close of each calendar month thereafter if there has been a change in such ownership during such month, a statement indicating their ownership at the end of such month and such changes in ownership as have occurred during such calendar month as required by Section 16(a) of the Exchange Act [15 U.S.C. 78p(a)] and Rule 16a-1, thereunder [17 C.F.R. 240.16a-1].

VIII. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants National Gas and DiBruno within 60 days of the date of this order file an accounting of all monies or property of any kind whatsoever received by them from the sale of the common stock of National Gas from November, 1983 to date and that defendants National Gas and DiBruno return all monies received, directly or indirectly, from the sale of National Gas common stock from November, 1983 to the investors who paid the monies, or if they cannot be found or located, to the United States Treasury, and such other amounts deemed necessary and appropriate to deprive the defendants of any unjust enrichment. The accounting shall show the name of the investor, the number of shares purchased, the amount paid, the date paid, the person who initially received the monies from the investor, any amount paid as a commission or remuneration to the salesperson and use of the proceeds.

IX. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court retains jurisdiction of this matter for purpose of enforcing this judgment.

There being no just reason for delay the Clerk of the Court is hereby directed to enter this Final Judgment of Permanent Injunction pursuant to Rules 54(b), 58, 77(d) and 79(a) of the Federal Rules of Civil Procedure.

Dated this 8 day of July, 1989


UNITED STATES DISTRICT JUDGE

JUDGMENT ENTERED:

Clerk