

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. _____

U.S. COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

v.

**MATTHEW REED,
DARRELL DANYLUK
SHAWN McLAUGHLIN, and
CONCORD ENERGY, LLC., a Colorado limited liability corporation.**

Defendants.

**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF AND
CIVIL MONETARY PENALTIES UNDER THE COMMODITY EXCHANGE
ACT**

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

I. SUMMARY

1. As more fully set forth below, during the period of at least May 2000 through October 2002 (“the relevant period”), Defendants Matthew Reed (“Reed”), Darrell Danyluk (“Danyluk”), Shawn McLaughlin (“McLaughlin”), and Concord Energy, LLC (“Concord”)¹ (collectively “Defendants”) engaged in acts and practices, which constitute violations of the Commodity Exchange Act, as amended, (the “Act”) 7 U.S.C. §§ 1 *et seq.* (2002).

¹ Concord engaged in acts and practices constituting violations of the Commodity Exchange Act during July 2002 through October 2002 of the relevant period.

2. Reed and Danyluk were employed as natural gas traders for Enserco Energy, Inc. (“Enserco”), a natural gas trading and marketing company located in Golden, Colorado, from at least May 2000, the beginning of the relevant period, until approximately the summer of 2002.

3. At all times during their employment with Enserco, Reed and Danyluk were supervised by McLaughlin, Enserco’s highest-ranking officer. During the relevant period, McLaughlin enjoyed titles of Executive Vice President and subsequently, President.

4. While employed with Enserco, Defendants Reed and Danyluk routinely, and McLaughlin on occasion, provided or caused to be provided to certain reporting firms, including but not limited to, *Gas Daily*, *Inside FERC*, and *NGI*, market information concerning natural gas, physical trades purportedly entered into by Enserco.

5. In the summer of 2002, Reed, Danyluk, and McLaughlin, in conjunction with two other Enserco employees, resigned from Enserco and formed Concord, a natural gas marketing company located in Lakewood, Colorado.

6. While at Concord during the relevant period, Defendant Reed and at least one other Concord employee routinely provided or caused to be provided to certain reporting firms, including but not limited to, *Gas Daily*, market information concerning natural gas physical trades purportedly entered into by Concord.

7. Reporting firms, such as *Gas Daily*, *Inside FERC*, and *NGI*, provide price indexes for the natural gas industry and compile the price indexes using price and volume information taken from actual fixed price physical natural gas trades executed by energy

companies. The price indexes are widely used by natural gas market participants to price and settle natural gas transactions and for price discovery and price risk assessment.

8. Defendants routinely executed natural gas physical trades that settled against such indices.

9. While employed with Enserco during the relevant period, Defendants Reed, Danyluk, and McLaughlin, acting individually and in concert, knowingly submitted or caused to be submitted, to the reporting firms, among other things, false or misleading or knowingly inaccurate information concerning physical natural gas trades they purportedly executed on behalf of Enserco.

10. While employed with Concord during the relevant period, Defendant Reed and at least one other Concord employee, knowingly submitted or caused to be submitted, to the reporting firms, among other things, false or misleading or knowingly inaccurate information concerning physical natural gas trades they purportedly executed on behalf of Concord.

11. By such conduct, Defendants knowingly delivered, or caused to be delivered, false or misleading or knowingly inaccurate reports concerning market information that affects or tends to affect the price of natural gas, a commodity in interstate commerce, in violation of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2).

12. Defendants engaged in such conduct with the intent to affect the prices set forth in the indexes. Accordingly, through the submission of false or misleading or knowingly inaccurate reports concerning natural gas transactions, Defendants attempted to manipulate the price of natural gas, in violation of Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2).

13. In addition to being liable directly for violating Section 9(a)(2), Reed, Danyluk and McLaughlin are each principally liable, pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a), for violations of the Act committed by others with his aid or counsel, or in which he otherwise acted in combination or concert.

