UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES COMMODITY FUTURES TRADING COMMISSION, **Plaintiff,** **vs.** **ENERGY TRANSFER PARTNERS, L.P., a Delaware Limited Partnership; ENERGY TRANSFER COMPANY (a/k/a La Grange Acquisition, L.P.), a Texas Limited Partnership; ETC MARKETING, LTD., a Texas Limited Partnership; HOUSTON PIPELINE COMPANY, a Texas Corporation,** **Defendants.**	**3-07CV1301-K** **COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF AND CIVIL MONETARY PENALTIES UNDER THE COMMODITY EXCHANGE ACT**

Plaintiff, United States Commodity Futures Trading Commission ("Commission"), by its attorneys, alleges as follows:

I. SUMMARY

1. As more fully alleged below, Defendants Energy Transfer Partners, L.P., Energy Transfer Company, ETC Marketing, Ltd., and Houston Pipeline Company (collectively the "Defendants") have engaged in acts and practices that constitute violations of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 1 *et seq*. (2002).

2. Specifically, during the period beginning in late September 2005 and ending in early December 2005 (the "relevant period"), Defendants' employees (i) attempted to manipulate

the price of physical natural gas baseload transactions for delivery at the Houston Ship Channel ("HSC") by intentionally flooding the HSC market with massive quantities of physical natural gas to place downward pressure on the price, and (ii) attempted to manipulate the October 2005 and December 2005 HSC monthly index prices of natural gas published by Platts (a division of The McGraw-Hill Companies, Inc.) in its *Inside FERC's Gas Market Report* ("*Inside FERC*"), by intentionally submitting to *Inside FERC* price and volume information about these baseload transactions for use by Platts in calculating the monthly indexes, all in violation of Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 13b, and 13(a)(2) (2002). Defendants' employees devised and executed this scheme in order to benefit Defendants' financial basis swap contracts tied to the October 2005 and December 2005 *Inside FERC* monthly price indexes at HSC.

3. The overt acts in furtherance of the attempted manipulations alleged below occurred, in part, on the IntercontinentalExchange ("ICE"), an electronic trading platform operating as an exempt commercial market under Sections 2(h)(3) and 2(h)(5) of the Act. 7 U.S.C. §§ 2(h)(3) and (h)(5).

4. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. §13a-1, the Commission brings this action against Defendants to enjoin such acts and practices, and to compel compliance with the provisions of the Act. In addition, the Commission seeks civil monetary penalties and such other ancillary relief as the Court deems necessary or appropriate under the circumstances.

5. Unless restrained and enjoined by this Court, there is a reasonable likelihood that Defendants will continue to engage in the acts and practices alleged in this Complaint or in similar acts and practices, as more fully described below.

II. JURISDICTION AND VENUE

6. 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, or, to enforce compliance with the Act 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.

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

III. THE PARTIES

8. **Plaintiff Commission** is an independent federal regulatory agency charged with the administration and enforcement of the Act, 7 U.S.C. §§ 1 *et seq.*, and the regulations promulgated thereunder, 17 C.F.R. §§ 1.1 *et seq.*

9. **Defendant Energy Transfer Partners, L.P.** ("ETP"), a Delaware limited partnership, is a multi-billion dollar publicly-traded energy company with its principal place of business in Dallas, Texas. ETP's business includes the gathering, compression, processing, transportation and storage of natural gas. Its natural gas operations include approximately 12,000 miles of natural gas gathering and transportation pipelines. ETP's employees buy and sell, or direct its subsidiaries' employees to buy and sell, physical and financial natural gas contracts for profit.

10. **Defendant Energy Transfer Company** (a/k/a La Grange Acquisition, L.P.) ("ETC"), a Texas limited partnership, is a subsidiary of ETP with business offices located in San Antonio and Houston, Texas. ETC engages in natural gas midstream operations (*i.e.*, the portion of the natural gas business between the production of the natural gas from wells and the delivery of natural gas to retail, commercial and industrial customers) and intrastate natural gas transportation and storage operations for ETP. ETC's employees buy and sell physical and financial natural gas contracts for ETP and ETC for profit, including under the name "ETC Marketing, Ltd."

11. **Defendant Houston Pipeline Company ("HPLC")**, a Texas corporation, is a subsidiary of ETP with business offices in Houston, Texas. HPLC serves the HSC natural gas market, the city of Houston, other natural gas delivery locations or "hubs," and owns the Bammel Gas Storage Facility ("Bammel"), which is located near Houston. HPLC's employees also buy and sell physical and financial natural gas contracts for ETP and ETC for profit, including under the name "ETC Marketing, Ltd."

