

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

_____ )	<b>CFTC Docket No. <u>04 -11</u></b>
<b>In the Matter of:</b> )	
)	
<b>CALPINE ENERGY SERVICES, L.P.</b> )	<b>ORDER INSTITUTING</b>
)	<b>PROCEEDINGS PURSUANT TO</b>
<b>Respondent.</b> )	<b>SECTIONS 6(c) AND 6(d) OF THE</b>
)	<b>COMMODITY EXCHANGE ACT,</b>
)	<b>MAKING FINDINGS AND</b>
)	<b>IMPOSING REMEDIAL SANCTIONS</b>
_____ )	

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**I.**

The Commodity Futures Trading Commission ("Commission") has reason to believe that Calpine Energy Services, L.P. ("Calpine Energy" or "Respondent"), a wholly owned subsidiary of Calpine Corporation, has violated Section 9(a)(2) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. § 13(a)(2) (2001). Therefore, the Commission deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted to determine whether Calpine 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 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 herein 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 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 at least September 2001 through October 2002 (the "Relevant Period"), Calpine Energy 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, one Calpine Energy trader knowingly reported certain actual trades at false prices and/or volumes, as well as trades that did not occur.

#### B. RESPONDENT

Calpine Energy is a Delaware Limited Partnership headquartered in Houston, Texas. During all times relevant hereto, Calpine Energy engaged in natural gas and power marketing throughout the United States. Calpine Energy employed approximately fifty traders during the Relevant Period to manage its marketing operations. Calpine Energy is a wholly owned subsidiary of Calpine Corporation,<sup>2</sup> a publicly traded corporation listed on the New York 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 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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<sup>2</sup> Calpine Corporation is a Delaware Corporation with headquarters at 50 West San Fernando Street, San Jose, California 95113. The company is engaged in the development, construction, ownership and operation of power generation facilities and the sale of electricity predominantly in the United States, but also in Canada and the United Kingdom.

## 2. Calpine Energy Reported False Market Information

From at least September 2001 through October 2002, one Calpine Energy gas trader knowingly delivered false reports to reporting firms on a routine basis.<sup>3</sup> These reports, submitted telephonically, contained certain actual trades in which the price and/or volume was altered, as well as trades that did not occur.

### D. LEGAL DISCUSSION

#### By Reporting False or Knowingly Inaccurate Market Information, Calpine 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).

Respondent violated Section 9(a)(2) of the Act when its employee knowingly delivered false or knowingly inaccurate price and volume information to the reporting firms.<sup>4</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, Respondent violated Section 9(a)(2) 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) (2001).

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<sup>3</sup> Calpine Energy no longer employs the trader responsible for making these false reports.

<sup>4</sup> 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 (7<sup>th</sup> Cir. 1988) (citing *Cange v. Stotler*, 826 F. 2d 581, 589(7<sup>th</sup> Cir. 1987); *Rosenthal & Co. v. CFTC*, 802 F. 2d 963, 966-67 (7<sup>th</sup> Cir. 1986)). Consequently, Calpine Energy is liable for its employee’s violations of the Act.

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, Calpine Energy and Calpine Corporation both agree to entry of an Order, in which the Commission makes findings, including findings that Calpine Energy violated Section 9(a)(2) of the Act, and orders that Calpine Energy cease and desist from violating the provision of the Act it has been found to have violated; and Calpine Energy shall pay a civil monetary penalty of One Million Five Hundred Thousand Dollars (\$1,500,000); and Calpine Energy and Calpine Corporation comply with the conditions and undertakings as set forth in this Order.

VI.

**Accordingly, IT IS HEREBY ORDERED THAT:**

1. Respondent shall cease and desist from violating Section 9(a)(2) of the Act.
2. Respondent shall pay a civil monetary penalty of One Million Five Hundred Thousand Dollars (\$1,500,000) 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 21<sup>st</sup> 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 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(e)(2) (2001), for violating a Commission Order.

3. Respondent and Calpine Corporation shall comply with the following conditions and undertakings as specified:

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

Respondent and Calpine Corporation shall cooperate fully and expeditiously with the Commission, including the Commission's Division of Enforcement ("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 indexes. As part of such cooperation, Respondent agrees 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 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 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) requests for assistance in locating and contacting any prior (as of the time of the request) officer, director, or employee of Respondent.

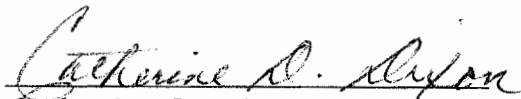
Respondent and Calpine Corporation also agree that they will not undertake any act that would limit their ability to fully cooperate with the Commission. Respondent and

Calpine Corporation designate Peter H. Rodgers, Esq., of the Sutherland, Asbill, and Brennan law firm, to receive all requests for information pursuant to this undertaking. Should Respondent or Calpine Corporation 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 Calpine Corporation additionally agrees, that neither they nor any of Respondent's or Calpine Corporation'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 Calpine Corporation'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 Calpine Corporation 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.



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

Dated: January 28, 2004