14. In addition to being liable directly for violating Section 9(a)(2), McLaughlin is liable, pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b), for the violations of Section 9(a)(2) of the Act committed by Reed, Danyluk, and others while employed at Enserco, as McLaughlin, while acting as a controlling person of Enserco, its employees, officers, and agents, including Reed and Danyluk, did not act in good faith and/or knowingly induced, directly or indirectly, Reed and Danyluk's violations of the Act.

15. Pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), Concord is liable for acts, omissions, and failures of its employees, officers, and agents, including Reed, which constitute violations of the Act.

II. JURISDICTION AND VENUE

16. 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.

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

18. Unless restrained and enjoined by this Court, Defendants are likely to continue to engage in acts and practices alleged in this Complaint or in similar acts and practices, as more fully described below.

III. THE PARTIES

19. **Plaintiff U.S. Commodity Futures Trading Commission** is the independent federal regulatory agency charged with the administration and enforcement of the Act, as amended, 7 U.S.C. §§ 1 et seq., and the Regulations promulgated thereunder, 17 C.F.R. §§ 1.1-190.10 (2004). The Commission is located at 1155 21st Street, NW, Washington, D.C. 20581.

20. **Defendant Reed**, an individual, resides in Denver, Colorado. Reed's principal places of business while employed with Enserco and Concord, were Golden, Colorado, and Lakewood, Colorado, respectively.

21. **Defendant Danyluk**, an individual, resides in Calgary, Alberta. Danyluk worked for both Enserco and Concord from offices located in Calgary, Alberta.

22. **Defendant McLaughlin**, an individual, resides in Littleton, Colorado. McLaughlin's principal places of business during the relevant period were Golden, Colorado and Lakewood, Colorado.

23. **Defendant Concord** is a Colorado Limited Liability Company headquartered at 165 South Union Boulevard, Lakewood, Colorado. As alleged above, Defendants Reed, Danyluk, and McLaughlin, in conjunction with two other Enserco employees, founded Concord on or about June 18, 2002 as a natural gas trading and marketing company.

IV. FACTS

A. Defendants Traded Natural Gas and Reported Market Information

24. During the relevant period, Enserco marketed natural gas to a wide range of customers across North America. Specifically, through its Golden, Colorado and Calgary offices, Enserco conducted natural gas marketing operations at gas trading hubs located primarily in the Rocky Mountain and West Coast regions of the United States.

25. During the relevant period, Enserco sought to buy and sell natural gas for profit. To that end, its traders/marketing representatives entered into transactions calling for the actual physical delivery of natural gas (“physical trades”). Physical trades typically were priced with either a fixed price set at the time of the transaction or with reference to an index to be issued at a later date.

26. From July 2002 forward, Concord traded a variety of natural gas instruments throughout the United States and Western Canada, including fixed price and index based transactions. Concord conducted its trading operations from offices located in Lakewood, Colorado and Calgary, Alberta.

27. During the relevant period, Concord sought to buy and sell natural gas for profit. To that end, its traders/marketing representatives entered into transactions calling for physical trades. Physical trades were priced with either a fixed price set at the time of the transaction or with reference to an index to be issued at a later date.

28. Natural gas was, and is, a commodity that travels in interstate commerce through a network of pipelines across the United States.

29. While employed with Enserco and then Concord, Defendants Reed, Danyluk, and McLaughlin traded natural gas and in trading natural gas, entered into physical trades.

30. While employed with Enserco during the relevant period, McLaughlin oversaw all of the company's operations including, among other things: natural gas trading, scheduling of natural gas; credit management; and personnel decisions. McLaughlin hired both Reed and Danyluk and directly supervised both Reed and Danyluk. In addition to his supervisory and management responsibilities, McLaughlin also actively engaged in natural gas trading.

31. During the relevant period, Defendants Reed, Danyluk, and McLaughlin reported or caused to be reported natural gas trade information, including price, volume, and delivery point/pricing location ("hub"), to reporting firms that compiled natural gas indexes for the industry, including but not limited to: *Gas Daily*, *Inside FERC*, and *NGI*.

32. Information concerning prices and volumes of natural gas trades reported by natural gas traders, including Defendants, to reporting firms, such as *Gas Daily*, *Inside FERC*, and *NGI*, is and was market information that affects or tends to affect the price of natural gas, a commodity in interstate commerce.