12. **Defendant ETC Marketing, Ltd. ("ETC Marketing")**, a Texas limited partnership, is a subsidiary of ETP with business offices located in San Antonio, Texas. ETC Marketing's employees buy and sell physical and financial natural gas contracts for ETP, ETC and HPLC for profit, both on and off exchange, including on ICE. ETP and ETC traded on ICE under the name ETC Marketing.

IV. FACTS

A. Background

1. *The Natural Gas Market and the HSC Natural Gas Delivery Hub*

13. During the relevant period, natural gas was a commodity that was typically transported in interstate commerce through a network of pipelines across the United States.

14. Much of the natural gas consumed in the United States is produced in the Gulf Coast region, primarily in Texas and Louisiana, and shipped by pipeline to the biggest consumer markets in the Midwest and Northeastern states.

15. Texas is one of the largest gas consuming states, with natural gas flowing from the southern onshore production areas to the northern part of the state through pipelines concentrated on the Texas east coast, and from the west Texas production areas to the consuming areas near Houston, Dallas and San Antonio.

16. The HSC natural gas delivery location or "hub," located near Houston, Texas, is one of the principal gateways for natural gas destined for markets in Texas, serving a highly concentrated area of large-volume consumers within Texas, including chemical plants, refineries, and power generating stations.

17. HSC is also an important byway for natural gas continuing north to interstate pipelines delivering gas to the Midwest and Northeastern states. Natural gas delivered at HSC is a commodity in interstate commerce.

18. Roughly fifteen percent of all gas produced in the United States flows through ETP's and its subsidiaries' natural gas gathering and transportation pipelines, three natural gas

processing plants, fourteen natural gas treating facilities and three natural gas storage facilities, including the Bammel natural gas storage facility.

2. ***Physical Trades and the Natural Gas Price Indexes***

19. During the relevant period, at the direction of ETP, natural gas traders at ETC, HPLC and ETC Marketing bought and sold natural gas for profit. To that end, their traders entered into transactions calling for the actual physical delivery of natural gas ("physical trades") to certain natural gas delivery hubs, including at HSC.

20. Physical trades were 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. The physical trades at issue here are "fixed-price" natural gas transactions.

21. During the relevant period, natural gas traders and energy companies, including the Defendants, reported price and volume information ("trade data") regarding their fixed-price physical trades for specific natural gas delivery hubs, like HSC, to companies that calculated natural gas price indexes ("indexes"), including Platts' *Inside FERC.*

22. During the relevant period, Platts collected from market participants, including Defendants, trade data relating to fixed-price, "baseload" transactions that were negotiated during "bidweek" for specific natural gas delivery hubs, including HSC.

23. A "baseload" transaction refers to a natural gas trade that requires the seller to deliver physical natural gas to the buyer at a particular natural gas delivery hub (like HSC), ratably, over the course of the following month (the "prompt month"). "Bidweek" typically refers to the last five business days of the month before the prompt-month begins.

24. During the relevant period, Defendants' employees knew that Platts used trade data collected from natural gas market participants, including the Defendants, about fixed-price, baseload contracts negotiated during bidweek, to calculate and publish its *Inside FERC* monthly price indexes for specific natural gas delivery hubs, including HSC. The *Inside FERC* monthly price indexes were published by Platts at the beginning of each month following the bidweek during which trade data was collected.

25. During the relevant period, natural gas market participants widely used price indexes, including *Inside FERC*, for various purposes, including the pricing of both physical and financial natural gas contracts (including financial basis swaps). Moreover, natural gas market participants referred to indexes for price discovery and for assessing price risks.

3. <u>Financial Basis Swaps</u>

26. Natural gas market participants, including the Defendants, also trade, via "financial basis swaps," the price difference (or "differential") between the index for certain physical natural gas trading locations, such as HSC, and the price of the Henry Hub ("HH") natural gas futures contract traded on the New York Mercantile Exchange ("NYMEX").

27. Normally, natural gas market participants, such as the Defendants, execute these financial basis swaps to hedge price risk, often in conjunction with NYMEX HH futures contracts, to speculate on the difference between the price of natural gas at the named location and the price of natural gas at HH, or both.

