

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Court  
Southern District of Texas  
FILED

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Michael N. Milby, Clerk

UNITED STATES COMMODITY  
FUTURES TRADING COMMISSION,

Plaintiff,

v.

ENRON CORP. and  
HUNTER SHIVELY

Defendants.

COMPLAINT FOR INJUNCTIVE AND  
OTHER EQUITABLE RELIEF AND  
CIVIL MONETARY PENALTIES  
UNDER THE COMMODITY  
EXCHANGE ACT

Docket  
No. \_\_\_\_\_

**H-03-909**

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

I.

SUMMARY

1. As more fully set forth below, Defendants Enron Corp. ("Enron") and Hunter Shively ("Shively") (collectively the "Defendants") have engaged in acts and practices which constitute violations of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 1 *et seq.* (2000), as amended by the Commodity Futures Modernization Act of 2000 ("CFMA"), Appendix E, Pub. L. 106-554, 114 Stat. 2763 (2000).

2. Specifically, on or about July 19, 2001, Enron and Shively engaged in a scheme to manipulate the price of natural gas in the Henry Hub next-day gas spot market ("HH Spot Market") traded on EnronOnline ("EOL"), Enron's electronic trading platform. The manipulation of the HH Spot Market had a direct and adverse effect on the New York Mercantile Exchange August 2001 natural gas futures contract ("NYMEX Henry Hub Futures"), including causing prices in NYMEX Henry Hub Futures to become artificial.

3. Commencing in or around September 2001 and through at least December 2001, Enron operated EOL as an illegal, unregistered futures exchange under the Act.

4. From December 21, 2000, until approximately December 2001, Enron, through EOL, further violated the Act by offering to trade a lumber swaps contract that was actually an illegal, agricultural commodity futures contract.

5. 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 Act. In addition, the Commission seeks civil monetary penalties and such other ancillary relief as this Court may deem necessary or just under the circumstances.

## 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 provides that whenever it shall appear to the Commission that any 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 promulgated thereunder, the Commission may bring an action against such person to enjoin such practice or to enforce compliance with the Act.

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

8. Unless restrained and enjoined by this Court, the Defendants are likely to continue to engage in the acts and practices alleged in this Complaint or in similar acts and practices, as described more fully below.

### III.

#### THE PARTIES

9. Plaintiff Commission is the 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.*

10. **Defendant Enron Corp.** is an Oregon corporation whose principal place of business is at 1400 Smith Street, Houston, Texas.

11. **Defendant Hunter Shively** resides in Houston, Texas. Shively became an employee of Enron in 1993. From May 1999 until at least December 2001, Shively had supervisory responsibilities over the Central Desk of Enron's natural gas trading operation in Houston.

### IV.

#### FACTS

##### **A. Enron, EOL, the HH Spot Market, and NYMEX Henry Hub Futures**

12. Enron was a multi-billion dollar energy company with multiple natural gas and energy derivatives trading units.

13. In or around November 1999, Enron launched EOL, its internet-based electronic trading platform for a variety of over-the-counter ("OTC") physical commodities and financial products.

14. Enron was a leading trader of natural gas spot and OTC derivatives products.

15. On or about October 26, 1999, Enron announced the launch of its EOL web-based commodity trading platform. Enron described EOL as a global internet-based transaction system for wholesale energy and other commodities that allowed participants to view commodity prices in real-time and to directly transact with Enron over the internet. EOL posted bids and offers for

many products including, but not limited to, spot contracts, forward contracts, swaps, options, and other derivatives in power, natural gas, coal, weather products, liquids, petrochemicals, lumber, pulp and paper, emission credits and other commodities in North America.

16. In its most basic form, EOL worked in this manner: 1) an Enron trader activated a product on his or her server and made a two-way market for that product by posting both a bid and an offer that Enron was willing to honor as a counterparty; 2) EOL displayed that bid and offer over its web site; 3) an EOL customer submitted an order to Enron by either hitting the bid or lifting an offer by clicking on the respective price displayed on-screen; 4) the order went back to the Enron server and was checked for volume, price and credit; and 5) a confirmation was then sent to the Enron trader and to the customer via the internet.

