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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

GREGORY C. LANGHAM
CLERK

Civil Action No.: 05-M-668 (oes) BY _____ DEP. CLK

UNITED STATES COMMODITY
FUTURES TRADING COMMISSION,

Plaintiff,

v.

ANDREW KENNEDY RICHMOND,

Defendant.

**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, defendant Andrew Richmond has 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).

2. More specifically, during the period beginning in approximately April 2000 and ending in approximately February 2001 (the "relevant period"), defendant violated Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b and 13(a)(2), by knowingly delivering, or causing 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 market information or conditions that affect or tend to affect the market price of natural gas, and by attempting to manipulate the market price of natural gas.

3. Accordingly, pursuant to Section 6c of the Act, 7 U.S.C. §13a-1, the Commission brings this action 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.

4. Unless restrained and enjoined by this Court, there is a reasonable and substantial likelihood that defendant 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

5. 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 and 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.

6. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a-1(e), in that defendant is found in, inhabits and transacts business in this District and the acts and practices in question have occurred, are occurring, or are about to occur in this District.

III. The Parties

7. Plaintiff 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.*

8. Defendant currently resides in Superior, Colorado. During the relevant period, defendant was employed by Western Gas Resources, Inc. (“Western”) in Denver, Colorado as the director of marketing for the Rocky Mountain, Mid-continent and Texas region. Defendant is currently employed by Shamrock Energy, a privately held corporation based in Shreveport, Louisiana, and reports for work in the Denver, Colorado offices of Optigas, Shamrock Energy’s parent corporation.

IV. Facts

A. The Natural Gas Market and Natural Gas Price Indexes

9. 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.

10. During the relevant period, Western sought to buy and sell natural gas for profit. To that end, its traders entered into transactions calling for the actual physical delivery of natural gas (“physical trades”).

11. Physical trades were typically priced with either a fixed price set at the time of the transaction or with reference to an index to be set at a later date.

12. During the relevant period, natural gas traders and companies reported natural gas market information to companies that calculated natural gas price indexes (“indexes”).

13. The market information the traders and companies reported to the indexes typically included price and volume information for natural gas transactions entered into for delivery at a specific natural gas pricing/delivery location (“transaction information”).

14. During the relevant period, participants in the natural gas markets widely used indexes for various purposes including pricing and settlement of index trades. Moreover, natural gas traders also referred to indexes for price discovery and for assessing price risks.

15. *Gas Daily* is an index widely used by the natural gas industry and its participants during the relevant period. *Gas Daily* is issued by Platts, a division of the McGraw-Hill Companies, and puts out a monthly and daily index for various natural gas pricing/delivery locations.

16. During the relevant period, *Gas Daily* gathered from market participants, including Western's traders, transaction information concerning physical, fixed-price natural gas transactions and calculated a volume weighted average price index for natural gas pricing/delivery locations.

17. The transaction information Western's traders reported to *Gas Daily* was market information that affects or tends to affect the price of natural gas, a commodity in interstate commerce.

B. Reporting and Trading Activities in Western's Rocky Mountain, Mid-continent and Texas Region

18. In his position as Western's director of marketing for the Rocky Mountain, Mid-continent and Texas region, defendant supervised the natural gas traders who traded within his region of responsibility.

19. The natural gas traders that defendant supervised within his region of responsibility were divided into three groups ("desks"): the Rocky Mountain desk; the Mid-continent desk; and the Texas desk. The traders also referred to the Texas desk as the southern region.

20. Defendant encouraged and/or required the traders he supervised to report transaction information to *Gas Daily*. Typically, the traders reported transaction information to *Gas Daily* over the telephone.

21. As a result of defendant encouraging and/or requiring the traders he supervised to report transaction information to *Gas Daily*, the traders reported transaction information to *Gas Daily* frequently, with at least one trader reporting transaction information on nearly every trading day throughout the relevant period.

22. During most months of the relevant period, the Texas desk traders entered into spread trades.

23. A spread trade involves related transactions at more than one separate pricing/delivery location wherein the difference between the price at each location is known as the "spread." Frequently, a spread trade remains in place for one month but its profitability is often judged on a daily basis by referencing the *Gas Daily* index.

24. A potential financial benefit to entering into a spread trade is that a company can make a profit by purchasing natural gas at one pricing/delivery location, transporting it to a second pricing/delivery location, and selling it at a higher price at the second location. If the spread is greater than the cost of transporting the natural gas from one location to the other, the company can make a profit by capitalizing on price differences, that is, by transporting natural gas to locations where it can be sold at a higher price.

25. If a market participant could manipulate the price of natural gas at one or more of the pricing/delivery locations for which they had entered into a spread trade, the potential profit

derived from the spread trade could be greater than it would have been had market forces alone been at work.

26. During the relevant period, defendant's Texas desk traders regularly entered into spread trades during most months within the relevant period.

C. **Defendant Pressured Traders to Submit False Reports to *Gas Daily* in an Attempt to Manipulate the Index Price of Natural Gas**

27. During the relevant period, defendant routinely pressured at least two of the traders he supervised to knowingly deliver false or misleading or knowingly inaccurate reports of transaction information to *Gas Daily* regarding natural gas pricing/delivery locations at which they had entered into spread trades. Defendant applied this pressure on the traders each time they entered into a spread trade.