28. The financial basis swap at issue here is the HSC financial basis swap. The buyer and seller of an HSC financial basis swap exchange payment streams, with the buyer paying the

seller the HH NYMEX final settlement price plus or minus a differential, and the seller paying the buyer the monthly HSC index price published by *Inside FERC.*

29. By entering the HSC financial basis swap, the seller will obtain a financial benefit the lower the *Inside FERC* index price moves from the HH NYMEX settlement price, and thus the wider the difference between the two prices.

30. During (and prior to) the relevant period, employees at ETC, ETC Marketing and HPLC (at the direction or with the consent of ETP) entered into financial basis swaps, including HSC financial basis swaps, with other natural gas market participants.

4. The IntercontinentalExchange

31. Natural gas market participants, including the Defendants, enter into and execute physical trades and financial basis swaps on electronic trading platforms, as well as through direct negotiations with other market participants in the bilateral markets.

32. ICE is an electronic trading platform that offers trading in physical natural gas contracts for over 100 natural gas hubs in North America, including the HSC. In addition to trading in physical natural gas, ICE offers trading in a number of financial natural gas contracts, including HSC financial basis swaps.

B. The Defendants Attempted to Manipulate the Price of October Baseload Natural Gas For Delivery at HSC During the September 2005 Bidweek.

33. By September 22, 2005, ETC's traders had purchased at the Waha natural gas delivery hub, which is located in West Texas, approximately 3,357,000 MMbtus of natural gas (*i.e.*, had acquired a "long" physical Waha natural gas position), intending to sell the vast majority of that natural gas at HSC, at prices higher than ETC had purchased it at Waha, by transporting it on pipelines from Waha to HSC as October 2005 baseload natural gas.

34. By September 23, 2005, ETC and HPLC traders had built a net short financial basis swap position (approximately 15,882,653 MMbtus) in the October 2005 HSC financial basis swap. The financial basis swap ultimately would be settled based upon the difference between the October *Inside FERC* HSC monthly index price (published the first of the month in October) and the HH NYMEX settlement price (published at the close of trading in that contract on September 28, 2005).

35. On September 24, 2005, Hurricane Rita made landfall, impacting the Texas and Louisiana Gulf Coast region by, among other things, reducing the demand for natural gas in the Houston consuming area as area residents evacuated due to the storm.

36. Beginning on Monday, September 26, 2005 (the first day of the September 2005 bidweek for October baseload natural gas), Defendants' employees, working in combination and concert with each other, devised a scheme to attempt to benefit their HSC financial basis swap positions by attempting to depress the price of physical natural gas at HSC by: (i) intentionally buying on September 26 and 27, 2005 additional quantities of physical natural gas at Waha for transport to HSC during the month of October; (ii) intentionally increasing the short HSC financial basis swap position; (iii) intentionally dumping (selling) on September 28, 2005 a massive quantity of fixed-price, baseload natural gas; and (iv) then intentionally reporting trade data reflecting those fixed-price, baseload sales to *Inside FERC* for its use in calculating the October *Inside FERC* monthly price index at HSC. Defendants' employees devised and executed this scheme in order to benefit Defendants' financial basis swap contracts tied to the October 2005 *Inside FERC* monthly price index at HSC.

37. Defendants' employees' intent to attempt to manipulate the price of natural gas at HSC is reflected, in part, in a recorded telephone conversation on September 26, 2005 between an ETP Senior Vice President and an employee of HPLC. In that conversation, the ETP Senior Vice President instructed at least one of his traders to "come out hard today for tomorrow" and "as much market as y'all can capture, capture it" and "even if you oversell [HSC], we'll figure it out later." In the same conversation, the ETP Senior Vice President said, "as long as we sell as much as we can, it ought to push [Houston] ship [Channel] down." He continued, "You know, it would be nice to have [Houston] Ship [Channel] kinda spread back out from from from uh . ., both for this month or October, also for our for our summer winter business."

38. Consistent with that instruction, on September 26 and 27, 2005, ETC traders (who were also agents of ETC Marketing) bought up additional natural gas at Waha for transport to HSC in October. When combined with the natural gas purchases at Waha for October HSC baseload delivery made before September 23rd, Defendants' total long physical Waha position increased to 8,707,776 MMbtus, or 8.7 Bcf of natural gas, nearly triple its earlier long Waha position despite the decreased demand at the HSC hub due to area residents having evacuated the Houston area in the wake of Hurricane Rita.

