

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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COMM. OF FUTURE MARKETS
1700 K STREET, N.W.
WASHINGTON, D.C. 20541

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In the Matter of:)	CFTC Docket No. <u>04-09</u>
)	
ONEOK ENERGY MARKETING AND TRADING COMPANY, L.P. AND ONEOK, INC.,)	ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTIONS 6(c) AND 6(d) OF THE COMMODITY EXCHANGE ACT,
Respondents.)	MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS
)	
)	

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that ONEOK Energy Marketing and Trading Company, L.P. (“OEMT”), an entity wholly-owned by ONEOK, Inc. and ONEOK, Inc. (collectively “ONEOK” or “Respondents”), have violated Section 9(a)(2) of the Act, as amended, 7 U.S.C. § 13(a)(2) (2002). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Respondents engaged in the violations set forth herein, and to determine whether any order shall be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, and prior to any adjudication of any issues of fact or law by the Commission, Respondents have submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Without admitting or denying the findings of fact herein, Respondents consent to the entry of this Order, in full and final settlement of any alleged violations of the above referenced laws or regulations solely as they relate to the activities and conduct described in Section C below, and acknowledge service of this Order Instituting Proceedings Pursuant to Sections 6(c) and 6(d) of the Commodity Exchange Act, Making Findings and Imposing Remedial Sanctions (“Order”). Respondents consent to the use by the Commission of the findings in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.¹

¹ Respondents do not consent to the use of its Offer or the findings in this Order as the sole basis for any other proceeding brought by the Commission, other than a proceeding brought to enforce the terms of this Order. Respondents do not consent to the use of the Offer or the findings in this Order by any other person or entity in this or any other proceeding. The findings made in this Order are not binding on any other person or entity, including, but not limited to, any person or entity named as a defendant or respondent in any other proceeding.

III.

A. SUMMARY

From at least July 2000 through October 2002, Respondents reported false and/or misleading information, including price and volume information concerning natural gas transactions, to certain reporting firms. Price and volume information is used by reporting firms in calculating published indexes of natural gas prices for various pipeline hubs throughout the United States. During this time period, ONEOK traders knowingly reported trades that did not occur and reported certain trades at false and/or misleading prices and/or volumes in violation of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2002).

The Commission recognizes the cooperation of ONEOK during the Division of Enforcement's investigation of this matter.

B. RESPONDENTS

ONEOK Energy Marketing and Trading Company, L.P. is a limited partnership organized and existing under the laws of the State of Texas. OEMT is an entity wholly owned by ONEOK, Inc., a corporation organized and existing under the laws of the State of Oklahoma. ONEOK's principal place of business is 100 West Fifth Street, Tulsa, Oklahoma. During all times relevant herein, ONEOK marketed natural gas, electricity, and other energy-related products to a wide range of customers across much of the United States. Specifically, ONEOK conducted natural gas marketing operations at trading hubs for portions of the Central and Western United States.

ONEOK, Inc. is a corporation organized and existing under the laws of the state of Oklahoma. ONEOK, Inc.'s principal place of business is 100 West Fifth Street, Tulsa, Oklahoma.

C. FACTS

1. ONEOK's False and/or Misleading Reporting

a. Gas Market Participants' Use of Information from Reporting Firms

During at least July 2000 through October 2002, reporting firms compiled and published indexes of natural gas prices for natural gas hubs throughout the United States. The indexes were calculated based upon trading information, including volume and price information, collected by the reporting firms from market participants. Participants in the natural gas markets use these indexes to price and settle commodity transactions. Moreover, natural gas futures traders refer to the prices published by the reporting firms for price discovery and for assessing price risks. For instance, an increase in prices at a natural gas trading hub signals either stronger demand or weakened supply, and futures traders take account of both price movements and changes in the supply/demand balance when conducting their futures trading.

b. ONEOK Reported False and/or Misleading Market Information

From at least July 2000 through October of 2002, Respondents knowingly delivered via electronic mail false reports to the reporting firms. The reports contained information about certain trades that did not occur and certain actual ONEOK trades in which the price and/or volume was not reported accurately. Respondents knowingly delivered this false and/or misleading trade information to reporting firms for use in the calculation of natural gas price indices.

D. LEGAL DISCUSSION

1. By Reporting False or Misleading or Knowingly Inaccurate Market Information, ONEOK Violated Section 9(a)(2) of the Act

Section 9(a)(2) of the Act makes it unlawful for any person “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[.]” *See, e.g., United Egg Producers v. Bauer Int’l Corp.*, 311 F. Supp. 1375, 1383 (S.D.N.Y. 1970) (concluding that false press releases regarding egg importation “tended to affect the price of eggs in interstate commerce”); *In re Soybean Futures Litig.*, 892 F. Supp. 1025, 1046 (N.D. Ill. 1995) (concluding that false reports can influence prices).

Respondents violated Section 9(a)(2) of the Act when employees of ONEOK knowingly delivered false or misleading or knowingly inaccurate price and volume information to the reporting firms.² As discussed above, price and volume information affect or tend to affect the market price of natural gas, including futures prices as traded on the NYMEX. Respondents violated Section 9(a)(2) of the Act.