17. EOL was very successful. In June 2000, Enron reported that transactional value on EOL had exceeded \$50 billion and that for the past several days transaction values exceeded \$1.5 billion per day. In May 2001, Enron reported that over 1 million transactions had been conducted on EOL since its inception and the notational value of all transactions exceeded \$590 billion.

18. Enron's natural gas trading group was located in Houston, Texas. The natural gas trading group was divided into desks corresponding to geographic regions of the U.S. There was a Central Desk, East Desk, West Desk, and Texas Desk. There was also a desk that traded NYMEX Henry Hub Futures (the "NYMEX Desk"). Each Enron trader generally was assigned trading responsibility for several EOL products. Enron traders were responsible for making a two-way market on EOL, that is, they posted bids and offers that Enron honored when transacted by a counterparty.

19. Among the products offered on EOL in 2001 was the HH Spot Market.

20. The Henry Hub is owned by the Sabine Pipe Line Co. and is located near the Gulf Coast of Louisiana, where 14 pipelines converge near the supply region of Louisiana. It is one of the main entry points for Gulf production and is used to direct natural gas to a variety of market

areas. The physical configuration of the Henry Hub and the lack of major constraints (congestion) in and out of the hub are factors that support a liquid market there.

21. EOL was the dominant platform for trading in the HH Spot Market in 2001. Other HH Spot Market participants routinely looked to EOL and Enron for current HH Spot Market pricing information. The HH Spot Market is a next-day market, thus most traders of this EOL product either were flat by the end of the trading day (11 a.m. Central time) or had to be prepared to make or take delivery. EOL accounted for 40% of the average daily volume of trading in that market. An average of five BcF (1 BcF equals 1 million mm BTUs) of HH Spot Market natural gas is traded daily. From at least March through September 2001, an average of two BcF of HH Spot Market natural gas was traded daily on EOL.

22. The Henry Hub is the delivery point for NYMEX Henry Hub Futures, and prices in the HH Spot Market are correlated with prices in NYMEX Henry Hub Futures. As prices in the HH Spot Market rise or fall, prices in NYMEX Henry Hub Futures generally rise and fall. By manipulating prices in the HH Spot Market, one can adversely affect prices for NYMEX Henry Hub Futures.

#### **B. The Manipulative Scheme**

23. On or about July 19, 2001, Shively, with the assistance of at least one other Enron natural gas trader, engaged in a scheme which manipulated prices in the HH Spot Market, and had a direct and adverse affect on NYMEX Henry Hub August 2001 Futures, including causing prices in NYMEX Henry Hub Futures to become artificial.

24. Defendants' manipulative scheme involved a plan among Enron traders to purchase an extraordinarily large amount of HH Spot Market natural gas within a short period of time (the "Manipulative Scheme").

25. Defendants effectuated their Manipulative Scheme through a variety of acts and practices that were intended to, and did, manipulate prices in the HH Spot Market. NYMEX

August 2001 Henry Hub Futures were affected by Defendants' Manipulative Scheme as well, including causing NYMEX Henry Hub Futures prices to become artificial.

26. Enlisting the assistance of the East Desk Enron trader who managed the HH Spot Market on EOL, Defendants bought a very large amount of natural gas in the HH Spot Market in a very short period of time, approximately fifteen minutes, in the morning of July 19, 2001, causing prices to rise artificially.

27. Immediately following the pre-arranged buying spree, Enron began unwinding its HH Spot Market position and prices declined in that market. Prices in the HH Spot Market declined in the first ten minutes while Enron unwound its position.

28. Before Shively implemented the scheme, other Central Desk traders learned that Shively was going over to the East Desk to bid up the HH Spot Market. The head of Enron's NYMEX desk was also informed of Shively's plan. Later, at some point during Enron's HH Spot Market trading, an Enron trader indicated to the Central Desk that the East Desk was "bidding up" the HH Spot Market. Shortly thereafter, a trader at the Central Desk stated that the East Desk was going to sell the HH Spot Market.

29. To ensure the participation of the Enron East Desk trader who managed the HH Spot Market on EOL, Shively agreed to cover any trading losses that trader incurred by participating in the Manipulative Scheme.