39. On September 28, 2005, beginning at approximately 2:00 p.m., an ETC trader, under the name "ETC Marketing," at the direction of the ETP Senior Vice President, dumped (sold) on ICE and in the bilateral market (*i.e.*, executed through direct negotiations with other market participants) approximately 11.2 Bcf of natural gas for baseload delivery in October 2005 at HSC in an attempt to exert downward pressure on the prices at HSC. Nearly 9 Bcf of these

sales were executed on ICE. The ETC trader who executed the baseload natural gas contracts on ICE was an agent of ETC Marketing.

40. Thirty-four of the thirty-five fixed-price trades executed on September 28, 2005 on ICE in the HSC baseload contract were executed by an ETC trader at the direction of the ETP Senior Vice President and under the name ETC Marketing, comprising 96.65% of all HSC October baseload sales volume on ICE that day.

41. Simultaneous with the conduct outlined in paragraph 38 and before the conduct described in paragraph 39 above, by approximately 1:00 p.m. EDT (Eastern Daylight Time) on September 28, 2005, ETC and HPLC traders had increased their short HSC financial basis swap position by 7,952,500 MMbtus, for a total short HSC financial basis swap position of 23,835,153 MMbtus of natural gas – or approximately 23.8 Bcf of natural gas. The financial basis swap ultimately would be settled based upon the difference between the October *Inside FERC* monthly price index at HSC (published the first of the month in October) and the HH NYMEX settlement price (published at the close of trading in that contract on September 28, 2005).

42. Thereafter, ETC employees prepared a spreadsheet containing trade data reflecting Defendants' fixed-price, baseload natural gas contracts for delivery at HSC that were executed on September 28, 2005.

43. ETC employees then submitted that spreadsheet to Platts for use by Platts in calculating the October *Inside FERC* monthly price index at HSC, and knowing that Platts would likely use this trade data in calculating the October *Inside FERC* monthly price index at HSC.

44. On October 1, 2005, *Inside FERC* published the HSC monthly price index. The index price was based upon the trade data Platts had obtained from natural gas market

participants about their fixed-price, October baseload deals negotiated during the September 2005 bidweek.

45. ETP executives and employees directed, consented to, and/or ratified the trading conduct and reporting to *Inside FERC*, set forth in paragraphs 33 through 44 above.

C. The Defendants Attempted to Manipulate the Price of December Baseload Natural Gas For Delivery at HSC During the November 2005 bidweek.

46. Beginning on or about November 21, 2005 (the first day of the November 2005 bidweek for December baseload natural gas), Defendants' employees, working in combination with each other, devised a scheme to repeat the trading strategy they had employed during the September 2005 bidweek, for essentially the same purpose. Namely, the Defendants' employees attempted to benefit their HSC financial basis swap positions tied to the December *Inside FERC* monthly price index at HSC by: (i) intentionally buying on November 21, 22, and 28, 2005 large quantities of natural gas at the Waha hub for transport to HSC during the month of December; (ii) intentionally dumping (selling) on November 28 a massive quantity of fixed-price, baseload natural gas on the HSC market; (iii) intentionally increasing the HSC short financial basis swap position; and (iv) then intentionally reporting trade data reflecting those fixed-price, baseload sales to *Inside FERC* for its use in calculating the December *Inside FERC* monthly price index at HSC.

47. Prior to November 21, 2005, ETC held a net short position of 992,031 MMbtu of physical natural gas at Waha for December 2005 baseload delivery. Consistent with Defendants' employees intent to acquire a large amount of natural gas to sell at HSC for December 2005 baseload delivery, on November 21, 22, and 28, 2005, ETC traders purchased 4,771,954 MMbtus of natural gas at Waha for transport to HSC in December. Accordingly, Defendants'

total net long physical Waha position increased to 3,779,923 MMbtus, or about 3.8 Bcf of natural gas.

48. On November 28, 2005, an ETC trader, under the name "ETC Marketing," dumped (sold) on ICE approximately 9 Bcf of natural gas for baseload delivery in December 2005 at HSC in an attempt to exert downward pressure on the prices at HSC. The ETC trader who executed the baseload natural gas contracts on ICE was an agent of ETC Marketing.

49. Thirty-one of the thirty-four trades executed on November 28, 2005 on ICE in the HSC baseload contract were executed by ETC traders (under the name ETC Marketing), comprising 95.7 % of all HSC December baseload sales volume on ICE that day.