IV.

FINDINGS OF VIOLATIONS

Based on the foregoing, the Commission finds that Respondents violated Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) (2002).

² Under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2002), and Section 1.2 of the Commission’s Regulations, 17 C.F.R. § 1.2 (2003) the act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust. “[I]t does not matter if the principal participated in or even knew about the agent’s acts; he is strictly liable for them.” *Stotler and Co. v. CFTC*, 855 F.2d 1288, 1292 (7th Cir. 1988) (citing *Cange v. Stotler*, 826 F. 2d 581, 589 (7th Cir. 1987); *Rosenthal & Co. v. CFTC*, 802 F.2d 963, 966-67 (7th Cir. 1986)). Consequently, Respondents are liable for their employees’ violations of the Act.

V.

OFFER OF SETTLEMENT

Respondents have submitted an Offer of Settlement in which, without admitting or denying the findings herein, Respondents acknowledge service of the Order; admit the jurisdiction of the Commission with respect to the matters set forth in this Order and, for any action or proceeding brought by the Commission based upon violations of or for enforcement of the Order; waive service and filing of a complaint and notice of hearing, a hearing, all post-hearing procedures, judicial review by any court, any objection to the staff's participation in the Commission's consideration of the Offer, any claim of Double Jeopardy based on the institution of this proceeding or the entry of any order imposing a civil monetary penalty or other relief, and all claims which they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000) and Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2003), relating to, or arising from, this action; stipulate that the record basis on which this Order is entered consists solely of this Order, including the findings in this Order; and consent to the Commission's issuance of the Order. Pursuant to the Offer of Settlement herein, Respondents agree to entry of an Order, in which the Commission makes findings, including findings that Respondents violated Sections 6(c), 6(d) and 9(a)(2) of the Act (2002) and orders that Respondents cease and desist from violating the provisions of the Act that they have been found to have violated; and Respondents will be liable for paying a total civil monetary penalty of Three Million Dollars (\$3,000,000); and Respondents will comply with the undertakings set forth in this Order.

Upon consideration, the Commission has determined to accept the Offer.

VI.

ORDER

Accordingly, IT IS HEREBY ORDERED THAT:

1. Respondents shall cease and desist from violating Section 9(a)(2) of the Act (2002);
2. Respondents will be liable for paying a total civil monetary penalty of Three Million Dollars (\$3,000,000) within ten (10) business days of the date of the entry of the Order, and make such payment by electronic funds transfer to the account of the Commission at the United States Treasury or by certified check or bank cashier's check made payable to the Commodity Futures Trading Commission, and addressed to Dennese Posey, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies Respondents and the name and docket number of this proceeding. Copies of the cover letter and the form of payment shall be simultaneously transmitted to Vincent A. McGonagle, Senior Deputy Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21st

Street, N.W., Washington, D.C. 20581. If payment is not made in accordance with the requirements of this paragraph, Respondents shall be subject to further proceedings pursuant to Section 6(c) and Section 6(e)(2) of the Act, 7 U.S.C. §§ 9 and 9a(2) (2002), for violating a Commission Order; and

3. Respondents shall comply with the following conditions and undertakings, as specified:

(a) Future Cooperation With the Government

Respondents shall continue to 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 conducted or brought by the Commission related to the subject matter of this proceeding or any current or future Commission investigation related thereto. Respondents agree to 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 with the Commission, Respondents agree 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 for a period of five years from the date of this Order; and
- (2) comply fully, promptly, and truthfully with any inquiries or requests for information from the Commission including, but not limited to, inquiries or requests:
 - (i) for authentication of documents;
 - (ii) for any documents within Respondents' possession, custody, or control, including inspection and copying of documents;
 - (iii) to produce (subject to reimbursement in accordance with the then-applicable Commission rules and regulations) any current (as of the time of the request) officer, director, employee, or agent of Respondents regardless of the employee's location and at such location that minimizes Commission travel expenditures, to 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 encourage them to testify completely and

truthfully in any such proceeding, trial, or investigation;
and

- (iv) for assistance in locating and contacting any prior (as of the time of the request) officer, director, or employee of Respondents.

Respondents also agree that they will not undertake any act that would limit their ability to fully cooperate with the Commission. Respondents designate Geoffrey F. Aronow, Esq. of the law firm Arnold & Porter to receive all requests for information pursuant to this undertaking. Should Respondents 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.

(b) **Public Statements**

By neither admitting nor denying the findings of fact, Respondents agree that neither they nor any of Respondents' agents or employees under their authority and control shall take any action or make any public statement denying, directly or indirectly, any findings or conclusions in the Order or creating, or tending to create, the impression that the Order is without factual or legal basis; provided, however, that nothing in this provision shall affect Respondents': (i) testimonial obligations; or (ii) right to take factual or legal positions in other proceedings or investigations to which the Commission is not a party. Respondents will undertake all steps necessary to assure that all of their agents and employees under their authority and control understand and comply with this agreement.

(c) **Miscellaneous Provision**

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

By the Commission.



Catherine D. Dixon
Assistant Secretary of the Commission
Commodity Futures Trading Commission

Dated: January 28, 2004