B. Natural Gas Market Participants' Use of Indexes

33. During the relevant period, reporting firms, such as *Gas Daily*, *Inside FERC*, and *NGI*, calculated the indices using natural gas transaction information, including volume, price, and hub. The indexes obtained and collected the transaction information used to calculate the indices from reports submitted by market participants, including the Defendants.

34. The reporting firms, including *Gas Daily*, *Inside FERC*, and *NGI* sought from natural gas traders specific market information, i.e. price and volume data, derived from fixed price, physical, natural gas trades the traders actually executed.

35. Natural gas traders submitted price and volume data to reporting firms for use in compiling the indexes.

36. Natural gas traders, including Defendants, generally knew that the reporting firms compiled their indexes using price and volume data from fixed price, physical natural gas transactions actually executed by the traders.

37. After collecting the reports submitted by market participants of their price and volume information for natural gas transactions entered into at each hub, the reporting firms calculated a volume weighted average to determine the index prices.

38. During the relevant period, *Gas Daily*, issued by Platts, a division of the McGraw-Hill Companies, was a daily index that provided natural gas market information and price indices for natural gas hubs throughout the United States and Canada.

39. During the relevant period, *Inside FERC Gas Market Report* ("*Inside FERC*"), also issued by Platts, was a monthly index for various natural gas delivery points.

40. Natural Gas Intelligence ("*NGI*") provided a daily, weekly, and monthly index for natural gas hubs throughout the United States and Canada during the relevant period.

41. The monthly indices issued by *Inside FERC* and *NGI* during the relevant period were calculated on a month-ahead basis. They were derived from prices and volumes of natural gas transactions scheduled for delivery throughout the coming month. Thus, for example, monthly index prices for August are typically based on price and volume data collected from market participants during the last five business days of July.

42. The daily index prices issued by *Gas Daily* and *NGI* during the relevant period were derived from the price and volume of fixed price trades executed for delivery the following day. For example, a daily index issued by *Gas Daily* on Thursday is calculated from the price and volume information of trades executed on Wednesday, for Thursday delivery.

43. During the relevant period, participants in the natural gas markets used the natural gas indices to price and settle commodity transactions; that is, the indices were used to calculate the values of trades that were executed at the index price.

44. Natural gas futures traders referred to the index prices issued by the trade publications for price discovery and for assessing price risks.

C. Defendants Reed, Danyluk, and McLaughlin Submitted False Trade Information and Caused False Trade Information To Be Submitted While Employed at Enserco

45. During the relevant period, Enserco segregated its trading operations into no fewer than three geographical areas. Reed was primarily responsible for trading natural gas in locations ranging from the Southwestern United States to Northern California. Danyluk was primarily responsible for trading natural gas in the Northwestern United States and Canada, including locations in Northern California, Oregon, and Washington. A third employee was primarily responsible for Enserco's natural gas trading in the Rocky Mountain and Midwest regions of the United States.

46. During the relevant period, Reed and Danyluk each delivered trade reports via telephone, electronic mail, or facsimile to reporting firms on a daily basis in which they purported to report price and volume information concerning actual natural gas physical trades entered into on behalf of Enserco at a number of trading hubs. In reality, Reed and

Danyluk, acting with McLaughlin's knowledge and consent, reported for these trading hubs, among other things, fictitious trades, meaning trades never entered into on behalf of Enserco.

47. Moreover, in an effort to have a greater impact on reporting firm indices, Reed and Danyluk engaged in a coordinated scheme, with McLaughlin's knowledge and consent, whereby each would submit fictitious trade information for not only those hubs within his geographic region, but for the hubs within the other's geographic region as well. For instance, throughout the relevant period, Reed reported fictitious trade information to *Gas Daily* for Stanfield and Sumas, natural gas trading hubs located within Danyluk's designated trading region that Reed rarely traded.

48. Reed and Danyluk referred to this scheme as "double dipping."

49. In order to effectuate their double dipping scheme, Reed and Danyluk coordinated their fictitious trade reports each day via telephone prior to submitting the false trade data to a reporting firm. During the course of these telephone calls, Reed and Danyluk each provided the other with instructions for reporting hubs within his region, as well as counsel for constructing a "believable" report.