30. On or about July 19, 2001, to cover the losses of that East Desk trader, Shively directed that over \$80,000 be transferred from an administrative trading account he controlled to the trading account of the Enron East Desk trader who agreed to participate in the Manipulative Scheme.

31. Shively acted in the scope of his employment in carrying out and directing the conduct of other Enron employees in furtherance of the Manipulative Scheme.

**C. Enron Operated an Illegal Futures Exchange**

32. In September 2001, Enron launched EOL 2.0, which included a feature whereby outside users could post bids and offers on EOL, provided the bids or offers were between Enron's posted bid and offer prices.

33. This modification to EOL, allowing outside users to post bids and offers that other outside users could accept, caused EOL to become an electronic trading facility under Section 1a(10) of the Act, 7 U.S.C. § 1a(10), from September to December 2001. Outside users of EOL now had the ability to transact with each other, even though Enron was technically the counterparty on these transactions.

34. Enron listed on EOL at least three "swaps" contracts that were commodity futures contracts: a) NYMEX swap; b) US Gas Daily Transco; and c) US Gas Daily Henry Hub.

35. Enron never sought designation as a contract market or registration as a derivatives transaction execution facility under Sections 5 and 5a of the Act, 7 U.S.C. §§ 7 and 7a, and never notified the Commission of its intention to operate an electronic trading facility in reliance on the exemption set forth in Section 2(h)(3) of the Act, 7 U.S.C. § 2(h)(3).

**D. Enron Traded An Illegal Agricultural Commodity Futures Contract on EOL**

36. From at least December 21, 2000 to December 2, 2001, Enron offered on EOL several lumber futures contracts based upon an index.

37. Enron listed on EOL a lumber contract that it called a "swap" that was a cash settled contract for the sale of a commodity for future delivery.

38. Enron's lumber futures contract did not trade on a designated contract market or registered derivatives transaction execution facility.

39. The lumber index described in EOL's lumber "swap" contract was an index of the prices published in the Delivered Price Comparisons section of *Random Lengths*. The index is an average of prices for all issues of *Random Lengths* published in a calendar month.

40. Enron's lumber contract was an illegal, off-exchange agricultural commodity futures contract.

V.

**VIOLATIONS OF THE COMMODITY EXCHANGE ACT**  
**COUNT I: MANIPULATION AND/OR ATTEMPTED MANIPULATION BY ENRON**  
**AND SHIVELY**

41. Paragraphs 1 through 40 are realleged and incorporated herein by reference.

42. Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, 13(a)(2), make it illegal for any person to manipulate or attempt 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, including any contract market.

43. Defendants had the ability to influence prices in the HH Spot Market and NYMEX Henry Hub Futures.

44. Defendants intended to cause artificial prices in the HH Spot Market.

45. On July 19, 2001, artificial prices existed in the HH Spot Market, and in NYMEX Henry Hub Futures as well.

46. Defendants' trading in the HH Spot Market on July 19, 2001 caused artificial prices in the HH Spot Market, and in the correlated NYMEX Henry Hub Futures.

47. By their manipulative actions, Defendants violated Sections 6(c), 6(d), and 9(a)(2) of the Act, 7 U.S.C. §§ 9, 13b, 13(a)(2).

48. Defendants (1) had the intent to manipulate the HH Spot Market and (2) overtly acted in furtherance of that intent to manipulate the HH Spot Market.



49. Enron is liable, pursuant to Section 2(a)(1)(B) of the Act, 7 U.S.C. § 2(a)(1)(B), for Shively's violations of the Act because Shively was an employee of Enron and his actions on July 19, 2001, were in the course and scope of his employment.

50. Each and every act or transaction engaged in by Defendants in furtherance of the manipulative scheme, as described above, 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, 13(a)(2).

## **COUNT II: OPERATION OF AN ILLEGAL FUTURES EXCHANGE BY ENRON**

51. Paragraphs 1 through 50 are realleged and incorporated herein by reference.

52. Section 1a(33)(A) of the Act, 7 U.S.C. § 1a(33)(A), defines the term "trading facility" as any person or group of persons "that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions by accepting bids and offers made by other participants that are open to multiple participants in the facility or system."

