

**UNITED STATES OF AMERICA**  
**Before the**  
**COMMODITY FUTURES TRADING COMMISSION**

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COMMODITY FUTURES TRADING COMMISSION

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**In the Matter of:**

**ENTERGY-KOCH TRADING, LP**

**Respondent.**  
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) **CFTC Docket No. 04 - 10**  
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) **ORDER INSTITUTING**  
) **PROCEEDINGS PURSUANT TO**  
) **SECTIONS 6(c) AND 6(d) OF THE**  
) **COMMODITY EXCHANGE ACT,**  
) **MAKING FINDINGS AND IMPOSING**  
) **REMEDIAL SANCTIONS**  
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**ORDER INSTITUTING PROCEEDINGS PURSUANT TO SECTION 6(c) AND 6(d) OF  
THE COMMODITY EXCHANGE ACT, MAKING FINDINGS AND  
IMPOSING REMEDIAL SANCTIONS**

**I.**

The Commodity Futures Trading Commission (“Commission”) has reason to believe that Entergy-Koch Trading, LP (“EKT”) has 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 EKT (“Respondent”) 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, the Respondent has submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Without admitting or denying the findings of fact herein, the Respondent consents to the entry of this Order, and acknowledges 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”). Respondent consents 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.<sup>1</sup>

<sup>1</sup> Respondent does 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. Respondent does not consent to the use of the Offer or the findings in this Order by any other person or entity in this

### III.

#### A. SUMMARY

From at least February 2001 through October 2002, EKT reported false 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, EKT traders knowingly reported, as EKT trades, trades that did not occur at EKT and knowingly reported false 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 the Respondent and Entergy-Koch, LP during the Division of Enforcement's investigation of this matter. The Respondent and Entergy-Koch, LP represent that they are, and will continue to be, active participants in developing industry-wide standards for the accurate reporting of price and volume information to reporting firms.

#### B. RESPONDENT

**Entergy-Koch Trading, LP** is a limited partnership organized and existing under the laws of the State of Delaware. EKT is a wholly owned subsidiary of Entergy-Koch, LP ("EKLP"). EKT's principal place of business is 20 Greenway Plaza, Houston, Texas. During all times relevant herein, EKT marketed natural gas, electricity and other energy-related products to a wide range of customers across North America. Specifically, EKT conducted electricity and natural gas marketing operations at eastern and western power and gas trading hubs for the Eastern and Western United States.

#### C. FACTS

##### 1. EKT's False Reporting

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

During at least February 2001 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.

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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.

**b. EKT Reported False Market Information**

From at least February of 2001 through October of 2002, Respondent knowingly delivered, either via facsimile, and/or via the internet through electronic mail, false reports to the reporting firms. The reports were identified as transactions entered into by EKT<sup>2</sup>, but the information contained in those reports do not match EKT trading records. The reports contained information about trades that did not occur at EKT and Respondent reported certain trades at false prices and/or volumes. Respondent knowingly delivered this false 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, EKT 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 and constitute part of a manipulation claim).

Respondent violated Section 9(a)(2) of the Act when employees of EKT knowingly delivered false or misleading or knowingly inaccurate price and/or volume information to the reporting firms.<sup>3</sup> 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. As such, the Respondent violated Section 9(a)(2) of the Act.

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<sup>2</sup> At the formation of the limited partnership which is now known as “Entergy-Koch Trading, LP” the company did business under the trade name “Axia” until July 2001, so some of the reports made to the reporting firms identify the transactions as “Axia” transactions. However, at all times relevant to this matter the legal name of the partnership was “Entergy-Koch Trading, LP”

<sup>3</sup> 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, Respondent is liable for its employees’ violations of the Act.

**IV.**

**FINDINGS OF VIOLATIONS**

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

**V.**

**OFFER OF SETTLEMENT**

Respondent has submitted an Offer of Settlement in which, without admitting or denying the findings herein, EKT acknowledges service of the Order; admits 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; waives 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 it may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994) and 28 U.S.C. § 2412 (1996), as amended by Pub. L. No. 104-21, §§ 231-32, 110 Stat. 862-63 (1996), and Part 148 of the Commission's Regulations, 17 C.F.R. §§ 148.1 *et seq.* (2002), relating to, or arising from, this action; stipulates that the record basis on which this Order is entered consists solely of this Order, including the findings in this Order; and consents to the Commission's issuance of the Order. Pursuant to the Offer of Settlement herein, Respondent and Entergy-Koch, LP agree to entry of an Order, in which the Commission makes findings, including findings that Respondent violated Section 9(a)(2) of the Act (2002) and orders that Respondent cease and desist from violating this provision of the Act that it has been found to have violated; and the Respondent will be liable for paying a total civil monetary penalty of Three Million Dollars (\$3,000,000); and Respondent and Entergy-Koch, LP 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. Respondent shall cease and desist from violating Section 9(a)(2) of the Act (2002);
2. Respondent will be liable for paying a total civil monetary penalty of 3 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 21<sup>st</sup> Street, N.W., Washington, D.C. 20581, under cover of a letter that identifies Respondent and the name and docket number of this proceeding. Copies of the cover letter and the form of payment shall be simultaneously transmitted to Gregory G. Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, 1155 21<sup>st</sup> Street, N.W., Washington, D.C. 20581. If payment is not made in accordance with the requirements of this paragraph, Respondent 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. Respondent and Entergy-Koch, LP shall comply with the following conditions and undertakings, as specified:

(a) **Future Cooperation With the Commission**

Respondent and Entergy-Koch, LP 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. Respondent agrees 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, Respondent and Entergy-Koch, LP 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 Respondent's or Entergy-Koch, LP's possession, custody, or control, including inspection and copying of documents;

- (iii) to produce any current (as of the time of the request) officer, director, employee, or agent of Respondent or Entergy-Koch, LP, 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 Respondent or Entergy-Koch, LP

Respondent and Entergy-Koch, LP also agree that they will not undertake any act that would limit their ability to fully cooperate with the Commission. Respondent and Entergy-Koch, LP designate Kenneth M. Raisler of the law firm Sullivan & Cromwell LLP to receive all requests for information pursuant to this undertaking. Should Respondent or Entergy-Koch, LP 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.

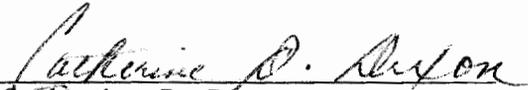
**(b) Public Statements**

By neither admitting nor denying the findings of fact, Respondent and Entergy-Koch, LP agree that neither they nor any of Respondent's and Entergy-Koch, LP's 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 Respondent's and Entergy-Koch, LP's: (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. Respondent and Entergy-Koch, LP 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 Respondent's and Entergy-Koch, LP's successors, assigns, beneficiaries and administrators.

By the Commission.

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

Dated: January 28, 2004