50. For example, in a telephone conversation recorded on November 30, 2000, Reed and Danyluk conspired to report false trade information to reporting firms for a monthly natural gas index issued for SoCal, a natural gas trading hub located in southern California:

Danyluk: Okay. Now let's talk about – start at the big one, SoCal, most important one. I'm going to report a total of 60 million....
Reed: ... We [expletive] traded more than that.
Danyluk: Oh, I know, but you're going to report a whole bunch of volume. We are going to be double dipping.
Reed: Ok.

Danyluk: So you – you report the big volume. This is just stuff that we did up here, 60 million. You can report like a half a B.
 Reed: Okay. I'm 17 dollars. That'll be high....

Danyluk: I have my low trade of 16.05.
 Reed: Well, you – no, you got to have some – you got to have 14s in there. No way. That's too ridiculous.
 Danyluk: Okay. Then my low is down to 14.07
 Reed: Okay.
 Danyluk: Nothing in the 15s. Better put something in there.
 Reed: Okay. I'm going to turn in something like 100 – like 200 million. I'll just give my individual trades.
 Danyluk: Yep.
 Reed: That's what I'll do.
 Danyluk: And change the volume, obviously.
 Reed: Yep. Is that enough? A little more.
 Danyluk: I'd go a little more. It's believable....

51. As part of his effort to deliver false trade information or cause false trade information to be delivered, Danyluk telephoned into Colorado, and received telephone calls from Colorado, on a near daily basis during the relevant period.

52. Defendants Reed and Danyluk perpetrated their double dipping scheme upon the reporting firms by portraying Enserco's Colorado and Calgary offices as autonomous trading operations with separate trading books and separate profit and loss calculations.

53. Reed and Danyluk's plan to utilize this double dipping scheme for trade reports they submitted to *NGI* was captured in a telephone conversation recorded on November 30, 2000:

Danyluk: I was just saying, Roger [*NGI* representative], he said, "So, you know, is it tough being in the – you know, in the Enserco— Enserco field office?" And I said, "Well, it's not that bad." I said, "Roger, we're – you know, we're pretty much – we run our own books still, so, you know, when – as far as reporting goes, you still have to talk to all of us." And he said, "Oh, yeah. No, I understand there's a lot of shops like that who have cross – cross trading, so –"
 Reed: Good.

Danyluk: So he's – he's – Roger I don't know, Roger and I, we – we get along okay. He's not going to question it.
Reed: Right on....

54. Reed and Danyluk also perpetrated this scheme upon *Gas Daily*, as evidenced by the following December 27, 2000 recorded telephone conversation:

Danyluk: What was the story you went with?
Reed: I told them that we run two separate books. And P and L's are separate.
Danyluk: Uh-huh.
Reed: And then he asked: Do you guys ever trade with each other?
Danyluk: No.
Reed: And I said that obviously that would not be in our corporation's best interests. At times we may, but it happens on a very rare occasion.
Danyluk: Right.

55. In reality, Enserco did not maintain autonomous trading operations or separate profit and loss calculations for its Colorado and Calgary offices.

56. On those occasions in which Reed was out of the office, McLaughlin often assumed his trade reporting responsibilities. On numerous occasions during the relevant period, Defendant McLaughlin discussed and coordinated the submission of false trade information to reporting firms with Danyluk and at least one other Enserco employee located in the company's Calgary office.

57. On at least one occasion during the relevant period, Defendant McLaughlin delivered a trade report to *Gas Daily* via telephone, which contained fictitious trades for several natural gas trading hubs.

D. Defendants Reed, Danyluk, and McLaughlin Submitted False Reports While Employed with Enserco in an Attempt To Manipulate Natural Gas Price Indices

58. During the relevant period, a substantial percentage of the natural gas transactions Defendants Reed, Danyluk and McLaughlin entered into on behalf of

Enserco were settled based on a reporting firm natural gas index. That is, the price Enserco paid or received for the transaction was determined by a subsequent index price issued by a reporting firm.