53. Section 1a(10) of the Act, 7 U.S.C. § 1a(10), defines "electronic trading facility" as a "trading facility that (A) operates by means of an electronic or telecommunications network; and (B) maintains an automated audit trail of bids, offers, and the matching of orders of the execution of transactions on the facility."

54. Section 2(h)(3) of the Act, 7 U.S.C. § 2(h)(3), provides for certain relief for transactions in "exempt commodities", as defined by Section 1a(14) of the Act, 7 U.S.C. § 1a(14), from various other provisions of the Act if the contract or transaction is, among other things, executed or traded on an electronic trading facility.

55. Section 2(h)(5) of the Act, 7 U.S.C. § 2(h)(5), requires, among other things, an electronic trading facility to notify the Commission of its intention to operate an electronic trading facility in reliance on the exemption in Section 2(h)(3) of the Act, 7 U.S.C. § 2(h)(3).

56. Section 4(a) of the Act, 7 U.S.C. § 6(a), provides, in pertinent part, that “it shall be unlawful for any person to offer to enter into, to enter into, to execute, to confirm the execution of any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery ... unless – such transaction is conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity.”

57. From September 2001 through at least December 2001, EOL was an electronic trading facility pursuant to Sections 1a(10) and (33) of the Act, 7 U.S.C. §§ 1a(10) and 1a(33). During the relevant time period, Enron offered on EOL at least three swap contracts that were cash-settled futures contracts.

58. Enron violated Section 4(a) of the Act, 7 U.S.C. § 6(a). Enron failed to seek designation or registration as a contract market or derivatives transaction execution facility under §§ 5 and 5a of the Act, 7 U.S.C. §§ 7 and 7a. In addition, Enron did not notify the Commission that EOL was acting as an electronic trading facility, as required under Section 2(h)(5) of the Act, 7 U.S.C. § 2(h)(5).

59. Each and every transaction occurring since September 2001 on EOL in connection with a contract for the purchase or sale of a commodity for future delivery, as described above, is alleged herein as a separate and distinct violation of Section 4(a) of the Act, 7 U.S.C. § 6(a).

### **COUNT III: TRADING AN ILLEGAL AGRICULTURAL COMMODITY FUTURES**

#### **CONTRACT BY ENRON**

60. Paragraphs 1 through 59 are realleged and incorporated herein by reference.
61. Lumber is an agricultural commodity.
62. A lumber index is not an excluded or exempted commodity under Sections 1a(13) and 1a(14) of the Act. 7 U.S.C. §§ 1a(13)-(14).

63. Enron listed one futures contract on lumber, which Enron called the US Lumber Financial Swap contract.

64. Enron's US Lumber Financial Swap contract was not traded on a designated contract market or registered derivatives transaction execution facility.

65. Section 4(a) of the Act, 7 U.S.C. § 6(a), provides, in pertinent part, that "it shall be unlawful for any person to offer to enter into, to enter into, to execute, to confirm the execution of, ... any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery ... unless - (1) such transaction is conducted on or subject to the rules of a board of trade which has been designated or registered by the Commission as a contract market or derivatives transaction execution facility for such commodity;..."

66. From December 21, 2000 through December 2001, Enron violated Section 4(a) of the Act, 7 U.S.C. § 6(a), by trading and offering for trade its US Lumber Financial Swap which was an off-exchange agricultural commodity futures contract.

67. Each and every transaction occurring on EOL in connection with its agricultural commodity futures contract, *i.e.*, the US Lumber Financial Swap described above, is alleged herein as a separate and distinct violation of Section 4(a) of the Act, 7 U.S.C. § 6(a).

## 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 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. restraining and enjoining Enron and any of its affiliates, agents, servants, employees, successors, assigns, attorneys, and persons in active concert with them who receive

actual notice of such order by personal service or otherwise, from directly or indirectly violating Section 4(a) of the Act, 7 U.S.C. § 6(a);

C. directing Defendants to pay civil monetary penalties, to be assessed by the Court separately against each defendant, in amounts not to exceed \$120,000 or triple the monetary gain to them for each violation of the Act, as described herein; and

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


Dated: March 11, 2003

Respectfully submitted,



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