

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

RECEIVED
04 JUL -1 AM 9:38
CLERK, U.S. DIST. COURT
MINNEAPOLIS, MN

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

NRG ENERGY, INC.,

Defendant.

CIVIL ACTION NO. _____

Complaint For Injunctive Relief
Under The Commodity Exchange Act,
As Amended

The United States Commodity Futures Trading Commission (“Commission”), by its attorneys, alleges as follows:

I. Introduction

At all times material to this Complaint:

1. Natural gas was a commodity that traveled in interstate commerce through a network of pipelines across the United States.
2. Defendant NRG Energy, Inc. (“NRG”) and companies like it were in the business, inter alia, of buying and selling natural gas for profit. Traders employed by NRG and these other companies entered into transactions calling for the physical delivery of natural gas. Such transactions were called “physical” trades. Physical trades occurred at fixed prices or at “index” prices.
3. Electric utilities often purchased natural gas at prices tied to index prices. In addition, the price of natural gas contracts was often based on index prices.

4. Certain index prices on which physical natural gas was traded were published on a daily basis by an industry newsletter, *Platts' Gas Daily* ("*Gas Daily*"). *Gas Daily* calculated the index prices by using information submitted by companies such as NRG. That information included the price and volume of fixed price, physical natural gas trades executed for next-day delivery.

5. Information concerning prices and volumes of natural gas trades, which was provided to publications such as *Gas Daily* to compute index prices, affected or tended to affect the price of natural gas in interstate commerce.

II. Summary Of Allegations Against NRG

6. As is more fully alleged below, NRG has engaged in acts and practices, which violate the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 1 *et seq.* (2002).

7. Specifically, from at least August 2001 through May 2002 (the "Relevant Period"), Defendant violated Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2), by knowingly delivering 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 affected or tended to affect the price of natural gas, a commodity in interstate commerce.

8. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, the Commission brings this action to enjoin such acts and practices, and compel compliance with the provisions of the Act.

III. Jurisdiction And Venue

9. 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 and other remedial 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.

10. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), in that Defendant is found in, inhabits, and transacts business in this District, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this District.

11. Unless restrained and enjoined by this Court, Defendant is likely to continue to engage in the acts and practices alleged in this Complaint or in similar acts and practices, as more fully described below.

IV. Parties

12. 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.*

13. Defendant NRG is a Delaware corporation headquartered at 901 Marquette Avenue, Minneapolis, Minnesota. NRG is a publicly traded company on the New York Stock Exchange.

V. Facts

A. The Natural Gas Price Indexes and Defendant's Natural Gas Trading

14. NRG is a wholesale generator of power 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.

15. NRG was formed in 1992 as the non-regulated subsidiary of Northern States Power, which, in 2000, was itself merged into New Century Energies, Inc., to form Xcel Energy, Inc. ("Xcel"). By 2001, NRG was one of the largest power companies worldwide.

16. In 2003, NRG and its subsidiaries 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 NRG's plan of reorganization and the plan became effective on December 5, 2003. As part of the plan of reorganization, Xcel relinquished its ownership interest and NRG became an independent public company without any material affiliation or relationship with Xcel. NRG emerged from Chapter 11 with a market capitalization in excess of \$2 billion. For the first quarter of 2004, NRG reported profits of \$30.2 million.

17. During the Relevant Period, Defendant, through its power marketing group, employed a number of traders who were responsible, inter alia, for buying and selling natural gas both for use in running NRG's facilities and for speculative purposes.

18. During the Relevant Period, and with regard to the conduct charged here, NRG traded natural gas, for profit, on electronic platforms, through brokers, and directly with counterparties.

19. Defendant 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.

20. Defendant'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. They also entered into financial trades, including futures and options contracts on the New York Mercantile Exchange ("NYMEX") and other related instruments.

21. Traders on the Natural Gas Desk traded a variety of instruments, including contracts involving fixed price natural gas and index-based over-the-counter natural gas trades.

22. During the Relevant Period, price index compilers used price and volume information collected from market participants such as Defendant to calculate indexes of natural gas prices for various hubs throughout the United States. The price index compilers include Platts, a division of The McGraw-Hill Companies, which issues a daily index for various natural gas hubs, titled *Gas Daily*.