59. Reed, Danyluk, and McLaughlin reported false trade information, including price and volume information, in an attempt to manipulate these natural gas price indices and thus the price of natural gas. If successful, this scheme could have affected the price of natural gas futures and options contracts traded on the New York Mercantile Exchange (“NYMEX”).

60. For example, in a January 3, 2001 recorded telephone conversation, Reed and Danyluk conspired to report Sumas, a natural gas delivery point located in Washington at the Canadian border, “low” after determining that they bought natural gas at a price based upon the *Gas Daily* Sumas index, and therefore benefited from a lower issued index price:

Danyluk: Okay. Well, let’s do it. Sumas I think I’m going to go a low of –
Reed: Now – now, I don’t know if we want a low anymore because we don’t have as much *Gas Daily* – you need to figure this out.
Danyluk: I did buy a lot of *Gas Daily* today.
Reed: Okay.
Danyluk: I bought at least 20 million, so –
Reed: And I’m still – and I sold 10 thousand less,
Danyluk: Yeah, I’m pretty sure we want it low....

61. Reed and Danyluk’s practice of delivering false trade information to reporting firms based upon their existing index based trading positions is further evidenced in a January 31, 2001 recorded telephone conversation, in which they decide to limit the day’s false report to the one delivery point in which they have an index based trading position or an “ax”:

Danyluk: Yeah. Let's do *Gas Daily* first.

Reed: Okay. Do you even [care]?

Danyluk: No, actually, to tell you the truth. We can just report what we actually traded.

Reed: Because pretty much we don't have no ax, do we?

Danyluk: No. No.

Reed: No ax.

Danyluk: Today, whatever *Gas Daily* we needed, we bought *Gas Daily* and yeah.

Reed: So we have no ax, no ax, and no ax. Opal, I think I'm going to end up buying it, but barely....

Danyluk: And then what about South of Green, no ax?

Reed: We do have an ax there. We actually have.

Danyluk: Oh, okay. How low do you want to go? (Chuckling)

Reed: Well, how low can you get? 5.30 seriously, 5.40?

Danyluk: 5.40 as a low. Thanks.

Reed: Thank you.

62. Defendant McLaughlin also participated in and thus condoned this scheme of reporting false trade information in accordance with Enserco's index based trading positions, as demonstrated in a December 18, 2000 recorded telephone conversation with

Danyluk:

McLaughlin: What's the deal with *Gas Daily*? Do we have a hidden agenda?

Danyluk: Always.

McLaughlin: You and Matt worry me.

Danyluk: (Laughter) Come on. We don't worry you. What's to worry about?

McLaughlin: (Cough, Cough.) Excuse me.

Danyluk: I'm sorry. Did you say collusion?

McLaughlin: Hold on....

Danyluk: Okay, um, Sumas

McLaughlin: Okay.

Danyluk: Sumas we are going to want high. Um, I would call it today—

McLaughlin: High of 12.75?

Danyluk: Well, I'm going to go highs of— a high of 13, a low of 11—

McLaughlin: You want it high?

Danyluk: Yes, we do. Yeah, I think the absolute highest that it possibly traded was today was about 12.25. I don't think it traded above 12.25....

McLaughlin: What did you do with Malin?

Danyluk: Malin I had from 12.70 to 13.50, my mid market is 13.10.

McLaughlin: We have no agenda here, (inaudible)?
Danyluk: That's correct. We don't have any – any agenda there.
McLaughlin: Okay. What else?
Danyluk: Let's go over to Opal. Want it high, low?
McLaughlin: I don't know.
Danyluk: What did [Enserco employee] do today?
McLaughlin: (Aside to Enserco Employee) Do you want Opal high or low?

63. In an effort to have an impact on reporting firm indices, Reed, Danyluk and McLaughlin coupled their delivery of false trade prices with significant reports of fictitious volume. For instance, Reed's false reports routinely contained fictitious volumes for multiple trading hubs, which in the aggregate exceeded 500,000 MMBTUs per day.

