

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

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)	CFTC Docket No. 03-20
In the Matter of:)	
WD ENERGY SERVICES INC.)	ORDER INSTITUTING
f/k/a EnCana Energy Services Inc.,)	PROCEEDINGS PURSUANT TO
Respondent.)	SECTIONS 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 WD Energy Services Inc. (“WD Energy” or “Respondent”),¹ an indirect wholly owned subsidiary of EnCana Corporation (“EnCana”), has violated Sections 6(c), 6(d) and 9(a)(2) of the Commodity Exchange Act, as amended (the “Act”), 7 U.S.C. §§ 9, 13b, 13(a)(2), and 15 (2001). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether WD Energy 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, 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 in full and final settlement of any alleged violations of the above referenced laws or regulations solely as they relate to the activities and conduct described in Section C 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.²

¹ During all times relevant to this proceeding, WD Energy Services, Inc. operated under the name PanCanadian Energy Services Inc. On April 8, 2002 PanCanadian Energy Services Inc. changed its name to EnCana Energy Services Inc. and on February 11, 2003 EnCana Energy Services Inc. changed its name to WD Energy Services Inc.

² 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

III.

A. SUMMARY

From at least June 2000 through at least August 2001 (the "Relevant Period"), WD Energy employees reported false information, including price and volume information, concerning natural gas cash 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 the Relevant Period, WD Energy employees knowingly reported trades that did not occur, reported certain actual trades at false prices and/or volumes, and did not disclose other actual trades, in an attempt to benefit the Respondent's trading positions.

The Commission factored the Respondent's significant cooperation with Division of Enforcement ("DOE") staff during the investigation of this matter into its decision to accept the Respondent's Offer.

B. RESPONDENT

WD Energy Services, Inc. is a Delaware corporation currently headquartered in Denver, Colorado. During the Relevant Period, WD Energy engaged in natural gas and power marketing throughout the United States from offices located in Houston, Texas and elsewhere in the United States. Subsequent to the Relevant Period, WD Energy terminated its Houston based merchant energy operations. WD Energy is an indirect wholly owned subsidiary of EnCana Corporation,³ a publicly traded corporation listed on the New York Stock Exchange and Toronto Stock Exchange.

C. FACTS

1. Gas Market Participants' Use of Information from Reporting Firms

During the Relevant Period, 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

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.

³ EnCana Corporation is a Canadian Corporation with headquarters at 1800 855 2nd Street, SW, Calgary, Alberta, T2P 2S5. The company engages in the exploration, development, production and marketing of natural gas, crude oil, and natural gas liquids as well as ownership and operation of power generation facilities.

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. **WD Energy Reported False Market Information**

From at least June 2000 through at least August 2001, Respondent's employees delivered false reports to the reporting firms. These reports, submitted telephonically and through electronic mail, contained nonexistent trades, as well as certain actual trades in which the price and/or volume was altered. Respondent also failed to include other actual trades in these reports. WD Energy employees knowingly delivered false trade information to reporting firms in an effort to benefit Respondent's trading positions. One of Respondent's employees also discussed false reporting with traders at two other energy companies.

D. **LEGAL DISCUSSION**

1. **By Reporting False Market Information, WD Energy 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 its employees knowingly delivered false price and volume information to the reporting firms.⁴ 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, Respondent violated Section 9(a)(2) of the Act.

⁴ Under Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B) (2001), and Section 1.2 of the Commission's Regulations, 17 C.F.R. § 1.2 (2002), 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, WD Energy is liable for its employees' violations of the Act.

2. **By Attempting to Manipulate Prices, WD Energy Violated Sections 6(c), 6(d) and 9(a)(2) of the Act**

Sections 6(c) and 6(d) of the Act together authorize the Commission to serve a complaint and provide for the imposition of, among other things, civil monetary penalties and cease and desist orders 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 registered entity ... or otherwise is violating or has violated any of the provisions 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. *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). To prove the intent element of manipulation or attempted manipulation, it must be shown that WD Energy “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.” *In re Indiana Farm Bureau Cooperative Association*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,796 at 27,281 (CFTC Dec. 17, 1982). “[I]ntent is the essence of manipulation.” *Id.* at 27,282.

Respondent specifically intended to report false, misleading or knowingly inaccurate market information concerning trade prices and volume of trading in an attempt to manipulate the price of natural gas in interstate commerce. These actions constitute overt acts in furtherance of the attempted manipulation. By so doing, Respondent’s conduct constitutes an attempted manipulation under 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 on the foregoing, the Commission finds that Respondent violated Sections 6(c), 6(d) and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, 13(a)(2) and 15 (2001).

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 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 this Order. Pursuant to the Offer of Settlement herein, WD Energy and EnCana both agree to entry of an Order, in which the Commission makes findings, including findings that WD Energy violated Sections 6(c), 6(d), and 9(a)(2) of the Act, and orders that WD Energy cease and desist from violating the provisions of the Act it has been found to have violated; WD Energy shall pay a civil monetary penalty of Twenty Million Dollars (\$20,000,000); and WD Energy and EnCana comply with the conditions and undertakings as set forth in this Order.

VI.

Accordingly, IT IS HEREBY ORDERED THAT:

1. WD Energy shall cease and desist from violating Sections 6(c), 6(d), and 9(a)(2) of the Act.
2. WD Energy shall pay a civil monetary penalty of Twenty Million Dollars (\$20,000,000) 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, Division of Enforcement, 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) (2001), for violating a Commission Order.

3. Respondent and EnCana shall comply with the following conditions and undertakings, as specified:

(a) Future Cooperation With the Government

Respondent and EnCana shall continue to cooperate fully and expeditiously with the Commission, including the DOE, and all other federal government agencies (hereafter collectively referred to as the "Government") in this proceeding, and in any investigation, civil litigation, or administrative matter related to the subject matter of this proceeding or any current or future Government investigation related thereto. Respondent and EnCana agree to cooperate fully and expeditiously with the Government'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, Respondent and EnCana 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; and

(2) comply fully, promptly, and truthfully to any inquiries or requests for information including but not limited to inquiries or requests:

- (i) for authentication of documents;
- (ii) for any documents within Respondent's or EnCana'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 EnCana, regardless of the employee's location and at such location that minimizes 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) for assistance in locating and contacting any prior (as of the time of the request) officer, director, or employee of Respondent or EnCana.

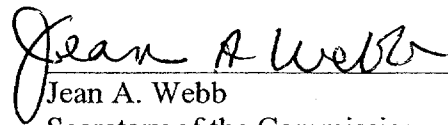
Respondent and EnCana also agree that they will not undertake any act that would limit their ability to fully cooperate with the Government. Respondent and EnCana

designate Douglas F. John, Esq., of the John & Hengerer law firm, to receive all requests for information pursuant to this undertaking. Should Respondent or EnCana 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, and EnCana additionally agrees, that neither they nor any of Respondent's or EnCana'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 EnCana'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 and EnCana will undertake all steps necessary to assure that all of the agents and employees under their authority and control understand and comply with this agreement.

By the Commission.



Jean A. Webb
Secretary of the Commission
Commodity Futures Trading Commission

Dated: July 28, 2003