23. Participants in the natural gas markets used indexes to price and settle commodity transactions. Natural gas price indexes such as *Gas Daily* were used by a variety of market participants in the spot and over-the-counter derivatives market to price and settle their natural gas deals. Many consumers of natural gas, particularly risk-averse end users such as utilities, purchased natural gas at the index price. In addition, many natural gas contracts were priced off of the published index prices.

24. Natural gas futures and options traders referred to the prices published by price index compilers for price discovery and for assessing price risk.

25. Consequently, because market participants use *Gas Daily* in the natural gas spot, over-the-counter derivatives, futures and options markets, the information reported to *Gas Daily* by Defendant's traders is market information that affects or tends to affect the price of natural gas in interstate commerce, and could have affected or tended to affect the natural gas futures and options contracts traded on the New York Mercantile Exchange.

B. Defendant's Submission of False or Misleading or Knowingly Inaccurate Trade Information to Compilers of Natural Gas Price Indexes

26. During the Relevant Period, Defendant, through its employees and agents, delivered reports concerning market information or conditions to price index compilers by telephone, facsimile, and electronic mail.

27. *Gas Daily* employees provided NRG traders with specific instruction concerning the kind of information to be reported, requesting that NRG traders report prices and volumes of actual physical next day trades or the high/low range of those trades with a volume weighted average price. *Gas Daily* employees explicitly excluded the reporting of other trades, including intraday trades.

28. During the Relevant Period, Defendant, through its agents and employees, knowingly delivered information concerning hundreds of natural gas trades to *Gas Daily*. Many of those trades contained false or misleading or knowingly inaccurate information.

29. Among the false or misleading or knowingly inaccurate trades NRG delivered to *Gas Daily* were individual natural gas trades that NRG traders had not executed. Also included were actual trades entered into by NRG, but with the prices of those transactions altered and/or the volumes significantly inflated (or deflated) – such that the trades potentially were weighed more heavily by the publication in calculating the index. As one final example, NRG traders reported information about “intraday” trades to *Gas Daily*, without advising the publication of the source of the information – despite *Gas Daily*'s express instruction to NRG that intraday trades were excluded from the publication's survey.

30. False, or misleading, or knowingly inaccurate reports concerning prices and volumes of natural gas trades, which were provided to publications such as *Gas Daily* to compute index prices, affected or tended to affect the price of natural gas in interstate commerce.

VI. Violations Of The Commodity Exchange Act

Count I: Delivery of False or Misleading or Knowingly Inaccurate Information

31. Paragraphs 1 through 30 are realleged and incorporated herein by reference.
32. It is a violation of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2), for any person, inter alia, “knowingly to deliver or cause 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 crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce . . .”
33. Defendant, through its employees and agents, violated Section 9(a)(2) of the Act when it knowingly delivered by telephone and the Internet reports to *Gas Daily* containing false or misleading or knowingly inaccurate market information, including, inter alia, entirely fictitious natural gas trades, and natural gas trades with altered prices and/or volumes.
34. Submission of false, or misleading, or knowingly inaccurate reports concerning prices and volumes of natural gas trades to publications like *Gas Daily* affected or tended to affect the price of natural gas in interstate commerce.
35. Each and every knowingly inaccurate report knowingly delivered by the Defendant, through its employees and agents, as discussed above, is alleged herein as a separate and distinct violation of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2). Defendant is liable for these violations pursuant to Section 2(a)(1)(B) of the Act.

VII. Relief Requested

WHEREFORE, Plaintiff Commission respectfully requests that

- A. this Court enter an order of permanent injunction restraining and enjoining Defendant and any of its affiliates, agents, servants, employees, successors, assigns, attorneys, and persons in active concert with them who receive actual notice of such order by personal service or otherwise, from directly or indirectly violating Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2), and
- B. this Court provide such other and further remedial and ancillary relief as it may deem necessary and appropriate.

Dated: July 1, 2004

Respectfully submitted,



Anthony Mansfield [MA #630216]
Kim Bruno [DC #389899]
Allison Page [VA #39029]
Judith Hutchison [DC #246934]

Division of Enforcement
United States Commodity Futures
Trading Commission
3 Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581
(202) 418-5000
(202) 418-5523 (facsimile)