64. McLaughlin, while acting as head of Enserco's operations, including supervision of Reed and Danyluk, actively participated in the scheme to manipulate natural gas indices and allowed Reed and Danyluk to perpetrate the scheme.

65. McLaughlin's knowledge and approval of the scheme is demonstrated in a December 19, 2000 recorded telephone conversation, in which he and Danyluk discussed *Gas Daily's* suspicion of Enserco's reporting practices:

Danyluk: Hey, Shawn
McLaughlin: Hey.
Danyluk: [Expletive]
McLaughlin: What'd they do?
Danyluk: They –
McLaughlin: Bust you?
Danyluk: Well, he didn't bust me. He says....

McLaughlin: Tom Haywood [*Gas Daily* employee] does not like us.
Danyluk: No, he does not.
McLaughlin: He's [upset] at us.
Danyluk: Yeah, Why?
McLaughlin: Because we gave him some pretty [bad] numbers (Chuckling).
Danyluk: Yeah.
McLaughlin: All summer at Stanfield.
Danyluk: Yeah.

McLaughlin: And even now, I think.

66. During the relevant period, Reed and Danyluk received monetary bonuses from Enserco, based on the profitability of their natural gas trading. Reed and Danyluk received bonuses exceeding \$9 million and \$7 million (Canadian), respectively. McLaughlin received bonuses from Enserco during the relevant period exceeding \$9 million.

E. The False Reporting and Attempted Manipulation Scheme Continued at Concord

67. The false reporting and attempted manipulation scheme in which Defendants Reed, Danyluk, and McLaughlin engaged while employed at Enserco continued at Concord. During the period of July 2002 through October 2002, Concord, through the actions of Reed and at least one other Concord employee, knowingly delivered trade reports via telephone to *Gas Daily* that contained fictitious trades for multiple trading hubs.

68. Defendant Reed, in conjunction with at least one other Concord employee, delivered these false trade reports in an effort to manipulate *Gas Daily* price indices. The overwhelming majority of these false trade reports were made during the period of September 10, 2002 through October 9, 2002, a period in which more than 20% of the natural gas trades Concord actually executed were priced off a *Gas Daily* Index.

69. During this September 10, 2002 to October 9, 2002 period, Reed and Concord reported more than 1.2 million MMBTUs in fictitious volumes to *Gas Daily*.

70. Defendant Reed and other Concord employees knowingly submitted, or caused to be submitted, reports of natural gas trades that included fictitious trades and false price and volumes, in an attempt to manipulate the price of natural gas, which if successful,

could have affected the price of natural gas futures and options contracts traded on the NYMEX.

71. Concord's trading profits for the months of September 2002 and October 2002 exceeded \$3.2 million.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

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

72. Paragraphs 1 through 71 are realleged and incorporated herein by reference.

73. Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2), provides, in pertinent part, that it is unlawful for any person "[k]nowingly 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"

74. Defendants violated Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2), when they knowingly delivered or caused 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 natural gas transactions to industry reporting firms that calculated and reported the index price of natural gas.

75. Submission of market information concerning price and volumes of natural gas trades to reporting firms, like *Gas Daily*, affects or tends to affect the price of natural gas, a commodity in interstate commerce.

76. While employed with Enserco, Reed aided, abetted, counseled, or acted in combination or in concert with Danyluk and McLaughlin in Danyluk and McLaughlin's

violations of Section 9(a)(2) of the Act and is liable for those violations as a principal, pursuant to Section 13(a) of the Act.

77. While employed with Enserco, McLaughlin aided, abetted, counseled, or acted in combination or in concert with Reed and Danyluk in Reed and Danyluk's violations of Section 9(a)(2) of the Act and is liable for those violations as a principal, pursuant to Section 13(a) of the Act.

78. While employed with Enserco, Danyluk aided, abetted, counseled, or acted in combination or in concert with Reed and McLaughlin in Reed and McLaughlin's violations of Section 9(a)(2) of the Act and is liable for those violations as a principal, pursuant to Section 13(a) of the Act.

