

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Case No. 04-3090 (MJD/AJB)

Plaintiff,

vs.

NRG ENERGY, INC.

Defendant.

**CONSENT ORDER OF PERMANENT INJUNCTION, CIVIL MONETARY
PENALTY AND OTHER EQUITABLE RELIEF AGAINST NRG ENERGY, INC.**

On July 1, 2004, Plaintiff U.S. Commodity Futures Trading Commission ("CFTC" or "Commission") filed a one count Complaint against Defendant NRG Energy, Inc. ("Defendant" or "NRG"), alleging that traders employed by NRG knowingly delivered false, misleading or knowingly inaccurate information concerning natural gas trades to companies that use information of this kind to compile natural gas index prices. The Complaint, as amended, seeks a civil monetary penalty, injunctive and other relief for violations of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 1 *et seq.* (2002).

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").¹

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 it 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 it 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 NRG nor any of its agents under its control shall take any action or make any public statement denying, directly or indirectly, or creating, or

¹ The payment of the civil monetary penalty is governed exclusively by Defendant's Plan of Reorganization, confirmed by the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court"), Docket No. 03-13024, on November 24, 2003 and effective on December 5, 2003 and by the relevant orders of the Bankruptcy Court with respect to the monetary claim of the CFTC against Defendant.

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 its agents under its control comply with this provision.

8. Represents that the NRG employees who were involved in the reporting activities described below have not been employed by NRG since before NRG filed its Chapter 11 bankruptcy petition in May 2003.

9. Consents to the use of the findings contained in this Order in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party; provided, however, that Defendant does not consent to the use of its settlement offer or the findings of fact and conclusions of law in this Order, as the sole basis for any other proceedings brought by the Commission, other than a proceeding brought to enforce the terms of this Order, or any proceedings in bankruptcy. Defendant also does not consent to the use of its settlement offer or the findings of fact and conclusions of law in this Order by any other person or entity in this or in any other proceeding. The findings of fact and conclusions of law made in this Order are not binding on any other person or entity named as a defendant or respondent in this or any other proceeding.

10. 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.

II.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. 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.

A. FINDINGS OF FACT

2. 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.

3. 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.

4. 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.*

NRG's Operations

5. NRG is a wholesale generator of power (electricity) and is primarily engaged in the ownership and operation of power generation facilities, as well as trading

and marketing of energy commodities, including natural gas and power in the United States and abroad.

6. At all times material to the Complaint, NRG had its headquarters at 901 Marquette Avenue, Minneapolis, Minnesota.

7. In 2003, NRG and certain of its subsidiaries, including NRG Power Marketing, Inc. ("NRG Power Marketing"), commenced voluntary petitions under Chapter 11 of the Bankruptcy Code of the United States Bankruptcy Court for the Southern District of New York. On November 24, 2003, the bankruptcy court entered an order confirming a plan of reorganization for NRG and NRG Power Marketing, and the plan became effective on December 5, 2003.

8. All actions by Defendant and its employees which are the subject of this Order occurred before the commencement of NRG's bankruptcy.

9. From at least August 2001 through May 2002 ("Relevant Period"), Defendant, through its subsidiary NRG Power Marketing, employed a number of traders who were responsible, inter alia, for buying and selling natural gas for use in running NRG's facilities and for speculative purposes.

10. During the Relevant Period, NRG Power Marketing traded natural gas, for profit, on electronic platforms, through brokers, and directly with counterparties.

11. NRG Power Marketing divided its traders into groups called desks. Some of the desks corresponded with NRG's specific plants and/or with geographic regions of the United States.

12. NRG Power Marketing's natural gas traders were assigned to the Natural Gas Desk. The natural gas traders entered into transactions calling for the physical delivery of gas ("physical trades"). They also entered into financial trades, including futures and options contracts on the New York Mercantile Exchange ("NYMEX") and other related instruments.

Natural Gas Price Indexes

13. Physical trades are typically priced with either a fixed price set at the time of the transaction or with reference to an index price to be set at a later date.

14. During the Relevant period, various companies used natural gas market information reported by market participants like Defendant to calculate indexes of natural gas prices for various hubs throughout the United States ("price index compilers"). The price index compilers included Platts, a division of The McGraw-Hill Companies, Inc. which issued a daily index titled *Gas Daily*.

15. The reported market information included price and volume information for natural gas transactions entered into by market participants for delivery at a specific location or hub.

16. Participants in the natural gas markets widely used these price indexes to price and settle commodity transactions. In particular, natural gas price indexes such as *Gas Daily* were used by a variety of financial and physical market participants on the spot and over-the-counter derivatives market to price and settle their natural gas deals. Natural gas futures and options traders referred to the prices published by price index compilers for price discovery and for assessing price risk.

17. The price and volume information reported to these indexes, including *Gas Daily*, is market information that affected or tended to affect the price of natural gas in interstate commerce, and affected or tended to affect the natural gas futures and options traded on the NYMEX.

NRG's Reporting of Trades

18. During the Relevant Period, Defendant, through its employees in NRG Power Marketing, delivered reports concerning market information or conditions to price index compilers by telephone, facsimile, and electronic mail.

19. *Gas Daily* employees instructed NRG Power Marketing traders concerning the kind of information to be reported, requesting that NRG Power Marketing traders report prices and volumes of actual physical next day trades or the full range of those trades with a volume weighted average price, and expressly advising against reporting intra-day trades.

20. During the Relevant Period, Defendant, through its employees in NRG Power Marketing, knowingly delivered information concerning natural gas trades to *Gas Daily*. The reports made by Defendant contained false or misleading or knowingly inaccurate information, including purported trades that traders had not executed, actual trades entered into by NRG Power Marketing, but with the prices and/or volumes of those transactions altered, and intra-day trades reported to *Gas Daily* as next day trades.

21. The false, or misleading, or knowingly inaccurate reports concerning prices and volumes of natural gas trades, which employees of NRG Power Marketing delivered

to *Gas Daily* to compute index prices, was market information that affected or tended to affect the price of natural gas, a commodity in interstate commerce.

B. CONCLUSIONS OF LAW

22. Defendant violated Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2), when its employees knowingly delivered reports to *Gas Daily* that contained market information that they 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.

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 affects or tends 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 shall pay and be liable for a civil monetary penalty of Two Million Dollars (\$2,000,000). The terms of the allowance, treatment and classification of

the civil monetary penalty are set forth in, and shall be governed exclusively by, the Authorization Order, as set forth in footnote 1 above.

C. 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 Michael Bramnick 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.

D. 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.

E. 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.

F. This Order shall inure to the benefit of and be binding on the parties' successors, assigns, heirs, beneficiaries and administrators.

G. This Order may be executed by the parties in counterparts and by facsimile.

H. The failure of any party hereto at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same or any other provision of this Order. No waiver in one or more instances of the breach of any provision contained in this Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Order.

I. Each person executing this Order represents, warrants and covenants that he/she has the full right and authority to enter into this Agreement on behalf of the Party on whose behalf such execution is made, and has the full right and authority to fully bind said Party to the terms and obligations of this Order.

DONE AND ORDERED THIS 13th DAY OF FEBRUARY 2007.

s/Michael J. Davis

Michael J. Davis, United States District Court Judge