28. Because a single spread trade was typically in place for up to one month, defendant often applied pressure on the traders on more than one occasion throughout the month for each spread trade that was in place.

29. Each time defendant pressured the traders to deliver the false or misleading or knowingly inaccurate reports of transaction information to *Gas Daily*, he did so with the intent to manipulate the price of natural gas at one or more pricing/delivery locations for which they had entered into a spread trade. The traders knew that defendant intended their false or misleading or knowingly inaccurate reports to manipulate the price of natural gas at pricing/delivery locations for which they had entered into a spread trade.

30. Each time defendant pressured the traders to knowingly deliver false or misleading or knowingly inaccurate reports of transaction information to *Gas Daily*, at least two

of the traders succumbed to defendant's pressure and knowingly delivered false or misleading or knowingly inaccurate reports of transaction information to *Gas Daily*.

31. When defendant caused the traders to knowingly deliver false or misleading or knowingly inaccurate reports in an attempt to manipulate the price of natural gas at one or more pricing/delivery locations, defendant's intent was to manipulate the spread(s) so that the spread(s) would be wider or narrower than had market forces alone been at work.

32. When defendant attempted to manipulate the spread(s) so that the spread(s) would be wider or narrower than had market forces alone been at work, defendant did so with the intent to increase the income Western derived from the spread trade(s).

33. If defendant's attempted manipulation of the price of natural gas had been successful, it could have affected the price of natural gas, a commodity in interstate commerce, and the price of natural gas futures and options contracts traded on the New York Mercantile Exchange ("NYMEX").

V. Violations of the Commodity Exchange Act

34. The allegations contained in paragraphs 1 through 33 above are re-alleged and incorporated by reference into each Count alleged below.

35. Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2), makes it 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. . . ."

36. Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2), also makes it 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.”

37. Pursuant to Section 13(a) of the Act, 7 U.S.C. § 13c(a), “Any person who commits, or who willfully aids, abets, counsels, . . . or procures the commission of a violation of this Act, . . . or who acts in combination or concert with any other person in any such violation, or who willfully causes an act to be done . . . may be held responsible for such violation as a principal.”

38. 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 – False Reporting

39. Defendant violated Section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2), when he 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 of natural gas transaction information to *Gas Daily*.

40. Delivery of false or misleading or knowingly inaccurate reports of transaction information to *Gas Daily* amounts to the delivery of market information that affects or tends to affect the price of natural gas, a commodity in interstate commerce.

41. Each occasion upon which defendant 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 transaction information concerning natural gas transactions is alleged herein as a separate and distinct violation of section 9(a)(2) of the Act, 7 U.S.C. § 13(a)(2).

42. Based on defendant's conduct described above, defendant willfully aided, abetted, counseled or procured the commission of a violation of the Act by the traders he supervised, or acted in combination or concert with them in a violation of the Act, or willfully caused them to violate the Act, and is therefore also liable for such violations pursuant to Section 13(a) of the Act, 7 U.S.C. §13c(a).

43. Each occasion upon which Richmond willfully caused aided, abetted, counseled, and or procured a violation of the Act and/or worked in combination and concert with the traders in a violation of the Act is alleged herein as a separate and distinct violation.

Count II – Attempted Manipulation

44. Defendant violated Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, and 13(a)(2) when he attempted to manipulate the price of natural gas, a commodity in interstate commerce. Defendant had the specific intent to manipulate the price of natural gas when he pressured the traders to deliver or cause to be delivered to *Gas Daily* through the mails or interstate commerce by telegraph, telephone, wireless, or other means of communication false or

misleading or knowingly inaccurate reports of natural gas transactions in an attempt to manipulate the price of natural gas.

45. Each occasion upon which defendant attempted to manipulate the price of natural gas at each individual pricing/delivery location 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).

46. Based on defendant's conduct described above, defendant willfully aided, abetted, counseled or procured the commission of a violation of the Act by the traders, or acted in combination or concert with them in a violation of the Act, or willfully caused them to violate the Act, and is therefore also liable for such violations pursuant to Section 13(a) of the Act, 7 U.S.C. §13c(a).

47. Each occasion upon which defendant willfully caused aided, abetted, counseled, and or procured a violation of the Act and/or worked in combination and concert with the traders in a violation of the Act is alleged herein as a separate and distinct violation.

VI. Relief Requested

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

A. Restraining and enjoining defendant and any of his 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), 9(a)(2) and 13(a) of the Act, 7 U.S.C. §§ 9, 13b, 13(a)(2) and 13c(a);

B. Directing defendant to pay civil monetary penalties, to be assessed by the Court against the defendant, in amounts not to exceed \$110,000 for each violation of the Act occurring before October 23, 2000 and \$120,000 for each violation occurring on or after October 23, 2000, or triple the monetary gain to him for each violation of the Act, as described herein;

C. Directing defendant 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 defendant to make full restitution, pursuant to such procedure as the Court may order, of funds received by him 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.

Respectfully Submitted

Dated: 04/11/05

**UNITED STATES COMMODITY FUTURES
TRADING COMMISSION**

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