79. McLaughlin, directly or indirectly, controlled Enserco and its employees, officers, and agents, including, Reed and Danyluk, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the foregoing violations of Section 9(a)(2) of the Act. McLaughlin is therefore liable for these violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

80. The foregoing acts, omissions, and failure of Reed and other Concord employees, officials and agents occurred within the scope of each person's employment or office within Concord. Concord is liable, therefore, for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

81. Each occasion upon which Defendants knowingly delivered or caused 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 information concerning natural gas transactions, including but not limited to

those specifically alleged herein, is alleged herein as a separate and distinct violation of Section 9(a)(2) of the Act, 7 U.S. C. § 13(a)(2).

Count II: Attempted Manipulation of Natural Gas Price Indices

82. The allegations contained in paragraphs 1 through 81 above are re-alleged and incorporated by reference herein.

83. Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2), provides, in pertinent part, that it is unlawful for any person to “[m]anipulate or attempt to manipulate the price of any commodity in interstate commerce”

84. Section 6(c) and 6(d) together authorize the Commission to serve a complaint and provide for the imposition of, among other things, fines and penalties if the Commission has reason to believe that “any person . . . has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any contract market . . . or otherwise is violating or has violated any of the provisions of [the] Act.”

85. Defendants violated Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2), when, with the intent to manipulate the price of natural gas, they knowingly delivered or caused 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 natural gas transactions to the reporting firms that calculated and reported the index price of natural gas.

86. While employed with Enserco, Reed aided, abetted, counseled, or acted in combination or in concert with Danyluk and McLaughlin in Danyluk and McLaughlin’s

violations of Sections 6(c), 6(d), and 9(a)(2) of the Act and is liable for those violations as a principal, pursuant to Section 13(a) of the Act.

87. While employed with Enserco, McLaughlin aided, abetted, counseled, or acted in combination or in concert with Reed and Danyluk in Reed and Danyluk's violations of Sections 6(c), 6(d), and 9(a)(2) and is liable for those violations as a principal, pursuant to Section 13(a) of the Act.

88. While employed with Enserco, Danyluk aided, abetted, counseled, or acted in combination or in concert with Reed and McLaughlin in Reed and McLaughlin's violations of Sections 6(c), 6(d), and 9(a)(2) of the Act and is liable for those violations as a principal, pursuant to Section 13(a) of the Act.

89. McLaughlin, directly or indirectly, controlled Enserco and its employees, officers, and agents, including, Reed and Danyluk, and did not act in good faith or knowingly induced, directly or indirectly, the acts constituting the foregoing violations of Sections 6(c), 6(d), and 9(a)(2) of the Act. McLaughlin is therefore liable for these violations pursuant to Section 13(b) of the Act, 7 U.S.C. § 13c(b).

90. The foregoing acts, omissions, and failures of Reed and other Concord employees, officials and agents occurred within the scope of each person's employment or office within Concord. Concord is liable, therefore, for these acts pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B).

91. Each and every act or transaction engaged in by Defendants in furtherance of the manipulative scheme, including but not limited to those described 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).

VI. RELIEF REQUESTED

WHEREFORE, Plaintiff Commission respectfully requests that this Court enter an order of permanent injunction:

- A. Providing for a permanent injunction restraining and enjoining Defendants and any of their affiliates, agents, servants, employees, successors, assigns, attorneys, and all persons in active concert with him who receive actual notice of such order by personal service or otherwise, from directly or indirectly violating Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2);
- B. Directing Defendants to pay civil monetary penalties, to be assessed by the Court against the Defendants, in the amount of \$120,000 per violation (or \$110,000 for each violation that occurred after November 27, 1996 and before October 23, 2000), or triple the monetary gain to the proposed Defendants for each violation of the Act as described herein;
- C. Directing Defendants to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act or Regulations, as described herein, and interest thereon from the date of such violations;
- D. Directing Defendants to make full restitution, pursuant to such procedure as the Court may order, of funds received by them as a result of acts and practices which constituted violations of the Act and Regulations, as described and interest thereon from the date of such violations; and,
- E. Providing for such other and further remedial and ancillary relief as this Court may deem necessary and appropriate.

Dated: _____

Respectfully submitted,

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