

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

_____)
In the Matter of:)
)
WESTERN GAS RESOURCES, INC.)
)
Respondent.)
)
)
_____)

CFTC Docket No. 04 -
**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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OFFICE OF PROCEEDINGS
PROCEDINGS

I.

The Commodity Futures Trading Commission (“Commission”) has reason to believe that Western Gas Resources, Inc. (“Western” or “Respondent”) has violated Section 9(a)(2) of the Commodity Exchange Act (the “Act”), 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 Western engaged in the violations set forth herein, and to determine whether any order should be issued imposing remedial sanctions.

II.

In anticipation of the institution of an administrative proceeding, Respondent has submitted an Offer of Settlement (“Offer”), which the Commission has determined to accept. Without admitting or denying the findings of fact herein, Respondent consents to the entry of this Order in full and final settlement of any alleged violations of the Act and the Commission’s Regulations promulgated pursuant to the Act solely as they relate to the activities and conduct described in Section D below, 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 herein in this proceeding and in any other proceeding brought by the Commission or to which the Commission is a party.¹

¹ 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 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 June 1999 through February 2001, Western knowingly reported false price and/or volume information concerning natural gas cash transactions to *Gas Daily*. Western delivered the false reports in an attempt to manipulate the price of natural gas by skewing the indexes in an attempt to benefit its trading positions in the physical marketplace.

From March 2001 through December 2002, Western knowingly reported false or misleading price and/or volume information concerning natural gas cash transactions to *Gas Daily* in that its traders knowingly delivered reports of transactions observed in the market and represented those trades as Western's actual trades.

At all relevant times, price and volume information was used by *Gas Daily* to calculate published indices of natural gas prices for various pipeline hubs throughout the United States.

B. RESPONDENT

Western Gas Resources, Inc. is a Delaware corporation with its headquarters in Denver, Colorado. Western explores for, produces, gathers, processes and transports natural gas and natural gas liquids. Western also buys and sells natural gas and natural gas liquids in the wholesale market throughout the United States and in Canada.

C. COOPERATION

Based on the recommendation of the Division of Enforcement ("DOE"), the Commission, in the decision to accept the Offer, afforded substantial weight to Respondent's extraordinary level of cooperation. In less than two months, Respondent swiftly and aggressively investigated its trade reporting activities and provided DOE with details of its analysis and findings from the internal investigation. As part of its decision to reduce sanctions against Respondent, the Commission also considered the following:

1. In response to DOE's inquiry, Respondent promptly uncovered the nature and extent of the misconduct and brought it to the attention of DOE;
2. Respondent quickly produced subpoenaed documents and records;
3. Respondent promptly disclosed the existence of the misconduct to the public;
4. Respondent committed to learning the truth expeditiously and simultaneously provided timely information and evidence to DOE;

5. Respondent hired over twenty additional staff to review its voluminous audio taped telephone conversations so Respondent could produce only relevant trader conversations to DOE, thereby reducing the government's investigative costs;
6. Respondent promptly reported the findings of its review, facilitating swift enforcement review;
7. Prior to the Commission's investigation, Respondent commissioned a review of its own risk controls by employing the services of a major outside consulting firm in 2002. Respondent then relied on the consulting firm's report of recommended changes to enhance its risk controls, but the consulting firm did not detect that certain traders were submitting false transaction information to reporting firms;
8. Respondent terminated the staff who directed the false reporting and attempted manipulation;
9. After discovering the misconduct, Respondent's Chief Executive Officer requested a meeting and personally met with DOE staff to discuss and thoroughly review Respondent's misconduct; and
10. Respondent stopped reporting transaction information and has adopted more effective internal controls and procedures designed to prevent a recurrence of the misconduct should Respondent resume reporting in the future.

D. FACTS

1. Gas Market Participants' Use of Information from *Gas Daily*

At all times relevant herein, *Gas Daily* compiled and published indices of natural gas prices for natural gas hubs throughout the United States. It calculated the indices based upon trading information, including volume and price information, collected from market participants. Participants in the natural gas markets use these indices to price and settle commodity transactions. Moreover, natural gas futures traders refer to the prices published by *Gas Daily* 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.

2. Western Knowingly Reported False Market Information and Attempted to Manipulate the Price of Natural Gas

From June 1999 through February 2001, two Western traders on Western's Texas trading desk knowingly reported false information to *Gas Daily* at the direction of their

supervisor. The reports, delivered telephonically, contained false price and/or volume information concerning natural gas cash transactions. The reports contained fabricated trades, select Western trades, and/or select trades observed in the market and represented as Western's actual trades. The traders delivered the false reports in an attempt to manipulate the price of natural gas by skewing the published index to increase the financial benefit Western derived from certain spread positions traded in the physical marketplace.

From March 2001 through December 2002, four Western traders knowingly reported false or misleading information to *Gas Daily*. These reports, delivered telephonically, contained false price and/or volume information concerning natural gas cash transactions. The traders knowingly delivered reports of transactions they observed in the market and represented those trades as Western's actual trades.

E. LEGAL DISCUSSION

1. By Reporting False or Misleading or Knowingly Inaccurate Market Information, Western 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[.]"² Western violated Section 9(a)(2) of the Act when certain of its employees knowingly delivered false or misleading or knowingly inaccurate price and volume information to *Gas Daily*,³ information that affects or tends to affect the market price of natural gas, including futures prices as traded on the NYMEX.