50. Simultaneously, Defendants built an even larger financial short position in the HSC December 2005 basis swap contract than they had in September 2005. During the conduct outlined in paragraphs 47 and 48 above, *i.e.*, from November 21 to November 28, 2005, ETC and HPLC traders increased their short HSC financial basis swap position by 13,480,009 MMbtus, for a total short HSC financial basis swap position of 45,181,360 MMbtus of natural gas – or approximately 45.2 Bcf of natural gas. The financial basis swap ultimately would be settled based upon the difference between the December *Inside FERC* monthly price index at HSC (published the first of the month in December) and the HH NYMEX settlement price (published at the close of trading in that contract on November 28, 2005).

51. Thereafter, ETC employees prepared a spreadsheet containing trade data reflecting Defendants fixed-price, baseload natural gas contracts for delivery at HSC that were executed on November 28, 2005.

52. ETC employees then submitted that spreadsheet to Platts for use by Platts in calculating the December *Inside FERC* monthly price index at HSC, knowing that Platts would likely use this trade data in calculating the December *Inside FERC* monthly price index at HSC.

53. On December 1,2005, *Inside FERC* published the HSC monthly price index. That index price was based upon the trade data Platts had obtained from natural gas market participants about their fixed-price, December baseload deals negotiated during the November 2005 bidweek.

54. ETP executives and employees directed, consented to, and/or ratified the trading conduct, and reporting to *Inside FERC*, set forth in paragraphs 46 through 53 above.

V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT

(All Defendants)

55. The allegations contained in paragraphs 1 through 54 above are re-alleged and incorporated by reference into each Count alleged below.

56. Pursuant to Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2), it is unlawful for any person to "[m]anipulate or attempt to manipulate the price of any commodity in interstate commerce or for future delivery on or subject to the rules of any registered entity, including any contract market."

57. Sections 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9 and 13b, 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."

COUNT I

(Attempted Manipulation in September 2005 of the October Baseload Contracts at HSC and October 2005 HSC Index Price in Order to Benefit the HSC Financial Basis Swap)

58. Defendants' employees violated Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2), when they attempted to manipulate the price of natural gas, a commodity in interstate commerce. Defendants' employees had the specific intent to manipulate the price of physical natural gas at HSC, the index price of natural gas at HSC, and/or the HSC financial basis swap when they engaged in, among others, the overt act(s) set forth in paragraphs 33 through 45 above.

59. Each occasion upon which Defendants' employees attempted to manipulate the price of physical natural gas at HSC is alleged herein as a separate and distinct violation of Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2).

60. Each occasion upon which Defendants' employees attempted to manipulate the *Inside FERC* monthly price index of natural gas at HSC in order to benefit their HSC financial basis swap is alleged herein as a separate and distinct violation of Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2).

61. Defendants are liable for their employees' conduct pursuant to Section 2(a)(1)(B) of Act, 7 U.S.C. § 2(a)(1)(B), for violations of the Act.

COUNT II

(Attempted Manipulation in November 2005 of the December 2005 Baseload Contracts at HSC and December HSC Index Price in Order to Benefit HSC Financial Basis Swap)

62. Defendants' employees violated Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2) when they attempted to manipulate the price of natural gas, a commodity in interstate commerce. Defendants' employees had the specific intent to manipulate the price of physical natural gas at HSC, the index price of natural gas at HSC, and/or the HSC financial basis swap when they engaged in, among others, the overt act(s) set forth in paragraphs 46 through 54 above.

63. Each occasion upon which Defendants' employees attempted to manipulate the price of physical natural gas at HSC is alleged herein as a separate and distinct violation of Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2).

64. Each occasion upon which Defendants' employees attempted to manipulate the *Inside FERC* monthly price index of natural gas at HSC in order to benefit their HSC financial basis swap is alleged herein as a separate and distinct violation of Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2).

65. Defendants are liable for their employees' conduct pursuant to Section 2(a)(1)(B) of Act, 7 U.S.C. § 2(a)(1)(B), for violations of the Act.

VI. RELIEF REQUESTED

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

A. Restraining and enjoining Defendants and any of their affiliates, agents, servants, employees, successors, assigns, attorneys, and all persons in active concert with them 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 amounts not to exceed $130,000 for each violation, or triple the monetary gain to them for each violation of the Act, as described herein; and

C. Providing for such other and further remedial and ancillary relief as this Court may deem necessary and appropriate.

Respectfully Submitted,

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