² 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); *CFTC v. Enron*, No. Civ.A.03-909-H, 2004 WL 594752 (S.D. Tex. Mar 10, 2004) (quoting *Cargill Inc. v. Hardin*, 452 F.2d 1154, 1163 (8th Cir. 1971); *Volkart Bros., Inc. v. Freeman*, 311 F.2d 52, 58 (5th Cir. 1962)) (manipulation can be "any and every operation or transaction or practice . . . calculated to produce a price distortion of any kind in any market", the means of which "are limited only by the ingenuity of man.").

³ Under Section 2(a)(1)(B) of the Act and Section 1.2 of the Commission's Regulations, 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, Western is liable for its employees' violations of the Act.

2. **By Attempting to Manipulate the Price of Natural Gas, Western Violated Section 9(a)(2) of the Act**

Section 9(a)(2) provides that it is unlawful for “[a]ny person to manipulate 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, or to corner or attempt to corner any such commodity.”

The following elements generally are required to show an attempted manipulation: (1) an intent to affect the market price; and (2) some overt act in furtherance of that intent.⁴ To prove the intent element of manipulation or attempted manipulation, it must be shown that Western acted or failed to act with “the purpose or conscious object of causing or effecting a price or price trend in the market that did not reflect the legitimate forces of supply and demand”.⁵

From June 1999 through February 2001, Western specifically intended to manipulate the price of natural gas, a commodity in interstate commerce. In order to do so, its traders knowingly submitted false or misleading or knowingly inaccurate transaction information to *Gas Daily*. The submission of the transaction information constitutes the overt act in furtherance of the attempted manipulation. By doing so, Respondent’s conduct constituted an attempted manipulation of the price of natural gas in the cash market as set forth in Section 9(a)(2) of the Act, which, if successful, could have affected prices of NYMEX natural gas futures contracts.

IV.

FINDINGS OF VIOLATIONS

Based upon the foregoing, the Commission finds that from June 1999 through February 2001, Western violated the attempted manipulation provision of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2) and that from June 1999 through December 2002, Western violated the false reporting provision of Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2).

V.

OFFER OF SETTLEMENT

Respondent has submitted an Offer of Settlement in which, without admitting or denying the findings herein, it acknowledges service of the Order; admits jurisdiction of the Commission with respect to the matters set forth in this Order and for any action or proceeding brought or authorized by the Commission based upon violations of or for

⁴ See *In re Abrams*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,479 at 43,136 (CFTC July 31, 1995); see also *In re Hohenberg Bros. Co.*, [1975-1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,271 at 21,477 (CFTC Feb. 18, 1977).

⁵ *In re Indiana Farm Bureau Cooperative Association*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,796 at 27,281-82 (CFTC Dec. 17, 1982).

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 (2000) and 28 U.S.C. § 2412 (2000), and Part 148 of the Commission's Regulations, 17 C.F.R. §§ 1 *et seq.* (2004), 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 this Order. Pursuant to the Offer, Respondent agrees to entry of the Order in which the Commission makes findings, including findings that Respondent violated Section 9(a)(2) of the Act, and orders Respondent to cease and desist from violating the provision of the Act it has been found to have violated; Respondent shall pay a civil monetary penalty of Seven Million Dollars (\$7,000,000); and Respondent shall comply with the conditions and undertakings as set forth herein. Upon consideration, the Commission has determined to accept the Offer.

VI.

Accordingly, IT IS HEREBY ORDERED THAT:

1. Respondent shall cease and desist from violating any provision of the Act.
2. Respondent shall pay a civil monetary penalty of Seven Million Dollars (\$7,000,000) within ten business days of the date of the entry of this 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 the 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 George Mocek, Director, DOE, 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, 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(e)(2) (2002), for violating a Commission Order.
3. Respondent shall comply with the following conditions and undertakings as specified:

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

Respondent shall continue to cooperate fully and expeditiously with the Commission, including the DOE, in any investigation, civil litigation, or administrative matter 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 indices. As part of such cooperation, Respondent agrees to:

(1) preserve all categories of documents called for in the Division subpoena *duces tecum* of August 29, 2003 in its possession, custody, or control as of the date of this Order, 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 to any inquiries or requests for information from the Commission, including but not limited to:

- (i) requests for authentication of documents;
- (ii) requests for any documents within Respondent's possession, custody, or control, including inspection and copying of documents;
- (iii) requests to produce any current (as of the time of the request) officer, director, employee, or agent of Respondent, regardless of the employee's location and at such location that conserves Commission travel resources, 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) requests for assistance in locating and contacting any prior (as of the time of the request) officer, director, or employee of Respondent.

Respondent also agrees not to undertake any act that would limit its ability to fully cooperate with the Commission. Respondent designates Jerome S. Hirsch, Esq., Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, New York 10036-6522 to receive all requests for information pursuant to this undertaking. Should Respondent seek to change the designated person to receive such requests, notice shall be given in writing to the DOE 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 agrees that neither it nor any of its agents or employees under its 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: (i) testimonial obligations; or (ii) right to take factual or legal positions in other proceedings to which the Commission is not a party. Respondent will undertake all steps necessary to assure that all of the agents and employees under its 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 successors, assigns, beneficiaries and administrators.

By the Commission.


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

Dated: July 1, 2004